



FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference : MAN/32UH/PHI/2023/0379 – 0385, 0387 - 0398

Property : Various pitches at Wolds Retreat, Caistor

Applicant : GREEN'S PARK HOMES LIMITED

Respondents : AS ATTACHED SCHEDULE

Type of Application : Determination of Pitch Fee, paragraph 17 (4),
Schedule 1, Mobile Homes Act 1983

Tribunal Members : Tribunal Judge A M Davies
Tribunal Member P Mountain

Date of Decision : 30 April 2024

DECISION

The pitch fee payable by each of the Respondents for the year ending 30 May 2024 is the same as the pitch fee payable by him or her in the year ending 30 May 2023.

REASONS

BACKGROUND

1. Early in May 2023 the Applicant served on the Respondents notices of increase of their respective pitch fees for the pitches they occupy at Wolds Retreat near Caistor ("the Park"). The Applicant proposed an increase of 13.5% over the previous pitch fee, that percentage being the RPI increase applicable to the pitch fee review date 31 May 2023.

2. The Respondents objected to pay the increase and in July 2023 the Applicant applied to this Tribunal pursuant to paragraph 17 (4) Chapter 2, Schedule 1 to the Mobile Homes Act 1983 ("the Implied Terms") for a determination of the pitch fees payable for their pitches for the year ending 30 May 2024.

THE LAW

3. Paragraph 17 of the Implied Terms sets out the procedure for pitch fee reviews as follows:

"17 (1) The pitch fee shall be reviewed annually as at the review date.

(2) At least 28 clear days before the review date the owner shall serve on the occupier written notice setting out his proposals in respect of the new pitch fee.

(2A) A notice under sub-paragraph (2) which proposes an increase in the pitch fee is of no effect unless it is accompanied by a document which complies with paragraph 25A.

(3) if the occupier agrees to the proposed new pitch fee, it shall be payable as from the review date.

(4) if the occupier does not agree to the proposed new pitch fee –

(a) the owner or the occupier may apply to the [tribunal] for an order under paragraph 16(b) determining the amount of the new pitch fee.

(b) 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 [tribunal] under paragraph 16(b)."

4. It follows from this paragraph that in order to increase the pitch fee on 31 May 2023 the Applicant's notice of increase had to be served on each of the Respondents no later than 2 May 2023.
5. Paragraphs 18 – 20 of the Implied Terms set out the matters relevant to a determination of the amount of the pitch fee and provide that unless it would be unreasonable to do so the pitch fee is to increase or decrease by a percentage equivalent to the increase or decrease in the Retail Prices Index over the previous 12 months. Relevant matters which may justify an adjustment to this percentage include deterioration in the condition or amenities of the park.

THE RESPONDENTS' OBJECTIONS

6. The Respondents did not fully explain their objections to the new pitch fee until around 10 February 2024, when their respective statements of case were filed with the tribunal and served on the Applicant. In July 2023 the Applicant had written to those Respondents who had not increased their monthly pitch fee payments, asking why they had not done so. It seems that many of the Respondents did not reply. Others, such as Mr and Mrs Richardson, replied by continuing previous correspondence in which they had set out their complaints about the condition of the Park or disrepair on their pitches. Only in February 2024 did the Respondents claim that the pitch fee increase notices had been served on them too late – ie on 4 May 2023 – and were therefore ineffective.
7. In addition to their claim that the notices of increase were ineffective, the Respondents said that the condition of the Park had deteriorated. They referred to a large number of issues which they said should lead the Tribunal to reduce the proposed pitch fee increase. Although there were some minor variations in the cases presented, in general each of the Respondents raised the same issues in their statements of case.

INSPECTION

8. The Tribunal inspected Wolds Retreat on 30 April 2024 in the presence of representatives of the Respondents, Mr Green of the Applicant, and the Applicant's counsel Mr Feldman. The Tribunal were shown the electric gates, the shipping containers and building material stores, the fishing pegs round the lake, the drainage ditch or stream along one side of the Park, some unfinished sheds, and the areas of the Park where the roads are gravelled rather than tarmacked.
9. The Tribunal saw nothing on the Park during the inspection which would justify a reduction in the RPI percentage rise in the pitch fees, but noted that the hearing bundle contained photographs taken earlier by the Respondents which were more likely to be relevant to their determination of the 2023/2024 pitch fee.
10. In the event, no determination was made regarding any alleged deterioration in the condition of the Park or its amenities.

THE HEARING

11. At the hearing, 17 of the Respondents were represented by Mrs Green who occupies pitch 17 on the Park. Mr Burgess, who occupies pitch 53, chose to represent himself. Mr Grundy, who occupies pitch 38, chose not to be represented at the hearing but asked the Tribunal to make a decision as to her pitch fee on the basis of the papers provided. Mr Feldman of counsel appeared for the Applicant.
12. The Tribunal had a large hearing bundle prepared by the 17 represented Respondents. This included the case papers for each of them together with their respective statements of case and supporting documents. The bundle included the witness statements of Mr Wayne Green of the Applicant, but was not an agreed bundle. The Applicant did not supply a separate bundle of documents for the hearing.
13. The question of the effectiveness of the notices of increase was dealt with as a preliminary issue.

THE APPLICANT'S CASE

14. Mr Green confirmed his witness statements, which he said he had written himself. He told the Tribunal that preparation of the notices had taken a long time on 2nd May, and that it had not been until about 2 or 3pm that hand-delivery to each of the park residents had begun that day. He said that on 2nd May 2023 every notice of increase was served personally either by himself or by the Park's administrator Mrs Patricia Abrahams, although he could not now say which of them had delivered to which addresses.
15. Asked whether any of the notices of increase had been delivered by teenage boys as alleged by the Respondents, he repeated that they were all served by himself or Mrs Abrahams, and that he, Mrs Abrahams or his brother aged about 29 always delivered all official documents. He said that the teenage relatives who sometimes carried out tasks on the Park only delivered letters to individual residents occasionally. He also said that the only other occasion when letters were delivered to all the residents on the Park on the same day was when an annual newsletter was disseminated.

16. Mr Green explained that Mrs Abrahams had been very ill since the summer of 2023, and that although she continues to work at the Park when she feels well enough, he had not asked her for a statement to confirm the date on which she assisted with the delivery of the 2023 notices of pitch fee increase.

THE RESPONDENTS' CASE

17. Mrs Green for the Respondents gave evidence that because of her training and profession as a civil servant, she always made a hand-written note of the date on which a document was received. Her bundle of documents includes several letters on which such a note of the date appears at the top of the first page, including the letter which accompanied the 2023 notice of increase. The note states that the letter was received on 4th May. In response to this Mr Green said that Mrs Green had recorded the date of receipt incorrectly. He further stated that in correspondence in June or July regarding the proposed pitch fee increase she had not claimed to have received the notice after 2nd May 2023.
18. Mrs Reeves also gave evidence for the Respondents. She said that Mrs Abrahams visited her at approximately 11 am on 2nd May 2023 and stayed with her for about 2 hours. They talked about the fact that Mrs Reeves had refused to increase her pitch fee in 2022 and that she was still paying at the 2021/2022 rate because work which the Applicant had promised to carry out had not yet been done. Mrs Reeves said that Mrs Abrahams promised again that the work would be carried out, and also promised to help facilitate Mrs Reeves' intended sale of her park home. Mrs Abrahams eventually persuaded her to increase her pitch fee to the 2022/2023 level which was £219.47 per month. Mrs Reeves told the Tribunal that having agreed to this she made the payment immediately through her banking app. She said that it was the only payment of that amount that she made between 31 May 2022 and 30 May 2023. Two days later, she said, she received the 2023 notice of increase and noted on her calendar for Thursday 4th May 2023 "*Rent increase again ??*". She said that on receipt of the notice she was surprised that during their discussion Mrs Abrahams had not mentioned that a further increase in pitch fee was to be expected at the end of May 2023.
19. In response to this Mr Green said that Mrs Abrahams delivered the notices of increase with him in the afternoon of 2nd May 2023 after her alleged visit to Mrs

Reeves. He also said that the visit must have taken place prior to 2nd May, because a bank transfer would not have had immediate effect. Mrs Reeves said that in her experience a bank transfer would be immediate, and added that her pitch fee notice of increase must have been completed and served after 2nd May because the notice of increase, which she said was served on her on 4th May, referred to the fact that her current pitch fee was £219.47 per month, ie the figure which she had only finally agreed to and paid on 2nd May.

20. Finally, Mr Richardson presented his evidence to the Tribunal. This consisted of correspondence from his wife to the Applicant, and crucially a letter dated 3rd May 2023 which began: *"Further to your letter with regard to the proposed new pitch fee our response is as follows. We agreed to increase our current fee to £219.47 on the basis of all the improvements you proposed to carry out. However at present the only improvements to our situation is the removal of some bricks"*. It ended *"...until some further progress is made we feel it's unreasonable to expect us to pay this additional charge"*. Mr Richardson said that the letter referred to in the first sentence was not the 2023 notice of increase about which they had no knowledge at the time, but was instead an unidentified letter received around the end of April 2023 which formed part of correspondence between his wife and the Applicant. He said that there had been a meeting at which the Applicant had tried to persuade the Richardsons to increase their pitch fee from the 2021/22 level (£201.35) to the 2022/23 level (£219.47).

21. Counsel argued that the letter referred to in the first sentence of this letter was clearly the notice of increase which had been served on 2nd May 2023. He said that Mrs Richardson's letter of 3 May was not only "entirely consistent" with the Applicant's claim that the notices of increase were served on 2nd May, but also put the question of the date of service beyond reasonable doubt.

22. Finally, in response to the question, why did the Respondents not raise this issue of the date of service of the pitch fee notice of increase prior to service of their witness statements around 10 February 2024, the answer given was consistently "because we did not have to".

23. Mr Burgess concurred with the representations made by Mrs Green and relied upon the oral and written evidence given by Mrs Reeves and Mr Richardson. He

confirmed that he was served with the 2023 notice of increase on 4th May 2023 by "one of the sons". The Tribunal heard evidence and read written statements which confirmed that service of at least some of the notices of increase had been effected by teenage boys or a teenage boy, and that service had taken place on 4th May. Counsel for the Applicant confirmed that all the notices were served on the same day, but claimed that this was 2nd May.

24. Mrs Grundy's written statement contains a number of assertions that for various reasons the pitch fee review notice served on her in May 2023 was defective. She states that the notice was served on her by "*a young boy carrying a pile of large white envelopes*" on 4 May 2023 "*accompanied by a letter dated 2nd May 2023*".

FINDINGS

25. The Tribunal accepts the evidence of Mrs Green as to how she recorded the date of receipt on documents and letters. Her hand-written record that the notice of increase was received on 4th May is more likely than not to be contemporaneous and correct.
26. The Tribunal accepts the evidence of Mrs Reeves that she was in a meeting with Mrs Abrahams for a considerable time on the morning of 2nd May. This appears to be inconsistent with Mr Green's claim that the notices were being prepared that morning and were only ready to be delivered after 2pm. Further, the bank transfer of £219.47, being the monthly pitch fee finally agreed by the Reeves, was transmitted to the Applicant on 2nd May 2023, and was the basis on which the Applicant was able to serve a notice of increase which stated that £219.47 was the "current" pitch fee to which the RPI related increase was to apply. Finally, there is no reason to suppose that the calendar entry made by Mrs Reeves is not genuine. It expresses surprise that, the Reeves having just agreed a pitch fee increase, another was being proposed which had not been mentioned by Mrs Abrahams at the meeting two days earlier.
27. In regard to the evidence of Mr Richardson, he was vague about the correspondence and events leading to the letter his wife had written on 3 May. However the hearing bundle contained copies of other letters written by Mrs Richardson. On 5th July and 7 October 2022 she wrote to the Applicant refusing to

agree to the 2022/2023 pitch fee increase for reasons relating to the condition of the Park. On 9 September 2023 she wrote again about outstanding work, and on 28 October 2023 she wrote to Mrs Abrahams: *"You will see when our November site fee goes out this coming week I have reduced it to £201.35. This being the sum we paid up to and including April this year. If you recall we were called to a meeting with yourself and Jason We concluded the meeting by saying if these issues were not addressed we would revert back to £201.35."*

28. Given this correspondence, the letter Mrs Richardson wrote to the Applicant on 3rd May is consistent not only with the 2023 pitch fee notice of increase having been served on 2nd May, but also with the alternative scenario, ie that Mrs Richardson was referring to correspondence and meetings relating to the increase from £201.35 to £219.47 on 31 May 2022.
29. The onus is on the Applicant to prove (on a balance of probabilities) the date on which the pitch fee notice of increase was served in May 2023. The evidence of Mr Green is unsupported by any administrative documents from his office. Neither Mrs Abrahams nor any other member of the Applicant's staff provided a witness statement. The Tribunal heard and accepts evidence that Respondents saw Mrs Abrahams working on site in the weeks or months immediately prior to the hearing. There appears to be no good reason why she would not have signed a statement confirming that she helped to serve notices of increase on 2nd May 2023 if she had in fact done so. That this was a crucial issue in the case has been apparent since mid February 2024.
30. In the light of evidence given at the hearing and the Respondent's written statements, and after giving due consideration to the evidence of Mr Green, the Tribunal concludes that the Applicant has failed to show on a balance of probabilities that the 2023 notice of pitch fee increase was served on 2nd May 2023. The notices were served out of time and consequently the Respondents' proposed pitch fee increases did not take effect on 31 May 2023.