



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

Case Reference : **BIR/00GA/PHI/2016/0007**

Property : **34 Linton Park, Worcester Road,
Bromyard, Herefordshire HR7 4DB**

Applicant : **Country Parks Ltd**

Representative : **Tozers, Solicitors**

Respondents : **Mr & Mrs Goddard**

Representative : **None**

Type of Application : **Application by site owner for
determination of a new level of pitch
fee under paragraph 16 of Schedule 2
Part 1 of the Mobile Homes Act 1983
("the Act").**

Tribunal Members : **Judge C Goodall LLB
Mr I D Humphries B.Sc.(Est.Man.) FRICS**

**Date and venue of
Hearing** : **17 January 2017 at Hereford Civil Justice
Centre**

Date of Decision : **15th February 2017**

DECISION

Background

1. Linton Park is a mobile homes site in Bromyard, Herefordshire registered for sixty-eight mobile homes, and owned by Country Parks Ltd (“the Applicant”).
2. On 25 February 2016, the Applicant served notice upon the occupiers of Linton Park of a pitch fee review to operate from 1 April 2016.
3. On 20 June 2016, the Applicant applied to the Tribunal for a determination of the pitch fee payable by eighteen occupiers at Linton Park under Paragraph 16 of Schedule 2 of Part 1 of the Mobile Homes Act 1983 (as amended) (“the Act”). It is assumed that these occupiers (as is their right) did not confirm agreement to the pitch fee review, which triggered a requirement for the Applicant to apply to the Tribunal for it to be determined, if they wished to obtain the benefit of a pitch fee review.
4. By a direction dated 6 October 2016, the Tribunal directed that one of the occupiers should be designated as lead respondent under the provisions of Rule 23 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (“the Rules”), and further directing that all other cases be stayed. In fact, that lead respondent declined to act as such, and the Tribunal therefore directed, on 3 November 2016, that Mr & Mrs Goddard should be substituted as lead respondent. They are described in this decision as the Respondents.
5. Of the other seventeen original respondents, three have reached an accord with the Applicant, and the applications against them have been withdrawn. The remaining fourteen respondents are listed in the Schedule to this decision. Their cases will be determined in due course, following the procedure set out in Rule 23 of the Rules.
6. A hearing of the application, in relation to the Respondents’ case, took place on 17 January 2017 at Hereford Court Centre. The Applicant was represented by Mr Kelly of Tozers, Solicitors. The Respondents represented themselves.

The Issues

7. There were three issues which the parties agreed at the hearing were in dispute regarding the content of the pitch fee review notice:
 - a. The Respondents object to paying any contribution in the pitch fee for river bank and street lighting works carried out in 2005 and charged as part of the 2006 pitch fee review and each year thereafter (“the 2005 Works”) at a total cost in 2015/16 of £40.64. The Respondents also believed an inflation element had been added to the 2005 Works cost, which they objected to paying.

- b. The Respondents objected to the addition of the cost of the site licence fee within the recoverable costs charged in the pitch fee. They said the fee had already been added in 2014/15 and should not be added again.
 - c. There was also objection to the addition to the pitch fee of additional security costs in 2015/16. The Respondents did not feel their pitch fee should include items that did not affect them directly.
8. The Tribunal of its own volition raised an additional point, namely whether the pitch fee review form was void and of no effect. The question arose because the Applicant had admitted that the current pitch fee figure given in section 2 of the pitch fee review form was wrong. Did that error cause the form to be fatally flawed? The Respondents confirmed they wished to take this issue as part of their case.

Inspection

9. The Tribunal inspected the relevant parts of Linton Park on the morning of 17 January 2017. In fact, both Tribunal members had previously inspected Linton Park, as both had been involved in a previous case in 2016 (“the 2016 Case”) under reference BIR/00GA/PHC/2015/0010, which had been an application under section 4 of the Act concerning the liability of another respondent, Mrs P G Taylor-Haywood, to pay a contribution towards the costs of the 2005 Works.
10. In the 2016 Case, the Tribunal recorded its observations of the site of the 2005 Works as follows:

“8. At the inspection, the Tribunal noted that a small river ran along the side of the site for a length of about 100 metres to the side of the site roadway and immediately opposite some of the pitches on the site. There was a fall of maybe 2 to 3 metres from the roadway to the river. Substantial stones were visible to the Tribunal at roadway level at the top of the bank. The Tribunal was informed that the stone work ran for the full length of the 100 metre strip, and that it had been installed at river level and built up to the top of the bank when the works were carried out. The lower level stonework was hardly visible to the Tribunal as it had become naturally overgrown. Along the river bank a substantial metal post and rail fence had been erected.

9. The Tribunal also noted that there were 15 “old style” electric lamps along part of the roadway on the site. Each had a grey box about a metre above the ground. The Tribunal was informed that the boxes had been installed as part of the renewal of the electrical wiring in these lamps in 2006.”

11. The Tribunal's observations on 17 January 2017 confirmed this description. The "small river" referred to is the River Frome.
12. The Tribunal also inspected some additional security cameras that it was told had been installed in 2015/16. There was one additional camera located on the north eastern footpath into Linton Park, and one overlooking a car parking area on the north west part of the park at the end of Linton Lane. The Tribunal was informed that both cameras had a feed into the site office so that observations could be made and recorded.

The Pitch Fee Review

13. The Notice referred to in paragraph 2 above is in a form prescribed by the Mobile Homes (Pitch Fee) (Prescribed Form) (England) Regulations 2013. In section 2, the current pitch fee is given as £132.29 per month, and the proposed new pitch fee is £134.19 per month (these figures equating to a annual current fee of £1,587.48 and an annual proposed fee of £1,610.28).
14. Section 3 of the form gives the date the proposed new pitch fee is to take effect. This is to be twelve months from the previous review date, i.e. from 1 April 2016.
15. Section 4 states the way in which the proposed new pitch fee is calculated. It uses the prescribed formula $A + B + C - D = \text{the new pitch fee}$, where:
 - A = the current pitch fee
 - B = the RPI adjustment (i.e. increase for inflation)
 - C = recoverable costs
 - D = any relevant deductions
16. "A" is given as £1,522.74. From paragraph 13 above, it can be seen that this differs from the current year's pitch fee in section 2 of the form of £1,587.48.
17. "B" is an inflation increase of 1.3% on the existing pitch fee £1,522.74, i.e. £19.80. There is no dispute about the rate to be used (which has to be the rate allowed by Schedule 1, Chapter 2, paragraph 20 of the Act). The calculation is $£1,522.74 \times 0.013 = £19.80$.
18. "C" is £67.75, being the cost of four items which the Applicant believes can be recovered through the pitch fee. These are:
 - a. £34.73 per pitch per annum for repair/improvement works carried out to a river bank at the site in 2006 (part of the 2005 Works).
 - b. £5.91 per pitch per annum for improvements to street lighting carried out in 2006 (the remainder of the 2005 Works).

- c. £22.58 per pitch being the apportioned part of the fee payable by the Applicant for a site licence.
- d. £4.53 per pitch being the cost of improvement works to the security equipment at the park in 2015/16.

19. There are no deductions, so "D" is zero.

20. Using the formula, the pitch fee sought is therefore the addition of A+B+C, which is £1,610.29, out by just one penny from the pitch fee requested of £1,610.28.

The Law

21. The procedures and principles which govern pitch fee reviews are contained in Chapter 2 of Schedule 1 to the Act, particularly paragraphs 16 to 20 inclusive, and paragraph 25A. Subsequent references in this decision to paragraphs 16 to 20 are references to this chapter of this schedule. The relevant sections of that material are 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.

(2A) In the case of a protected site in England, a notice under subparagraph (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 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.

[Tribunal Note – Sub paragraphs 6A to 10 are omitted as not relevant in this case.]

(11) Sub-paragraph (12) applies if a tribunal, on the application of the occupier of a pitch in England, is satisfied that—

(a) a notice under sub-paragraph (2) or (6)(b) was of no effect as a result of sub-paragraph (2A) or (6A), but

(b) the occupier nonetheless paid the owner the pitch fee proposed in the notice.

(12) The tribunal may order the owner to pay the occupier, within the period of 21 days beginning with the date of the order, the difference between—

(a) the amount which the occupier was required to pay the owner for the period in question, and

(b) the amount which the occupier has paid the owner for that period.

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;

...”

22. The relevant provisions of paragraph 25A are:

“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).”

The site agreement terms

23. The relevant paragraphs which govern the Applicant's obligations regarding maintenance of the park, and its contractual right to increase the pitch fee are contained in clauses 4(a) and 7(a) of the site agreement. These provide:

“4 The owner undertakes with the occupier as follows:-

- (a) To keep and maintain those parts of the park which are not the responsibility of the occupier hereunder or of other occupiers of other pitches on the park in a good state of repair and condition

...

7 (a) On the review date namely the 1st April in each year the amount of the annual pitch fee shall be reviewed and in determining the amount of the reviewed pitch fee regard shall be had to:

- (i) the Index of Retail Prices
- (ii) sums expended by the owner for the benefit of the occupiers of mobile homes on the park
- (iii) any other relevant factors including the effect of legislation applicable to the operation of the park

The Parties' Cases

The Respondents

24. Mrs Goddard explained the Respondents' case to the Tribunal. On each of the three issues before the Tribunal summarised at paragraph 7 above, she explained her position as follows:

The 2005 Works

25. Mrs Goddard informed the Tribunal of the background to the 2005 Works being undertaken, which was explained in the 2016 Case as follows:

“2. In 2005 there was an incident at Linton Park when a visiting nurse drove her car into a small river which forms one of the borders of the park. Fortunately, though undoubtedly traumatic, no personal injury was suffered, but as a result, the Applicant was required to carry out what it described as “extensive improvements”. The Applicant also wished to carry out refurbishment and replacement of the street lighting on the park which did not meet legislative requirements applicable at the time. It asked the home owners on the site to pay for the cost of these works (“the 2005 Works”). The Applicant’s case is that agreement was reached that all pitch owners would pay the total sum of £40.64 per annum towards those costs, as a fixed annual sum which would not increase with inflation. The Respondent denies that this was agreed.”

26. Mrs Goddard did not accept that it was right to expect her to pay for the 2005 Works. She queried whether she had any legal obligation to pay additional costs for what she regarded as maintenance of the park, which she thought should be part of the pitch fee. She challenged whether the river was part of Linton Park anyway.
27. At the hearing, Mrs Goddard accepted that she had eventually agreed to pay a contribution of £40.64 in 2006 towards the 2005 Works, but she felt she had been forced to agree. She accepted that she also paid the same contribution in each year from 2006 until 2014/15. She did not pay for the 2005 Works in the 2015/16 year. Although she paid in 2006, she felt she had been forced to do so because the Applicant was threatening to charge an even greater amount.
28. The Tribunal interjects to comment that the Applicant was not proposing in 2006 to charge the direct cost of the 2005 Works to the mobile home owners on Linton Park, but instead to charge a sum that might be described as a financing fee. Had the full direct cost been charged, it would have been higher than the £40.64 per annum requested in 2006.

Site Licence Fee

29. At the hearing, Mrs Goddard accepted the principle that she should pay the licence fee for 2016/17 within her pitch fee.

Security camera costs

30. Mrs Goddard objected to these costs being added to the pitch fee. She felt she should only have to pay for what affected her pitch, and she had no issues with security.

The Applicant

31. Mr Kelly explained the Applicant's position on each of the issues:

The 2005 Works

32. The Applicant's position was that it was entitled to charge a contribution towards the costs of the 2005 Works under the provisions of the site agreements, specifically under clause 7(a)(ii) or (iii) of the agreements with the occupiers at Linton Park, in that the 2005 Works had been sums expended for the benefit of the occupiers of Linton Park, or had been expended because of requirements contained in health and safety legislation as applied to Linton Park. What in fact happened was that a proposal was put to the occupiers to charge the cost in a way that was favourable to the occupiers, as the charge did not seek to recover the whole of the potentially recoverable costs, and that proposal was unanimously accepted. In legal terms, a variation of the pitch fee had at that point come

into effect. The terms were that no annual uprating of that cost would be charged, which had been observed.

33. Mr Kelly also said that the Applicant had made a unilateral decision in any event that the payment of the additional £40.64 per annum by the occupiers each year meant that by the end of the 2020/21 year, the Applicant would have fully recovered the sums it intended to recover for the 2005 Works, so after that date the additional charge for the 2005 Works would no longer be demanded.

Site licence fee

34. Mr Kelly confirmed that the first site licence fee had been incurred in 2014/15 and the Applicant had sought to collect it in 2015/16 by charging £24.07 as an additional recoverable cost. In setting the proposed fee for 2016/17, that £24.07 had been deducted from the pitch fee for the previous year when giving the amount of the pitch fee for the previous year in section 4 of the form, and then the actual cost of £22.58 for the licence fee had been added back as a recoverable cost. There had therefore been no double counting.

Security camera costs

35. The Applicants case is that the cameras are an improvement and their cost was expended for the benefit of the occupiers at Linton Park. They specifically say that under paragraph 18 of Chapter 2 of the Schedule 1 to the Act, the Tribunal must have regard to such expenditure where it has been the subject of consultation, and the majority of occupiers have not disagreed in writing.
36. The Applicant's bundle of documents shows that in August 2015 two men, masquerading as workmen, approached a resident at Linton Park and persuaded her to engage them to carry out repairs to her roof. A few days later, whilst one of the men distracted her, the other gained access to her house. A substantial amount of money was subsequently discovered to be missing.
37. The Applicant contacted the police, who recommended a review of security arrangements. A reference to an organisation called "Stop that thief" was made, and after an assessment, they recommended installation of CCTV cameras with number plate recognition, and security light cameras with integrated recording on the side gate entrance and at the upper car park. Indicative costs were provided. These are not easy to understand, but the Tribunal recognises that at least two invoices for a combined total of £1,338.20 have been paid for this work.
38. The Applicant sought a contribution of £308.60 from the occupiers, equating to £4.53 per pitch. This was to be a one off fee, not repeated in subsequent years.

39. A consultation letter was sent to all occupiers dated 16 December 2015 asking for a form indicating agreement to be provided. The response was that as at the date of the hearing, 40 occupiers had given their written consent to paying the requested contribution, and 13 had objected.

Discussion

40. The Tribunal has jurisdiction to determine the pitch fee on any review of it. It must be satisfied that it is reasonable for the pitch fee to be changed, and if so it must then determine the new pitch fee. The Tribunal must take account of certain statutory constraints upon the exercise of its discretion to determine the new pitch fee. Of particular relevance in this case:

- a. Unless it would be unreasonable to do so, there is a presumption that the pitch fee should increase (or decrease) in line with inflation as defined in paragraph 20;
- b. Regard must be had to the cost of any improvements which are for the benefit of the occupiers and upon which there has been consultation and a majority have not disagreed in writing with the proposal consulted upon (see paragraph 18(1)(a));
- c. Other factors may be taken into account if it would be fair and just to do so, having regard to the statutory scheme in the Act.

41. On the three issues raised:

2005 Works

42. The Tribunal agrees with the Applicant, and in line with the approach adopted in the 2016 Case, that the annual contribution of £40.64 is payable by each resident. It determines that the river bank is within the bounds of Linton Park. It is strongly arguable that the 2005 Works were not maintenance works, but improvements, and in any event, were legally due from the respondents to the Applicant by operation of clause 7 of their contracts.

43. But what is incontrovertible, is that the Respondents did in fact agree to pay, and paid, an increased pitch fee in 2006 that included the £40.64 charged for the 2005 Works. They also did so for each of the following eight years without objection, it being clearly pointed out in each communication they received in those years that the reviewed pitch fee included the 2005 Works contribution. The Tribunal agrees with the Applicant's analysis that a consensual variation of contract came into force in 2006 and from that date the pitch fee legally due is increased by £40.64 per annum, without inflation applying.

44. The Tribunal does not accept that the Respondents were forced to agree the 2006 pitch fee increase. In its view, the Respondents looked at the alternative to signing and decided that the prospect of having to challenge a request for an even greater amount was unattractive, and so decided to accept the deal on the table, even though they did not like it. Such is the nature of negotiations, and there is no evidence that the Respondents were unlawfully coerced into agreeing the Applicant's proposal.
45. Without making any determination on the point, which has not been argued, the Tribunal comments that it is probably too late in any event to challenge the 2005 Works contribution now.

Site licence fee

46. The inclusion of the site licence fee for 2015/16 in the 2016/17 pitch fee review has now been agreed by the Respondents. There is therefore no need for the Tribunal to make a determination on this point.
47. In this case, the Applicant has added the site licence fee to the 2016/17 pitch fee after stripping out the previous year's fee which is to the benefit of the residents, as the fee was lower in 2015/16 than for the previous year. As the parties agreed this approach for 2016/17, it being to the residents benefit to do so, the Tribunal does not intend to impose an alternative. The parties should however note that this approach may not always be appropriate (see for example *Vyse v Wyldecrest Parks (Management) Ltd [2017] UKUT 0024 (LC)*). And the Tribunal also takes the view that once a licence fee has become part of a pitch fee, it will take an exceptional situation for the site owner not to be able to continue to recover an annual inflation uplift on that component of the pitch fee in subsequent years.

Security camera costs

48. The Tribunal is entirely persuaded that the additional one off charge of £4.53 per pitch for a contribution towards increased security costs for 2015/16 is reasonable and should be allowed, because:
- a. There was a reasonable basis for reviewing the site security, in the light of the specific criminal incident that occurred;
 - b. The review was conducted by an appropriately independent external adviser;
 - c. Its conclusions appear sensible and reasonable;
 - d. The Applicant is bearing the majority of the costs of the recommended work;
 - e. The amount requested as a contribution is modest and of clear benefit to every resident on the park;

- f. Consultation on the proposed works took place as required by paragraph 18(1)(a)(ii) of Chapter 2 or Schedule 1 to the Act;
- g. A majority of residents did not object in writing (see paragraph 18(1)(a)(iii): on the contrary, a majority expressly agreed in writing.

Is the form void and of no effect due to an error?

The Problem

- 49. The initiation and the achievement of a pitch fee review is controlled by statutory provisions. For the purposes of this case, these are the provisions in paragraphs 16 to 20 and 25A Schedule 1, Chapter 2 of the Act, particularly paragraphs 17(2) and 17(2A).
- 50. In *Small v Talbot* ([2014] UKUT 0015 (LC)) ("*Small*"), which concerned a pitch fee review notice given in accordance with paragraph 17(2) before paragraph 17(2A) and 25A came in to force, a notice of proposal to increase a pitch fee gave the incorrect pitch fee for the previous year. The Upper Tribunal supported the conclusion of the first-tier tribunal in determining that no inflation increase could be allowed where the wrong figure had been stated for the commencement pitch fee on which the inflation increase was based.
- 51. In *Shaw's Trailer Park (Harrogate) v Sherwood* ([2015] UKUT 0194 (LC)) ("*Shaw's Trailer Park*"), an incorrect figure was given in the notice required under paragraph 25A for the RPI adjustment. A further notice was served containing correct information, but in relation to the notice with incorrect information, this was held to be void and of no effect.
- 52. The Applicant accepts that an incorrect figure was given in the statutory notice required under 17(2A) for the starting pitch fee on which the pitch fee review was based. In the light of these two quoted cases, the Tribunal raised as an issue whether the notice might therefore be invalid (as the notice of proposal in *Small* was held to be) or void and of no effect (as per the decision in *Shaw's Trailer Park*). The Tribunal was highly mindful that it should not descend into the arena and argue the Respondents case for them, but on the other hand, particularly as the Respondents are unrepresented, and the task of the Tribunal is to determine on its merits whether it would be reasonable to change the pitch fee, it took the view that it would be better equipped to identify all of the important issues which need to be considered before the correct sum due as a new pitch fee can be identified, and it has therefore raised this issue of its own volition (see *Admiralty Park Management Company Limited v Mr Olufemi Ojo* ([2016] UKUT 421 (LC))).

The background facts

53. For the pitch fee review on 1 April 2014 (i.e. the 2014/15 year), the Applicant proposed that the Respondents pitch fee increase to £1,546.81. That is the amount actually paid for that year by the Respondents. That was therefore the pitch fee for 2014/15 which was agreed by both the Applicant and Respondents.

54. For the pitch fee review on 1 April 2015, in its paragraph 25A notice, the Applicant proposed an increase to £1,587.45 calculated as follows:

2014/15 Agreed Fee	£1,546.81
Less 2005 Works contribution	<u>£ 40.64</u>
	£1,506.17
Plus inflation of 1.1%	<u>£ 16.57</u>
	£1,522.74
Add back 2005 Works contribution	£ 40.64
Plus Site Licence Fee	<u>£ 24.07</u>
Amount Proposed	£1,587.45

55. The Respondents did not agree to pay the pitch fee proposed for 2015/16 although they agreed in a letter dated 22 August 2015 to pay the site licence fee. The Applicant did not bring a case to the tribunal to determine the fee for that year.

56. Under paragraph 16, the pitch fee is only changed by one of two events: agreement, or determination by the tribunal. If one of these does not apply, the pitch fee is not varied and the resident must continue to pay the current pitch fee (paragraph 17(4)(b)).

57. The pitch fee for the Respondents for 2015/16 (applying paragraph 17(4)(b)) was therefore the fee they had accepted, by paying it, for 2014/15, of £1,546.81 (the current fee), plus the site licence fee which they agreed to pay on 22 August 2015 of £24.07, making a total of £1,570.88. This analysis is accepted by the Applicant in paragraph 8 of their statement of case (though the figures are out by one penny). The Tribunal notes that this is not the sum that was paid by the Respondents for 2015/16, which was £1,529.76. It seems to the Tribunal that the shortfall of £41.12 is most probably intended to be a withholding of the 2005 Works contribution for 2015/16, the Respondents being in dispute over that sum. But as they had paid this contribution in the previous year (and indeed since 2006), it had become part of the pitch fee, so that withholding it was ineffective to reduce the pitch fee owed in 2015/16.

58. The Applicant's paragraph 25A notice for 2016/17 required that they state the amount of the "current pitch fee", on the prescribed form. The figure inserted was £1,587.48 (expressed as a monthly figure on the form) rather than the £1,570.88 they now accept as payable, or the £1,529.76 actually paid. The information given on the form was therefore incorrect. This was accepted by the Applicants. The consequence was that the inflation uplift was applied to the wrong base cost, so that amount was also incorrect, and the proposed fee itself also became arguably incorrect. The proposed new fee should simply be the addition of the current fee plus the amounts requested as uplift, and as two of these were incorrect, the final proposed fee will also be incorrect.

The party's submissions

59. Obviously, the issue that has to be decided by the Tribunal is what it should do about the errors on the paragraph 25A notice for 2016/17. Do they invalidate the form completely, or does the Tribunal have power to determine the new pitch fee by substituting what it finds as the correct figures and imposing its determination of the new pitch fee upon the parties.

60. The Tribunal requested that the parties make written submissions to it on the correct approach to take, particularly in the light of the cases referred to above.

61. Mr Kelly's firm has made submission which the Tribunal summarises as follows:

a. Summarising *Small* and *Shaw's Trailer Park*, the submission suggests that:

- i. There must be strict compliance with the requirements of paragraph 25A and the use of the prescribed form;
- ii. An error is not fatal to "strict compliance". However, the error must be "obvious" (*Shaw's Trailer Park*), or leave the occupier still able to understand the proposal and to decide whether to accept it (*Small*).

b. On application to the facts in this case:

- i. The correct form was used;
- ii. There was no error on the form that required research for it to be identified;
- iii. It is accepted that the current pitch fee the Applicant should have used on the form was £1,570.87, and that the RPI adjustment should have been made to the net figure after

deducting £40.64 for the 2005 works figure, not to the figure actually used;

- iv. Nevertheless, the Respondents were aware that:
 1. The pitch fee proposed for 2015/16 had been £1,587.45;
 2. That figure was used on the 2016/17 form as the current pitch fee;
 3. The Respondents did not challenge the proposed RPI increase;
 4. The Respondents were aware they had not accepted the 2015/16 increase.
- v. It was therefore obvious that the Applicant, in taking the starting point in the 2016/17 proposal, was proposing a new pitch fee from 1 April 2016 which represented the sum of the two RPI adjustments from 1 April 2015 and from 1 April 2016.
- vi. The submission argues that the proposed new pitch fee on the 2016 form was in fact correct. This is the amount the Applicant wishes the tribunal to determine as the new pitch fee. The errors related to the way in which the Applicant had reached the proposed figure. It was obvious, they say, what the Applicant was trying to do, given the background knowledge of the Respondents.

62. The Respondents also made written submissions on this issue. They confirmed that the Respondents regarded the proposals contained in the pitch fee review form as confusing.

Discussion

63. The Tribunal notes the Applicant's formulation of the test arising from *Small*, namely that the proposal for a new pitch fee has to enable the occupier to understand the proposal and to decide whether to accept it. In its view, this is slightly weaker than the test actually propounded in *Small* at paragraph 20, that:

“ [the] proposals must be clear enough for the occupier to understand them”.

It is important, in the view of the Tribunal, to include the necessity for clarity.

64. Since *Small*, a new prescribed form has been introduced. The correct form was used in this case, but it was completed incorrectly.
65. This case is not on all fours with *Shaw's Trailer Park*, as that case concerned the correct insertion of information expressly required under paragraph 20A(1)(b). The question of whether the detail required on the prescribed form, such as the current pitch fee has to be correct or the form is invalidated was not expressly decided in *Shaw's Trailer Park*.
66. The Tribunal takes the approach that the introduction of the prescribed form does not weaken the requirement for the proposals to be clear and understandable. Indeed, in *Small*, the Chamber President of the First-tier Tribunal, sitting as the Judge in that case, welcomed the introduction of the form as it would give site owners a degree of certainty about the information that has to be provided.
67. It seems to the Tribunal that when using a prescribed form, it is necessary for the bespoke components of that form to be correct to avoid the form being misused, and to provide clarity.
68. The Tribunal's view, having carefully considered the evidence and submissions in this case, is that the Applicant's proposals made in its letter and form dated 25 February 2016 were not clear and did not enable the Respondents, and could not reasonably have enabled the Respondents, to understand the proposals being made, for the following reasons:
- a. The figure used as the current pitch fee was incorrect (as admitted);
 - b. That error may have been apparent to the Respondents as long as they were aware of the legal implications of paragraph 17, though there is no evidence in this case that they were. But what was not obvious was why an error had been made. Was it an intentional error? Might there be some specific reason for the Applicant to have used a different figure? Nor was it obvious what the consequences of that error were. Just as in *Shaw's Trailer Park*, where the error resulted in the need for the occupier to carry out research into RPI, this error meant that the Respondents would have to carry out research into the legal effect of the error, and raise questions of the Applicant as to what they meant when they gave the wrong figure. Using the wrong figure inevitably causes confusion, and reduces (and possibly obliterates) the clarity of the proposal.
 - c. The error also meant that the resultant figures for RPI were incorrect;
 - d. The form requires the Applicant to state the proposed new fee. Section 4 of the form should enable the recipient to understand how the new fee is calculated. It is essentially a simple matter of identifying the component parts of the proposed new fee, and then

adding them up. In this case, by virtue of the wrong current fee being used as the starting point, the final figure given of £1,610.28 is higher than it should have been had the correct starting point been used. The Applicant says in its submission to the Tribunal that in fact the final figure is right. In fact, they say, it was "obvious" that the Applicant was trying to use the 2016/17 review to claim **both** the inflation for 2016, and **also** inflation for 2015, as that was not imposed in 2015/16. Quite how the Respondents were meant to realise this was the intention of the pitch fee proposal made on 25 February 2016 baffles the Tribunal. There is no reference whatsoever to this interpretation on the prescribed form, or in the covering letter. It is fanciful to believe that it was clearly part of the Applicant's proposal;

- e. It is also the case here that section 4 of the prescribed form does not clearly identify what the Applicant is doing with inflation. In fact, as emerged at the hearing, when the Applicant gave the current pitch fee as component "A", it had deducted those elements of the pitch fee on which it did not wish to add inflation. It then applied inflation as component "B", and then added back the non-inflationary elements at component "C". The Tribunal does not challenge this methodology, and accepted it in the 2016 Case, but it would be better in its view for a clearer explanation of this process to be given in section 4 of the form, either by explaining how the Applicant arrives at component "A", or possibly by retaining the full current pitch fee at "A", but explaining at component "B" that inflation has only been applied to a reduced amount. The important principle is that the form (which is only a tool to enable information to be provided in a clear way) must be clear, and if it requires additional words to be inserted to make its intention clear, that should be done. If a site owner is reluctant to tinker with what is a prescribed statutory form, it obviously also has the option of explaining more fully in an accompanying letter (i.e. its paragraph 17(2) notice) what its intentions are for a pitch fee.

69. Having reached the conclusion that the 2016/17 pitch fee review form was unclear and confusing, objectively assessed, what must the Tribunal do? The lack of clarity in *Small* resulted in a determination that the proposal was invalid, as was the same result in *Shaw's Trailer Park*. The error here was the same as that which occurred in *Small*. The Tribunal is of the view that the conclusion must be the same, namely that it must determine the notice to be invalid as it does not comply with the requirements of paragraphs 17(2) and 17(2A).

70. This is the decision in the lead case where there are fourteen other respondents and it is possible that the current pitch fee given in the notice in other cases may have been correct. The Tribunal considers that it would be useful to indicate how it would have dealt with the merits of the pitch fee review had that been the case. We would have determined the new

pitch fee for 2016/17 at £1,610.32 (if each site owners pitch fee in 2015/16 had in fact been £1,587.48) comprising:

		£	£
A	Pitch fee	1,587.48	
B	Deduct 2005 Works costs	40.64	
C	Deduct site licence fee for 2014/15	24.07	
D	Sub-total		1,522.77
E	Apply inflation to D at 1.3%		19.80
F	Add back 2005 Works cost		40.64
G	Add site licence fee for 2015/16		22.58
H	Add one-off security light charge		4.53
	TOTAL		1,610.32

71. There are unresolved issues that were raised at the hearing. Mr Kelly argued that the Tribunal should determine that the pitch fee should be the same for all pitches. Some respondents now had lower pitch fees than other residents because of difficulties arising in the review process, and some having agreed with the proposal whilst others have not. That is, he said, not fair and the Tribunal should increase the pitch fee to such amount as meant each resident was being treated fairly and being charged the same amount. As it turns out, this issue does not now arise in this case as the Tribunal has determined that it cannot increase the pitch fee for the Respondents at all this year. The point therefore remains undetermined.

Summary

72. The Tribunal determines that it is not reasonable for the pitch fee for 2016/17 to be changed in this lead case as the notice to do so is invalid for lack of clarity and because incorrect information was inserted into the prescribed form.

73. Had the form been valid, the Tribunal would have determined that a sum of £4.53 would have been payable within the pitch fee for additional security measures as a one-off payment.

74. The Tribunal would also have continued to allow the sum of £40.64 per annum, being the cost of the 2005 Works, (without inflation being applied to it each year) to be included in the 2016/17 pitch fee and would allow that to be included in the pitch fee in future years until 31 March 2021. Thereafter, the Applicant would need to make a case for it to continue to be included bearing in mind its stated position that at that point it would have collected enough contribution to have met the expenditure on the 2005 Works that it sought to collect from the residents.

75. The Tribunal would have approved the addition in 2016/17 of the fee payable to the local authority for a site licence, provided the previous year's fee was deducted from the pitch fee payable in 2015/16 had this not been agreed. And in very general terms, once a site licence fee is included within

the pitch fee, a site owner will normally continue to be entitled to recover an inflation uplift in subsequent years.

Appeal

76. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Judge C Goodall
Chair
First-tier Tribunal (Property Chamber)

Schedule of Respondents in the Related Cases

Name	Pitch Number	Tribunal reference
Mr Hickinbotham	3	BIR/00GA/PHI/2016/0002
Ms Redfern	6	BIR/00GA/PHI/2016/0003
Mr & Mrs Adams	19	BIR/00GA/PHI/2016/0004
Mr & Mrs Keight	20	BIR/00GA/PHI/2016/0005
Mrs Lippett	31	BIR/00GA/PHI/2016/0006
Mr & Mrs Connop	37	BIR/00GA/PHI/2016/0008
Mrs Taylor-Hayward	41	BIR/00GA/PHI/2016/0009
Mr & Mrs James	45	BIR/00GA/PHI/2016/0010
Mr & Mrs Lavender	47	BIR/00GA/PHI/2016/0011
Mr & Mrs Harrison	51	BIR/00GA/PHI/2016/0012
Mr & Mrs Kelley	62	BIR/00GA/PHI/2016/0015
Mrs Halls	64	BIR/00GA/PHI/2016/0017
Mr & Mrs Moses	65	BIR/00GA/PHI/2016/0018
Mr & Mrs Lock	67	BIR/00GA/PHI/2016/0019