



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

Case Reference : CHI/00HE/PHI/2022/0118

Property : 36 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 Haywood

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 £110.44 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 19 December 2022 representations were received from the Respondent. It is not clear whether these were served upon the Applicant.
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 objections have been received and the application is therefore so determined.

The parties' cases

10. In a statement from the Respondent on 23 January 2023 it was stated that.
 - Whilst the use of RPI was legal it was unfair as the state pension has not been increased by the same amount.
 - The state of the roads from No 36 to the entrance was dangerous as the concrete was breaking up.
 - The road has partly had a new Tarmac surface due to the intervention of Cornwall Council. The rest of the park has only had potholes filled which will not last long.
 - The construction of the roads is contrary to the Site Licence Conditions for Residential Caravans.
 - The original plan of the Park has been relocated to an inconvenient location.
 - There is a tree in a dangerous condition growing in the boundary wall at No 36 which is the Applicants' responsibility to maintain.
11. In support of her statement the Respondent appends photographs of the road referred to before the section was covered in tarmac.
12. In a statement in reply the Applicant sets out the legal position which in summary is that any increase 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.
13. 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.
 - Photographs of the road resurfaced in November 2022 were appended.
 - 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 change in the meter reading and is not a matter to be considered in assessing the pitch fee.
- No evidence has been provided regarding the alleged failure to maintain a boundary wall which it is averred are on the Respondent's pitch and her responsibility to maintain.
- There has been no decrease in the condition of the wall within the last 12 months.
- Regarding the use of an incorrect pitch fee the Applicants aver that the Respondent's pitch fee was increased from £101.04 to £102.45 following the pitch fee review in 2021. The Applicants received payment of the increased pitch fee of £102.45 from the Respondent since the pitch fee review in 2021. Whilst the Respondent's standing order remained as £101.04, the Applicants received the monthly difference between the 2020 pitch fee and 2021 pitch fee for the pitch fee year via cheque, as the Respondent was unable to access a bank to amend the standing order. In accordance with paragraph 16 of the Implied Terms payment of the increased pitch fee is deemed to be acceptance of the same. It is not accepted, therefore that the current pitch fee cited within the Application is incorrect or the incorrect pitch fee review figure was utilised for the 2022 pitch fee review.
- The fact that the state pension has not increased is outside of the Applicants' control and there is no legal obligation for the Applicants to consider the same when looking to increase the pitch fee in accordance with the Implied Terms.
- The Applicants acknowledge that the Sign was moved as a new wall was erected at the entrance to the Park where the Sign was originally located. The Sign was therefore moved to the left of the road so the same could be seen, however it remains at the entrance to the Park.

14. Reimbursement of the £20 application fee is sought.

15. 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

16. Planet Park is a protected site within the meaning of the Mobile Homes Act 1983 (the 1983 Act).

17. The Respondent's right to station her 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.

18. 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.
19. The Applicant said that the pitch fee review date is 1 April each year. The Respondents have not disputed the accuracy of this statement.
20. 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.
21. The Tribunal accepts the Applicants' explanation that the pitch fee was increased in 2021 to £102.45.
22. 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.
23. 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.
24. 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."
25. 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.
26. The Applicant has restricted the increase in pitch fee to the percentage increase in the RPI.
27. 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.

28. 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”

29. The Applicant replied to the Respondent’s assertions in paragraph 15 above in particular that the test was whether there had been a deterioration since the last pitch fee review.
30. 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.
31. 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 and the manner in which the site was managed. The Respondent did not suggest there had been a reduction in the amenities or services provided.
32. The Tribunal accepts that the Respondent is 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.
33. The Tribunal, therefore, confirms the increase.

Decision

34. 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 £110.44 with effect from 2 June 2022.
35. 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.