FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/00KB/PHI/2023/0100**
Property	**:**	**1A The Spinney, Brookside Park, Stagsden Road, Bromham, Bedford, MK43 8NB**
Applicant	**:**	**Wyldecrest Parks (Management) Limited**
Representative	**:**	**Mr David Sunderland, Estates Director**
Respondent	**:**	**Mr Brian Betts**
Type of application	**:**	**Application to determine a pitch fee**
Tribunal member	**:**	**Judge K. Saward**
Date of decision	**:**	**31 January 2024**

DECISION AND REASONS

Description of determination

This has been a determination on the papers. A face-to-face hearing was not held because all issues could be determined on paper and no hearing was requested. The documents comprise an Applicant's indexed and paginated bundle of 35 pages, plus two statements dated 21 December 2023 and 10 January 2024 in reply to the Respondent's response. The contents of all these documents are noted.

The order made is described below.

Decision of the Tribunal

(1) The Tribunal considers that it is reasonable for the pitch fee to be changed and determines that the pitch fee payable by the Respondent for the year commencing 1 April 2023 is £173.18 per month.

(2) The Tribunal makes an order under rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ('the 2013 Rules') that the Respondent shall pay to the Applicant £20 within 28 days of this Decision, in reimbursement of the Tribunal fee paid by the Applicant.

(3) The application for an order that the Respondent pay the Applicant's costs pursuant to rule 13(1) of the 2013 Rules is dismissed.

The application

1. The Applicant is the park site owner of Brookside Park, being a protected mobile homes site within the meaning of the Mobile Homes Act 1983 ('the 1983 Act'). The Respondent occupies the pitch at 1A The Spinney. The Applicant does not hold any written agreement with the Respondent on file governing the occupation of the pitch. However, the implied terms set out within Chapter 2 of Part 1 of Schedule 1 to the 1983 Act apply.

2. As the Respondent has not agreed to an increase in pitch fees for 2023/24, the site owner must apply to this Tribunal if it is to obtain an increase (implied term 16). The Applicant seeks a determination of the pitch fee payable by the Respondent as from the review date of 1 April 2023. The application is dated 2 May 2023.

Directions

3. In accordance with the Directions issued on 31 October 2023, the Applicant provided an indexed and paginated bundle containing the application, a copy of the Directions, statement of case, evidence of RPI, pitch fee review notice and accompanying form.

4. By those same Directions, the Respondent was required to complete and return an attached 'reply form for park home owners' by 20 December 2023 if he objects to the proposed pitch fee increase.

5. The form was not returned in objection. Nor was a bundle provided by the Respondent including (a) a full statement of the Respondent's case in response to the application related to their park home (b) full details and evidence of why it would be unreasonable to increase the pitch fee if the Respondent relies on matters set out in paragraph 18(1) of Chapter 2 of Part 1 of Schedule 1 of the Act (c) any witness statements of fact, and

(d) any other documents relied on. The bundle was also required to be filed and copied to the Applicant by 20 December 2023.

6. Instead, the Respondent emailed the Tribunal on 19 December 2023 attaching a series of photographs with the message: "*A few examples of non Road Surface Maintenance after some two yrs plus of site ownership. As per my initial email to the Tribunal……Further to follow in due course of other instances etc!" [sic].*

7. A further emailed followed on 21 December 2023 attaching more photographs with a message saying "*… a few more examples to substantiate my initial case in point. To reiterate in my opinion, only a site visit at your earliest convenience, would give a fair and Frank assessment of my argument to this issue in question. Hard facts of the case! Just want a sense of Fair Play alround. No more, no Less!" [sic].*

8. The request for a site visit was refused by a Procedural Chair on 2 January 2024 and the parties informed that the matter would continue to be determined on the papers. On reviewing the documents, the Tribunal considers that an inspection was neither necessary nor proportionate to the issues to be determined and that a hearing was not necessary.

9. The Directions permitted the Applicant a right of to reply by 19 January 2024. In response, the Applicant submitted a statement dated 21 December 2023. The statement pointed out that the Respondent had failed to file and serve the reply form as required by the Directions and that no case had been made out to demonstrate a reduction in amenity. A supplemental statement followed from the Applicant on 10 January 2024 reiterating the same points, but also responding to the condition of the road shown in the Respondent's photographs.

10. The Tribunal notes the Respondent's non-compliance with the Directions in submitting photographs without returning the completed 'reply form' to object to the increased pitch fee and failing to provide a bundle including statement setting out full details of his case. The Respondent's email of 21 December 2023 was also sent after the deadline.

11. The Directions of 31 October 2023 said they were formal orders that must be complied with. They warned that if the Respondent failed to comply with the Directions, they may be barred from taking any further part in all or part of the proceedings and the Tribunal may determine all issues against them pursuant to rules 9(7) and (8) of the 2013 Rules.

12. No application has been made for the Respondent to be barred from the proceedings or any part. If the Tribunal were to consider doing so of its

own volition, then opportunity would need to be given first for the parties to make representations. This would cause delay. In any event, the Tribunal notes that the Applicant has taken the opportunity to respond to the Respondent's emails. In the circumstances, it would not accord with the overriding objective of rule 3 to deal with cases fairly and justly to debar the Respondent's response.

13. The Tribunal notes the application made by the Applicant for recovery of its fees and costs to which it will return.

Consideration

14. The notice and accompanying pitch fee review form proposes a new pitch fee of £173.18 per month. This represents a monthly increase of £20.46 on the previous monthly fee of £152.72 applicable from 1 April 2022 when the last review was undertaken. The adjustment sought is made with reference to the change in the Retail Price Index ('RPI') taking the figure of 13.4% for the month of January 2023.

15. The law applicable to a change in pitch fee is set out within the 1983 Act. Provisions within Chapter 2 of Part 1 of Schedule 1 to the 1983 Act set out the implied terms that govern the process and means of calculation.

16. The site owner can only increase the pitch fee annually with the agreement of the occupier or, in the absence of agreement, by a determination of the new pitch fee by this Tribunal. Written notice must be given to the occupier at least 28 clear days before the review date setting out the proposals in respect of the new pitch fee. The written notice must be accompanied by a prescribed Pitch Fee Review Form otherwise the notice proposing an increase in the pitch fee is of no effect.

17. Notice of the proposed new pitch fee was served on the occupiers on 23 February 2023. The prescribed form (dated 21 February 2023) has been used and the relevant time limits complied with.

18. The Tribunal must determine two things. Firstly, that the change in the pitch fee is reasonable and, if so, it has to secondly determine the new pitch fee. It is not deciding whether the level of pitch fee is reasonable.

19. 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.

20. The definition of 'pitch fee' at paragraph 29 is "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……."

21. Paragraph 20(A1) sets out a presumption that the pitch fee shall increase or decrease by a percentage which is no more than any percentage change in the RPI since the last review date, unless this would be unreasonable having regard to paragraph 18(1). In *Wyldecrest Parks (Management) Ltd v Kenyon and others* [2017] UKUT 0026 (LC) the Upper Tribunal stated that with the mandatory considerations well in mind "*the starting point is then the presumption in paragraph 20(A1) of an annual increase or reduction by no more than the change in RPI. This is a strong presumption but it is neither an entitlement nor a maximum.*"

22. With effect from 2 July 2023, the RPI has been replaced with the CPI for all new pitch fee reviews in changes introduced by The Mobile Homes (Pitch Fees) Act 2023. At the time of this review the RPI still applied, and the amendments were not in force at the time of this application. Nevertheless, the Directions invited the parties to make any submissions and evidence relied upon on whether CPI is a better measure of inflation for the relevant period. The Respondent did not respond to this point to pursue any argument over the rate of inflation.

23. Paragraph 18(1) sets out factors to which 'particular regard' must be had when determining the amount of the new pitch fee. These include improvements carried out since the date of the last review (paragraph 18(1)(a)) and also under paragraph 18(1)(aa) of '… any deterioration in the condition, and any decrease in the amenity, of the site or any adjoining land which is occupied or controlled by the owner since the date on which this paragraph came into force (in so far as regard has not previously been had for the purposes of this sub-paragraph)'.

24. Paragraph 18(1)(ab) then refers to '… any reduction in the services that the owner supplies to the site, pitch, or mobile home, and any deterioration in the quality of those services, since the date on which this paragraph came into force (in so far as regard has not previously been had for the purposes of this sub-paragraph)'. Paragraphs 18(1)(aa) and (ab) came into force on 26 May 2013.

25. The site owners do not claim to have spent money on any improvements since the date of the last review for paragraph 18(1)(a) to apply. There is no suggestion that the pitch fee includes costs and fees incurred by the site owner which are to be disregarded by paragraph 19.

26. As the Respondent has not submitted any statement of case, the Tribunal has no details of the Respondent's specific complaints and why it is considered that the pitch fee should be reduced. The Tribunal has only photographs supplied by the Respondents of hard surfaced areas. It deduces that the Respondent is seeking to rely upon paragraph 18(1)(aa) and is claiming a deterioration in the condition of the site.

27. The photographs show block paving with signs of moss between the stones and some gaps and unevenness. The overall condition does not look unsatisfactory. Further photographs of the site access road show that the surface has been patched up and uneven in places with signs of potholes starting to form. The Applicant disputes there is any reduction in amenity and "*although worn in places the road remains serviceable.*"

28. Whether there has been a deterioration in the condition of the road sufficient to warrant an adjustment to the pitch fee cannot be gleaned in the absence of details of the case sought to be made. The Tribunal cannot speculate as to the case that the Respondent might have wanted to make.

Conclusions

29. It is undisputed that there has been compliance with the statutory formalities imposed by the 1983 Act in undertaking a pitch fee review. Thus, the Tribunal accepts that the Applicant had complied with the procedural requirements of paragraph 17 of Part 1 of Schedule 1 of the Act to support an application for an increase in pitch fee in respect of the pitch occupied by the Respondent.

30. In considering whether a change in the pitch fee is reasonable, the Tribunal has paid particular regard to the factors in paragraph 18(1) and whether there has been any deterioration in the condition of the site for which the Applicant owner is responsible. The Tribunal is not satisfied that there is sufficient evidence of a deterioration in the site.

31. Paragraph 20(1) contains 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. It does not say that the pitch fee will be automatically adjusted in accordance with the RPI. However, the Tribunal is mindful that is the starting point.

32. The Tribunal considers that the Respondents have not adduced sufficient evidence to displace the presumption that the pitch fee should be increased in line with the RPI. The Tribunal concludes that it is reasonable for the pitch fee to be changed and the proposed pitch fee increase is reasonable.

Application for fees and costs

33. The Applicant has applied for recovery of the £20 application fee and costs of £100. It cites unreasonable behaviour by the Respondent in refusing to the agree to the review thereby forcing the Applicant to make the application and then not complying with the Directions of the Tribunal. Quite how the £100 costs have been calculated is unclear.

34. Under rule 13(2) of the 2013 Rules the Tribunal may make an order requiring a party to reimburse another party the whole or part of their fees. It is entirely discretionary. The Tribunal has upheld the pitch fee increase sought by the Applicant in circumstances where the Respondent's case has been scant to say the least. It is fair and just that an order be made in the Applicant's favour for the £20 application fee.

35. In terms of costs, rule 13(1)(b) of the 2013 Rules provides that the Tribunal may make an order in respect of costs only if a person has acted unreasonably in bringing, defending or conducting proceedings. The Respondent did not reply to the costs application.

36. In *Willow Court Management Company (1985) Ltd v Alexander* [2016] UKUT 290 (LC)), the Upper Tribunal gave clear guidance on the principles to be applied in respect of rule 13(1)(b). It suggested a sequential three-stage approach, which is not of rigid application but provides a helpful framework. It may be summarised as:-

(1) applying an objective standard, has the person acted unreasonably?
(2) if so, should the Tribunal exercise its discretion to make an order for costs?
(3) if so, what should the terms of the order be?

37. The Respondent's refusal to agree the increased pitch fee prompted the application but it was not unreasonable conduct in the proceedings. Under the 2013 Rules, the word "proceedings" means acts undertaken in connection with the application itself and steps taken thereafter.

38. Defending the application was not unreasonable in itself, but it was unreasonable to disregard the Tribunal Directions and fail to give details of the case which the Respondent sought to put. Simply submitting photographs did not suffice.

39. Despite the failure to comply with Directions, the Tribunal is mindful that orders under rule 13(1)(b) are to be reserved for the clearest cases and the bar is a high one. The Tribunal is normally a 'no costs' jurisdiction. The Tribunal does not consider that this is a case that merits the Tribunal exercising its discretion to make an order for costs.

40. The Applicant's application for costs is refused.

Name: Judge K. Saward Date: 31 January 2024

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e., give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).