



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

**Case Reference** : CHI/23UE/PHI/2013/0013.

**Property** : 14/15c Woodlands Park, School Lane,  
Quedgeley, Gloucester, GL2 4PT.

**Applicant** : R & M Hearne t/a Gloucestershire  
Park Homes

**Representative** : Mr. C Lutton, Luttons Dunford,  
Solicitors

**Respondent** : Mrs. Daphne M O'Neil

**Representative** : Mr. Vincent H O'Neil

**Type of Application** : Pitch Fee increase  
Mobile Homes Act 1983 (as amended)

**Tribunal Members** : Judge J G Orme (Chairman)  
Mr. I R Perry FRICS (Member)  
Mr. S Fitton (Member)

**Date and Venue of  
Hearing** : 4 February 2014.  
Gloucester County Court

**Date of Decision** : 7 February 2014.

## DECISION

**For the reasons set out below, the Tribunal determines that the pitch fee payable by the Respondent, Mrs. Daphne M O'Neil to the Applicants, R & M Hearne t/a Gloucestershire Park Homes, in respect of the pitch known as 14/15c Woodlands Park, School Lane, Quedgeley, Gloucester, GL2 4PT with effect from 1 May 2013 is £212.31.**

### Reasons

#### Background

1. Woodlands Park, School Lane, Quedgeley Gloucester ("the Park") is a residential mobile home park consisting of 97 units. It is owned and operated by Richard and Margaret Hearne and their children, James, Joseph and Belinda, trading in partnership under the style of R and M Hearne t/a Gloucestershire Park Homes and Leisure Group ("the Applicants"). The Respondent, Mrs. Daphne M O'Neil, is the owner of the mobile home located on the pitch numbered 14/15c at the Park. She occupies the pitch pursuant to an agreement which was made on 28 September 1999 between Mr. and Mrs. Hearne and Susan Thomas. Mrs. O'Neil took over the agreement on 26 August 2005.
2. In March 2013, the Applicants served notice on Mrs. O'Neil informing her that her pitch fee would be increased by £6.38 per month as from 1 May 2013 being a 3.1% increase in line with the increase in the RPI in the year to December 2012. The new pitch fee would be £212.31. Mrs. O'Neil did not agree the increase. On 25 June 2013 the Applicants applied to the Tribunal to determine the new level of pitch fee.
3. On 16 July 2013 the Tribunal issued directions providing for both parties to submit written statements of case. It directed that there should be a hearing with a target date of 27 September 2013. At the request of the parties, the original hearing date fixed for 27 September was vacated and further time was given to the parties to negotiate. On 10 January 2014 the Tribunal sent the parties notice of hearing fixed for 4 February 2014.
4. Mrs. O'Neil appointed her son, Vincent O'Neil, to act as her representative in connection with the application. On 29 January 2014 Mr. O'Neil wrote to the Tribunal seeking an adjournment of the hearing. He said that he had only just returned from New Zealand and that his mother was still in New Zealand and would not be returning until the end of April. The Applicants' solicitor resisted the request for an adjournment on the grounds that a considerable time had passed since the application was made, the next review date was approaching and that Mrs. O'Neil and her son would have known when they were due to be abroad. The Tribunal refused the application for an adjournment on the basis that it had no information as to when Mrs. O'Neil had travelled abroad nor why she had gone and there was no

explanation as to why she had not made appropriate arrangements to deal with the application in her absence, nor why she had not informed the Tribunal of her absence.

5. On 3 February 2014 the Tribunal received further correspondence from Mr. O'Neil in which he informed the Tribunal that he would not be attending the hearing on 4 February but he did not indicate why he would not be able to attend.

### **The Law**

6. Section 2(1) *Mobile Homes Act 1983* (as amended) ("the Act") implies into any agreement to which the Act applies the applicable terms set out in part I of schedule 1 to the Act. Those implied terms take priority over any express terms of the agreement. Those terms were amended by *The Mobile Homes Act 1983 (Amendment of Schedule 1)(England) Order 2006 SI 2006/1755* to include provisions relating to the pitch fee. That Order provides that the amendments apply retrospectively to any agreement made before that Order came into force on 1 October 2006 as well as to subsequent agreements. The implied terms set out in part I of schedule 1 to the Act have been further amended by the *Mobile Homes Act 2013* ("the 2013 Act"). Those amendments came into force on 26 May 2013.
7. The relevant provisions of part I of schedule 1 of the Act which apply in this case are those set out in chapter 2 and it is paragraphs 16 to 20 that deal with the pitch fee.
8. Paragraph 16 provides that 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.*"
9. Paragraph 17 provides that "*the pitch fee shall be reviewed annually as at the review date*", 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 and provides that if the occupier does not agree to the proposed new pitch fee, the owner may apply to the appropriate judicial body for an order determining the amount of the new pitch fee.
10. Paragraph 18(1) and (1A) provide:
  - (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 improvements*
      - (i) *which are for the benefit of the occupiers of mobile homes on the protected site;*
      - (ii) *which were the subject of consultation in accordance with paragraph 22(e) and (f) below;*
    - and

(iii) 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 purpose of compliance with the amendments made to this Act by the Mobile Homes Act 2013.

Those parts which are underlined are the amendments made by the 2013 Act.

11. Paragraph 20(1) provides:

*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 since the last review date, unless this would be unreasonable having regard to paragraph 18(1) above.*

12. The 2013 Act has inserted further provisions into paragraph 20 which determine which month of the index must be used.

### **The Inspection**

13. The Tribunal inspected the Park on 4 February 2014. Mr. James Hearne and Mr. Joseph Hearne were present at the inspection together with the Applicants' solicitor, Mr. Lutton. Mrs. O'Neil was not present nor represented.
14. The Tribunal inspected pitch 14/15 C. The Tribunal noted the area of garden included in the pitch. Mr. Joseph Hearne pointed out to the Tribunal the stump of the tree referred to in Mrs. O'Neil's statement and which had been removed by the Applicants in 2013.
15. The Tribunal inspected the concrete roadway adjacent to the pitch. Part of the roadway leading to the pitch had been covered with a resinous type of material and was in excellent condition. The remainder of the roadway showed some wear in the concrete surface but it remained in good condition and there were no potholes.
16. The Tribunal drove around the remainder of the park. The communal parts of the park appeared to be well maintained, were clean, neat and tidy.

### **The Hearing and the Issues**

17. The hearing took place at Gloucester County Court on 4 February 2014. Mr. Lutton represented the Applicants. Mr. James Hearne and Mr. Joseph Hearne were present. Mrs. O'Neil was not present nor represented.
18. Before proceeding with the hearing, the Tribunal considered whether to proceed in the absence of Mrs. O'Neil or her representative. The Tribunal was satisfied that Mr. O'Neil had been given proper notice of the date of the hearing and was aware of the date of the hearing. No reason had been given for his absence. It considered that sufficient time had been given to the parties to resolve the matter between them and that it was important for the Applicants to have the pitch fee determined before the next review date. The Tribunal determined that it was in the interests of justice to proceed with the hearing in the absence of Mrs. O'Neil.
19. Mr. O'Neil had filed a statement on behalf of his mother dated 14 August 2013 in which he raised 7 issues in opposition to the application.
20. Mr. James Hearne had filed a statement dated 16 September 2013 in which he responded to those issues. Mr. James Hearne gave additional oral evidence to the Tribunal at the hearing.
21. Mr. Lutton submitted that the Tribunal should determine the pitch fee ignoring the amendments made by the 2013 Act. He said that the notice of proposed increase and the review date were both before the date on which those amendments came into force and the Tribunal should apply the law as it was at that time.

22. Mr. Lutton said that the applicants did not rely on any improvements since the last review date to justify any increase. He said that there was no evidence of any deterioration of the condition of the Park, of any decrease in the amenity of the Park or of any deterioration in any services supplied by the Applicants since the last review date. Mr. Lutton submitted that there were no factors to be taken into account under paragraph 18(1) and that the presumption in paragraph 20(1) should apply. Mr. James Hearne had exhibited to his statement a copy of the statistics for the retail prices index showing that the year on year increase in the index to December 2012 was 3.1%. Although the document does not contain any reference to the year, Mr. Hearne confirmed that it related to December 2012. The Applicants therefore contended for an increase of 3.1% so as to increase the pitch fee to £212.31 per month.
23. The Applicants went on to deal with the points raised by Mrs. O'Neil in the statement filed on her behalf.
24. She alleged that the original agreement was unenforceable because paragraph 7 of part IV of the agreement had not been completed to show the review date. The Applicants had filed a copy of the agreement with the application in which that paragraph had been left blank with no date specified as the review date. Mr. James Hearne produced to the Tribunal the original of the agreement in which the date had been completed as "*the 1st day of May in each year*". In all other respects, the copy of the agreement filed with the application appeared to be a photocopy of the original. Mr. Hearne suggested that a copy of a blank page had been inserted by mistake when the copy was submitted to the Tribunal. Mr. Hearne confirmed that Mrs. O'Neil took over the pitch on 26 August 2005 and that there had been a pitch fee review on 1 May in every year from 2006 to 2012 all of which resulted in increases of the pitch fee and which were all concluded by agreement with Mrs. O'Neil. He said that Mrs. O'Neil had not challenged the review date on any previous occasion.
25. She complained that the condition of the roadway adjacent to the pitch had required resurfacing in view of the dangerous nature of the surface and that the Applicants had been in breach of their obligations by failing to carry out repairs until recently. She accepted that part of the roadway had been resurfaced by the Applicants but said that the remainder of the roadway was "*unmaintained and in the respondent's opinion very dangerous*". Mr. James Hearne confirmed that the resurfacing work was completed on 21 August 2013. He said that the condition of the roadway before resurfacing was such that the crust of the concrete surface had deteriorated as a result of use of salt resulting in a roughening of the surface. He said that there were no potholes and that the surface had been similar to the surface of that part of the roadway which had not been resurfaced. He said that that roadway was still of a good standard, as seen on the inspection.

26. Mrs. O'Neil complained that homes let by the Applicants were not being adequately maintained. Mr. Lutton said that he was unable to respond to that point because there was no detail as to which homes she was referring to.
27. Mrs. O'Neil complained that the Applicants seek to charge for the provision of gas to the site when she has a contract with British Gas for the supply of gas. Mr. James Hearne explained that in the early 2000's, residents were offered the opportunity to have mains gas piped to their pitches so that they could use mains gas rather than bottled gas. Mrs. O'Neil's predecessor had accepted that offer and had agreed to an increase in the pitch fee to reflect the capital cost. Mrs. O'Neil had accepted that position when she had taken over the pitch. He referred to a previous decision under reference CHI/23UE/PHC/2012/0009 in which a similar situation had been considered by a tribunal and found to be fair.
28. Mrs. O'Neil had asked for a full statement of accounts for the maintenance charges and pitch fees applied to the pitch but no such information had been forthcoming. Mr. Lutton submitted that there was no contractual or statutory entitlement to such a statement.
29. Mrs. O'Neil complained that the Applicants had failed to arrange for or authorise the removal of a dead tree at the rear of her pitch. She had produced a copy of a quotation for the removal dated 12 June 2013 but she did not produce a copy of any letter notifying the Applicants. Mr. James Hearne said that he had no knowledge of the dangerous state of the tree until he received a statement in connection with these proceedings, whereupon he had arranged for a tree surgeon to inspect and report, obtained permission from the council to remove the tree and had the tree removed at the Applicants' expense.
30. Finally, Mrs. O'Neil complained of a breach of confidentiality and discrimination.

### **Conclusions**

31. The Tribunal was not satisfied with the explanation given by Mr. James Hearne as to how the tribunal came to have a copy of the agreement in which the review date was left blank and the original now had a date inserted. The evidence strongly suggests that the date has been inserted since the application was made to the Tribunal. The Tribunal finds as a fact and proceeds on the basis that the review date was left blank in the agreement. The Tribunal does accept the evidence of Mr. Hearne that there has been a review of the pitch fee and an increase in the pitch fee by agreement on 1<sup>st</sup> May in each year from 2006 to 2012. The Tribunal does not accept Mrs. O'Neil's suggestion that the agreement is unenforceable. Paragraph 17 of part I of schedule 1 to the Act clearly stipulates that there is to be an annual review of the pitch fee. It is clear that the parties have proceeded on the basis that the review should be conducted on 1<sup>st</sup> May in each year. The Tribunal finds as a fact that that is the review date.

32. In relation to the roadway adjacent to the pitch, the Tribunal accepts the evidence of Mr. James Hearne about the state of the roadway before repairs were carried out. The Tribunal noted on its inspection that the surface of the roadway where repairs have been effected is now in excellent condition and that the surface of the roadway where it has not been repaired is still in good condition. It is a little rough but there are no potholes. The Tribunal does not accept Mrs. O'Neil's suggestion that it is in a dangerous condition.
33. The Tribunal finds that there was no evidence before it of any deterioration in the condition of the site or any decrease in the amenity of the site or any reduction in the services provided by the Applicants since the last review date on 1 May 2012.
34. The Tribunal accepts the evidence of Mr. James Hearne in relation to the removal of the tree. The Tribunal notes that under paragraph 3(f) of part IV of the agreement, it is the responsibility of the occupier to keep the pitch in a neat and tidy condition. It seems at least arguable that Mrs. O'Neil was responsible for the tree. The Tribunal is not satisfied that there is any evidence of a breach of obligation by the Applicants in this respect.
35. In relation to the gas supply, the Tribunal is satisfied that any element of the pitch fee which relates to the gas supply reflects the capital cost incurred by the Applicants when installing the pipes and not to the actual supply of gas. In any event, Mrs. O'Neil accepted the position when she took over the pitch and agreed to pay the pitch fee.
36. None of the points raised by Mrs. O'Neil in her statement are relevant to the determination of the pitch fee. They do not provide evidence of deterioration in the condition of the site or a decrease in the amenity of the site.
37. The Tribunal can understand why Mr. Lutton submits that, when determining the pitch fee, the Tribunal should ignore the amendments made by the 2013 Act. The date of the notice of proposed increase and the review date were both before the amendments came into force on 26 May 2013. Therefore it would be logical for the pitch fee to be determined on the basis of the law which existed at that time. However, the amendments made by the 2013 Act do appear to be retrospective and the contrary argument must be that the Tribunal should determine the pitch fee by applying the law which exists at the time of the application and its determination. The Tribunal is not aware of any transitional provisions having been made pursuant to section 15(4) of the 2013 Act.
38. In view of the Tribunal's findings about the condition and amenity of the site, it is not necessary for the Tribunal to determine that legal issue. Whether it applies paragraph 18(1) as it was before 26 May 2013 or as it is after that date, there are no factors to which the Tribunal



must have regard under that paragraph. In those circumstances, the presumption set out in paragraph 20(1) applies "*unless this would be unreasonable having regard to paragraph 18(1) above*". No arguments have been put forward on behalf of Mrs. O'Neil as to why it would be unreasonable to apply that presumption. The Applicants seek an increase of no more than the increase in the RPI.

39. Applying the test laid down by paragraph 16(b), the Tribunal considers that it is reasonable for the pitch fee to be changed and for it to be increased in proportion to the increase in the RPI during the preceding 12 months. The Tribunal considers that it was reasonable for the Applicants to use the RPI figure for December 2012 rather than for any other month. In the circumstances, the Tribunal determines the new pitch fee at £212.31 per month.

### **Right of Appeal**

40. Any party to this application who is dissatisfied with the Tribunal's decision may appeal to the Upper Tribunal (Lands Chamber) under section 231C of the Housing Act 2004 or section 11 of the Tribunals, Courts and Enforcement Act 2007.
41. A person wishing to appeal this decision must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with this application. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit. The Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal and state the result the party making the application is seeking.
42. The parties are directed to Regulation 52 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 SI 2013/1169. Any application to the Upper Tribunal must be made in accordance with the Tribunal Procedure (Upper Tribunal)(Lands Chamber) Rules 2010 SI 2010/2600.

J G Orme  
Judge of the First-tier Tribunal  
Dated 7 February 2014