



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

Case Reference : **CHI/43UD/PHI/0143**

Property : **37 Chapel Farm Park, Guildford Road,
Normandy Guildford GU3 2BB**

Applicant : **Wyldecrest Parks (Management) Limited**

Representative : **Mr David Sunderland of the Applicant**

Respondent : **Mr Christopher deLaney**

Representative : **In person**

Type of Application : **Mobile Homes Act 1983 as amended:
Application by site owner for determination
of the new pitch fee.**

Tribunal Members : **Judge Paul Letman MBE
Mr Colin Davies FRICS
Ms T Wong**

Date and venue of : **28 March 2023
Hearing On line**

Date of Decision : **24 May 2023**

**RE-ISSUED DECISION WITH REASONS
INCLUDING DECISION ON COSTS**

Introduction

1. By Application Notice (in form PH9) dated 29 November 2022 ('the Application') the Applicant as owner seeks the determination of a new level of pitch fee in respect of 37 Chapel Farm Park ('the Property').
2. By Pitch Fee Review Notice dated 21 September 2022 ('the Review Notice'), the Applicant proposed an increase in the Pitch Fee for the Property from £222.36 to £249.71 pursuant to Chapter 2 of Part 1 of Schedule 1 to the Mobile Homes Act 1983 ('the MHA 1983') to take effect on 1 November 2022. In accordance with section 20(A1) of the MHA 1983 the proposed increase was calculated over 12 months by reference to the RPI for August 2022 which was 12.3%.
3. On 31 January 2023 the Tribunal made directions for the further conduct of the Application, requiring the Respondent to serve a statement of case by 21 February 2023, a reply by 14 March 2023 and the preparation of a bundle for hearing by the same date. The hearing of the Application was duly listed for determination as a Fast Track case on 28 March 2023.

The Parties' Cases

4. The Applicant relies simply on the Review Notice (in accordance with the Mobile Homes (Pitch Fees) (Prescribed Form) (England) Regulations 2013/1505) seeking a single year increase pursuant to the terms of the 1983 Act.
5. The Respondent contests the Review Notice and the proposed increase on the basis that his Mobile Homes Agreement provides that he is to pay an annual pitch fee (subject to review) by way of equal 4 weekly payments in advance. He refers also to the fact that in a previous case (ref. CHI/43UD/PHI/0001) the FtT accepted that his was an annual pitch fee. He objects to the Review Notice because it proposes an increase based on monthly payments.
6. Further, he points out that the proposed monthly increase when applied and rounded up generally has the effect of increasing his annual payment above that which would be payable if the RPI increase was applied to the pitch fee stated as an annual sum. To demonstrate the point the Respondent helpfully produces a table showing the comparative figures due as follows:

Year	Wyldecrest Monthly	Wyldecrest Total	Respondent's Total Fee (per annual fee)
2009-10	154.79	1,857.48	1,857.44
2010-11	162.07	1,944.84	1,944.74
2011-12	170.49	2,045.88	2,045.87
2012-13	175.44	2,105.28	2,105.20

2013-14	181.23	2,174.76	2,174.67
2014-15	185.93	2,231.16	2,231.07
2015-16	187.97	2,255.64	2,255.61
2016-17	191.35	2,296.20	2,296.20
2017-18	198.81	2,385.72	2,385.72
2018-19	205.77	2,469.24	2,469.22
2019-20	211.12	2,533.44	2,533.42
2020-21	212.18	2,546.16	2,546.09
2021-22	222.36	2,668.32	2,668.30
2022-23	249.71	2,996.52	2,996.50
	Totals	32,510.64	32,510.05

7. No other issue is taken by the Respondent, who confirmed that subject to this 'rounding error' point he was content to accept for the purposes of section 20(A1) of the Mobile Homes Act 1983 it was reasonable for the RPI annual increase to be applied.
8. The Applicant maintains that in accordance with the standard form Review Notice it is entitled to propose an RPI increase based on a monthly pitch fee. Nonetheless, in so far as this generates a payment above that which the Respondent calculates to be due based upon RPI applied to the annual pitch fee, it confirmed that it does not seek to claim the difference and is content to waive any claim to the balance, both to date and hereafter.

The Hearing

9. At the hearing Mr Sunderland for the Applicant and Mr deLaney in person, each helpfully explained their respective cases as summarised above. Mr deLaney made the point also that he has requested annual statements of account from the Applicant but these have not been provided. He added that the stance taken by the Applicant appeared to be part of an attempt to oblige him to pay monthly rather than '4 weekly' and that he was opposed to this and any like attempt to vary the terms of his Mobile Homes Agreement.

Discussion

10. The Respondent raises an interesting issue in relation to this pitch fee review, as to whether the landlord is entitled to review what is clearly an annual pitch fee (payable 4 weekly) on the basis of a Pitch Fee Review Form which quotes the current pitch fee as a monthly amount and likewise proposes a new pitch fee which is the amount per month. As the figures above show, however, this is in truth a practical issue, rather than a significant issue of principle.
11. The current monthly pitch fee in the Review Notice is not wrong, because taking the annual pitch fee calculated by the Respondent to be correct, the amount per

month is £222.36 (222.358 rounded). Equally, the difference of 2 pence that results from applying the correct RPI percentage to the monthly amount rather than the annual amount cannot make the increased monthly amount of £249.71 wrong, given that the £222.36 starting figure is correct, even though this produces a figure which is different from the RPI adjusted annual amount.

12. Further, there is nothing in the terms of Schedule 1 of the MHA 1983 which indicates that the Review Notice must reflect exactly the rental period under the agreement, provided of course that the figures stated are correct. This appears to have been the approach taken by the tribunal hearing the contested 2016 review between the same parties, which accepted the validity of the Review Notice in that case which also stated the pitch fees (current and proposed) as monthly amounts.
13. Yet further, it is noticeable the standard template of the prescribed form for the purposes of regulation 25A, specifically allows for the current and proposed pitch fees to be stated per '[week/month/quarter/year]'. Although this could be said simply to cater for different kinds of agreement, there is nothing in the rubric of the form which indicates that a yearly pitch fee cannot be stated as an amount per month.
14. In the light of the foregoing, there is no basis in our judgement for saying that the Review Notice dated 21 September 2022 in this application or, more broadly, the whole review was incorrect or invalid for any reason.
15. The remaining issues for the Tribunal therefore are whether it is reasonable for the pitch fee to be changed and if so, what the new pitch fee should be. No grounds have been advanced before the Tribunal to suggest that in principle it would be unreasonable for the pitch fee to be changed. Equally, no point was taken in relation to any of the matters mentioned under Paragraph 18 of Schedule 1 to the MHA 1983 or otherwise, to suggest that it would be unreasonable for the pitch fee to be subject to an RPI percentage increase in accordance with Paragraph 20 of the MHA 1983.
16. Indeed, as noted above, subject to his objection to the Review Notice considered and rejected above, Mr deLaney accepted that it would be appropriate to increase his pitch fee by the RPI adjustment proposed to an annual figure of £2,996.50. In the circumstances, the Tribunal is satisfied that it would be reasonable for the pitch fee to be changed and determines in accordance with the Review Notice the amount of the new pitch fee to be in the sum of £249.71 (amounting to an annual pitch fee of £2,996.50).
17. Given the discrepancy in the figures discussed above between the yearly pitch and the monthly pitch fee, however, it does seem to the Tribunal to be unnecessarily troublesome for the Review Notice to be based on the monthly rather than yearly pitch fee, with the small amounts overcharged as a result then having to be excluded and waived. For future reviews in our view it would be better, therefore, for the Review Notice to refer to an annual amount to avoid confusion and the

potential for challenge. If it is not and the issue returns to the FtT, this exhortation may be something which the Tribunal then hearing the matter may consider to be relevant on any issue as to costs.

Determination

18. For the reasons set out above the Tribunal determine the amount of the new pitch fee in the sum of £249.71 per month (equivalent to an annual sum of £2,996.50) effective from the review date of 1 November 2022.
19. Noting also, of course, that properly pursuant to Mr deLaney's Mobile Homes Agreement, unless agreed to the contrary, the new pitch fee must be claimed by way of equal 4 weekly payments in advance and will need to be recalculated for this purpose; for information the Tribunal calculates this to be the sum of £230.50 every 4 weeks.
20. Further, in accordance with paragraph 17 of Schedule 1 to the MHA 1983, the new pitch fee shall be payable from the said review date but the Respondent as occupier shall not be treated as being in arrears until the 28th day after the date of this determination.

Application for Costs

21. Further to the substantive issues above, at the hearing of the Application the Applicant made an application to the Tribunal under Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (SI 2013/1169) ('the Rules') for its costs against the Respondent.
22. The basis of the application for costs is that the Application was bound to succeed, as it has, and the Respondent's opposition to the Application baseless, such that it was sufficiently unreasonable for the Respondent for the purposes of Rule 13 for the Respondent to have defended the same at all. The Respondent opposes the application.

Jurisdiction

23. The tribunal's jurisdiction to make orders for costs under Rule 13 of the Tribunal's Rules is, in so far as is presently material, as follows:

'13. (1) The Tribunal may make an order in respect of costs only –

- (a) under section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;*
- (b) if a person has acted unreasonably in bringing, defending or conducting proceedings in –*

(ii) *a residential property case...*

(4) *A person making an application for costs-*

(a) must, unless the application is made orally at a hearing, send or deliver an application to the Tribunal and to the person against whom the order is sought to be made;..

(5) An application for an order for costs may be made at any time during the proceedings but must be made within 28 days after the date on which the tribunal sends (a) a decision notice recording the decision which finally disposes of all issues in the proceedings..

(6) The Tribunal may not make an order for costs against a person ('the paying person') without first giving that person an opportunity to make representations.

24. The tribunal's jurisdiction under section 29(4) of the Tribunal Courts and Enforcement Act 2007 is to make orders for costs wasted as a result of any improper, unreasonable or negligent act or omission on the part of any legal or other representative of a party.

25. As to the test of whether a party or its representative has acted unreasonably for the purposes of the above provisions, this was considered by the Upper Tribunal (UT) in *Willow Court Management Company (1985) Limited v Alexander & others* [2016] UKUT 290 (LC) In that case the UT approved the guidance in *Ridehalgh v Horsefield* [1994] 3 All ER 848, the well-established lead authority on the wasted costs jurisdiction.

26. Thus, the UT accepted that 'Unreasonable ... aptly describes conduct which is vexatious, designed to harass the other side rather than advance the resolution of the case' (as stated by Lord Bingham MR in *Ridehalgh*). The test it was said may be expressed in different ways; Would a reasonable person in the position of the party have conducted themselves in the manner complained of? Or Sir Thomas Bingham's 'acid test': is there a reasonable explanation for the conduct complained of?

27. Further, the UT directed that in exercising the powers under Rule 13, a three-stage approach is appropriate. At the first stage the question is whether a person has acted unreasonably. A decision in this respect does not involve an exercise of discretion but rather the application of an objective standard of conduct to the facts of the case. If there is no reasonable explanation for the conduct complained of, the behaviour will properly be adjudged to be unreasonable, and the threshold for the making of an order will have been crossed.

28. A discretionary power is then engaged, and the decision maker moves to the second stage of the inquiry. At that second stage it is essential for the tribunal to consider whether, in the light of the unreasonable conduct it has found to have been demonstrated, it ought to make an order for costs or not; it is only if it decides that it should make an order that the third stage is reached when the question is what the terms of the order should be. For example, whether the order should cover all or only some of the costs claimed.

Decision on costs

29. In the light of the above principles and guidance this tribunal rejects the said application for costs. Whilst ultimately the Respondent's opposition failed this in itself does not suffice. Moreover, as noted at paragraph 10 of the (substantive) decision above, the Respondent's case raised in our view an interesting point of principle regarding the review period and the effects of rounding the monthly figures.

30. In our view this was a legitimate issue for the Respondent to raise and one which he was reasonably entitled to argue before the tribunal and have determined. True the sums involved are small, but that does not in our judgement detract from the point of principle.

31. Nor in our view can the Applicant sensibly complain in this regard, given that the Respondent has it appears long sought that his pitch fee demands and reviews are based on 4 weekly and yearly figures respectively, yet this has been deliberately resisted by the Applicant. Indeed, as we have urged already at paragraph 17 above, in the absence of some other agreement or accord between the parties, in our view it would be better in future for the Review Notice to refer to an annual amount to avoid confusion and the potential for challenge.

32. In the circumstances and for the reasons briefly touched upon above, we have no hesitation in dismissing the present application for Rule 13 costs.

Re-Dated as above.

Right to Appeal

Pursuant to rule 36(2)(c) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (SI 2013/1169) ('the Rules') the parties are duly notified that they have a right of appeal against the decision herein.

That right of appeal may be exercised by first making a written application to this tribunal for permission to appeal under rule 52 of the Rules. An application for permission to appeal must be sent or delivered to the tribunal so that it is received **within 28 days** of the latest of the dates that the tribunal sends to the person making the application:

(a) written reasons for the decision or (b) notification of amended reasons for, or correction of, the decision following a review (under rule 55) or (c) notification that an application for the decision to be set aside (under rule 51) has been unsuccessful.



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Tribunal Members : **Judge Paul Letman MBE
Mr Colin Davies FRICS
Ms T Wong**

Date and venue of : **28 March 2023
Hearing On line**

Date of Decision : **01 June 2023**

SUPPLEMENTARY DECISION ON COSTS

Introduction

33. By an initial decision herein at the beginning of May 2023 the Tribunal determined in accordance with the Applicant's Application Notice (in form PH9) dated 29 November 2022 ('the Application') that the amount of the new pitch fee in respect of 37 Chapel Farm Park ('the Property') should be in the sum of £249.71 per month (equivalent to an annual sum of £2,996.50) effective from the review date of 1 November 2022.
34. Subsequent thereto the Applicant contacted the Tribunal and noted that his application for costs under Rule 13 had not been determined. The Tribunal understood this to be a wider application for costs under Rule 13(1) and proceeded to determine the same. On 24 May 2023 it sent out a Re-Issued decision including a dismissal of any the said Rule 13 application.
35. Upon receipt of the latter decision the Applicant immediately filed an Application dated 24 May 2023 for Permission to Appeal. The grounds of the proposed appeal as stated in the application are as follows:
- (1) The tribunal treated an application for reimbursement of fees under Rule 13(2) as an application for costs under Rule 3(1).
 - (2) There is no requirement under Rule 3(2) to show unreasonable conduct in terms of the *Willow Court* case. Rule 13(2) is at the discretion of the Tribunal.
 - (3) In treating the application as an application for costs, the tribunal erred in law.
 - (4) The tribunal are asked in the first instance to review their decision under Rule 53.

Process and Procedure

36. The application for permission to appeal is mistaken. The Tribunal has not made an error of law in treating an application for reimbursement of fees under Rule 13(2) as an application for costs under Rule 13(1) (there is no costs jurisdiction under Rule 3(1), and it is presumed the reference in the application is intended to be to Rule 13(1)).
37. In the absence of any clear documentation relating to any costs application and based on its recollection of the proceedings the Tribunal has determined by its re-issued decision what it apprehended to be an application under Rule 13(1). The error, if there was one, is one of fact not law and there is nothing properly the subject of an appeal.
38. Rather, the proper course is for the Applicant's application under Rule 13(2) (now effectively made at least by the application for permission) to be considered by the Tribunal and duly determined. Alternatively, if contrary to the foregoing, for any reason the proper course is a review, the Tribunal accepts the invitation to

review their decision and proceeds pursuant to Rule 55 to determine the said Rule 13(2) application by the Applicant on the basis of its representations.

Decision

39. Rule 13(2) provides as follows, *‘The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.’* In relation to this Rule (unlike Rule 13(1)) it is uncontroversial that, as submitted by the Applicant, the Tribunal has a broad discretion, that there is no requirement for unreasonable conduct and that the principles in *Willow Court* are of no relevance.
40. Rather in exercising this untrammelled discretion the Tribunal has simply to consider all the circumstances of the case and acting in accordance with the overriding objective determine whether it is fair and just that, here, the Respondent should be ordered to reimburse the Applicant the whole or part of any fees paid by the Applicant in respect of the (substantive) Application. The Applicant contends that it is.
41. However, for all the reasons referred to at paragraphs 29 to 31 inclusive in the Tribunal’s previous decision on costs (in relation to Rule 13(1)), the Tribunal are equally of the view that there is no sensible basis for exercising its broader discretion under Rule 13(2) so as to make an order for reimbursement in favour of the Applicant. The said application for reimbursement of any fees under Rule 13(2) is accordingly dismissed.

Dated as above.

Right of Appeal

Pursuant to rule 36(2)(c) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (SI 2013/1169) (‘the Rules’) the parties are duly notified that they have a right of appeal against the decision herein.

That right of appeal may be exercised by first making a written application to this tribunal for permission to appeal under rule 52 of the Rules. An application for permission to appeal must be sent or delivered to the tribunal so that it is received **within 28 days** of the latest of the dates that the tribunal sends to the person making the application:

- (a) written reasons for the decision, or
- (b) notification of amended reasons for, or correction of, the decision following a review (under Rule 55), or
- (c) notification that an application for the decision to be set aside (under Rule 51) has been unsuccessful.

Further, in so far as the decision above is made pursuant to Rule 55, any party that has not been given an opportunity to make representations on the review

may apply for the decision to be set aside and for the decision to be reviewed again (in accordance with Rule 55(3)).