FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	Property
CHI/18UL/PHI/2023/0205	9 Oaklands Residential Park, Okehampton
CHI/18UL/PHI/2023/0208	24 Oaklands Residential Park, Okehampton
CHI/18UL/PHI/2023/0209	26 Oaklands Residential Park, Okehampton

Applicant : Oaklands Residential Park Limited
oaklands.park@outlook.com

Representative :

Respondent : The Occupiers of the properties listed above

Representative : Oliver Stoneman
os52915@outlook.com

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

Tribunal Members : W H Gater FRICS
Regional Surveyor
Mr M Atkinson
Mr M Ayres FRICS

Date of Decision : 7 February 2024

DECISION

Summary of Decision

The Tribunal determines pitch fees with effect from 1 January 2023 as follows:-

- 9 Oaklands £166.67 per month
- 24 Oaklands £156.48 per month
- 26 Oaklands £191.97 per month

Background

1. On 29 March 2023 the Applicant site owner sought a determination of the monthly pitch fees in respect of the subject properties as follows: -
   - 9 Oaklands £166.67 increased from £145.95
   - 24 Oaklands £156.48 increased from £137.02
   - 26 Oaklands £191.97 increased from £168.10

   as from 1 January 2023.

2. A Pitch Fee Review Notice dated 3 December 2022 with the prescribed form was served on the occupiers proposing to increase the pitch fee by an amount which the site owner says represents an adjustment in line with the Retail Prices Index ("RPI") of 14.2 %.

3. The review notice included a conditional second proposal increasing the pitch fee by 10% if agreed before 1 January 2023. None of the Respondents accepted that reduced proposal and the Tribunal is asked by the Applicants to confirm the increase set out on the prescribed from.

4. On 20 September 2023 the Tribunal directed the Application to be determined on the papers without an oral hearing unless a party objected within 28 days.

5. On 6 November 2023 the Tribunal approved an application by the Respondent admitting certain documents and permitting the Applicant to make submissions in respect of them.

6. The occupiers of the properties listed above objected to the matter being determined on the papers and on 7 November 2023 the Tribunal issued directions for a hearing to take place on 11 December 2023.

7. The Directions provided that the application form and accompanying papers should stand as the Applicant's statement of case.

8. The Respondents were invited to prepare a statement setting out why they disagreed with the application and the Applicants were invited to issue a response.

9. The Tribunal has identified the following issues from the Respondents combined responses in challenging the pitch fee increase.

    - The validity of the pitch fee notices.
    - The inclusion of water and sewerage charges within the pitch fee and subject to RPI increase.
    - Loss of amenity on grounds set out below.
    - The Respondents at 26 Oaklands Park claim that their notice has the wrong name being Mrs Treaise whereas the named tenants are Mr I and Mrs M Treaise.

10. In making this determination the Tribunal has had regard to the written evidence in the bundle and oral submissions at the hearing.

Consideration

11. Oaklands Residential Park is a protected site within the meaning of the Mobile Homes Act 1983 ("the 1983 Act"). The definition of a protected site in Part 1 of the Caravan Sites Act 1968 includes a site where a licence would be required under the Caravan Sites and Control of Development Act 1960 if the exemption of local authority sites were omitted.

12. It comprises an established park home site on the outskirts of Okehampton off Hatherleigh Road.

13. The Respondent's right to station their mobile home on the pitch is governed by the terms of their Written Statement with the Applicant and the provisions of the 1983 Act. A copy of each Agreement has been supplied.

14. The Applicant served the Respondent with the prescribed form proposing the new pitch fee on 3 December 2022, which was more than 28 days prior to the review date of 1 January 2023. The Application to the Tribunal to determine the pitch fee was made on 29 March 2023 which was within the period starting 28 days to three months after the review date.

15. The Tribunal is satisfied that the Applicant has 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 Respondent.

The Law

16. The Tribunal is required to determine whether the proposed increase in pitch fees is reasonable. The Tribunal is not deciding whether the overall level of pitch fee is reasonable.

17. 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 and applies unless factors identified in paragraph 18 are demonstrated so that presumption does not apply. If the presumption does apply, it may be rebutted but only by other factors which are sufficiently weighty to do so.

18. See the Upper Tribunal decision in Vyse -v- Wyldecrest Parks (Management) Limited 2017 [UKUT] 24. [Vyse]

19. A pitch fee is payable by each Respondent. Pitch fee is defined in paragraph 29 of Part 1 of Schedule 1 of the 1983 Act as:

> 29"..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."

The Inspection

20. The Tribunal inspected the site and met the Respondents. The Applicants were unable to attend the inspection but were present at the hearing in Exeter.

21. The Tribunal inspected areas referred to in the submissions but took no submissions from those present.

The Hearing

22. Present at the hearing were:

> For the Applicants: Mr and Mrs Smith
> For the Respondents:
> Mr Stoneman, 9 Oaklands
> Mr Pavely, 24 Oaklands
> Mr and Mrs Treaise, 26 Oaklands.

23. Mr Stoneman spoke for himself and the other Respondents, who were permitted by the Tribunal to add supplementary comments where appropriate.

The Applicants

24. Mr Smith explained that the Applicants had bought a 50% share in the site in 2017 and subsequently acquired the remaining half in 2021. They had made a lot of improvements to the site. There are 30 pitches, 19 are new units and there are 11 longstanding older ones. Both the Applicants are experienced in park home operation as both families own large sites.

25. Improvements include fencing the perimeter, further maintenance of the park and installation of new road kerbs. The 19 new units have been added over the period 2017 to 2023. In the first quarter of 2024 new tarmac services will be installed. Each new unit has a new base and services installed at significant cost. The Applicants consider that the new work they've done has made the site compliant. Significant amounts of rubble have been cleared and other residents have been in favour of the work saying that they've added to the value of the park.

26. Of the old eleven units 7 have agreed the 10% increase. The offer of 10% was a goodwill gesture and now 26 in total are paying 10% having agreed almost immediately. That offer expired on the 1st of January 2023.

27. The Applicant relies on the decision in *Vyse* referred to above and states that none of the matters raised by the Respondents amount to a fall in the scope of Implied Term 18(1) or are factors to which considerable weight attaches.

28. Regarding the validity of the notices, it was not necessary to provide a second form in respect of the Applicant's second proposal because it did not amount to a second review of the pitch fee.

29. Whether or not the second offer, described as a time sensitive goodwill offer, meets the relevant statutory requirements is a moot point as the offer has now expired. The Applicant does not seek to rely on it, only the first proposal for which a compliant Pitch Fee Review Form was served on the Respondents.

30. Regarding water and sewerage it was understood that this was included in the pitch fee when they took over. It has never been taken as a separate payment. There is one meter for water for the whole park. Such charges are not separately quantifiable to enable separate charging.

31. Water and sewage have always been charged as part of the pitch fee. The park homes agreement had been drawn up by a solicitor. It is true that some parks have several meters but here there is one meter, and the Applicants pay the bill. They have never been asked to pay the charge separately.

32. The Applicants pay £15,000 per annum and this is a lot of cash to lay out. They continue this practice which they believe has been going on since at least 2012.

33. Regarding the site amenity, the Applicants were not involved prior to 2017 but were certain that some work had been done to comply but that their continued development was improving the site. The licence was for 30 units but some were less than the required distance apart and had issues with fire protection work. They have removed units which do not comply and replaced them with new ones.

34. Not all residential sites have onsite parking. Questioned by the Tribunal the applicant confirmed it full site location distances are now compliant.

35. Parking Spaces comprise 5 at the entrance and two in front of units 25/29 The requirement is 10% of the site number of units and their minimum therefore would be 3 where as they provide seven. The council had measured and found it to be adequate. Parking meets the conditions of the Site licence. The Local Authority officer Mr Sexton had congratulated the owners.

36. With regard to rubble on site there was evidence of rubble in photographs over 20 years old. It takes time to develop the site and there will from time to time be rubble. Some 250 tonnes of rubble were required to build up the site.

37. Regarding the tree referred to by Mr Stone as having been removed, this was actually split in pieces by a storm before it was removed. Arrangements to comply with a Tree Preservation Order have been compliant and met the Local Authority conditions.

38. Changes to the site have been approved by the Local Authority the only stipulation was that they should install additional signage which had been done.

39. Asked about the tight junction between some units the applicant stated that residential park sites are not housing developments and therefore without individual planning the comments do not always apply. Previous owners had put homes on illegally and the Applicants are rectifying this.

40. In respect of the Treaise's notice the Applicant state that whilst the notice was addressed to Mrs Treaise, and the written statement contains both Mr and Mrs Treaise, the notice is not invalidated by the inclusion of only one name.

The Respondents

41. The review notice. The Respondents submitted that the review process was invalid as it proposed two figures and sought to prevent their use of the tribunal services. This is contrary to the government's intention on the use of such statutory forms.

42. The notice of proposal for the 10% increase was invalid as it was not accompanied by a prescribed form.

43. The water and sewage should be calculated based on Ofwat rules as a separate bill and divided between the units. The Respondents referred to a previous case in respect of this site in June 2013 but provided no evidence of the decision. It was said that the Tribunal had separated the water charges. The Respondents need clarity on the actual water/sewerage bill and note that Southwest Water charges are cheaper than they were ten years ago. Southwest Water's charges had been frozen, and this year will only increase by 1%. The Respondents seek a separate water bill and not a 14.2% increase.

44. The Water Resale Act does not allow an RPI increase, and the legislation is there to help prevent this being sidestepped.

45. Site amenity. It is unfair that the Applicants admit the improvement works have not been completed yet seeks a 14.2% increase.

46. Regarding car parking this was previously functional but the road has been narrowed and alterations have created a nasty corner.

47. The surface water drain where the tree was removed is on a slope and gets blocked. The tree should have been replaced exactly where it was and not built on.

48. Rainwater flooding on the lower areas of the site is a continuing problem.

49. The Respondents are not confident that the Applicants are compliant in siting despite assertions. Mr Stoneman indicated that he considered some units do not have privacy and one unit has two parking spaces in the 5.2 metre gap.

50. Mrs Treaise restated that the development work has not benefited the occupiers. The kerbs are too high. There are not five visitor spaces at the front only three. This is because two of those units are spaces used by residents who have no parking. Contractors and electricians add to congestion or block the road.

51. Mr Pavey referred to disputes on site which resulted in the police being called and said that life was difficult at the property. The Tribunal allowed Mr Smith to comment and both parties cited poor behaviour by the other.

52. With regard to the Treaise notice, the Tribunal questioned Mr Treaise and he said he did of course see the notice and that he had signed the original agreement. He referred to animosity between himself and Mr. Smith.

Decision in respect of the pitch fee

53. The Tribunal finds that the RPI factor in the notice has been correctly calculated in accordance with the Act.

54. The issue for the Tribunal is to examine the increase, not the original fee. It must consider whether the factors raised by Respondents is of sufficient weight to depart from the statutory assumption that the fee should rise by the RPI.

55. The relevant period to be considered is between the dates of 1 January 2022 and 31 December 2022.

56. It is clear that the Respondents are aggrieved by the issues raised and no doubt this may have been exacerbated by the extraordinary rise in the RPI in 2022 which has led to this sharp increase. Nevertheless, the Tribunal must determine the issue on the evidence, statute and case law.

Validity of notice of increase.

57. The Respondents claim that the notice of increase was invalidated by the addition of a second proposal, conditionally offering to limit the increase to 10%, if agreed before the review date.

58. They claim that the attached prescribed form was invalid as it lacked details of the 10% proposal.

59. The Tribunal finds that the notice of increase was not invalidated by the inclusion of a second proposal. Paragraph 17 (2) does not limit the number of proposals which may be made and in fact it mentions proposals in the plural.

60. At the time the application was made to the Tribunal the second, concessionary proposal had lapsed, and the jurisdiction of the Tribunal relates only to whether the presumption that the fee should rise by the RPI (in this case 14.2%) had been overridden.

61. The notice before the Tribunal comprises a proposal notice and a completed prescribed form in respect of the RPI increase of 14.2%.

62. The second proposal was a concessionary offer which did not invoke the Act as it was below the current RPI. Had the Respondent agreed the lower sum the Tribunal would have no jurisdiction to determine the matter under Paragraph 16.

63. The question of whether the 10 % increase was valid for the purpose of the Act (as it did not include the calculation required on the prescribed form) is not before the Tribunal as that offer has lapsed.

64. The Tribunal accordingly finds that the inclusion of a second proposal in the notice letter does not invalidate the review as the proposal to increase by 14.2% was accompanied by the required form.

Inclusion of Sewerage and Water in the pitch fee.

65. The Respondents say that the inclusion of water and sewerage charges in the pitch fee side step the protection of the Water Resale Order and the charges should be separated.

66. The Tribunal rejects this argument for the following reasons:-

67. Firstly, pitch fee is defined in paragraph 29 of Part 1 of Schedule 1 of the 1983 Act as:

> 29"..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."

68. The written agreements for numbers 24 and 26 contain express terms that water rates or water, and sewerage are included in the pitch fee. Accordingly, the Tribunal finds that water and sewerage charges are included in the pitch fee for these pitches.

69. The agreement for number 9 is silent at 3(a) but 3(b) provides for the occupier to pay and discharge all general and/or water rates which may be *assessed , charged or payable*. No separate charge has been assessed, charged or payable.

70. The Tribunal accepts the Applicant's evidence that throughout their ownership the pitch fee has been inclusive of water and sewerage charges and will continue to be.

71. In view of the absence of a separate assessment and the long held practice of inclusive charging the Tribunal also finds that that the pitch fee for number 9 water and sewerage charges are also inclusive.

72. Secondly, the Water Resale Order referred to by the Respondents deals with the actual resale of water. The Respondents do not "purchase" water from the Applicants but rather water and sewerage charges are part of an overall sum for occupation of the pitch charged by the Site owner.

73. This situation was considered by the Upper Tribunal in Sayer re 48 Woodland View {2014] UKUT 0283 (LC) [Sayer] where at 25& 38 the Deputy President said:-

> *25. The Water Resale Order 2006 came into effect on 31 March 2006 and revoked a previous order in similar terms, the Water Resale Order 2001. The general effect of the Orders is to require that anybody re-selling water or sewerage services may charge no more than the amount they*

are charged by their own water company, plus a reasonable administration charge. If the re-seller charges more than the average household bill for the region, he or she must be able to justify the higher amount according to rules contained in the Order. The 2006 Order obliges a re-seller to provide specified information about how the charge which a purchaser is asked to pay has been calculated or estimated. If such information is not provided on request the charge recoverable by the re-seller from the purchaser is limited to half of the average household bill for the region.

38. In my judgment the RPT was correct to approach the effect of the 2006 Order on the basis that water was not charged for separately. On that basis I do not consider that the 2006 Order applies to the supply of water by the site owner to Mr Sayer. Mr Sayer is not a "purchaser" within the definition in paragraph 5 of the 2006 Order because he does not buy water from the site owner in the manner contemplated by the Order. Mr Sayer receives water in return for payment, but he does so only as part of a wider bargain which includes the right to station his mobile home on the pitch (together with any other rights and services conferred by the agreement) in return for which he pays a single undifferentiated and indivisible pitch fee. It is impossible to apply the maximum charge provisions of paragraph 6 of the Order to such an arrangement.

74. The Tribunal gave the parties time to comment on the Sayer case after the hearing. Written submissions were received from the Respondents which the Tribunal has considered. In it they question the relevance of Sayer and the veracity of the Applicant's statement. They refer to practices under previous ownership of the site and include comment on matters outside of the issue of water and sewerage charges.

75. After due consideration the Tribunal finds no evidence in these submissions to alter its decision on this point

76. Accordingly, the Tribunal finds that the pitch fee is inclusive of Water and Sewage charges for each of the Respondent's pitches.

Loss of amenity.

77. The Tribunal has carefully considered the representations by both parties. The Respondents clearly hold strong views about the amenities and changes at the site.

78. This is a developing site, and the Applicants continue to make changes as old units are replaced.

79. The jurisdiction of the Tribunal is limited to determining whether the statutory presumption that the pitch fee should rise by the RPI. In Vyse it was held that that presumption should only be displaced by weighty matters.

80. The claimed loss of amenity includes matters which have been present for years or are inherent in the site. Drainage in a park home site is often problematic and steps have been taken to mitigate this. The Tribunal accepts the Applicant's evidence that the altered layout is compliant with statutory and local authority requirements.

81. Accordingly, none of the items claimed, despite being an irritant to the Respondents are of sufficient weight to displace the presumption that the fee should rise by the RPI.

82. Regarding the exclusion of Mr Treaise from the review notice. The Tribunal is satisfied that Mr Treaise was in receipt of the notice and that Mr and Mrs Treaise have not been prejudiced by the exclusion of Mr Treaise's name from the notice. Accordingly, the Tribunal finds that the notice in respect of 26 Oaklands was valid.

83. Given the above circumstances the Tribunal finds that the proposed increase in pitch fees is reasonable and determines the pitch fees as summarised above.

Fees

84. 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) pursuant to rule 13(2) of The Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013.

85. The Tribunal is minded to order the Respondents to reimburse the Applicant with the Tribunal application fee of £20.00.

86. The Respondent may make representations in writing to the Tribunal by 5 February 2024 as to why they should not reimburse the application fee.

87. If the Respondent makes representations, those will be considered. The Tribunal will provide a further order in respect of re-imbursement following consideration of the representations.

88. In the absence of representations being made, the order that the Respondent reimburses the fee of £20.00 will automatically take effect without further order on 10 February 2024, payable within 14 days.

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.