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1. For the reasons which follows the tribunal determines that each application be granted, so that :
 - a. In the case of 60 East Beach Park the pitch fee, which in proceedings before the tribunal under Case RefCAM/00KF/PHI/2016/0005 was held at the previous sum per annum of £2 209.19, shall from 1st April 2017 be increased to the annual sum of £2 264.40; an increase of £55.21 or 2.5%
 - b. In the case of 63 East Beach Park the pitch fee shall from 1st April 2017 be increased from the previous annual figure of £2 235.60 to £2 291.40, an increase of £55.80 or 2.5%.

Introduction

2. Although the applicant site owner and manager applied separately for pitch fee increases in respect of 60 and 63 at its East Beach Park site respectively the same or similar issues have been raised by both sets of neighbours, joint directions have been issued, and it is sensible to deal with both applications in the same decision.
3. Perhaps the essential difference between the two cases is that in 2016 the Barkers resisted the application for a pitch fee increase, on the ground that the services of a resident manager had been withdrawn upon the incumbent’s retirement. The tribunal had agreed that this was a reduction in service but that it did not warrant a reduction in the pitch fee. However, due to a lack of supervision while the new part-time manager covering several sites was introduced the service had been reduced for a few months and an increase would not be allowed for that year. Alone among residents on the site, therefore, the Barkers enjoyed a lower annual pitch fee; and this formed the basis on which this year’s review took place.
4. Both sets of respondents resisted any pitch fee increase upon different grounds than those employed by the Barkers in 2016. The Barkers rely upon :
 - a. The absence of general maintenance – especially sweeping and clearance of gullies/soakaways
 - b. Lack of reception and supervision of contractors on site
 - c. Worry about the response from Tingdene Parks Ltd when they asked about contact details, especially out of hours contacts.
5. The Oddys replied to the tribunal by letter dated 30th July 2017, setting out the following points :
 - a. Kerb/garden damage – caused by a very narrow entrance to a car park
 - b. Lighting in car park – no change from before (no lighting)
 - c. Park Manager – lack of contact details for new manager)
 - d. Car park sweeping, general sweeping and gardening service (none).

Material provisions in written statement

6. The written statements in each case are similar in their terms, with that for 60

being dated 22nd May 2014 and that for 63 dated 17th October 2014. In each case paragraph 7 in Part 2 of the written statement identifies the initial pitch fee and that it is payable by twelve equal monthly instalments, and paragraph 8 provides that the pitch fee is reviewable annually on 1st April.

7. Of relevance to the points raised by the respondents, whether to the tribunal or directly to the applicant company by e-mail or correspondence, is paragraph 2(d) of the express terms to be found in Part 3 of the written statement, viz :

The site owner must do everything they can reasonably do to provide and keep the services available to the pitch. However the site owner will not be responsible for any temporary failure or lack of facilities and services if this is caused by something outside their control.

Applicable law

8. The relevant principles of law governing the subject of annual pitch fee increases appear in paragraphs 16, 17, 18 & 20 of Chapter 2 of Schedule 1 to the Mobile Homes Act 1983 (as amended). The material parts provide 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.¹

- (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 may apply to the appropriate judicial body for an order under paragraph 16(b) determining the amount of the new pitch fee;
- (b) the occupier shall continue to pay the current pitch fee to the owner until such time as the new pitch fee is agreed by the occupier or an order determining the amount of the new pitch fee is made by the appropriate judicial body under paragraph 16(b); and
- (c) the new pitch fee shall be payable as from the review date but the occupier shall not be treated as being in arrears until the 28th day after the date on which the new pitch fee is agreed or, as the case may be, the 28th day after the date of the appropriate judicial body's order determining the amount of the new pitch fee.

(5–10) *[not relevant]*

¹ I.e. a document that complies with the Mobile Homes (Pitch Fees) (Prescribed Form) (England) Regulations 2013 [SI 2013/1505]

18.(1) When determining the amount of the new pitch fee particular regard shall be had to—

- (a) *[not relevant]*
- (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 force² (in so far as regard has not previously been had to that deterioration or decrease for the purposes of this subparagraph);
- (ab) in the case of a protected site in England, any reduction in the services that the owner supplies to the site, pitch or mobile home, and any deterioration in the quality of those services, since the date on which this paragraph came into force (in so far as regard has not previously been had to that reduction or deterioration for the purposes of this subparagraph)

20(A1) In the case of a protected site in England, unless this would be unreasonable having regard to paragraph 18(1), there is a presumption that the pitch fee shall increase or decrease by a percentage which is no more than any percentage increase or decrease in the retail prices index³ calculated by reference only to –

- (a) the latest index, and
- (b) the index published for the month which was 12 months before that to which the latest index relates.

(A2) In sub-paragraph (A1), “the latest index”–

- (a) in a case where the owner serves a notice under paragraph 17(2), means the last index published before the day on which that notice is served;
- (b) in a case where the owner serves a notice under paragraph 17(6), means the last index published before the day by which the owner was required to serve a notice under paragraph 17(2).

9. By section 4 of the Act a tribunal has jurisdiction to determine this particular issue and it is therefore the “appropriate judicial body” referred to in the above provisions, and as defined in section 5.

Discussion and findings

10. The tribunal had before it a bundle of 165 pages, although the last 73 comprised copies of the respective written statements and review letters with accompanying statutory notices.

11. There are potentially two stages to the determination of this application :
- a. Firstly, whether a change in the pitch fee is reasonable and, if so,
 - b. What the new pitch fee should be.
- The tribunal starts with the amount contractually agreed between the original

² i.e. 26th May 2013

³ Although the “Retail Prices Index” or RPI is no longer recognised as an official national statistic due to its exaggerated effect it continues to be published by the ONS as an unofficial statistic and for the time being is still the index relied upon for various statutory purposes, such as rent capping, and it provides a presumed maximum or minimum in the case of pitch fee adjustments

parties as the pitch fee and then factors in inflation since the last review and whether there has been an increase or reduction in the services or amenities provided by the site owner. There is no requirement to find that the level of the pitch fee overall is reasonable.

12. The tribunal is satisfied that the applicant has complied procedurally with all the statutory notice requirements, that the notices were served at the correct time and, as the Barkers agree, that the RPI increase has been calculated correctly at 2.5% (actually 2.49% if taken to the next decimal place).
13. The respondents have expressed their dissatisfaction about a number of matters, and whether the arrangements for cleaning, for example, are as regular as they would wish, but the question that the tribunal must ask itself is whether there has been a reduction in the level of service provided since the last review.
14. *Site management* — Mr Peter Edwards had been appointed as a part-time site manager but in the early part of 2017 fell ill and went off sick. The applicant did what it could to provide temporary cover, with a resident, Bob Pugh, agreeing to do so. When it became clear that Mr Edwards would not return Mr Pugh, over the summer, took over on a permanent basis. As explained in the 2016 tribunal decision, once all the pitches had been marketed and sold there was really not a lot for the site manager to do, so a part-time role by a manager covering several sites was regarded by the company as sufficient. The respondents do not complain about appointing Mr Pugh to the post – indeed they seem pleased to have him – but to what they regard as the applicant’s failure to inform residents that they had done so, and of his contact details.
15. The tribunal considers that the company did what it could to provide sickness cover for their employee and, when a permanent change of staff was required, it acted reasonably in trying and succeeding in persuading Mr Pugh to continue in the role. The express term in Part 3, paragraph 2(d) provides that :
 ...the site owner will not be responsible for any temporary failure or lack of facilities and services if this is caused by something outside their control.
That provision covers the situation faced by the applicant company here. Once alerted to Mr Edwards’ illness the company succeeded in finding alternative cover which it has now made permanent. If there was any dip in service levels that was temporary and is excusable. His contact details have been provided, but both sets of complainants seem to have been well aware of who he was and how to get hold of him.
16. *Sweeping and gully clearance* — The objection is that this service has been provided only about once per year instead of more frequently. It has also been hindered by the geography of the site, so that large council-contracted vehicles (operated by Veolia?) have difficulty in turning – and can’t get through the narrow entrance to the car park next to both respondents. Whether the service should be provided (and paid for) more frequently is a different question from whether the service provided has deteriorated since the last review. The company says that it has not, and the points sought to be made by the respondents do not answer that question. Is the frequency of sweeping and gully clearance any less than would be provided by the local authority if the site road were adopted as a

road maintainable at public expense? The tribunal is not told. The tribunal is therefore of the view that this service – while it may not be up to the standard that the respondents say they want – is any less than it was before.

17. *Lack of reception and supervision of contractors* – The complaint is that there is a lack of co-ordination between Tingdene’s head office and the local site manager as to when and what tasks are due to be undertaken, and by whom. As park home sites tend to be occupied by those nearing or post-retirement it can be understood why there might be concern about unidentified persons moving about the site, perhaps with a view to going door to door and taking advantage of potentially vulnerable people.
18. The documentation shows that the applicant has asked contractors to provide their staff with High Viz clothing, ideally with logo identification. The suggestion that contractors come equipped with business cards or other identification has not found an unsympathetic ear amongst the applicant’s staff. However, if such staff are sufficiently identified and know exactly what task they need to perform then they should be allowed to go about their business without being minded by the site manager. In these days when timing requests of contractors or delivery companies are often met with the answer “AM or PM” it would be unrealistic to expect a site manager to wait around just in case contractors turn up.
19. In the tribunal’s determination this is a request by the respondents about how they would prefer a service to be provided. It is not, however, a reduction of an existing service.
20. *Car park lighting and design* – While the Oddys complain about damage to some rocks that they placed strategically to discourage the inaccurate reversing of large vehicles this is a separate issue from reduction in service. The tribunal notes the willingness of Tingdene to discuss amendments to the access to and layout of the car park next to the respondents’ homes if the residents’ association wishes to engage in a consultation about it. The same applies to lighting, which is often a more contentious issue. Some prefer the apparent security of well-lit surroundings whereas others prefer dark skies, with no lights disturbing their sleep. These issues, while of importance to the particular respondents, do not constitute a reduction in service meriting a decrease (or refusal of an increase) in the pitch fee.
21. *Contact details* – As mentioned above, both sets of respondents seem to have been well aware of Mr Pugh’s involvement as the temporary and now confirmed site manager. Although his name and contact number may not have been posted as early as the respondents might like, so that other residents would know, there has been no complaint by those others. Further, the site notices appear to cover all critical emergency numbers, such as the nearest health centre, NHS Direct, the local police station, Southend Council, EMG Gas and Tingdene’s approved electrical contractor [see page 46].
22. Overall, apart from a reduction in site management while Mr Edwards was ill and his employment rights had to be observed, Tingdene acted as swiftly as it could to put in place suitable temporary cover; later asking Mr Pugh to take over on a permanent basis once it was realised that Mr Edwards could not continue. The

other issues raised by the respondents do not in the tribunal's determination amount to a reduction in service, although they may fall below the respondents' expectations. In the circumstances the tribunal upholds the applications for an inflation-linked increase in the fees payable for the respective pitches to the sums requested. Although the tribunal has, in footnote 3 above, touched upon the relative merits of the now unofficial RPI and other indices of inflation such as the officially recognised CPI, no argument has been advanced that on such basis the pitch fees be increased by some lower amount.

Dated 15th September 2017

Graham Sinclair

Graham Sinclair
Tribunal Judge