



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

Case References : **BIR/17UH/PHI/2023/0103**

Property : **67 Brookfield Park, Mill Lane, S42 6AF**

Applicant : **RJT Derbyshire Limited**

Representative : **None**

Respondents : **Mr S & Mrs V Ashlee**

Representative : **None**

Type of Application : **An application under paragraph 16
Chapter 2 Part 1 Schedule 1 Mobile
Homes Act 1983 for the determination of
a new pitch fee for the subject property**

Tribunal : **Judge P.J Ellis.
Tribunal Member Mr R.P. Cammidge FRICS**

Date of Hearing : **12 December 2023**

Date of Decision : **17 January 2024**

DECISION

The new pitch fee effective from 1 March 2023 is £183.56.

Introduction

1. The Applicant is the owner of Brookfield Park a park home site licensed for occupation by 77 homes but presently occupied by 75 homes. The Respondents are owners of 67 Brookfield Park which they have occupied pursuant to an agreement under the Mobile Homes Act (the Act) with effect from 15 November 2008. The Applicant has owned the site since 2019.
2. On 30 May 2023 the Applicant issued this application. On 20 August 2023 the Respondents' issued their own application for the same determination of the new pitch fee. The Respondent's application was returned because by that date the Tribunal had issued direction on 7 August 2023 for submission of evidence and disposal of the matter. Preliminary paragraphs of the Directions included a recital of Notes in section 7 of the Pitch Fee Review Form and in particular that there is a presumption that the pitch fee will increase or decrease by no more than the annual change in the Retail Price index unless that would be unreasonable having regard to the matters set out in paragraph 18(1) Chapter 2 Part 1 Schedule 1 of the Act.
3. The parties agreed to a paper determination after an inspection by the Tribunal. The matter came for determination on 12 December 2023. The Tribunal inspected the site on that day when the parties were present. The Tribunal were shown the pitch owned by the Respondents, the placement of the liquid gas container, the Respondent's hedge and the boundary dry-stone wall. After meeting the parties, members walked round Brookfield Park.

The Issues

4. By the application the Applicant seeks a determination under paragraph 16 Chapter 2 Part 1 Schedule 1 Mobile Homes Act 1983 of a new level of pitch fee for the subject property with effect from 1 March 2023. The Respondents have refused to accept pitch fee increases for years 2021 and 2022 as well as the current proposed increase. Their counter application admits they have not agreed to pitch fees from 2022 because of three separate allegations of default on the part of the Applicant, namely

failure to remove fencing next to their gas tank, failing to repair the nearby drystone wall and failing to tend to weed growing by the site roadside.

5. In their response to the Application served following the issue of directions the Respondents raised further matters relating to alleged failures on the part of the Applicant relating to general park maintenance and lack of communication by the site owners including failing to enforce site rules relating to the appearance of the neighbouring property number 68 Brookfield Park.
6. Relations between the Respondent and their neighbour are very poor resulting in an incident of physical confrontation in August 2023 with police intervention.
7. The issue for the Tribunal is to decide whether the pitch fee proposed is reasonable in accordance with the principles established by Paragraph 20 Chapter 2 part 1 Schedule 1 of the Act.
8. The Tribunal is satisfied the Applicant complied with the procedural requirements regulating the issue and service of a notice of proposed new pitch fee. The Respondents did not raise any issue regarding the pitch fee review notice.

The Site

9. Brookfield Park is a residential park homes site situated in the village of Old Tupton approximately 6 miles from the M1 and around 6 miles south Chesterfield centre. The park homes site is accessed from Mill Lane and is of a sloping nature. The main spine road comprises a circular section to the west and a continuation of the spine road to the east with park homes mainly to either side of the spine road. There is a small grassed open area to the west section of the site.
10. The site licence dated October 1980 permits the location of 78 park homes and we understand that there are 75 park homes on the site at present and this has not changed for some period of time. The park homes site is fairly typical in nature having a range of park homes of differing sizes and ages with the majority of the pitches appearing to be maintained to a fair standard.

11. Number 67 Brookfield Park is located to the north corner of the site adjacent to Mill Lane and Ashover Road with the access to 67 being adjacent to number 68. The boundaries to these two properties abut.

The Parties Submissions

12. It is convenient to review the matters raised by the Respondents as their reasons for alleging an increase in pitch fee is unreasonable in turn.
13. The position of a fence in relation to the gas tank was a cause of major dispute between the Respondents and their neighbour (at 68 Brookfield Park) and with the Applicant. It also formed a substantial part of their case narrative. At the inspection the Tribunal were shown the position of the gas tank. The basis of the respondent's concern was that they believed the timber fence adjacent to their gas tank was not in compliance with safety regulations and would potentially impede a new supply of gas to the tank when required. At the time of the Tribunal's inspection the panel had been removed.
14. The Applicant's written submissions explained the actions taken to ensure the fence was removed.
15. During the inspection, the Respondents referred the Tribunal to a dry-stone wall adjacent to their park home. This was a low stone wall which also featured some mortar bedding to the top courses. The wall itself showed evidence of some distortion and settlement with age as well as a few loose and dislodged stones. The Applicants provided a report within their submissions from J. Poole confirming they have inspected the dry -stone wall on separate occasions during 2021, 2022 and 2023 and the opinion of the contractor was that the" wall was solid at the base" in addition they would check the wall each year and repair when they considered it necessary.
16. Based on the contractor's report and the inspection Tribunal members did not form the view that this represented a deterioration of any significance. In addition, it was confirmed by the respondents that this was a matter that had been ongoing for a number of years.

17. The Tribunal was shown a hedge planted by the Respondents some years ago within the boundary of their plot. The new hedge is additional to and of a different plant type from other hedging marking the park boundary. The papers referred to earlier disputes regarding the trimming of the hedge and some damage to young plants but now the new hedge is full grown it is trimmed by the Applicant at the same time as the older hedge. It appears there are still occasional complaints about the timing of hedge trimming.
18. As far as the allegations of want of park maintenance including not attending to the weeds or enforcing site rules, the Tribunal walked around the park after the inspection. The overall appearance of the park was neat and tidy with well maintained roadways and paved areas. The homes showed signs of care and attention. Many manifested creativity and imagination with their appearance. The criticism of the Applicants relating to non-enforcement of rules appeared to be directed at the neighbouring property which had a colour scheme different to the Respondents. However, many other properties were decorated with minor colour variations which did not detract from the overall appearance of the park.

The Written Statement under Mobile Homes Act 1983 and the pitch fee

19. The pitch agreement (the Agreement) was made between the Respondents and the park's previous owner Mr Tom Hartley on 15 November 2008. It complies with the statutory obligations of the Act. There was no dispute about the Agreement itself which provides that the pitch fee is payable with effect from that date on a monthly basis. The review date is annually on 1 March.
20. Paragraphs 16-20 of Part 2 of the Agreement set out the regulations governing the pitch fee. Paragraph 17(2) provides that *"At least 28 clear days before the review date the owner shall serve on the occupier a written notice setting out his proposals in respect of the new pitch fee"*.
21. On 19 January 2023 the Applicant served on the Respondents a Pitch Fee Review Notice proposing an amendment to the pitch fee by the annual change in the RPI for December 2022 released on 18 January 2023 which was 13.4%. The new fee would increase from £161.87 to £183.56 pcm. More than 28 days' notice of the proposed change was given.

22. There was a second proposal contained in the Notice that as the Applicant was mindful of the difficult times for everyone it would apply a discount of 2.4% to limit the increase to 11% or a new fee of £179.68pcm.
23. The terms of the second proposal required the Respondents to agree the proposal and pay the increased pitch fee by the review date of 1 March 2023. If not accepted the proposal would be withdrawn and not be available for acceptance so that the only proposal was the First Proposal of £183.56pcm.

The Statutory Framework

24. The Mobile Homes Act 1983 provides a comprehensive scheme for regulation park homes. Schedule 1 governs agreements under the Act. The implied terms set out in Chapter 2 apply to all agreements which relate to a pitch. Paragraph 17 of Chapter 2 provides:

(1)The pitch fee may be reviewed at the review date if, at least 28 clear days before that review date, the owner has served on the occupier a written notice setting out the owner's proposal in respect of the new pitch fee.

(2)The notice referred to in sub-paragraph (1) must set out the services which the agreement provides that are included in the pitch fee proposed by the owner.

(3)If at any time the occupier agrees to the proposed pitch fee it shall be payable as from the review date.

(4)If the occupier does not agree to the proposed pitch fee the owner or the occupier may apply to the court for an order determining the amount of the new pitch fee.

(5)An application under sub-paragraph (4) may be made at any time after the end of the period of 28 days beginning with the review date.

The review provision presumes an increase by reference to RPI:

Unless this would be unreasonable having regard to paragraph 18(1), there is a presumption that the pitch fee shall increase or decrease by a percentage which is no more than any percentage increase or decrease in the retail prices index calculated by reference only to—

(a)the latest index, and

(b)the index published for the month which was 12 months before that to which the latest index relates

25. Paragraph 20 prescribes the powers of the court or tribunal if asked to determine a new pitch fee:

(1) Where an application is made to the court under paragraphs 17(4), 18(2) or 19(3), the court shall, if the court considers it reasonable for the pitch fee to be changed, make an order determining the amount of the new pitch fee.

(2) The occupier shall continue to pay the current pitch fee to the owner until such time as the new pitch fee is agreed by the occupier or an order determining the amount of the new pitch fee is made by the court.

(3) If the court makes such an order, the new pitch fee shall be payable—

(a) where the application was made under paragraph 17(4), as from the review date;

(b) where the application was made under paragraphs 18(2) or 19(3), as from the 28th day after the date of the court order determining the amount of the pitch fee.

26. No other provisions of the legislation are recited because this dispute is whether or not the proposed increase is reasonable. There is no dispute regarding the procedural obligations on the part of the Applicant.

Decision

27. This is an application under s17(4) of Chapter 2 arising by reason of the Respondents refusal to agree a new pitch fee. The Tribunal was supplied with a substantial amount of written submissions setting out on the Respondents part a number of complaints regarding the behaviour and inadequate management of the park by the Applicant. The complaints have been summarised in this decision.

28. Having seen the pitch and the park the Tribunal observed the gas tank was no longer affected by a fence panel. The stone wall was in a satisfactory condition. The hedge was under control. The park was in a good condition. The pitches were well maintained with no discordant appearances.

29. The Tribunal does not consider the Respondents have made out any complaints that either justify withholding the pitch fee or refusing to accept an increase calculated in accordance with the regulations.

30. The only issue for the Tribunal, consequently, is whether it considers the proposed increase is reasonable or there should be a departure from the general provision regarding calculation of pitch fee increases set out above. Having carefully read the

submissions from the Respondents and inspected the site the Tribunal did not note any issues that remain unresolved and that represent a fundamental loss of amenity or reduction of service over the period as required under the Act to usurp the assumption of an RPI increase.

31. The Tribunal is satisfied the proposed increase is appropriate because it has not seen anything which would make the increase unreasonable. Accordingly, it determines the new pitch fee effective from 1 March 2023 is £183.56.

Appeal

32. If either party is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties (rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

Judge PJ Ellis Chair