



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

**Case Reference** : BIR/44UF/PHI/2014/0012  
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**Applicants** : Mr and Mrs M Weaver (no 88)  
Mr M Southall (No 102)

**Respondent** : South Staffordshire Council  
Mrs P Griffiths, Commercial  
and Housing Services manager

**Properties** : 88 and 102 Hinksford Mobile  
Home Park, Kingswinford,  
West Midlands DY6 0BB

**Type of Application** : Determination of level of pitch  
fee under paragraph 16 chapter  
2 of the Mobile Homes Act 1983  
(as amended) (the Act)

**Tribunal** : R T Brown FRICS  
Judge W G T Vaughan  
D Underhill

**Dated** : 27 OCT 2014

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**DECISION**

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## DECISION

1. The Tribunal determines that the Notice of Increase dated 16<sup>th</sup> December 2013 and the amendment to the Notice dated 4<sup>th</sup> April 2014 are valid for the purposes of increasing the pitch fee.
2. The Tribunal determines that the pitch fee in respect of both the subject properties is £26.18 per week with effect from 7<sup>th</sup> April 2014.

### Background

3. On the 16<sup>th</sup> December 2013 the Respondent served separate notices of increase in Pitch Fee on Mr and Mrs Weaver (No 88) and Mr and Mrs Southall (No 102) proposing the sum of £26.28 per week in place of the existing £25.52 per week with effect from 7<sup>th</sup> April 2014.
4. The site is a protected site.
5. It is not in dispute that the notices were in the form prescribed under paragraph 245(A) of Chapter 2 of Part 1 to the Mobile Homes Act 1983 (as amended).
6. It is further not in dispute that the Respondent wrote to both parties on 4<sup>th</sup> April 2014 (3 days before the increase was to take effect) advising that it had incorrectly calculated the increase in accordance with the formula provided by statute and accordingly the increase was to £26.18 and not £26.28. The reason given being that the RPI had been incorrectly calculated.

### Relevant Law

The Mobile Homes Act 1983 (as amended by the Mobile Homes Act 2013).

7. Section 2 (1) implies into any agreement to which the Act applies the applicable terms set out in part 1 of Schedule 1 to the Act. The implied terms take priority over any express terms of the site agreement. The Mobile Homes Act 1983 (Amendment of Schedule 1)(England) Order 2006 SI 1755 made provision relating to pitch fees. Those amendments are retrospective to any agreement made before the order came into force on 1<sup>st</sup> October 2006 as well as subsequent agreements. Further amendments to the implied terms are set out in part 1 of schedule 1 to the Act and came into force on 26<sup>th</sup> May 2013 further amending the implied terms.
8. The provisions relating to the pitch fee are set out in part 1 of schedule 1 of the Act and chapter 2 paragraphs 16 to 20.
9. Under Paragraph 16 the pitch fee can only be changed with the agreement of the occupier or *'if the appropriate judicial body, on the application of the owner or the occupier, considers it reasonable for the*

*pitch fee to be changed and makes an order determining the amount of the new pitch fee'*

10. Under paragraph 17: *'the pitch fee shall be reviewed annually as at the review date'* and sets out the procedure for the owner to serve a notice of any proposed increase on the occupier at least 28 clear days before the review date. It further provides that if the occupier does not agree to the proposed pitch fee then the owner (or in the case of a protected site in England the occupier) may apply to the appropriate judicial body in this case the First-tier Tribunal (Property Chamber) for an order determining the amount of the new pitch fee.

11. Paragraph 18 deals with the amount of the pitch fee:

*(1) When determining the amount of the new pitch fee particular regard shall be had to*

*(a) Any sums expended by the owner since the last review date on improvement*

*(i) Which are for the benefit of occupiers of mobile homes on the protected site;*

*(ii) Which were the subject of consultation in accordance with paragraph*

*(iii) 22(e) and (f) below; and*

*(iv) To which a majority of the occupiers have not disagreed in writing or which, in the case of such disagreement, the appropriate judicial body, on the application of the owner, has ordered should be taken into account when determining the amount of the new pitch fee;*

*(aa) in the case of a protected site in England, 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 to that deterioration or decrease for the purposes of this sub paragraph);*

*(ab) in the case of a protected site in England, 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 to that reduction or deterioration for the purposes of this sub paragraph);*

*(b) in the case of a protected site in Wales any decrease in the amenity of the protected site since the last review date:*

*And*

*(ba) in the case of a protected site in England, any direct effect on the costs payable by the owner in relation to the maintenance or management of the site of an enactment which has come into force since the last review date; and*

*(c) in the case of a protected site in Wales, the effect of any enactment, other than an order made under*

*paragraph 8(2) above, which has come into force since the last review date.*

*(1A) But, in the case of a pitch in England, no regard shall be had, when determining the amount of the new pitch fee, to any costs incurred by the owner since the last review date for the purposes of compliance with the amendments made to this Act by the Mobile Homes Act 2013.*

12. Paragraph 20 (A1): *In the case of a protected site in England, unless this 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 calculated by reference only to –*

*(a) the latest index, and*

*(b) the index published for the month which was 12 months before that to which the latest index relates.*

13. The Notice of increase or decrease must be in the form prescribed by The Mobile Homes (Pitch Fees)(Prescribed form)(England) Regulations 2013/1505.

### **Inspection**

14. The Tribunal inspected the site in the presence of both Mr Weaver and Mr Southall. Mrs P Griffiths, Commercial and Housing Services Manager represented the Respondent South Staffordshire Council. Mr Foster the Site Manager was also present.
15. Hinksford Mobile Home Park is located close to the village of Swindon approximately 8 miles south of Wolverhampton.
16. The Tribunal were told the park extended to approximately 5.5 hectares (13.5 acres). There are pitches for 137 mobile homes with 2 further pitches prepared and ready for development.
17. There are also a number of garages let exclusively to residents of the park and un allocated parking.
18. During the inspection the members of the Tribunal were shown:
- a. Two new foundations for 2 additional homes to be placed
  - b. New fencing behind those foundations
  - c. Blocked manhole covers
  - d. Patch repairs to the concrete paths
  - e. Uneven path slabs
  - f. Necessary tree maintenance works
  - g. Extensive flood protection and revetment work to protect the site

19. The members of the Tribunal found the site to be well laid out, clean, tidy and generally well managed. The issues drawn to the Tribunal's attention are typical of the ongoing repair and maintenance of any site of this size and type.

### **Hearing**

20. The hearing was held after the inspection and attended by the Applicants and Mrs Griffiths.

### **Applicants Cases**

#### *Mr and Mrs Weaver*

21. Mr Weaver had helpfully provided information for inclusion in the trial bundle prepared by Mrs Griffiths.
22. In summary he objected to the increases on the following grounds:
- (a) Council Tax has been frozen for 3 years and the pitch fee has risen year on year. The gap between council tax and pitch fee widens each year.
  - (b) The revenue from Hinksford Park is £186,000.00 but only £14,000.00 is allocated back to the site.
  - (c) The Park infrastructure has remained the same since approximately 1956/7 and consequently the sewage pipes are now too narrow to cope with the increased number of units and there is a cesspit. There is no mains gas and cable TV is not permitted.
  - (d) The Parish Council admit that it is unfair that taken together the Council Tax and pitch fee paid by residents is higher than the rent for any property in Swindon.
  - (e) Residents are not treated with respect. Recent footpath repairs were dreadful. Letters went unacknowledged and then home owners written to 'dismissively and told the work was adequate.

#### *Mr and Mrs Southall*

23. Mr Southall helpfully provided information for inclusion in the trial bundle prepared by Mrs Griffiths.
24. In summary he objected to the increases on the following grounds:
- (a) The pitch fee has increased year on year without consultation with residents which is illegal.
  - (b) There has been no justification of the increase. There is very little of the £188,000.00 plus revenue generated by the site being reinvested in the park.
  - (c) The RPI figure, for calculating the increase, should have been taken from the latest figures released not September 2013.

### **Respondent's Reply**

25. Mrs Griffiths responded to the points raised by Mr Weaver as follows:

- (a) The pitch was not increased in 2013. The amount of the increase is the amount permitted by the new regulations. There is no additional increase to cover the costs of any works undertaken (the Respondent has never imposed such a charge) and there has been no decrease in facilities. The increase covers the increase in the costs of providing services to the site e.g. staffing, gardener, planned and reactive maintenance, tools, business rates and insurance.
- (b) In 2014/2014 the figure for general maintenance was £30,000.00. The budget for running the Park in 2014/2015 is £120,000.00 of which £34,000.00 is allocated to general maintenance representing an increase of 11%.
- (1) Works carried out included repairs/ replacements to: garage lights, gulleys and drains, leaking pipes to outhouses, bollards, site mower, replacement of old pipe work, manhole covers, removal of trees, electricity consumer unit, rock salt, repairs to pathways, removal of speed bump, provision of plants and shrubs.
- (2) In 2014/2015 works are planned: Replacement pathways (year 2 of 5 year programme), replace outhouse doors, treatment of Japanese knotweed and Himalayan Balsam and maintenance of fire extinguishers.
- (c) The sewage pipes are the responsibility of South Staffordshire Waterworks Company. Blockages are cleared by the Respondent and the pipes are jetted annually. There is no cesspit at the site and all homes are connected to the main sewer. The provision of gas is not the responsibility of the Respondent. Permission for cable TV services would not be unreasonably withheld.
- (d) Council Tax is charged to all residential properties in South Staffordshire and contributes to the services received by all residents. The pitch fee is for the provision of the hard standing, and running and maintenance of the site.
- (e) The Respondent, who is a commercial and not a social landlord, is committed to the highest standard of customer care and its Customer Charter sets out the service standards it is aspiring to achieve. The costs of works to maintain the desirability of the site have not been included in any calculation of pitch fee increase. Works carried out include: Repairs to the roads, accommodation for 'live in' site warden, on site offices and meeting room, and revetment work to Smestow Brook to prevent further erosion of the banks.

26. Mrs Griffiths responded to the points raised by Mr Southall as follows:
- (a) As 28 (a) above.
- (b) As 28(b) above and there is no additional increase proposed to cover the cost of works proposed. The Respondent has never imposed an additional charge on residents for any capital works.
- (c) The Tribunal noted that no specific response was made to this point however it has been acknowledged by the Respondent elsewhere in the submission.

## **Further Directions**

27. At the hearing the Tribunal advised Further Directions would be issued.
28. Those Directions sought submission from the parties as follows:
  - a) The Notice served on 16<sup>th</sup> December 2013 appears to be in the form prescribed by The Mobile Homes (Pitch Fees)(Prescribed Form)(England) Regulations 2013 (No 1505). However, as acknowledged by the Respondent, the incorrect RPI was used to calculate the increase. The Tribunal will consider the validity of the Notice as served on 16<sup>th</sup> December 2013.
  - b) The Respondent issued a correction letter on 4<sup>th</sup> April 2014. The Tribunal will consider if the said Notice can be amended or corrected by the letter from the Respondent dated 4<sup>th</sup> April 2014.
29. The Applicants made a response by a letter to the Tribunal dated 21<sup>st</sup> September 2014 in which they said they derived no benefit from the increase.
30. Mr D Pattison Director of Legal and Public Health Protection on behalf of the Respondent in a letter to the Tribunal dated 17<sup>th</sup> September 2014 said the conditions set out in paragraph 25A of Schedule 1 to the Act had been met (the notice was in the prescribed form).
31. The Respondents position is that the use of the incorrect RPI does not invalidate the notice. Paragraph 20(A1) sets out the presumption of an increase or decrease in line with RPI. The Respondent accepts that presumption (that there is an automatic limitation of RPI on the increase/decrease) and corrected the error by its letter of the 4<sup>th</sup> April 2014.
32. Further by virtue of paragraph 20(A1) there is an implied power in the legislation to correct an obvious error in its original notice. In addition, there is no prejudice caused to the Applicants nor is there any benefit to the Respondent.

## **The Tribunal's Deliberations**

33. The Tribunal considered all the written and oral evidence, summarised above, submitted by the parties.

### *On the validity of the Notice and correction letter*

34. The Tribunal finds as a matter of fact that the Notice served on 16<sup>th</sup> December 2013 was in the form prescribed by The Mobile Homes (Pitch Fees)(Prescribed form)(England) Regulations 2013/1505.

35. The Tribunal further finds as a matter of fact that, as conceded, by the Respondent the incorrect RPI figure (for September 2013) had been used to calculate the increase when the correct month was October 2013 .
36. The questions for the Tribunal to determine are given that the notice was in the correct form but contained incorrect information;
  - (1) Does the inaccuracy go to the substance of the notice?
  - (2) Can the Respondent correct that error by service of a correction notice in the form of the letter dated 4<sup>th</sup> April 2014?
37. The Tribunal considering the provision of paragraph 20(A1) of part 1 of schedule 1 to the Act and concurs with the parties that the presumption is that the pitch fee will increase or decrease in line with RPI (subject to the provisos in paragraph 18 of part 1 of schedule 1 chapter 2 of the Act).
38. The Tribunal agrees with the Respondent that this provision limits any increase to RPI to the latest published figure preceding the notice. The fact that the notice using the incorrect figure sought a higher increase does not invalidate the limitation in paragraph 20(A1).
39. The Respondent says there is an implied power in paragraph 20(A1) to correct an obvious error in such a notice. The reason being there is no prejudice to the Applicants or gain by the Respondents.
40. The Tribunal agrees that no prejudice has been caused thereby to either party and that in the interests of justice and efficacy the Notice as served and amended is a sufficient notice for the purposes of and for the proper disposal of these proceedings.

*On the pitch fee increase*

41. Applying the tests in paragraph 18 of part 1 of schedule 1 chapter 2 of the Act the Tribunal concludes that:
  - (b) No sums have been expended to which this section applies.
    - (aa) There has been, on the evidence presented to the Tribunal, no deterioration in the condition or amenity of the site since last review.
    - (ab) There has been no reduction in the services (or the quality thereof) of the services supplied to the site.
    - (ba) There has been no direct effect on the costs payable in relation to the maintenance and management of the site as a result of any enactment.
  - (1A) There has been no attempt by the Respondent to increase the pitch fee above the presumption in paragraph 20(1) for the purposes of compliance with the amendment made to the Mobile Homes Act 2013.



42. The only conclusion the Tribunal can reach is that the presumption of an increase in line with the RPI for the month of October 2013 should be applied to the pitch fee with effect from 7<sup>th</sup> April 2014.

***Appeal Provisions***

43. 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).

**27 OCT 2014**

Robert T Brown Chairman