



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

Case Reference : BIR/41UG/PHI/2017/0026

Property : 78 Lodgefield Park, Baswich Lane, Stafford, ST17 0YE

Applicant : Mr Asa Hartley t/a Hartley Park Homes

Representative : Mr Asa Hartley

Respondent : Mr David Lambert

Representative : None

Type of Application : Determination of new pitch fee pursuant to paragraph 16, Chapter 2, Part 1, Schedule 1 of the Mobile Homes Act 1983 (as amended)

Tribunal Members : Mr I.D. Humphries B.Sc.(Est.Man.) FRICS
Mr P.J. Hawksworth

Date and Venue of Hearing : 13th October 2017 at the First-tier Tribunal (Property Chamber), City Centre Tower, 5-7 Hill St., Birmingham, B5 4UU

Date of Decision : 26th October 2017

DECISION

Introduction

- 1 This is an application by the owner of Lodgefield Park Home site for determination of the pitch fee payable for Pitch 78 Lodgefield Park, Baswich Lane, Stafford, ST17 0YE.
- 2 The site owner, Mr Hartley, served a Pitch Fee Review Form on the occupier, Mr Lambert, dated 27th February 2017 proposing an increase in the pitch fee from £1,739.10 p.a. to £1,784.31 p.a. with effect from 1st April 2017.
- 3 The Notice was in accordance with paragraph 25A(1), Chapter 2, Part 1, Schedule 1 to the Mobile Homes Act 1983 ('the Act') and the increase calculated in accordance with the increase in retail price index over the relevant period.
- 4 As Mr Lambert had not responded, Mr Hartley applied to the Tribunal on 4th July 2017 for the amount to be determined by the Tribunal.

The Law

- 5 Section 2 of the Mobile Homes Act 1983 provides that the terms of Part 1 of Schedule 1 to the Act shall be implied and shall have effect notwithstanding the express terms of the Pitch Agreement. Paragraphs 16 to 20 of Chapter 2 of Schedule 1 to the Act were introduced by the Mobile Homes Act 1983 (Amendment of Schedule 1) (England) Order 2006. The relevant provisions of the legislation that apply to this decision are as follows:

- 6 Paragraph 16 provides:

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

- (a) *with the agreement of the occupier, or*
- (b) *if the court, 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.*

- 7 Paragraph 17 provides:

- (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 court 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 court 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 court 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.*
- (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.*
- (6A) *In the case of a protected site in England, a notice under subparagraph (6)(b) which proposes an increase in the pitch fee is of no effect unless it is accompanied by a document which complies with paragraph 25A.*
- (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 or (in the case of a protected site in England) the occupier may apply to the court 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 court under paragraph 16(b); and*
 - (c) *if the court makes such an order, the new pitch fee shall be payable as from the 28th day after the date on which the owner serves the notice under sub-paragraph (6)(b).*
- (9) *An application under sub-paragraph (8) may be made at any time after the end of the period of 56 days beginning with date on which the owner serves the notice under sub-paragraph (6)(b), but in the case of an application in relation to a protected site in England 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) in relation to a protected site in England to be made outside the time limit specified in sub-paragraph (5) (in the case of an application under sub-paragraph (4)(a)) or in the case of sub-paragraph (9) (in the case of an application under subparagraph (8)(a)) 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.*
- (10) *The occupier shall not be treated as being in arrears—*
 - (a) *where sub-paragraph (7) applies, until the 28th day after the date on which the new pitch fee is agreed; or*
 - (b) *where sub-paragraph (8)(b) applies, 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 court order determining the amount of the new pitch fee.*

- (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.*

8 Paragraph 18 provides:

- (1) *When determining the amount of the new pitch fee particular regard must 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 paragraphs 22(f) and (g); and*
 - (iii) *to which a majority of the occupiers have not disagreed in writing or which, in the case of such disagreement, the court [tribunal] on the application of the owner, has ordered should be taken into account when determining the amount of the new pitch fee;*
 - (aa) *in the case of a protected site in England, any deterioration in the condition, and any decrease in the amenity, of the site or any adjoining land which is occupied or controlled by the owner since the date on which this paragraph came into force [26th May 2013] (in so far as regard has not previously been had to that deterioration or decrease for the purposes of this subparagraph);*
...

9 Paragraph 20 provides:

- (A1) *In the case of a protected site in England, unless this would be unreasonable having regard to paragraph 18(1), there is a presumption that the pitch fee shall increase or decrease by a percentage which is no more than any increase or decrease in the retail price index calculated by reference to*
- (a) *the latest index, and*
 - (b) *the index published for the month which was 12 months before that to which the latest index relates.*

Submissions

- 10 Mr Hartley sent submissions to the Tribunal before the Hearing. At the Hearing, he advised that Mr Lambert had granted Lasting Power of Attorney to his daughter, Mrs A.K. Foster, a copy of which was provided, and provided copy emails dated 12th October 2017 from Mrs Foster advising that the new pitch fee had been agreed and the amount paid in full by bank transfer.
- 11 The Tribunal received nothing directly from Mr Lambert or Mrs Foster.

Decision

- 12 The Tribunal notes Mr Hartley's submissions and the email from Mrs Foster to Mr Hartley but having received nothing directly from Mrs Foster confirming the agreement, determines the amount payable from 1st April 2017 to be the amount proposed on the Pitch Fee Review Form dated 27th February 2017 of £1,784.31 per annum.

I.D. Humphries B.Sc.(Est.Man.) FRICS
Chairman

Date: 26th October 2017

Appeal to the Upper Tribunal

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 the result sought by the party making the application.