



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

Case Reference : **CHI/23UE/PHI/2014/0014.**

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

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

Representative : **In person**

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

Representative : **No appearance**

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

Tribunal Members : **Judge J G Orme (Chairman)
Mr. S Hodges FRICS (Member)**

**Date and Venue of
Hearing** : **18 December 2014.
Determination without a hearing**

Date of Decision : **22 December 2014.**

DECISION

For the reasons set out below, the Tribunal determines that the pitch fee payable by the Respondent, Mrs. Daphne 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 2014 is £218.04 per month.

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 O'Neil, is the owner of the mobile home located on the pitch numbered 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. In the agreement, the pitch is referred to as number 14C. Mrs. O'Neil informed the Tribunal that she asked for the number to be changed and that it is now referred to as pitch 15C. The application refers to it as 14/15C and that is the numbering used in this decision.
2. On 24 March 2014, the Applicants served notice on Mrs. O'Neil informing her that her pitch fee would be increased by £5.73 per month as from 1 May 2014 being a 2.7% increase in line with the increase in the RPI in the year to February 2014. They proposed that the new pitch fee would be £218.04 per month. Mrs. O'Neil has not agreed the increase. On 15 July 2014 the Applicants applied to the Tribunal to determine the new pitch fee.
3. On 1 August 2014 the Tribunal issued directions providing for the application and supporting documents to stand as the Applicants' statement of case and for the Respondent to submit a written statement of case by 29 August 2014 stating whether she agreed the Applicants' case and if not setting out her reasons for disputing it. The Tribunal gave notice pursuant to Rule 31 of the *Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013/1169* that it intended to dispose of the application without a hearing.
4. Mrs. O'Neil has not provided a statement of case to the Tribunal and has taken no part in the application.
5. Neither party requested an oral hearing.

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*. 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 (“Chapter 2”) and it is paragraphs 16 to 20 and 25A that deal with the pitch fee. The text of the relevant parts of those paragraphs is set out in the schedule to these reasons.
8. In summary, the pitch fee may be reviewed annually on the review date. The site owner must serve written notice on the occupier at least 28 days before the review date of his proposals for the new pitch fee. If the occupier agrees the pitch fee, it is payable from the review date. If the occupier does not agree the pitch fee, the site owner or the occupier may apply to the Tribunal to determine the pitch fee. The application must be made at least 28 days after the review date but not more than 3 months after the review date. Once the Tribunal has determined the pitch fee, it is payable as from the review date but the occupier is not treated as being in arrears until the 28th day after the date of the Tribunal’s determination.
9. Paragraphs 18 and 19 set out the matters which may be taken into account by the Tribunal in determining the pitch fee. Particular regard must be given to any sums expended by the site owner on improvements to the site since the last review date, any deterioration in the condition of the site or decrease in amenity of the site or any reduction in the amount or quality of the services supplied by the site owner to the pitch since the last review date. Paragraph 20 provides that there is a presumption that the pitch fee will increase or decrease by a percentage that is no greater than the percentage increase or decrease in the retail prices index in the 12 months prior to the date on which notice of increase is served unless this would be unreasonable having regard to paragraph 18(1).

The Inspection

10. The Tribunal inspected the Park on 18 December 2014 in the presence of Mr. Richard Hearne. Before commencing the inspection, the Tribunal called on Mrs. O’Neil at pitch number 15C. She informed the Tribunal that she was aware of the application and of the inspection. She produced a copy of the Tribunal’s letter to her dated 25 November 2014 notifying her of the time of the inspection. She informed the Tribunal that her pitch was numbered 15C and not 14 or 14C. She confirmed that she did not agree the increase in the pitch fee. She considered the Applicants’ proposed pitch fee to be excessive. She thought that her son would be

dealing with her submissions to the Tribunal but did not disagree when told by the Tribunal that no such submissions had been received. She informed the Tribunal that she did not wish to accompany the Tribunal on its inspection of the site.

11. The Tribunal inspected the Park, particularly those parts adjacent to the pitch. 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 good condition. The remainder of the roadway showed some wear in the concrete surface but it remained in good condition and there were no potholes. The car park at the entrance to the Park was covered with tarmac which appeared to be in good condition. Elsewhere, the roadways were largely constructed with block paving and appeared to be in good condition. The communal parts of the park appeared to be well maintained, were clean, neat and tidy.

The Submissions

12. The Applicants' submission consisted of the application form, a copy of the letter from the Applicants to Mrs. O'Neil dated 24 March 2014 notifying her of the proposed increase in pitch fee, a copy of the accompanying form prescribed by paragraph 25A of Chapter 2, a copy of the written statement of terms of the agreement and a copy of the Tribunal's previous decision dated 7 February 2014 under case reference CHI/23UE/PHI/2013/0013.
13. The Tribunal had received no written submissions from Mrs. O'Neil.

Conclusions

14. The Tribunal satisfied itself that a copy of the application and of the Tribunal's directions dated 1 August 2014 had been sent to Mrs. O'Neil under cover of the Tribunal's letter dated 5 August 2014. The Tribunal satisfied itself that Mrs. O'Neil had been given notice of the application and of the inspection.
15. In the absence of any submissions from Mrs. O'Neil, the Tribunal accepted the written evidence submitted by the Applicants. It has not been challenged by Mrs. O'Neil.
16. On the basis of the copy of the written agreement and of the previous decision of the Tribunal dated 7 February 2014, the Tribunal was satisfied that the date for the review was 1 May 2014.
17. The Tribunal was satisfied that the Applicants had given Mrs. O'Neil 28 day's clear written notice of their proposals in respect of the new pitch fee. The Tribunal was satisfied that that notice was accompanied by a form complying with paragraph 25A(1) of Chapter 2.
18. The Tribunal was satisfied that the application had been made within the time allowed by paragraph 17(5) of Chapter 2.

19. The Tribunal noted that neither party asserted that there were any matters falling within paragraph 18(1) of Chapter 2 to which the Tribunal should have particular regard. Neither party asserted that there were any matters arising under paragraph 19 of Chapter 2 which might affect the pitch fee.
20. The Tribunal was not aware of any matters arising either from its inspection of the Park or from either party's submissions that would make it unreasonable for the presumption set out in paragraph 20 of Chapter 2 to apply.
21. The Tribunal checked the RPI figures and agreed that the RPI index had increased by 2.7% to February 2014. The proposed increase was not greater than that sum.
22. Applying the test laid down by paragraph 16(b), the Tribunal considers that it is reasonable for the pitch fee to be changed. The Tribunal agrees that the presumption set out in paragraph 20 should apply. The Tribunal agrees with the figure proposed by the Applicants and determines the pitch fee in the sum of £218.04 per month with effect from 1 May 2014.

Right of Appeal

23. 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.
24. 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.
25. 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 22 December 2014

The Schedule

Extracts from The Mobile Homes Act 1983, Schedule 1, Part I, Chapter 2 (as amended).

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The pitch fee can only be changed in accordance with paragraph 17, either –

- a) with the agreement of the occupier, or
- b) 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.

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 a written notice setting out his proposals in respect of the new pitch fee.
- 2A) In the case of a protected site in England, 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 (in the case of a protected site in England) the occupier may apply to the appropriate judicial body 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 appropriate judicial body under paragraph 16(b); and
 - c) the new pitch fee shall be payable as from the review date but the occupier shall not be treated as being in arrears until the 28th day after the date on which the new pitch fee is agreed or, as the case may be, the 28th day after the date of the appropriate judicial body's order determining the amount of the new pitch fee.
- 5) An application under sub-paragraph (4)(a) may be made at any time after the end of the period of 28 days beginning with the review date but, in the case of an application in relation to a protected site in England, no later than three months after the review date.
- 6) Sub-paragraphs (7) to (10) apply if the owner -
 - a) has not served the notice required by sub-paragraph (2) by the time by which it was required to be served, but
 - b) at any time thereafter serves on the occupier a written notice setting out his proposals in respect of a new pitch fee.

....

18

- 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) ...
 - 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) ...
- 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.
 - 2) When calculating what constitutes a majority the occupiers for the purposes of sub-paragraph (1)(b)(iii) each mobile home is to be taken to have only one occupier and, in the event of there being more than one occupier of a mobile home, its occupier is to be taken to be the occupier whose name first appears on the agreement.
 - 3) In a case where the pitch fee has not been previously reviewed, references in this paragraph to the last review date are to be read as references to the date when the agreement commenced.

19

- 1) When determining the amount of the new pitch fee, any costs incurred by the owner in connection with expanding the protected site shall not be taken into account.
- 2) In the case of a protected site in England, when determining the amount of the new pitch fee, no regard may be had to any costs incurred by the owner in relation to the conduct of proceedings under this Act or the agreement.
- 3) In the case of a protected site in England, when determining the amount of the new pitch fee, no regard may be had to any fee required to be paid by the owner by virtue of-

- a) section 8(1B) of the Caravan Sites and Control of Development Act 1960 (fee for application for site licence conditions to be altered);
 - b) section 10(1A) of that Act (fee for application for consent to transfer site licence).
- 4) In the case of a protected site in England, when determining the amount of the new pitch fee, no regard may be had to any costs incurred by the owner in connection with-
- a) any action taken by a local authority under sections 9A to 9I of the Caravan Sites and Control of Development Act 1960 (breach of licence condition, emergency action etc);
 - b) the owner being convicted of an offence under section 9B of that Act (failure to comply with compliance notice).

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.
- A2) In sub-paragraph (A1), "the latest index"-
- a) in a case where the owner serves a notice under paragraph 17(2), means the last index published before the day on which the notice is served;
 - b) in a case where the owner serves a notice under paragraph 17(6), means the last index published before the day by which the owner was required to serve a notice under paragraph 17(2).
- 1) ...
 - 2) Paragraph 18(3) above applies for the purposes of this paragraph as it applies for the purposes of paragraph 18.

25A

- 1) The document referred to in paragraph 17(2A) and (6A) must -
 - a) be in such form as the Secretary of State may by regulations prescribe,
 - b) specify any percentage increase or decrease in the retail prices index calculated in accordance with paragraph 20(A1),
 - c) explain the effect of paragraph 17,
 - d) specify the matters to which the amount proposed for the new pitch fee is attributable,
 - e) refer to the occupier's obligations in paragraph 21(c) to (e) and the owner's obligations in paragraph 22(c) and (d), and
 - f) refer to the owner's obligations in paragraph 22(e) and (f) (as glossed by paragraphs 24 and 25).
- 2) Regulations under this paragraph must be made by statutory instrument.
- 3) The first regulations to be made under this paragraph are subject to annulment in pursuance of a resolution of either House of Parliament.

- 4) But regulations made under any other provision of this Act which are subject to annulment in pursuance a resolution of either House of Parliament may also contain regulations made under this paragraph.

The Mobile Homes (Pitch Fees) (Prescribed Form) (England) Rregulations 2013 SI 2013/1505 prescribe the form required by paragraph 25A.