



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

Case Reference	: CHI/19UJ/PHI/2023/0064 CHI/19UJ/PHC/2023/0003 CHI/19UJ/PHA/2023/0002
Property	: 9 White Horse Park, Osmington Hill, Weymouth, Dorset DT3 6ED
Applicant	: Mrs Carmen Smith Mr Garry Smith
Representative	:
Respondent	: White Horse Park Limited
Representative	: Ms A Gourlay, counsel Instructed by Apps Legal Limited
Type of Application	: Determination of New Pitch Fee Order for the site owner to give the occupier a written statement as to the terms of their agreement Determination of a Question under section 4 of the 1983 Act.
Tribunal Member(s)	: Regional Judge Whitney
Date of Hearing	: 17 th October 2023
Date of Decision	: 2 nd November 2023

DECISION

The Applications

Determination of New Pitch Fee CHI/19UJ/PHI/2023/0064

1. The Tribunal received the Application on 7 March 2023. The Applicants state that they received the notice of the new pitch fee on 30 October 2022. The review date is 1 January. The grounds for the Application are that (1) There has been a deterioration in the condition and or decrease in the amenity of the site. (2) The underwriters have refused to insure the mobile home (3) they have been discriminated against and forced to abandon their mobile home on 12 December 2021 (4) the previous Tribunal did not answer the seven questions posed by Judge Dobson (5) The site owner is in breach of the site licence (7) The site owner has not resolved the dispute of the two-driveway attached to the home. The Applicants are requesting that all pitch fees to be refunded and the dispute resolved, namely the driveways are removed. The Applicants did not attach the pitch fee review notice to the Application.

Order for the site owner to give the occupier a written statement as to the terms of their agreement CHI/19UJ/PHC/2023/0003

2. The Application is dated 23 April 2023. The Applicants have attached a written statement under the Mobile Homes Act 1983. The Applicant puts forward no grounds for the Application.

Determination of a Question under section 4 of the 1983 Act. CHI/19UJ/PHA/2023/0002

3. The Application is dated 24 April 2023. The Applicants ask seven questions 1) Was the separation distance between pitches 9 and 10 on White Horse Park part of the pitch when the agreement pursuant to the Mobile Homes Act 1983 (“the agreement”) was entered into? 2) Have the provisions of the Model Standards been breached in relation to the siting of the park home on pitch 10? 3) Has there been a breach by or caused by the Respondent of express or implied terms for quiet enjoyment? 4) Does the pitch as laid out constitute a health and safety hazard? 5) Does the failure by the Respondent to have in place a site licence, site rules and a fire risk assessment at the time of the agreement render the agreement null and void? 6) Does the failure by the Respondent to have in place a site licence, site rules and a fire risk assessment at the time of the agreement mean that the six-month period provided for in section 3A of the Act? 7) If relevant, are the Applicants able to terminate the agreement

Previous Proceedings involving the Applicants

4. **CHI/19UJ/PHN/2020/0001:** Concerned the introduction of site rules. The Tribunal confirmed rule 18b and quashed rule 18c
5. **CHI/19UJ/PHC/2020/0011:** Struck out: non payment of fee.

6. **CHI/19UJ/PHC/2020/0012:** The Tribunal decided that the seven questions identified by Judge Dobson in an earlier case management hearing could all be dealt with under question 3: quiet enjoyment. The Tribunal found that there was no breach of quiet enjoyment. Judge Cooke refused the Applicants permission to appeal, and specifically dealt with the suggestion that the FTT should have followed its own directions and determined the other six issues (LC 2022 10). FTT also made a Rule 13(1)(b) costs order in the sum of £20,000 against the Applicants. Judge Cooke refused the Applicants permission to appeal against the costs order (LC 2022 162).
7. **CHI/19UJ/PHC/2021/0011:** The Applicants brought an application under section 4 asking 81 questions against Dorset Council. The Application was struck out on the ground that the Tribunal had no jurisdiction.
8. **CHI/19UJ/PHI/2021/0008:** Applicants' application for review of pitch fee with effect from 1 March 2021. This was struck out because the Applicants had no basis for making an application.
9. **CHI/19UD/PHI/2021/0010:** Respondent's application for review of pitch fee with effect from 1 March 2021. The Applicants defence was that the Respondent had breached the terms of the 1983 agreement and site licence. The Tribunal found in favour of the Respondent
10. **CHI/19UJ/PHA/2022/0001:** Withdrawn under Rule 11.
11. **CHI/19UJ/PHI/2022/0069:** The Respondent's application for review of pitch fee with effect from 11 April 2022. The Applicants repeated the defence made in the application for a pitch fee review for the previous year. The Tribunal found in favour of the Respondent and made a rule 13(1)(b) costs order against the Applicants in the sum of £3,024.
12. **CHI/19UJ/PHA/2022/0002:** Applicants' application for a statement pursuant to section 1(6) of the 1983 Act. The Tribunal struck out the Application because a statement had been provided when the Applicants purchased the mobile home.

Background

13. The Tribunal gave directions initially on 28th July 2023. The Tribunal directed that all three applications would be joined and gave a preliminary view that the all three applications should be struck out pursuant to Rule 9 of the Tribunal Procedure Rules 2013. The directions set out the basis upon which each application should be struck out. I do not repeat these but have had regard to what was said by Judge Tildesley.

14. The directions also indicated that the Tribunal would consider whether pursuant to Rule 6(1) of the Tribunal Procedure Rules 2013 a restriction should be placed upon the Applicant's ability to issue further applications. Finally they included provisions for any application for costs pursuant to Rule 13 of the Tribunal Procedure Rules.
15. The matter first came for hearing on 7th September 2023. That hearing was adjourned at the application of the Respondent. A full explanation was given by Judge Loveday in his directions dated 7th September 2023.
16. The adjourned hearing took place on 17th October 2023. That hearing was to take place by video. Mr and Mrs Smith attended in person. Counsel Ms Gourlay appeared for the Respondent together with her instructing solicitor Ms Apps.
17. There were initially difficulties in Mr and Mrs Smith connecting by video and the start of the hearing was delayed. The hearing commenced at 11.07 with Mr and Mrs Smith attending by telephone only. Both myself, Counsel and Solicitor for the Respondent were on video.
18. I had before me a bundle prepared by the Tribunal comprising of 204 pdf pages. Each party had a copy of this. I also had further submissions from the Applicants and the Respondent and I had access to the Tribunal's electronic file.
19. I allowed each party to make submissions as to whether or not I should strike out each of the three applications, whether I should make any orders pursuant to Rule 6(1) of the Tribunal Procedure Rules 2013 and also to consider the application for unreasonable costs pursuant to Rule 13 of the Tribunal Procedure Rules 2013 made by the Respondent against the Applicant. At the conclusion all parties confirmed they had made any and all submissions they wished me to hear.

Discussion and Decision

20. I thank all parties for their submissions. It is clear that the Applicants feel a genuine grievance as to the way matters relating to the earlier proceedings have been determined.
21. I make clear that I consider myself bound by the earlier determinations. Mr and Mrs Smith have exhausted their ability to appeal all of these earlier decisions. I have seen much correspondence which appears to suggest they are pursuing separate claims against their various advisers, insurers and other parties connected with the earlier applications. These are not matters relevant to the decisions I have to make. My role is to consider the position relating to each of the 3 applications and

determine whether or not these are matters which the Tribunal can and should proceed to determine.

22. I state at the outset that I am satisfied that all three applications should be struck out. I give my reasons below.

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23. As the original directions highlighted no pitch fee review notice had been provided with the Application. Mr and Mrs Smith have not provided any pitch fee review notice. Mr and Mrs Smith contend that there has been a loss of amenity and that their insurer will no longer offer insurance. Various other matters are also raised. As a result they seek to suggest the pitch fee should not be payable. As I understand their submissions they accept no pitch fee review notice has been served.
24. It is the evidence of the Respondent that no pitch fee review notice has been served. It was suggested that the Respondent has no intention of seeking to review the pitch fee given the Applicants have not been paying for some considerable period of time the current pitch fee. The Respondent suggests given no notice has been served the Tribunal's jurisdiction is not engaged.
25. I am satisfied no notice has been served. I therefore agree with the submissions of the Respondent that the Tribunal's jurisdiction is not engaged unless and until a pitch fee review notice has been served. I am satisfied that the application must be struck out pursuant to Rule 9(2)(a) of the Tribunal Procedure Rules 2013.

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26. As was stated in the original directions the Applicant's attached a written statement. The issue appears to be that Mr Smith contends that he should also be named as a party to the written statement and not just Mrs Smith. Mr Smith contends he is entitled to require the Respondent to provide a written statement in joint names.
27. The Respondent contends that a written statement has been provided which is in the name of Mrs Smith being what was originally required by the Applicants. The Respondent suggests that Mr Smith is not entitled within these proceedings to require the Respondent to provide an amended statement in joint names. In particular it is suggested that previously Mr Smith did not wish to be party to the statement.
28. I am satisfied that a written statement has been issued in the name of Mrs Smith. This has previously been accepted by the parties in the various other determinations referred to above. I find that I

have no jurisdiction to order the site owner to provide a written statement given the same has been provided.

29. I am satisfied that the Tribunal has no jurisdiction to determine this application and the same should be struck out pursuant to Rule 9(2)(a) of the Tribunal Procedure Rules 2013. Further if required I am satisfied that the application is effectively the same as that under CHI/19UJ/PHA/2022/0002 and should also be struck out pursuant to Rule 9(3)(c) of the Tribunal Procedure Rules 2013 having been previously decided.

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30. I refer to paragraph 3 above which sets out the basis of the application. Judge Tildesley in his initial directions identified that in his view it appeared that the Applicants are raising again the seven questions which were considered by the previous Tribunal in CHI/19UJ/PHC/2020/0012. Judge Cooke refused permission to appeal and dealt specifically with the issue of the Tribunal reducing the seven questions to one question.
31. Mr and Mrs Smith confirmed in their submissions that essentially they believe that CHI/19UJ/PHC/2020/0012 only dealt with 6 of the 7 questions that had been identified earlier in those proceedings.
32. The Respondent made submissions that this new application was a repetition of the earlier application.
33. I am satisfied that this application does raise issues which are substantially the same or similar to those determined in CHI/19UJ/PHC/2020/0012. As a result I am satisfied that this should be struck out and that the making of this further application is an abuse of process. I strike out this application pursuant to Rule 9(3)(c) and (d).
34. I consider whether or not I have power under Rule 6 of the Tribunal Procedure Rules 2013 to restrict the making of future applications by Mr and Mrs Smith either individually or jointly. I do not believe that I do and I decline to make any orders.
35. Mr and Mrs Smith should not take this as opportunity to issue further applications. To be clear the process is that when the Tribunal receives an application it is referred to a Judge to review and consider what if any directions are required. The Applicants should be under no misapprehension that the Tribunal will strike out applications which have no jurisdiction or should not be proceeded with under our rules.

Rule 13 Costs

36. The Respondent seeks an order that the Applicants pay their costs as the Applicants conduct has been unreasonable. I record for the sake of completeness that previous orders for costs have been made against the Applicant in earlier proceedings and these have not been paid.
37. As can be seen set out above the Applicants have a long history of bringing proceedings. Judge Tildesley set out his preliminary views within his directions of 28th July 2023 and I have accepted that all three applications should be struck out.
38. The solicitors for the Respondent have made full submissions as to why I should exercise my powers to make an order. They have included copies of various emails which demonstrate how they say the Applicant's conduct is unreasonable. These include bombarding the solicitors with emails and copying them in on emails which have no real relevance to them as well as making allegations against the solicitors with conduct of these proceedings.
39. I record that whilst the Applicant's are litigants in person they have had the benefit of legal advice throughout the history of this litigation. They are dissatisfied with that advice and that is an entirely separate matter. They are however familiar with the workings of the Tribunal.
40. I am satisfied that in pursuing these applications after the directions issued by Judge Tildesley they have acted unreasonably. Judge Tildesley explained why he believed the applications should be struck out. At that point in my judgment a reasonable litigant would have taken stock and withdrawn the proceedings.
41. The Applicants did not do so but continued with the same. I am satisfied that in so doing their conduct was unreasonable in bringing and conducting these proceedings.
42. In pursuing these applications the Respondents have incurred costs. Those costs have only been incurred as a result of the pursuit of these proceedings. As a result I am satisfied that the Respondent is entitled to an order that the Applicant shall pay its costs, subject to my assessment pursuant to Rule 13(1)(b) of the Tribunal Procedure Rules 2013.
43. I have been provided with a schedule of costs totalling £8,689. This includes the costs for both hearings and covers the totality of the costs for dealing with the three applications. I am satisfied it is appropriate for me to summarily assess these costs and I will proceed to do so.

44. I am not minded to allow the Respondent to recover the costs of the hearing on 7th September 2023. It was their application to adjourn as Judge Loveday made clear. The reasoning the Respondents give as to why they made such application was because the Applicants took issue with Judge Loveday hearing the matter as he was in the same set of Chambers as Ms Gourlay. An adjournment would avoid the time and expense of an appeal if the case had proceeded on that day and a decision was made to strike out the applications.
45. As Judge Loveday set out in his directions of the 7th September 2023 there were no grounds for his recusal. I am not satisfied the reference to an appeal has any merit. The Applicants may seek leave to appeal this decision as with any other. The Respondent is not required to do anything unless and until either this Tribunal or the Upper Tribunal gives leave to appeal. If leave is granted other costs rules may come into play. In my judgment it was a tactical decision by the Respondent to seek an adjournment but they must bear their own costs of that hearing having sought the adjournment given Judge Loveday indicated he would proceed to hear the matter as he was satisfied there were no grounds for recusal.
46. I am satisfied that the hourly rate of the fee earner with conduct Ms Apps is reasonable. I have looked at the schedules both for this and the earlier hearing. Ms Gourlays fee for the earlier hearing was £3,500 and the schedule of work done includes items for that hearing. I accept that Ms Gourlay's fee is less for the second hearing to take account of work done.
47. I assess the costs that the Applicant should pay to the Respondent pursuant to Rule 13(1)(b) of the Tribunal Procedure Rules are £5,750. Such costs should be paid within 28 days of this decision.
48. As a postscript I have received further emails from both sides. It appears the Applicants continue to copy in the Respondent's solicitors in correspondence not addressed to them and which they suggest has no bearing upon them. The Applicants invite me to delay issuing a determination as they refer to taking advice from a barrister.
49. It is for the Respondent and its solicitor to consider what steps they wish to take. I would urge the Applicant's to curb the sending of correspondence to parties who are not party to the same and for whom there is no relevance. I have acknowledged above that the Applicant's feel aggrieved but they must follow proper legal due process. It appears the barrister to whom the Applicants refer is considering professional negligence proceedings against previous advisers of the Applicants. I am satisfied there is no reason to delay issuing of this decision to provide some finality to these applications.

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.