



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

Case Reference : **BIR/17UJ/PHI/2024/0051, 0059 and 0066**

Properties : **Premises at Sunningdale Park Queen Victoria Road New Tupton Chesterfield S42 6GA (see attached Schedule)**

Applicant : **Mr M White & Mrs O White**

Representative : **David Sunderland**

Respondent : **As listed in the Schedule**

Application : **Applications under paragraph 16 of Chapter 2 of Part 1 of Schedule 1 to the Mobile Homes Act 1983 for the determination of the new level of pitch fee for the subject properties**

Tribunal : **Judge M K Gandham (Deputy Regional Judge)**

Date of Decision : **26 February 2025** (*corrected 18 March 2025*)

Corrected **DECISION**

I have corrected this decision, in accordance with the power under Rule 50(a) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, to amend the accidental slip made in paragraph 20 of the decision, in which the third pitch referred to should have been pitch '41' rather than pitch '26'.

Background

1. On 21 June 2024, Mr M White and Mrs O White ('the Applicants') made applications under paragraph 16 of Chapter 2 of Part 1 of Schedule 1 to the Mobile Homes Act 1983 ('the Act') for determination of a new level of pitch fee, effective from 1 April 2024, for three pitches - 10 Poplar Drive, 26 Poplar Drive and 41 Poplar Drive ('the Properties'), all of which are located in Sunningdale Park.
2. The Applicants are the site owners of Sunningdale Park, Queen Victoria Road, New Tupton, Chesterfield, S42 6GA ('the Site'). Mrs Elsdon (Pitch No. 10), Mr and Mrs Pallendine (Pitch No. 26) and Mr and Mrs Would (Pitch No. 4) ('the Respondents') are the respective occupiers of the Properties.
3. Directions were issued by the Tribunal on 10 September 2024 ('the First Order'). The First Order consolidated all three applications, under Rule 6(3)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ('the Rules').
4. In the First Order, the Tribunal drew the attention of the Respondents to the Pitch Fee Review Form issued by the Applicants and, in particular, to the statutory presumption (in paragraph 20 of Chapter 2 of Part 1 of Schedule 1 to the Act) that the pitch fee would increase or decrease by no more than the annual change in the Consumer Prices Index (CPI), unless that would be unreasonable having regard to the matters set out in paragraph 18(1) of Chapter 2 of Part 1 of Schedule 1 to the Act.
5. The Respondents were directed that, if they did not agree to the proposed new pitch fees, to send to the Applicants, and to the Tribunal, a Statement in Response, setting out in full their reasons for opposing the same. The Tribunal indicated that, if any respondent failed to send a statement in Response, that respondent might be deemed to have no objection to their proposed new pitch fee.
6. No Statements in Response were received from any of the Respondents by the specified deadline, although the Tribunal received a statement in Reply from the Applicants on 26 September 2024, in which the Applicants requested orders under Rules 13(1) and (2) of the Rules for reimbursement of the application fees (£22.00 per application) and the Applicants' costs amounting to £300.00 (£100.00 per application).
7. On 30 September 2024, the Tribunal received a Statement in Response from Mr Would (this was mistakenly set out in an Order 1 form dated 24 September 2024), which referred to the maintenance of trees on the Site. Following correspondence from the Tribunal, Mr Would sent a further letter which was received on 28 October 2024.

8. As the Tribunal had not received any correspondence from either Mrs Elsden or Mr and Mrs Pallendine, and as Mr Would had not confirmed whether he agreed with his new pitch fee, the Tribunal issued a second set of directions on 21 November 2024 ('the Second Order').
9. The Second Order asked any respondent who did not agree to the pitch fee to comply with the First Order and asked for any submissions on costs in response to the Applicants' Reply. The order also warned the Respondents that if they did not comply with directions, they would be automatically barred from taking further part in the proceedings under Rules 9(1) and (7)(a) of the Rules.
10. The Tribunal received a telephone call from Mrs Elsden on 28 November 2024, a further letter from Mr Would on 28 November 2024 and a letter from Mr and Mrs Pallendine on 4 December 2025.

Submissions

Applicants' Submissions

11. Mr Sunderland, on behalf of the Applicants, in the Reply referred to the failure of any of the Respondents to provide a Statement in Response by the deadline stated in the First Order. He reiterated the statutory presumption under paragraph 20 of Chapter 2 of Part 1 of Schedule 1 to the Act and noted that, under paragraph 16, the pitch fee can only be increased by agreement or by application to the tribunal.
12. Mr Sunderland submitted that, as the pitch fees had not been agreed, the Applicants had no option but to make an application, so requested the Tribunal make an order under Rule 13(2) for reimbursement of the application fees of £22.00 each.
13. Mr Sunderland further requested the Tribunal to make an order under Rule 13(1) for the Applicants' costs, amounting to £100.00 per respondent, as he submitted that the Respondents had acted unreasonably in, firstly, refusing to agree to the statutory inflationary increase and, then, failing to respond to the Tribunal's directions.

Respondents' Submissions

Mrs Elsden – 10 Poplar Drive

14. Mrs Elsden did not provide any written submissions but, instead, contacted the tribunal's offices by telephone on 28 November 2024 to advise that she was trying to make payments of the new pitch fee, but had been struggling financially.

Mr and Mrs Pallendine – 26 Poplar Drive

15. Mr and Mrs Pallendine, in their letter of 4 December 2024, stated that the failure to pay the increase had been "*an honest mistake*" and that they had already paid the full amount due by, at least, 1st October 2024, together with payment of £30.00 towards any arrears.

Mr and Mrs Would – 41 Poplar Drive

16. In the Statement in Response received 30 September 2024, Mr Would submitted that the Applicants had failed to maintain the boundary fences, ivy and trees at the Site.
17. In the letter received 28 October 2024, Mr Would, again, referred to the poor maintenance of the trees, which he stated was the reason he had initially failed to pay the proposed increase. He confirmed that he had recently paid the increase and any arrears. He added that such payment had been banked by Mr White, so he believed the matter to be closed. Mr Would also requested costs of £200.00 from the Applicants for stress caused to him.
18. In his letter of 28 November 2024, Mr Would reiterated that payment had already been made.

The Tribunal's Deliberation and Determination

Decision on Pitch fee

19. As all of the Respondents appear to have now either paid the new pitch fee increase (in the case of Mr and Mrs Pallendine and Mr and Mrs Would) or have provided no evidence to suggest that the proposed increase is unreasonable (in the case of Mrs Elsdon), the Tribunal finds that the statutory presumption set out in paragraph 20 of the Act applies and that the pitch fees are to increase by 4% as at the date detailed in the Notice, being 1 April 2024.
20. Accordingly, the Tribunal determines that:

The pitch fee for 10 Poplar Drive, Queen Victoria Road, New Tupton, Chesterfield S42 6DH shall be increased from £221.61 per month to £230.47 per month, effective from 1 April 2024.

The pitch fee for 26 Poplar Drive, Queen Victoria Road, New Tupton, Chesterfield S42 6DH shall be increased from £182.07 per month to £189.35 per month, effective from 1 April 2024.

The pitch fee for 41 Poplar Drive, Queen Victoria Road, New Tupton, Chesterfield S42 6DH shall be increased from £182.07 per month to £189.35 per month, effective from 1 April 2024.

Tribunal's Decision on Rule 13 Applications

Rule 13(2) - Reimbursement of Fees

21. The Tribunal may, on its own initiative or on the request of a party, under Rule 13(2) "*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...*". In this matter, the Applicants had paid an application fee of £22.00 for each of the three applications.

22. Although the Tribunal accepts the Applicants' argument – that the pitch fee can only be changed under paragraph 16 by agreement or by application to the tribunal – the Tribunal's power under Rule 13(2) is a discretionary one.
23. In this matter, Mrs Elsdon did not appear to disagree with the increase, she referred to having financial difficulties paying the same; Mr and Mrs Pallendine referred to their failure to pay as being an honest mistake and they appeared to have made payment following the First Order having been issued; and Mr Would, although initially objecting to the increase due to the maintenance of the Site, appeared later to have considered that this was not a reduction in the amenity, so, again, paid the increase and any arrears before the end of October 2024.
24. Having considered the submissions of all parties, the Tribunal has decided not to make an order under Rule 13(2) against any of the Respondents.

Rule 13(1) - Costs

25. The limited powers for a Tribunal to award costs are contained within Rule 13 of the Rules.
26. Unlike CPR 44.2(2)(a), once a power to make an order for costs is engaged, there is no general rule that an unsuccessful party will be ordered to pay the costs of the successful party. The only general rule is derived from section 29 of the Tribunals, Courts and Enforcement Act 2007, which provides that “*the relevant Tribunal shall have full power to determine by whom and to what extent the costs are to be paid*”, subject to the tribunal's procedural rules.
27. The Upper Tribunal in *Willow Court Management Co (1985) Ltd v Alexander* [2016] UKUT 0290 (LC), provided guidance on the correct approach to costs claims under Rule 13 and suggested that a three-stage process should be adopted when dealing with such applications:
 - firstly, the tribunal should consider whether the person against whom an order is sought has behaved unreasonably;
 - secondly, the tribunal must consider whether, in the light of the unreasonable conduct it has found, it ought to make an order for costs or not; and
 - finally, it should decide what the terms of that order should be.
28. The Upper Tribunal discussed the assessment of unreasonable behaviour and considered that in deciding whether behaviour was reasonable required a “*value judgement*”. It saw no reason to depart from guidance given in *Ridehalgh v Horsefield* [1994] Ch 205, where the expression of ‘unreasonable’ conduct was defined as:

“... conduct which is vexatious, designed to harass the other side rather than advance the resolution of the case, and it makes no difference that the conduct is the product of excessive zeal and not improper motive. But conduct cannot be described as unreasonable simply because it leads in the event to an unsuccessful result or because other more cautious legal representatives would have acted differently.”

The Upper Tribunal also expressed its thought that, alone, it would be improbable that the failure of a party to adequately prepare for a hearing, to adduce proper evidence for their case, to state a case clearly or to seek a wholly unrealistic or unachievable outcome, would justify the making of an order under Rule 13(1)(b).

29. In relation to lay people, the Upper Tribunal considered that they should not be considered unreasonable for being unfamiliar with the substantive law or tribunal procedure, for failing to appreciate the strengths and weaknesses of theirs or their opponent's cases and for lacking presentation skills or performing poorly at the hearing, and went on to state that (para 32):

"...The behaviour of an unrepresented party with no legal knowledge should be judged by the standards of a reasonable person who does not have legal advice. The crucial question is always whether, in all the circumstances of the case, the party has acted unreasonably in the conduct of the proceedings."

30. The Applicants, in their Reply, stated that the costs of £100.00 they were seeking from each of the Applicants was due to the unreasonableness of the Respondent *"refusing to agree to the statutory inflationary increase and then failing to respond to the Directions"*. Their costs related to *"the costs incurred in making and responding to the Application."*
31. The Tribunal finds that the failure of a respondent to agree to the increase in their pitch fee cannot, of itself, be considered unreasonable.
32. In relation to the failure of a respondent to comply with orders of the tribunal, although the Tribunal considers that this may, in certain circumstances, be considered unreasonable, in this matter the Tribunal finds that there was nothing unreasonable in either Mrs Elsdon or Mr and Mrs Pallendine failing to provide a Statement in Response. They were only required to provide a Statement in Response if they did not agree with the new pitch fee and neither of them have stated that they considered the new pitch fee unreasonable.
33. Mr Would did provide a Statement in Response (albeit mistakenly on an Order 1 form) which, though not received by the Tribunal by post until 30 September 2024 (the deadline for submission in the First Order was 25 September 2024) was dated 24 September 2024. The Tribunal does not consider one short delay by an unrepresented party in providing a reply by post to amount to unreasonable behaviour.
34. Although the Applicants provided a two-page Reply by email on 26 September 2024 (the day following the Respondents' deadline for submissions in the First Order), they were only required to supply a Reply *"if"* a respondent had raised an objection to the new pitch fee. As no response had been received by the deadline, no such Reply was needed.
35. In relation to the Tribunal's Second Order, all three Respondents provided some form of response to the same.

36. As such, the Tribunal does not consider that, in the circumstances of this case, any of the Respondents have acted unreasonably. Consequently, the first stage of the process for the making of an order under Rule 13(1)(b) has not been passed and the Tribunal makes no order for costs.

Appeal Provisions

37. 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).

SCHEDULE

Mrs Elsdon – 10 Poplar Drive (0059)
Mr & Mrs Pallendine – 26 Poplar Drive (0066)
Mr & Mrs Would– 41 Poplar Drive (0051)