



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

Case Reference : **MAN/16UE/PHI/2023/0037**

Property : **5 Fell View, Fell View Park, Gosforth
CA20 1HY**

**Applicant
Ltd** : **The Berkeley Leisure Group**

Respondent : **B.R.Upperton**

Type of Application : **For the determination of a pitch fee
under the Mobile Homes Act 1983 –
Schedule 1 Chapter 2 paragraphs 16-
20**

Tribunal Members : **Judge J.M.Going
C.R. Snowball MRICS**

Date of Decision : **24 October 2023**

Date of these Reasons : **27 October 2023**

REASONS FOR THE DECISION

The Decision

The Application is refused. The Notice setting out the Applicant's proposal for a new pitch fee was invalid, and consequently the pitch fee of £113.65 per month remains unchanged.

Preliminary

1. By an Application (“the Application”) dated 9 March (2022, but clearly meant to be 2023) the Applicant (“Berkeley”) applied to the First Tier Tribunal Property Chamber-(Residential Property) (“the Tribunal”) for an order to be made under paragraph 16(b) of Schedule 1 of the Mobile Homes Act 1983 (“the 1983 Act”) determining the amount of a new pitch fee to be paid by the Respondent (“Mr Upperton”) should the Tribunal consider it reasonable for the pitch fee to be changed.
2. On 17 July 2023 the Tribunal issued Directions in respect of the Application and 2 further applications for pitch fee determinations at Fell View Park (“the Park”), detailing a timetable for documents to be submitted, and confirming that it considered it appropriate for the applications to be determined on the papers, unless any of the parties requested an oral hearing. None have done so.
3. The Tribunal convened on 24 October 2023 to make its decision.

Background

4. The following matters are evident from the papers or are of public record and have not been disputed.
5. The Park is a protected site within the meaning of the 1983 Act. Berkeley is its owner and operator, and Mr Upperton is the owner of a park home (“the property”) within the Park stationed on the pitch. In the terms of the 1983 Act and in the context of the pitch Mr Upperton is referred to as the “occupier” and Berkeley as the “owner”.
6. The written statement in respect of the property as required under section 1(2) of the 1983 Act (“the written statement”) was completed between Berkeley’s predecessors in title and Mr Upperton’s predecessors in title on 12 November 1983.
7. Clause 7(a) of the written statement specified the review date for the pitch fee as being “the first day of April in each year”. The second schedule to the

written statement also records the reviews of the pitch fee which took place on 1 April 1984, 1 April 1986, 1 April 1988, 1 April 1990, and 1 April 1991.

8. Assignments dated 28 November 1992 and 14 February 2008 each referred to the terms of the written statement, and Berkeley and Mr Upperton were both parties to the Assignment dated 14 February 2008.

9. On 17 November 2022 Berkeley sent a letter and a duly completed Pitch Fee Review Form as prescribed under the Mobile Homes (Pitch Fees) (Prescribed Form) (England) Regulations SI 2013/1505 (which are together referred to as “the Notice”) to Mr Upperton proposing a new pitch fee of £129.79 in place of £113.65 per month and with effect from 1 January 2023.

10. The increase was not agreed, and Berkeley applied to the Tribunal to determine the matter.

Evidence and submissions

11. The papers presented to the Tribunal included copies of the Application, the written statement, extracts from the previously referred to Assignments, the Notice, a statement from Mr Drew, a director of Berkeley, some photographs, and an email from Mr Upperton.

12. Mr Drew in his statement confirmed that “at the time of the Notice that there were 77 occupied pitches on the Park. The Park is licenced for 85 pitches...” He referred to the calculation of the proposed new pitch fee by reference to an annual increase in the Retail Price Index (“RPI”) of 14.2%, relying on “Implied Term 20(A1) of Schedule 1 to the Mobile Homes Act 1983, as now amended, which gives rise to a presumption that the pitch fee should increase or decrease by a percentage which is no more than any percentage increase or decrease in the Retail Price Index ..”

13. He also stated that Berkeley “notes that the pitch review date in the agreement is 1 April” before continuing Berkeley “has the very many years reviewed the fee on 1 January” and quoted extracts from its payment records for Mr Upperton referring to changed standing order payments at or around the beginning of 2018, 2019, 2020, 2021, and 2022.

14. Mr Upperton in an email (inter alia) referred to the proposed increase as “the biggest increase since I moved here in February 2008”, and his status as a pensioner with a limited income. He questioned the help given by Berkeley and concluded by stating “it might also help if B P started their increase in April as the majority of owners are pensioners”.

The Law

15. The provisions relating to the review of a pitch fee are contained in paragraphs 16 to 20 of Chapter 2 of Part 1 of Schedule 1 to the 1983 Act.

16. Paragraph 29 defines the pitch fee as: “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 the use of the common areas of the protected site and their maintenance, but does not include amounts due in respect of gas, electricity, water and sewerage or other services, unless the agreement expressly provides that the pitch fee includes such amounts.”

17. The pitch fee can only be changed in accordance with paragraph 17, either with the agreement of the occupier, or by the Tribunal, on the application of the site owner or the occupier (Para 16). The pitch fee shall be reviewed annually as at the review date (Para 17(1)). The owner serves on the occupier a written notice setting out the proposed new pitch fee (Para 17(2)). If it is agreed, the new pitch fee is payable from the review date (Para 17(3)). If it is not agreed, the owner (or an occupier on a protected site) may make an application to the Tribunal to determine the new pitch fee (Para 17(4)). Once decided, the new pitch fee is payable from the review date (Para 17(4)(c)). When determining the amount of the new pitch fee, particular regard shall be had to any sums expended by the site owner since the last review date on certain improvements provided after consultation (Para 18(1)(a)) and any reduction in services supplied by the site owner or decrease in the condition or amenity of the site, or any adjoining land occupied or controlled by the site owner, which has not been taken into account in a previous pitch fee review (Para 18(1)(aa) &(ab)). Unless it 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 in the previous year (Para 20(A1)).

18. The written notice proposing the new pitch fee will be of no effect if it is not in the prescribed form (Paras 17(2A) and 25A). It should be served at least 28 days before the review date (Para 17(2)) or, if late, with 28 days' notice (Para 17(7)). An application to the Tribunal may be made at any time after the end of the period of 28 days beginning with the review date but no later than three months after the review date (Para 17(5)) unless the written notice was late in which case an application may be made after the end of period of 56 days beginning with the date on which the owner serves the notice, but not later than four months after the notice. (Para 17(9)).

The Tribunal's Reasons and Determination

19. The Tribunal had first to determine whether the Notice was valid.

20. The Tribunal found that it was not.

21. Notwithstanding that the Notice itself was found to be in the prescribed form (or in a form substantially to the like effect) the date specified as the review date was not correct.

22. Paragraph 29 of Chapter 2 of Part 1 of Schedule 1 to the 1983 Act confirms that ““review date” means the date specified in the written statement as the date on which the pitch fee will be reviewed in each year, or if no such date is specified, each anniversary of the date the agreement commenced”.

23. In this instance the written statement clearly specifies the review date as being 1 April, which Berkeley clearly acknowledge.

24. Consequently, the review date relating to the property must be that which is specified in the written statement being 1 April, and not 1 January as stated in the Notice.

25. The Tribunal noted that Mr Drew referred to recent years where Mr Upperton had increased his payments of the pitch fee at or around the beginning of a new calendar year. Whilst that has not been disputed, there are potentially many reasons why parties might acquiesce to a change for a particular period, but which would fall short of an agreement to rewrite an operative written statement. Berkeley has not provided any evidence of any agreed written revision to the written statement. On the contrary, Mr Upperton has voiced his preference that annual reviews should take place in April.

26. A pitch fee can only be changed either by agreement between the parties, or by the statutory procedures set out in the 1983 Act being properly followed. In this case, the Tribunal found that neither applies.

27. Because the Notice was invalid, the pitch fee remains unchanged.