



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

Case Reference : CHI/43UE/PHI/2022/0180

Property : 23 Bramblehall Lane, Upper Farm Park
Home Estate, Boxhill Road, Box Hill,
Tadworth, Surrey, KT20 7JY

Applicant : Thawcroft Limited

Representative :

Respondent : Mr S Morgan
Mrs K Morgan

Representative :

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

Tribunal Member : D Banfield FRICS, Regional Surveyor

Date of Decision : 7 June 2023

DECISION

The Tribunal's decision of 12 April 2023 having been set aside this fresh decision is made under Section 9 (5)(a) of the Tribunals, Courts and Enforcement Act 2007 ('Review of decision of First-tier Tribunal') taking into account the evidence not previously submitted.

Background

1. On 21 December 2022 the Applicant site owner sought a determination of the pitch fee of £2,821.40 per year payable by the Respondents as from 1 November 2022.
2. A Pitch Fee Review Notice dated 14 September 2022 was served on the Respondents proposing to increase their pitch fee by an amount which the site owner says represents only an adjustment in line with the Retail Price Index.
3. The Tribunal required the Applicant to serve the Application and directions on the Respondents. The Applicant confirmed that this had been done
4. On 3 February 2023 the Tribunal directed the Application to be determined on the papers unless a party objected within 28 days. The Tribunal received no objections. The Tribunal required the Respondents to file their statement of case and serve it on the Applicant and the Applicant was given the right of reply.
5. The Tribunal directed the Applicant to prepare the Hearing Bundle and references in this decision are to the pdf page numbers within that bundle shown as [*]

Consideration

6. Upper Farm Park Home Estate is a protected site within the meaning of the Mobile Homes Act 1983 (the 1983 Act). [43-56]
7. The Respondents' right to station their mobile home on the pitch at 23 Bramblehall Lane is governed by the terms of the Written Agreement with the Applicant a copy of which has been supplied [20-42] and the provisions of the 1983 Act.
8. The Applicant said that the pitch fee is reviewed annually on 1 November each year. The Respondents have not disputed the accuracy of the statement.
9. The Applicant further stated that on 14 September 2022 the correct Pitch Fee Review Form prescribed by the Mobile Homes Act was used to propose an annual pitch fee increase effective from 1 November 2022. The proposed pitch fee increase was in line with the RPI as of August 2022 i.e.12.3% plus recoverable costs of a share of the site inspection fee imposed by Mole Valley District Council amounting to £6.08 per resident.
10. On return from annual leave the site managers hand delivered the pitch fee review forms and a covering letter on 27 September 2022 which was more than 28 days prior to the review date of 1 November 2022 and that the Application to the Tribunal to determine the pitch fee was

made on 21 December 2022 which was within the period starting 28 days to three months after the review date.

11. Despite numerous attempts to communicate with the Respondents neither the increased pitch fee has been paid nor have they advised the Applicant whether they agree or oppose the increase. [61]
12. In a witness statement from Christine Oatley, Park Manager at Upper Farm Park Home Estate [62] it was said that;
 - The Respondents had cancelled their Direct Debit to the Applicant prior to the October pitch fee collection.
 - Various communications had been hand delivered.
 - The pitch fee review forms and covering letter dated 27 September had been returned on the assumed grounds that the covering letter had been addressed to the Homeowner and not him by name.
 - Previous letters similarly addressed had not been rejected.
 - Repeated questions were put to the Company Secretary querying Ms Oatley's status as agent for Thawscroft Limited.
13. Copies of the correspondence referred to are included in the bundle. [65-79]
14. The Respondents have not complied with the Tribunal's Directions to advise the Applicant whether they agreed with or opposed the increase and as such the Tribunal makes this determination without the benefit of knowing their views.
15. Having regard to its findings at 10 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.
16. 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.
17. 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."
18. 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.
19. In this case the Applicant has restricted the increase in pitch fee to the percentage increase in the RPI plus a proportion of the cost of a site inspection by Mole Valley District Council.
 20. Taking the RPI increase first, the Tribunal's starting point is that the pitch fee should be increased in line with RPI which it is satisfied is 12.3%.
 21. No submissions have been put forward by the Respondent that the Tribunal should make any adjustment to that figure and as such the Tribunal is satisfied that an increase of 12.3% is appropriate in respect of RPI.
 22. Turning now to the proportion of Mole Valley's fee of £456 amounting to £6.08 per home. At section 4 (C) of the Pitch Fee Review Form a figure has not been inserted although under the heading "Recoverable Costs" on the same page [12] it is stated "We have added a charge that we have incurred and believe can be recovered through the pitch fee."
 23. On page 6 of the form is further reference to Recoverable costs [16] which state that "Matters to which such costs relate that are recoverable through the pitch fee include;
 - A change in the law since the last review date, other than one which is specifically prohibited from being included, which directly affected the cost of management or maintenance of the site.
 - The costs of certain "improvements"
 24. The Applicant makes no further reference to the Recoverable costs save as to Ms Corcoran's assertion that "as this was the first year this fee has been imposed by Mole Valley District Council" [61].
 25. In their application to appeal the Tribunal's decision of 12 April 2023 the Applicant states that;
 - We would like to appeal the Tribunal's decision regarding the Mole Valley licence fees of £456 recovered from the residents at £6.08 per home that had a "...direct effect on the costs payable by the owner in relation to the maintenance or management of the site of an enactment which has come into force since the last review date."
 - Although the section 5A of the 1960 Act commenced on the 1st of April 2014, Thawcroft Limited received correspondence from Mole Valley District Council (MVDC) which was dated the 6th of January 2020 regarding a "Public Consultation concerning the introduction of the fees for Mobile Home and Caravan Site

Licensing" (in fact, Page 4 Paragraph 2 of this letter from MVDC states that the site operator/owner may choose to pass on the cost of the licensing to the residents who live on the site). MVDC subsequently rendered the first Licence fee invoice to Thawcroft Limited dated the 11th of February 2022 and it was this fee that was recovered through the pitch fee review which took place on the 1st of November 2022. It was not possible for Thawcroft Limited to recover the aforementioned Licence fee prior to this because MVDC had not notified them of the exact amount of the fee.

- Referring to (a very similar) case *Wyldecrest Parks (Management) Ltd v Mr and Mrs P Kenyon and Others* [2017] UKUT 0028 (LC) UTLC Case Number: LRX/103/2016, the "Determination" Paragraph 49. of the Appeal Decision document of this case states that "Paragraph 18(1) (ba) therefore required that when determining the next pitch fee review, on 1 February 2015, "particular regard" had to be had to any direct effect of that enactment on the costs payable by the owner in relation to the maintenance or management of the Park. But by that review date the new enactment had had no direct or even indirect effect on the cost of management because no valid licence fee had yet been demanded or paid. I do not think it would be legitimate to treat paragraph 18(1) (ba) as extending to any potential effect in future; only a "direct effect" must be taken into account, and I take this to require a real effect to be experienced during the year in which the reviewed pitch fee will be payable."
- Paragraphs 50. and 51. of the aforementioned "Determination" document continue, "There was therefore no obligation on the FTT to take the additional cost of the licence fee into account on the February 2016 review. But the absence of an obligation is not the same as a prohibition. I consider that the FTT was therefore in error in its conclusion, cited in paragraph 22 above, which treated the delay in introducing the annual site licence fee not only as meaning that the fee was not something to which particular regard must be, but as meaning that it could not be taken into account at all. While the question posed by the FTT when it granted permission to appeal (i.e. whether it was entitled to have regard to a factor "which 14 appears to be implicitly excluded from paragraph 18(1)") is a legitimate one, I am satisfied that on examination it is not an obstacle to this conclusion. The implied terms are specific in identifying those factors which "shall not be taken into account", listing them in paragraph 18(1A) and paragraph 19, and changes in site licence costs are not among them. It is not appropriate to treat a mandatory requirement to give particular consideration to a factor if it occurs within a specified period as if it were a prohibition on considering the same factor should it occur after that period." "I am therefore satisfied that an additional cost which it is known will be payable by site owner in the period

during which the reviewed pitch fee will apply is a matter capable of being taken into account in determining the amount of that pitch fee."

- Turning now to Pitch Fee Review Form; although most regrettably there was an omission in section 4 (C) of the Pitch Fee Review Form, on the same page full details of the Licence fee being recovered through the pitch fee are clearly disclosed in full on the table under the heading "(C) Recoverable costs".
26. In following the guidance given by the Upper Tribunal case referred to above it is clear that the Licence Fee paid to MVDC is a matter capable of being taken into account in determining the amount of the pitch fee and as such I determine that the proportionate cost of £6.08 may be recovered as part of the pitch fee.

Decision

27. Given the above the above circumstances the Tribunal determines that the RPI element of the proposed increase in pitch fee is reasonable together with the addition of for Recoverable Costs of £6.08. **The Tribunal determines a pitch fee of £2,821.40 per annum with effect from 1 November 2022.**
28. The Tribunal is minded to order the Respondents to reimburse the Applicant with the Tribunal application fee of £20. This order will take effect unless the Respondents make representations in writing to the Tribunal on why they should not reimburse the fee by 27 June 2023.

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.