

UPPER TRIBUNAL (LANDS CHAMBER)



UT Neutral citation number: [2014] UKUT 0015 (LC)

UTLC Case Number: HA/10/2012

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

PARK HOMES – Mobiles Homes Act 1983 – pitch fee reviews – whether owner’s notice adequate to trigger jurisdiction of Tribunal to determine level of pitch fee

IN THE MATTER OF AN APPEAL AGAINST A DECISION
OF THE RESIDENTIAL PROPERTY TRIBUNAL FOR THE
SOUTHERN RENT ASSESSMENT PANEL

BETWEEN:

(1) MR J SMALL
(2) MRS B SMALL
(3) MR J SMALL (JUNIOR)
T/A J & B SMALL PARK HOMES

Appellants

and

MR TALBOT AND OTHERS

Respondents

Re: Various properties at Ringswell Park,
Sidmouth Road,
Exeter, Devon EX2 5QE

Before: Siobhan McGrath, Chamber President – First-tier Tribunal (Property Chamber) sitting as a Judge of the Upper Tribunal (Lands Chamber)

Sitting at: 45 Bedford Square, London WC1B 3DN

on

7 January 2014

Mr M Beattie for the Appellants

The Respondents did not appear and were not represented

© CROWN COPYRIGHT 2014

The following cases are referred to in this decision:

Mannai Investment Company Ltd v Eagle Star Life Assurance Company Ltd [1977]
2 WLR 945

Stroud v Weir Associates Ltd [1987] 1 EGLR 190

Decision

Introduction

1. The appeal in this case is against the decision of the Residential Property Tribunal for the Southern Rent Assessment Panel (“the RPT”) given on 2nd October 2012 in a dispute about the level of certain pitch fees. The appellants are the owners of the park home site at Ringswell Park, Sidmouth Road, Exeter, Devon, EX2 5QE: Mr J Small, Mrs B Small and Mr J Small (junior) together trading as J & B Small Park Homes, the respondents are a number of park home owners at that site.

2. The appeal was dealt with at a hearing on 7th January 2014. The appellants, J & B Small Park Homes, were represented, with my permission, by Mr M Beattie, a self-employed consultant for the Smalls’ Group. Also in attendance were Mr J Small (junior) and Mr G Self, who had some direct management involvement in the site. None of the respondents attended or were represented. In a letter dated 5th August 2013, Crosse & Crosse, solicitors for a number of the respondents explained that for financial reasons no response would be made to the appeal. Nothing was heard from those respondents not so represented.

3. The point at issue in the appeal is whether the Tribunal was correct to decide that the site owners were entitled to an increase of 4% in the current pitch fee payable by the park home owners (who I will refer to as the occupiers) “if and only if it can in each case prove that the amount of the current pitch fee shown in the relevant notice of increase, to which the percentage increase was added, had been agreed and was paid by the relevant respondent for the whole of the preceding 12 month period”

The statutory provisions

4. The Mobile Homes Act 1983 applies to any agreement under which a person is entitled to station a mobile home on land forming part of a protected site and to occupy the mobile home as his only or main residence. It is common ground in this case that Ringswell Park is a protected site. So far as is relevant, the Act operates by implying certain terms into agreements and in this case the relevant terms are set out in Chapter 2 of Part I of Schedule 1 to the Act.

5. The terms to be implied in respect of pitch fees are found at paragraphs 16 to 20 of Chapter 2. As is explained below, those provisions were amended by the Mobile Homes Act 2013, but the amendments were not in force at the time this dispute arose and therefore the provisions described in this judgement are as they were prior to the 26th May 2013.

6. Paragraphs 16 and 17 provided, so far as is relevant to this appeal, as follows:

“16. 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.

(3) If the occupier agrees to the 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 may apply to the appropriate judicial body for an order under paragraph 16(b) 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 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.

(7) If (at any time) the occupier agrees to the proposed pitch fee, it shall be payable as from the 28th day after the date on which the owner serves the notice under sub-paragraph (6)(b)

(8) If the occupier has not agreed to the proposed pitch fee –

(a) the owner may apply to the appropriate judicial body for an order under paragraph 16(b) determining the amount of the new pitch fee.

.....

(9) An application under sub-paragraph (8) may be made at any time after the end of the period of 56 days beginning with the date on which the owner serves the notice under sub-paragraph (6)(b) but ... no later than four months after the date on which the owner serves that notice.

.....

(9A) A tribunal may permit an application under sub-paragraph (4)(a) or (8)(a) to be made to it outside the time limit specified in sub-paragraph (5)... or in sub-paragraph (9).....if it is satisfied that, in all the circumstances, there are good reasons for the failure to apply within the applicable time limit and for any delay since then in applying for permission to make the application out of time.”

7. In summary therefore, a pitch fee may be reviewed once a year. The process is initiated by the service of a written notice of proposal by the site owner on the occupier. The occupier may agree the proposal but if agreement is not forthcoming then the owner can apply to the Tribunal for an order determining the amount of the pitch fee. The difference between an application under paragraph 17(4)(a) and an application under paragraph 17(8)(a) is the window of time during which an application can be made to the Tribunal.

8. Paragraphs 18, 19 and 20 make provision for matters relevant to the determination of the amount of the pitch fee. Those paragraphs have also been amended by the Mobile Homes Act 2013. Paragraph 20(1) provided that “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.” During the course of the hearing before the Residential Property Tribunal, reference was also made to paragraph 22(b) which provides that the owner shall, if requested by the occupier, provide (free of charge) documentary evidence in support and explanation of any new pitch fee.

Background

9. In December 2011, pitch fee notices were served by Mr Self on each of the respondent occupiers. A sample of one of those notices was included in the appeal bundle. The notice is dated 2nd December 2011 and has the title “2012 annual pitch fee review.” At the Tribunal there was some discussion as to whether the notices were served on 2nd December or on 7th December, 2011 but that has no bearing on this decision. The sample notice is addressed to Mr H Tolbot and reads as follows:

“Please find below the pitch fee review payable from 1st January 2012. We are required to provide 28 days notice of this review.

This review has been calculated from the RPI; during the period of October 2010 to September 2011 the average RPI figure was 5.2%

Based on the above we have calculated the 2012 pitch review to be 4%

Your current pitch fee payable monthly is £127.57

Your 2012 review pitch fee payable monthly is £132.67

If you currently pay by standing order please ensure you notify your bank as soon as possible and amend the amount of your monthly payment.

I thank you for your support during 2011, if you wish to contact us regarding the above please feel free to do so I can be contacted on..."

10. None of the respondents agreed to the proposals in the notices and on 28th March 2012, the appellant referred the notices to the Residential Property Tribunal. On 6th August 2012, Crosse & Crosse, solicitors acting on behalf of a number of the respondent occupiers wrote to the appellants as follows:

"Only very recently we at last were able to see a copy set of papers that were lodged by your firm with the application to the RPT. Having considered this with our clients virtually all the figures that your clients have advanced as to the present pitch fee payments are wrong.....

Our clients understanding as to what has happened here is that your clients have based what they have presented to the Tribunal upon agreement to the last (1st January 2011) proposed pitch fee increase which was not agreed by the relevant residents and thereafter was not taken any further by your clients.

Unless this matter is resolved beforehand it will need in consequence to be addressed at the relisted Tribunal hearing on 29th August

If your clients still wish to substantiate their figures we invite you to provide reasons why that is so. Otherwise however, we invite your client to agree our clients' figures as the present (subject to decision on 1st January 2012 application)."

11. No response was made to that letter and the matter proceeded to a hearing on 29th August 2012. From the Tribunal's decision dated 2nd October 2012, it is clear that a number of issues were in dispute. Firstly, it was conceded on behalf of the appellants that many of the figures for the passing pitch fees set out in the December notices were wrong. Therefore an application was made on behalf of the appellants for the Tribunal to extend its determination of the amount of increases in pitch fees to earlier years. The Tribunal refused to do so and there is no appeal against that part of the decision. Secondly the Tribunal heard evidence and submissions about the management and condition of the park home site and on matters pertaining to the level of the pitch fees under paragraphs 18 to 20 of the Chapter set out above. The Tribunal decided that an appropriate increase was 4% and there is no appeal against that part of the decision.

12. Thirdly and crucially, the Tribunal decided that those notices which specified an incorrect "current pitch fee" were invalid. The reasons given are as follows:

"78. The Tribunal does not accept that those Notices which refer to the incorrect current pitch fee are valid. The Notice is not a notice which the sender can rely upon to the detriment of the recipient without a response. It is simply a notice advising the recipient that the Applicant is intended to increase pitch fees on a due date. The increase in the pitch fee must thereafter be agreed by the parties or be subject to a determination by the Tribunal

79. It is not unreasonable to assume that a reasonable recipient would be confused by a notice which does not refer to the correct pitch fee he is currently paying. He might reasonably assume that the Applicant is trying to mislead or cheat him. All of the respondents have refused to agree the pitch fee increase as each is entitled to do. Whilst loss of amenity, addressed above, is a valid reason for proposing a lesser increase, it is reasonable to assume that each respondent would be entitled to receive a correct computation of the actual amount of the increase proposed and the amount which he will have to pay. The Applicant clearly accepted this, as the calculation was included in the Notices. In all but two cases, however, it was wrong.

80. When this error was found by the Respondent's solicitors, and his delay in discovering this was compounded by the refusal of the Applicant's solicitor to supply copies of the Notices until the Tribunal directed it to do so, Ms Selly sent the 6th August letter to Tozers, who allegedly received no instructions from their client to respond, despite the clear importance of the issue raised.

81. The consequences of this failure to respond were made worse at the hearing. Although Tozers had already confirmed in writing to the Tribunal that previous pitch fee increases had been agreed, it still accepted instructions from the Applicant to make a verbal application for a determination in relation to the earlier year or years (the scope of which was never clarified) on grounds that were never stated. It is not at all clear when such instructions were given or received, save that it was patently before the hearing as Tozers were prepared and able to distribute copies of the *Mannai* case. Finally the applicant only recollecting having seen the 6 August letter after an adjournment of the hearing to reconsider his evidence and blaming his failure to respond to that letter upon business commitments exceeds the bounds of credibility. All of this leads the Tribunal to conclude that the conduct of the applicant is at best questionable and at worst deliberately obstructive and unreliable.

82. Having considered the decision in the *Manni* case the Tribunal considers it wholly inappropriate to apply its principles to the Notices. The Notice was not a unilateral notice as the break notice was in *Mannai*. The current pitch fees quoted on the notices were not quoted in error. There is simply no evidence that those higher amounts were ever paid or indeed payable even though the applicant's solicitor told the Tribunal that previous pitch fee increases had been agreed.

83. For all of those reasons the Tribunal determines that any notice served by or on behalf of the applicant on any site owner purporting to increase the pitch fees in January 2012 which refers to an incorrect current pitch fee is invalid."

The Submissions

13. The submissions for the appellant are substantially set out in a written statement of case prepared by Mr P Edwards of Tozers LLP and dated 25th July 2013. This sets out the background to the appeal and asks that the Upper Tribunal to set aside the RPT's decision and to determine that all the current pitch fees be increased by 4% as at the review date, alternatively to direct that the RPT determine the pitch fees as at the review

date. At the hearing it was explained that in fact new notices had been served on each of the respondents. This had been confirmed in a letter dated 11th July 2013 to Messrs Crosse & Crosse as follows:

“In case our clients’ application for permission to appeal was unsuccessful or their appeal thereafter was determined against them, our clients served a second pitch fee review notice without prejudice to the first and applied to the Residential Property Tribunal in respect of that second notice.....That application was stayed pending the appeal....”

As a result of those second notices, I was informed that all but two of the pitch fees have now been agreed. I was not shown any of the new notices or any agreement following the new notices.

14. The submissions point out that the scheme of the Act is to require the Tribunal to act effectively as arbitrator between the parties in relation to questions arising under the Act and reliance is placed on the judgement of Lord Justice Glidewell in *Stroud v Weir Associates Ltd* [1987] 1 EGLR 190.

15. It was submitted that the Tribunal was wrong to hold that the notices did not set out the owners proposals in respect of a new pitch fee for the following reasons:

- (a) As the entitlement to a pitch fee review arises automatically under paragraphs 17(1) and (ii) and is the consideration for the use of the owner’s land and his obligations under the agreement, any provision that interferes with his prima facie right should be restrictively construed, so as not to be penal or otherwise disproportionately interfere with his possessions.;
- (b) That the process for pitch fee reviews is intended to be relatively informal and cost effective and it would be undesirable if this became beset by technical arguments and Parliament should not be presumed to have intended such a result;
- (c) The only requirement on the face of the implied terms is that the owner propose a new pitch fee. There is no other requirement and anything else included in a notice such as a figure or proposal, whether correctly stating matters or not, is mere surplusage;
- (d) A notice could either propose an amount for the new pitch fee or propose that it be determined in a certain way – eg the existing pitch fee, once determined (if itself under review) + 10%;
- (e) Each of the notices in this case proposed a new pitch fee. It was open to the occupiers to disagree with such new pitch fee on any basis, including that they had not agreed to the current pitch fee stated, which they appear to have done;
- (f) In the circumstances the applicant was entitled to apply to the RPT for an order determining the new pitch fee and the RPT, having found it was reasonable that the pitch fee be changed, was duty bound to determine the new pitch fee.

16. At the hearing, Mr Beattie adopted the points made in the written submissions. Additionally, Mr Self observed that it took six months before it was pointed out by Crosse & Crosse that the pitch fees were inaccurate and that therefore it could be inferred that the occupiers were not concerned about the inaccuracies in the notices. This argument was supported, he said, by the fact that some representations had been made about the proposed increase. In this respect he made reference to a letter dated 9th December 2011 from Mr Talbot where he said, in effect, that because of the lack of maintenance on the site, he would not be paying the increase. Mr Self observed that Mr Talbot did not take issue with the figures in the notice and this may have been because he could calculate an increase of 4% from his current pitch fee and/or may have been because he knew the fee would either have to be agreed or be referred to the Tribunal for determination.

17. Although at the hearing before the Residential Property Tribunal, Tozers had relied upon *Mannai Investment Company Ltd v Eagle Star Life Assurance Company Ltd* 1977 2 WLR 945, no reliance was placed on that case in the Upper Tribunal.

Consideration

18. There is some force in the appellant's arguments. In particular, the pitch fee terms implied by the 1983 Act do not themselves specify the form or content of a notice proposing an increase. Furthermore the implied terms do not require a site owner to limit the pitch fee sought either to an RPI increase or otherwise. Therefore, it might be said, a notice proposing a change in the pitch fee can specify any figure at all. The occupiers will then either agree that figure or not. If they do not agree, then the site owner may refer the matter to a Tribunal for determination.

19. It is clear that the process for the review of a pitch fee, contemplated under the Act is a bilateral matter. As Lord Justice Glidewell said in *Stroud v Weir Associates Ltd* "It is to my mind clear that when an agreement, as this one does, talks about "determining" the pitch fee, the determination is not a unilateral process Mr Gordon I think was inclined to argue that the word "determination" means simply "determination by the site owner I believe that to be wrong. It is clear to my mind that determination involves the agreement of the parties or an order of the court..."

20. In order to start the process of review the site owner must "set out his proposals" for the pitch fee and in my view those proposals must be clear enough for the occupier to understand them and to either accept the proposals or reject them. This minimum requirement is necessary to trigger the review process otherwise the occupier will not have had an opportunity to consider the proposal and to accept it or reject it. The process will not be bilateral if the proposal is insufficiently clear.

21. In this case the proposal sent to a number of the occupiers referred to an incorrect starting point. The pitch fee specified as being currently payable was wrong. Therefore the calculation of a 4% increase was also wrong. On balance, in this case, I consider that

this error meant that the notices of proposal were inadequate to trigger the review process.

22. Although the proposal was for a 4% increase and as suggested by the appellant each occupier could work out how much of an increase from their current pitch fee that would be, that is not what the notice said. Instead a calculation is made in the proposal and a resulting figure given. In my view this was sufficient to cast a serious doubt about the proposal. Although the occupiers are invited to contact Mr Self to discuss the proposal, that again does not save the notice. The Act specifies that a notice of proposal must be given 28 days prior to its taking effect and that a reference may not be made until after that date. If, in order to understand a notice of proposal, an occupier has to contact the site owner or manager in order to understand the proposed figures, then that notice period might be significantly curtailed. This is of particular relevance in this case where, even on the appellants case, the notice was served on the last possible day to secure an increased pitch fee on 1st January 2012.

23. I therefore consider that the 4% increase in the pitch fee proposed in December 2011 would only apply to those occupiers who had received accurate notices of proposal from the appellants. Although I have formulated my decision differently from the Residential Property Tribunal, the effect is the same and the appellants are not entitled to an increase of 4% from the current pitch fee from 1st January 2012 where the notice of proposal specified the wrong amount for the passing pitch fee.

24. As I have already mentioned, the Mobile Homes Act 2013 has made amendments to the pitch fee provisions. In particular there are new paragraphs 17(2A) and 17(6A) which provide that a notice of proposal "is of no effect, unless it is accompanied by a document which complies with paragraph 25A. Paragraph 25A is also new and gives the Secretary of State power to prescribe a suitable form of notice. This is to be found in the schedule to the Mobile Homes (Pitch Fees) (Prescribed Form)(England) Regulations 2013 No 1505. At the hearing Mr Small acknowledged the change in the provisions and said that they were very welcome as they give site owners a degree of certainty as to the information that must be provided.

25. For the reasons set out above, the appeal is dismissed.

Dated: 15th January 2014

Siobhan McGrath
Chamber President – First-tier Tribunal
(Property Chamber) sitting as a Judge of
the Upper Tribunal (Lands Chamber)