



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

Case References : (1) CHI/40UD/PHI/2013/0021 and (2)
CHI/40UD/PHC/2013/0019

Property : South Somerset Residential Park,
Turnpike, Exeter Road, Howley,
Chard, Somerset, TA20 3EA

Applicants : Members of the Turnpike Park
Residents Association

Representative : Mrs. Annette McCartney

Respondent : South Somerset Holiday Park Ltd

Representative : Mr. J.S. Clement

Type of Applications : (1) Pitch Fees - Mobile Homes Act 1983
(as amended)
(2) Section 4 Mobile Homes Act 1983
(as amended)

Tribunal Members : Mr. J.S. McAllister F.R.I.C.S.
Judge D. Agnew
Judge A. Cresswell

Date of Hearing : 9th. January 2014

Date of Decision : 24th. January 2014

DECISION

INTRODUCTION

1. These are 2 applications both dated 20th October 2013 by certain members of the Residents Association for a determination as to a new level of pitch fees and as to whether or not proposed sewerage charges are payable and if so the amount. Directions were issued by the Tribunal dated 24th October 2013 that both cases should be heard together. Both applications are under the Mobile Homes Act 1983 as amended ["the Act"].

2. The grounds of the applications were that the proposed pitch fees increases are unjustified and unnecessary and that the proposed sewerage charges are unjustified.

DOCUMENTS

3. The Applicants submitted, as directed –

Pitch Fees- Letter dated 16th November 2013 with attachments.

Letter dated 28th November 2013 with attachments.

Sewerage charges -

Letter dated 16th November 2013 with attachments.

Letter dated 28th November 2013 with attachments.

As directed the Respondent submitted –

A letter dated 17th December 2013 and attached statement of case, with attachments, dated 16th December 2013 from its solicitors Tubervilles of Uxbridge, Middlesex. This statement related to both cases.

INSPECTION

4. The Tribunal inspected the park immediately prior to the hearing. Also present were Mr. P. J. Jeffries one of the Applicants, Mr. G. Weeks director South Somerset Holiday Park Ltd and Mr. J. Clement of Tubervilles solicitor for the Respondent. The whole property comprises the subject residential park, an adjoining holiday or touring park, a shower/toilet block, a reception block and 2 dwellings for the site owners. Access to both parks is by a shared entrance drive from the A30 Exeter Road. The Parties pointed out to the Tribunal the sewerage treatment plant which serves the residential park, the shower/toilet block, mainly used by the occupants of the adjoining holiday park, the office block and the 2 dwellings. The holiday park has its own separate sewerage disposal system. The residential park currently has 48 occupied pitches with park homes. The holiday park currently has an unknown number of caravans etc. on site.

THE HEARING

5. Present were the following members of the Residents Association, Mrs A.S. McCartney, [Chair], Mr. P.J Jeffries [Secretary], Ms. N. Lampard, [Treasurer], Mrs. C. Hussay, Mr. M.A. Smith, Mr. M.G. Inman, and Mr.

V. Courtney. For the Respondent were Mr. Weeks and Mr Clement. Observers present were Mr. D. Bell of the South Somerset District Council, Mr and Mrs. G. Trelfall of NAFRA and a former owner of a park home on the subject site Mr. E. Burgess.

Preliminary Matters

6. The Parties agreed with the Tribunal that the Respondent should state its case first.

7. Mr. Clement raised 3 procedural matters all in relation to the pitch fees application. Firstly that the Residents Association were not entitled to bring this action on behalf on individual park home owners without their express agreement. Secondly 2 owners Mr. P. Jenkins and Mr. T. Barnes should be removed as Applicants. This was an issue agreed on behalf of the Applicants and by the Tribunal. It was agreed that the 39 Applicants in respect of both applications are those on the list of 42 attached to the application forms, but excepting Mr. P. Jenkins, Mr. T. Barnes and Mr. P.J. Simerster. Thirdly it was said that the application was made on an incorrect form and is misconceived and any owners should contest the proposed change in their pitch fee by an application to the Tribunal under section 2(3) of the Act. This was because the proposed pitch fees are not reviews as such but are the results of new agreements due to a change in the status of the park following its licensing on 22nd April 2013. The Respondent agreed that the information required of an Applicant by the Tribunal's rules had been provided and it was agreed that the application could properly proceed under section 2(3).

The Respondent's case re the basic pitch fees

8. Mr. Clement for the Respondent then spoke to his statement of case and told the Tribunal that the residential park was licensed by the South Somerset District Council on 22nd April 2013. Prior to then it was licensed as a holiday park. A copy of the licence was provided which permits up to 59 park homes on the residential park. The adjoining holiday park is licensed for up to 110 touring caravans.

9. Mr. Clement said that the residents had asked the council to relicense the park. Mr Bell, Licensing Officer of the council stated that a number of residents had approached him, as most wanted to be on a permanent not holiday site. Mr. Bell then contacted Mr. Weeks and his surveyor following which the residential park was licensed changing its status from a holiday to a protected site.

10. Mr. Clement said that on 4th. July 2013 the Respondent then wrote to all park residents to explain that a new agreement was necessary with them to comply with the Act. A copy of the agreement was attached for the residents to sign and return. A copy of both of these documents was attached to the Respondent's statement. The letter also proposed a new pitch fee payable from 22nd April 2013, representing an increase in the fee which had last been reviewed as from 1st February 2013.

11. The Respondent consulted Mr. R. Gale-Hasleham, surveyor for advice as to the new pitch fees. Mr. Clement for the Respondent considered that the pitch fee review procedure under the Act did not apply because the change in the park's status meant that the old holiday park agreement had been superseded by the new one. Following the advice received from the surveyor, which was only verbally conveyed to the Tribunal the Respondent decided to set the new pitch fees at a higher level than those payable under the former holiday park agreements. There were 3 main reasons for this decision, [1] the restriction on future pitch fee reviews imposed by the Act, [2] evidence of comparable pitch fees and [3] loss of sale commission income.

12. With regard to [1] the Respondent required a reasonable future income level as the Act generally restricted increases to changes in the RPI.

13. With regard to [2] the Respondent produced a list of 12 parks with pitch fees ranging from £1466 pa to £2316.60 pa. This brief list was provided by the above named surveyor but it did not provide any park details nor the dates the fees were fixed.

14. With regard to [3] the Respondent stated that the agreed sale commission on the former holiday park was 15% but on the protected site is restricted to 10%. Accordingly the Respondent considered it reasonable to factor in this shortfall in part at least in setting in the new pitch fees.

15. Following several questions by the Tribunal Mr. Clement accepted that the effective date of the new pitch fees was to be set by the Tribunal and he stated that the Respondent would agree to the date being 4th July 2013.

16. Mr. Clement then stated that the Respondent had used a pitch fee banding system based on the size of the park home and whether a home was a single or twin unit. A similar system had been used to arrive at the existing pitch fees. 7 new bands were used, and, after taking advice these ranged from £1600 pa to £1900 pa. Some other parks also used such a system. In reply to a Tribunal question Mr. Weeks stated that he had not based the system on the pitch sizes as they were too difficult to measure as the pitches were of varying shapes and sizes. The Respondent produced a schedule of 49 homes showing the individual fees at February 2013 and the proposed fees in the new agreements. The existing fees included sewerage charges, the proposed fees were exclusive of and in addition to sewerage charges.

17. In reply to a Tribunal question Mr. Clement stated that he was not aware of any case law which supported his contention that the new agreements lawfully overrode the existing contractual agreements in which the fees had been reviewed on 1st February 2013 for a period of 1 year from that date. Mr. Clement stated that the Respondent was in an unusual position in that the park became licenced and protected only a few months after the fees had been reviewed. This was at the instigation of several residents.

The Applicants' case re the basic pitch fees

18. Mrs. McCartney spoke for the Applicants. They produced a letter dated 16th. November 2013 with copy letters and pitch fee invoices from 37 park home owners and a note from the owner of number 52. The letter stated that any change to the pitch fees was unnecessary and unjustified. Also that the comparable fees produced by the Respondent were inclusive of water and sewerage charges. The fees paid by the Applicants at February 2013 included sewerage charges but were exclusive of water charges which the Applicants paid separately.

19. The Applicants' letter/statement dated 28th. November 2013 stated that the advice given by NAPHR was that pitch fees can only be increased once in any 12 month period and that there was no obligation on the Respondent to increase the fees in April 2013 just because the park became protected in that month. The Applicants also contended that the pitch fees proposed were not comparable to those provided by the Respondent. They produced a copy pitch fee invoice from a park in Exeter - £1543.30 pa inclusive of sewerage charges at January 2013 and a copy email dated 2nd. November 2013 showing pitch fees of an unidentified park which gave the 2013 pitch fee of £1975.20 pa. inclusive of water and sewerage charges.

20. Mrs. McCartney stated that the Respondent should have consulted the Applicants in November 2012 when the prospect of the site being protected was first known. She also said that it was unfair to base the pitch fees on the home sizes etc. rather than the sizes of the pitches. The Applicants considered that there should be no increases from the February pitch fees in the new agreements.

21. In reply to a question from Mr. Clement Mrs. McCartney agreed that the Applicants did benefit from the greater rights and protection provided by the licensing of the park as a permanent residential one.

The Respondent's case re the proposed sewerage charges

22. Mr. Clement stated that the Respondent accepted that it could not separately charge the Applicants for the cost of maintaining the sewerage treatment plant. However it is reasonable to charge for the cost of operating the plant in addition to the pitch fees. He said that the total annual operating cost this year is £5154 apportioned as follows, Environment Agency permit charge £1026, quarterly tank emptying £2376 and electricity £1752. Copy invoices were produced from which the Respondent had estimated the electricity charge.

23. Mr. Clement said that these charges were not subject to the RPI pitch fee review as laid down in the Act. It is fair to charge separately here for if the park was connected to main drainage the residents would be liable for environmental rates in addition to the pitch fees.

24. The Respondent considered it fair and reasonable to pass on 75% of the operating costs to the residents which equated to currently £80.53 pa per pitch. Mr Clement stated that the water charges for the park were estimated to be between 56% and 60% of the total for both parks. The 75% was fair as the

majority of the work done by the treatment plant relates to the residential rather than the touring park. Mr. Weeks conceded that there was no accurate way to calculate these charges and that he had made a genuine attempt to arrive at a fair sum i.e. 75%. In reply to a Tribunal question Mr. Weeks said he had not checked his estimate against the environmental rates levied on a similar property in the locality.

The Applicants' case re the proposed sewerage charges

25. For the Applicants Mrs. McCartney conceded that the Respondent was not seeking to charge them for the cost of maintain the treatment plant. The Applicants felt that it appeared to them that they were being asked to subsidise the residents of the holiday park and the 2 dwellings of the Weeks family. They were prepared to contribute but contributions should be a fair reflection of actual costs distributed across the entire park. She also maintained that as sewerage costs had been included in the agreed pitch fees from February 2013 there should be no further increase with regard to sewerage charges.

THE LAW

26. With regard to the annual review of pitch fees paragraph 16 of the Act as amended states – The pitch fee can only be changed in accordance with paragraph 17 either with the agreement of the occupier, or (b) if the Tribunal, 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; Paragraph 20 (A1) states “..... there is a presumption that the pitch fee will 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” This presumption assumes that the matters referred to in paragraph 18 of the Act do not apply as is the case here.

27. With regard to the sewerage charges section 4 of the Act states –
“ Jurisdiction of a tribunal or the court: England and Wales
(1) In relation to a protected site in England, a tribunal has jurisdiction –
(a) to determine any question arising under this Act or any agreement to which it applies; and
(b) to entertain any proceedings brought under this Act or any such agreement,
subject to subsections (2) and (6)”

28. The Mobile Homes Act 1983, as amended, states-

“ [Particulars of agreements]

[(1) This Act applies to any agreement under which a person (“ the occupier”) is entitled –
(a) to station a mobile home on land forming part of the protected site; and

- (b) to occupy the mobile home as his only or main residence.
- (2) Before making an agreement to which this Act applies, to owner of the protected site ("the owner") shall give to the proposed occupier under the agreement a written statement which –
 - (a) specifies the names and addresses of the parties;
 - (b) includes particulars of the land on which the proposed occupier is to be entitled to station the mobile home that are sufficient to identify that land;
 - (c) sets out the express terms to be contained in the agreement; (including any site rules (see section 2C)
 - (d) sets out the terms to be implied by section 2(1) below; and
 - (e) complies with such other requirements as may be prescribed by Regulations made by the appropriate national authority.
- (3) The written statement required by subsection (2) above must be given –
 - (a) Not later than 28 days before the date on which any agreement for the sale of the mobile home to the proposed occupier is made, or
 - (b) (if no such agreement is made before the making of the agreement to which this Act applies) not later than 28 days before the date on which the agreement to which this Act applies is made.....”

29. Express terms are individually negotiated between the owner and occupier. They usually cover such areas as the annual review of the pitch fee.

30. If either party wishes to delete or vary or add an express term to the agreement the can apply to the Tribunal within the first 6 months of entering into the agreement (section2 (3) of the Mobile Homes Act as amended).

THE TRIBUNAL'S FINDINGS

31. With regard to the pitch fees the Tribunal agrees with the Respondent that this is not a case of a review of pitch fees under the provisions of the Act because the pitch fees being paid from February 2013 were not in respect of Mobile Homes Act agreements as the site was not a "protected site" under the Act until 22nd. April 2013 when the new site licence was granted.

32. However the fact that the application to the Tribunal had been made on the form applicable to a pitch fee review does not prevent the Tribunal from determining the express terms of the agreement for, in effect, the Applicants have in their application provided all the necessary information to enable the Tribunal to make a determination under section 2(3)(a) of the Act as amended. Mr Clement for the Respondent did not contend otherwise.

33. Prior to 22nd. April 2013 the position of both the site owner and the park home occupiers was precarious because the only licence covering the site was for a holiday caravan park. None of the Applicants have holiday caravans on the site. They have permanent homes there. Consequently the site owner could have been forced to close down the operation of the residential part of the park with the result that the residential park home owner would be compelled to vacate their pitches and leave the site altogether.

34. The written agreements the park home owners had with the site owner permitted the latter to site holiday caravans on the park, but, as stated above none of the Applicants to these proceedings have holiday caravans on the site. Consequently the Tribunal finds that the written agreements they had with the site owner were not effective to allow permanent homes to be sited there.

35. The Tribunal agrees with the Respondent's solicitor that the change in status to that of a protected site required a new agreement that complied with the Act. This provided the opportunity for the Respondent to state new express terms which would include the new pitch fee. The protection given to the Applicants is, as they have done, to apply to the Tribunal within 6 months of the agreement for the Tribunal to consider the express terms and ask the Tribunal to vary the terms.

36. The situation in this case is somewhat different from normal where a person seeks to bring a mobile home onto a protected site or take an assignment of an existing Mobile Homes Act agreement where he or she accepts the site owner's terms for the pitch fee by agreement and signs a written statement. This statement would set out, amongst other things, the express and implied terms of the agreement. It would be sent to the proposed occupier at least 28 days before the agreement is entered into or the assignment is effected. However in this case the park home owners were already in occupation when, by operation of the granting of the site licence they automatically became beneficiaries of and subject to the provisions of the Act. Whilst the park home owners feel, therefore that they are suffering two increases in pitch fee within short succession this will only occur if the Tribunal refuses to vary the express term for the pitch fee as proposed by the Respondent.

37. The Act gives no guidance to the Tribunal as to the circumstances under which it should vary or delete an express term. This Tribunal considers therefore that it has a wide discretion to do so where it considers an express term to be unreasonable.

38. The question the Tribunal therefore posed itself was whether the proposed pitch fee was reasonable and if not what a reasonable fee would be for each of the Applicants. In that regard the Tribunal found that the evidence from both parties was rather inadequate. The Respondent's evidence of comparables was simply a list of park homes, provided by its surveyor, situated in the vicinity of this park with figures claimed to be pitch fees for those sites. The surveyor was said to be with a firm that specialised in park home matters. However the surveyor's letter or report was stated to be privileged and a copy was not provided for the Tribunal nor the Applicants.

There was no information as to how the other sites compared with the subject park. There was no indication as to whether these were pitch fees for existing park home owners or for new occupiers. There was no information as to the pitch sizes or the dates when the fees had been agreed. The Applicants disputed these figures and produced a copy of an email dated 2nd November 2013 said to be from a park home owner on one of the sites in the Respondent's surveyor's list. This email claimed that the pitch fee paid by this person was less than the sum quoted by the Respondent's surveyor. The Applicants also produced a copy invoice of a pitch fee review of a park home in Exeter which they said indicated that the Respondent's figures were excessive. However there was nothing to verify these 2 documents nor did they provide sufficient detail to be of real use to the Tribunal.

39. Nor was the Tribunal assisted by the limited information provided by the Respondent as to the income it would lose as a result of the 5% [from 15% to 10%] reduction in sales commission. The Tribunal accepted that there would be a detriment to the Respondent as a result of this reduction. However the figures for the sales of one full year only were quoted, again without any verification details. The number of sales for part of the following year were proportionately fewer and there could the Tribunal reflected be some years when there are no sales at all.

40. The Tribunal concluded that the best evidence of the appropriate pitch fees were those fees agreed at February 2013 with adjustments to allow for the benefits the Applicants would receive by virtue of the fact that from 22nd April 2013 they would be occupiers having the protection of the Act and able lawfully to occupy their homes all year round. The Tribunal also took into account the detriment to the Respondent as a result of this protection.

41. The benefits to the Applicants are that they-
have regulated their occupation of their pitches for permanent residence.
have greater security of tenure.
their pitch fees will be controlled so that they will usually not increase by more than RPI.
they may be able to assign the benefit of the agreement more easily than they could have before the new site licence was granted.
the amount of commission paid on the sale of their park home is limited to 10%.
The Respondent suffers a corresponding detriment although it has the benefit of the operation of the residential park being rendered lawful.

42. There was no evidence before the Tribunal as to what percentage should be added to the "non protected" site pitch fee to reflect the advantages to the park home owners of the site becoming a protected site. Doing its best, weighing up the various factors set out above and using its own knowledge and experience the Tribunal considered that a home owner would pay an extra 5% on top of the pitch fee in February 2013 to secure the benefits referred to above.

43. The Tribunal did not consider that the Respondent's proposals for banding should be implemented. The occupiers were already paying

differential pitch fees which had been agreed with the various owners. Furthermore there were different bandings probably more appropriate such as pitch size rather than the size and type of home thereon. On balance the Tribunal considered that it was most appropriate to add 5% to the existing agreed pitch fees. The date these new pitch fees will be payable from is 22nd April 2013 being the date when the new licence was granted. [The pitch fees will be reviewable from 22nd April 2014 under the provisions of the Act,].

44. With regard to the proposed sewerage charges the Tribunal considered that the Respondent's evidence that 75% of the usage of of the system was attributable to the residential park as opposed to the holiday park, reception block and the two owners dwellings was unreliable. It was challenged by the Applicants. The Respondent had conceded that its percentage was simply its estimate. The Tribunal noted that in comparison the Respondent had calculated that the corresponding water usage percentage was between 60% [year 2011/2012] and 56% [year 2012/2013]. In any event the cost of the operating of the sewerage system was previously contained within the agreed pitch fee. The Respondent had not contended that this arrangement was in any way unfair to it. The Tribunal could not see why the fact that the site had become protected site would have made any difference to the cost of operating the sewerage system.

45. The Tribunal decided therefore that there should be no addition to the pitch fees for any sewerage charges as these should be included in the pitch fees increased by 5% with effect from 22nd, April 2013. The effect of the sewerage charge amount being included in the pitch fee means that this element may increase with the RPI along with the basic pitch fee but at least the Applicants will know that the cost of operating the sewerage system will not normally increase by more than the RPI. A wish by the Respondent to separate the charge out from the pitch fee at the time of a subsequent review could be the subject of a further application to the Tribunal for a resolution which would protect the interests of both parties in the event of there being costs of the sewerage treatment beyond RPI.

APPEALS

46. A person wishing to appeal against this decision must seek permission to do so by making a written application to the First - Tier Tribunal at the Regional Office which has been dealing with the case.

47. 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.

48. 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 admit the application for permission to appeal.

49. 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 which the person is seeking.

J.S. McAllister F.R.I.C.S.
Chairman

Dated 24th. January 2014