



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : CHI/00HE/PHI/2022/0104

Property : 7 Planet Park, Westdown Road, Delabole,
Cornwall PL33 9BQ

Applicant : Michael Mark Anthony White and Michael
Thomas White t/as White Park Homes

Representative : Blacks Solicitors LLP

Respondent : Mrs C Bailey and Mr G Sharpe

Representative :

Type of Application : Review of Pitch Fee: Mobile Homes Act
1983 (as amended)

Tribunal member : D Banfield FRICS, Regional Surveyor

Date of Decision : 22 May 2023

DECISION

Background

1. On 15 August 2022 the Applicant site owner sought a determination of the pitch fee of £173.93 per month payable by the Respondent as from 2 June 2022. This was one of 27 pitch fee applications that were submitted together.
2. A Pitch Fee Review Notice was said to have been served on each Respondent dated 16 April 2022 proposing to increase the pitch fee by an amount which the site owner says represents only an adjustment in line with the Retail Price Index. The Applicant stated that the Review Date was 1 April each year.
3. The Applicant did not provide copies of the Pitch Fee Notice or Written Statement but did provide a statement of facts with a copy of a Written Statement and Pitch Fee Notice from a resident at the park. Unfortunately these copies were illegible.
4. On 7 December 2022 the Tribunal issued a Notice that it was minded to strike out the Application on the grounds that it did not have jurisdiction to deal with it. This was because as it did not possess the relevant documents to proceed and could not be satisfied that the correct process had been followed by the Applicant.
5. Representations were requested from both parties to be received by 21 December 2022.
6. On 18 December 2022 representations were received from the Respondent. It is not clear whether these were served upon the Applicant. The Tribunal notes that the Respondent has highlighted that the review date is 'January' and not the date specified by the Applicant. It is a matter for the parties whether further representations are made with regard to the validity of the application.
7. On 21 December 2022 the Applicant submitted detailed representations together with copies of two Pitch Fee Review Notices and a Review Form (subsequently received following the service of the application) and 13 Written Agreements that it had located, one of the said Written Agreements relating to this park home.
8. The Tribunal noted the Applicant's submissions and allowed the application to proceed, issuing directions on 6 January 2023 setting out a timetable for the submission of the parties' respective cases.
9. The directions indicated that the Tribunal considered that this application was likely to be suitable for determination on the papers alone without an oral hearing unless a party objects in writing. No objects have been received and the application is therefore so determined.

The parties' cases

The Respondent

10. *“We moved onto the park 10/06/21 and should have been paying the written statement price of £150 as shown on the paperwork supplied by you, a copy of which was sent to your solicitor and the court, and a copy attached again with this correspondence. Unfortunately on moving into our park home on the above date, you increased the price without any pitch fee review paperwork and in our ignorance to the written law, a direct debit was set up and paid at that amount . We subsequently discovered this should not have happened as procedures must be followed. For 2022 you have actually sent pitch fee review paperwork, but this would now mean you are attempting to increase our pitch fee twice within 12 months! This is totally unacceptable and we are not in agreement to that. You were informed by email from the outset why I didn't agree with the pitch fee increase and the only response I received in reply was correspondence from your solicitor informing that if I didn't pay, court proceedings would commence. You have never attempted to write or speak directly to me regarding my correspondence of you failing to follow procedure of pitch increase when we initially moved onto the park. In addition to this, two of the road ramps were causing a lot of discomfort and clanking in our vehicles when we passed over them, especially the Roughtor View one. The road surface entering the park and along Roughtor View was broken and uneven and very uncomfortable to drive on, let alone walk over. * *You have now repaired part of the entrance road onto the first section driving down into the park and over the worst two humps, after the Local Authority Council served you with a Court Order to complete these works due to the very poor state of the road service. There are still two very uneven humps remaining, one that makes steering have to be corrected as it alters the path of the vehicle and the other that has no lighting whatsoever and is a liability to those walking the path when daylight has gone. Also when we exit the park on foot, the path leading from 2 Planet Park and then on between 36 & 37 is in desperate need of a light, the road hump causes me to stumble in the dark as it is an unlit area. I have to carry a torchlight in order to see where to walk. The surface around that area also collects mud/moss and is very slippery. No attempts on your part have been made to rectify these. The Park has also been without a Manager for a considerable time meaning when the park had a water leak on the road and also an electrical cut out, we had no-one on site to turn to for help or information. I understand you state there is no law requiring a Park Manager and you have stated residents can contact your office with issues, this is difficult as your office is only open certain hours and is based over 250 miles away. Now there is a notice on the entrance to the park for 'Prior Planning Approval' to turn 'two offices' into 'residential dwellings', when you have already completely turned them into residential dwellings! It appears to me that time and again you fail to do things by the law of the land, yet you expect us as residents to*

comply with your requests, when you fail to go about them correctly. I have lost faith and trust in you as a Park Owner.”

The Applicant

11. A statement in reply was received on 3 March 2023 setting out the legal position which in summary will not exceed the increase in RPI and any adjustment for a reduction in amenity or services since the last review. Reference is made to *Vyse v Wyldecrest Parks (Management) Limited* [2017] UKUT 0024.
12. In answer to the issues raised by the Respondent the Applicant states that;
 - The state of the roads; there has not been a decrease in condition since the last review.
 - The works were carried out as part of the overall development of the site not in response to any Council action.
 - The validity of the Council’s Notice is being challenged.
 - Delays were incurred due to the non-appearance of a contractor and finding a replacement.
 - The lighting is unchanged since 2019 when they purchased the park and at the last pitch fee review in 2021.
 - New lights have been provided as part of the development for holiday use which also benefit the Park.
 - There has been no Park Manager since January 2021 and therefore no reduction in services in the last 12 months.
13. Reimbursement of the £20 application fee is sought.
14. The Respondents agreed to purchase their home in late 2020 not moving onto the Park until June 2021. The pitch fee payable by new residents moving onto the Park in January 2021 was £159.13, following the pitch fee review in 2021, the pitch fee was increased in line with the relevant RPI of 1.4% to £161.35 which pitch fee the Respondents paid.
15. The Applicant avers that the increase in pitch fee was carried out prior to the completion of the sale of the Respondents’ home situated on the pitch and prior to the Written Statement being entered into.
16. The Respondents having paid a pitch fee of £161.35 from June 2021 are deemed to have accepted the same. Further, the Implied Terms permit a review of the Pitch Fee each year and is not restricted from carrying out a review within 12 months of the Written Statement being entered into.
17. A hearing bundle was provided on 3 March 2023 the contents of which have been examined and the Tribunal is satisfied that the application remains capable of being determined on the papers without an oral hearing.

Consideration

18. Planet Park is a protected site within the meaning of the Mobile Homes Act 1983 (the 1983 Act).
19. The Respondents' right to station their mobile home on the pitch at Planet Park is governed by the terms of the Written Agreement with the Applicant and the provisions of the 1983 Act.
20. The Applicant has been unable to provide a copy of a Written Statement for this pitch but has provided one relating to another pitch which it said applied to all the pitches on the Park.
21. The Applicant said that the pitch fee review date is 1 April each year. The Respondents have not disputed the accuracy of this statement.
22. The Applicant further stated that it served the Respondents with the prescribed pitch review form proposing the new pitch fee effective from 2 June 2022 on 16 April 2022 which was more than 28 days prior to the effective review date and that the Application to the Tribunal to determine the pitch fee was made on 15 August 2022 which was within the period starting 28 days to three months after the review date of 2 June 2022. The Applicant explained that it applied the RPI of 7.8 per cent as published in February 2022 being the last index published for the year to January 2022.
23. Having regard to its findings above the Tribunal is satisfied that the Applicant had complied with the procedural requirements of paragraph 17 of Part 1 of Schedule 1 of the 1983 Act to support an application for an increase in pitch fee in respect of the pitch occupied by the Respondents.
24. The Tribunal has considered the Respondent's assertion that the correct pitch fee when she entered into the agreement was £150 in support of which a copy of a page from an otherwise unidentified written statement showing that sum is provided at page 100 of the bundle. The extract is incomplete and does not contain a start date for the pitch fee. The Tribunal does not find this extract to be compelling evidence and on the evidence submitted prefers the Applicant's explanation of events contained in paragraph 14 above.
25. The Tribunal is required to determine whether the proposed increase in pitch fee is reasonable. The Tribunal is not deciding whether the level of pitch fee is reasonable.
26. Pitch fee is defined in paragraph 29 of Part 1 of Schedule 1 of the 1983 Act as:

"The amount which the occupier is required by the agreement to pay to the owner for the right to station the mobile home on the pitch and for use of the common areas of the protected site and their maintenance, but does not include amounts due in respect of gas, electricity, water, sewerage or

other services, unless the agreement expressly provides that the pitch fee includes such amounts."

27. The Tribunal is required to have regard to paragraphs 18, 19 and 20 of Part 1 of Schedule 1 of the 1983 Act when determining a new pitch fee. Paragraph 20(1) introduces a presumption that the pitch fee shall increase by a percentage which is no more than any percentage increase or decrease in the RPI since the last review date.
28. The Applicant has restricted the increase in pitch fee to the percentage increase in the RPI.
29. The Applicant referred to the decision of the Upper Tribunal: *Vyse v Wyldecrest Parks (Management) Ltd*, [2017] UKUT 24 (LC), where the increase sought was above RPI.
30. In *Vyse*, HHJ Alice Robinson said as follows:

"There are a substantial number of mobile home sites in England occupied pursuant to pitch agreements which provide for relatively modest pitch fees. The legislative framework for determining any change in pitch fee provides a narrow basis on which to do so which no doubt provides an element of certainty and consistency that is of benefit to site owners and pitch occupiers alike. The costs of litigating about changes in pitch fee in the FTT and in the Tribunal are not insubstantial and will almost invariably be disproportionate to any sum in issue. I accept the submissions...that an interpretation which results in uncertainty and argument at many pitch fee reviews is to be avoided and that the application of RPI is straightforward and provides certainty for all parties"
31. The Applicant replied to the Respondent's assertions in paragraph 10 above in particular that the test was whether there had been a deterioration since the last pitch fee review.
32. The Applicant submitted that there had been no deterioration of the site and that the site had remained in the condition that it has always been in. The Applicant argued that it would be reasonable for the Tribunal to approve the proposed increase in line with RPI.
33. The Tribunal's starting point is that the pitch fee should be increased in line with RPI. In determining whether the presumption applies, the Tribunal must have regard to the matters identified in paragraphs 18 and 19 Part 1 of Schedule 1 of the 1983 Act. In this case paragraph 19 did not apply because there was no evidence that the increase in the pitch fee included costs which were specifically excluded by that paragraph. Similarly, the Applicant was not including costs of any improvements within the proposed increase. It appears to the Tribunal that the Respondent's case rested on whether there had been a deterioration in the condition of the site. The Respondent did not suggest there had been a reduction in the amenities or services provided.

34. The Tribunal accepts that the Respondents are dissatisfied with the current state of the site and wish for improvements to be carried out. The issue I must consider however is if, in the period between the current review of 2 June 2022 and the previous review, the condition of the site has deteriorated. Whilst evidence has been submitted identifying shortfalls in the condition of the site the Tribunal is not satisfied that it falls within the period at issue and sufficient to displace the presumption that the pitch fee should be increased in line with RPI.
35. The Tribunal, therefore, confirms the increase.

Decision

36. Given the above the above circumstances the Tribunal determines that the proposed increase in pitch fee is reasonable. Further the Tribunal determines a pitch fee of £173.93 with effect from 2 June 2022.
37. The Respondents have participated in the proceedings and raised matters of assistance to the Tribunal's determination. As such the Tribunal refuses the Application for reimbursement of the Application fee of £20.00

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.