



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

Case Reference : **CAM/12UG/PHI/2018/0008**

Property : 19 Merton Park, High Street, Waterbeach, Cambs
CB25 9JX

Applicant : Paul Edwards (in person)

**Respondent
represented by** : Andrew Manson
: Ms Drummond (counsel, of Fenners Chambers)

Type of Application : by occupier for a determination of new level of pitch
fee [MHA 1983, Sch 1, Pt 1, Ch 2, para 16]

Tribunal Members : G K Sinclair, G F Smith MRICS FAAV REV &
C Gowman BSc MCIEH MCMI

**Date and venue of
Hearing** : Tuesday 11th September 2018 at
Cambridge County Court

Date of this decision : 5th November 2018

DECISION

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1. In this application Mr Edwards, the owner of a park home sited at Merton Park in Waterbeach, seeks further assistance from the tribunal. In late 2017 he sought answers to various questions which he said arose under his pitch agreement, and these were dealt with in a decision dated 2nd January 2018.¹ He now challenges the site owner's desire to increase the annual pitch fee in line with inflation (as determined by reference to the Retail Prices Index).
2. For the reasons given below the tribunal determines that this particular pitch, at the very entrance to the licensed site, has suffered such a loss of amenity that a reduction in the existing pitch fee of 10% is justified, as from the date that the requested increase would otherwise have taken effect.
3. In the circumstances, pursuant to rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal orders in addition that the respondent reimburse the tribunal issue and hearing fees of £20 and £200 respectively that Mr Edwards was required to pay.

Introduction

4. As explained in the tribunal's previous decision, although the company Merton Park Ltd, of which Mr Manson is sole director, owns and manages a number of park home sites Merton Park itself is not one of them. Instead it is owned and operated (although through an office also used by the company to manage its businesses) by Mr Manson personally.
5. Of crucial importance to the applicant's complaint is the fact that Mr Manson also owns several properties between this park home site and the public highway. He has, however, in the last few years let these for business purposes to one or other of two companies (Foxa Ltd and Nice Stay Ltd) which are controlled by two Bulgarians : Daniel Miykov (who gave evidence at this hearing) and his domestic partner Elica Ilieva.
6. These two companies jointly use a website to promote Cambridge Water House Apartments, an AirBnB type of operation providing short-stay, unsupervised accommodation within a reasonably quick taxi-ride of Cambridge. The result is that taxis are said by Mr Edwards (who has produced very many still and video images as evidence) to regularly drop off and collect groups of tourists, wedding parties, etc right outside his mobile home, both during the day and late at night. The car park next to him is for the use of Cambridge Water House and perhaps one remaining unit with a residential tenant. With no clear boundary markers, some visitors wander around within the park home site, looking for assistance, posing for photos and/or talking amongst themselves.
7. Mr Edwards purchased a mobile home sited on pitch 19 Merton Park in about May 2015, taking an assignment of his seller's interest under a written statement under the Act said to commence on 24th February 2009. Despite the large sum of money involved he did not use a solicitor (who might have carried out some basic enquiries that were overlooked) but instead placed his trust in the seller's estate agent. He never received or even saw a copy of the written statement which had originally been provided by the site owner. This was remedied by Mr Manson

¹ CAM/12UG/PHC/0010

after the last hearing in November 2017.

8. A notice of the proposed 3.6% pitch fee increase was served on 20th March 2018. It was not accompanied by the Pitch Fee Review Form prescribed by the Mobile Homes (Pitch Fees) (Prescribed Form) (England) Regulations 2013,² and thus was legally ineffective. This application, based on that notice, was dated 25th May 2018. However, by agreement between the parties and the tribunal at the hearing, it was treated as a challenge to a legitimate notice rather than a nullity; the alternative being for the application to be dismissed and the applicant left to challenge the later, legally correct, notice served on 29th June 2018. The same issues would be canvassed, using the same evidence as already filed and served, but many months later.

Material provisions in written statement

9. The written statement begins as a rather vague document, with none of the boxes in Part 1 completed, including the names of the parties, other than the start date of 24th April 2009 (box 3), plot number (box 4), and a reference to an additional charge for “Second car additions car £10:00 per month” (box 9).
10. In Part 3 (Implied Terms) paragraphs 16 to 20 make provision for the pitch fee and the method of changing it annually, at the review date (left blank in Part 1). Written notice of the proposed increase must be served on the occupier at least 28 days before the review date, and the occupier shall continue to pay the existing pitch fee until a new one is either agreed or an order determining the amount of the new pitch fee is made by the court. (These provisions have been overtaken by subsequent statutory amendment, for which see below).

Applicable law

11. 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.³
 - (3) If the occupier agrees to the proposed new pitch fee, it shall be payable as from the review date.

² SI 2013/1505

³ I.e. a document that complies with the Mobile Homes (Pitch Fees) (Prescribed Form) (England) Regulations 2013 [SI 2013/1505]

- (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]*

- 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 force⁴ (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 index⁵ 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

⁴ i.e. 26th May 2013

⁵ 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

was required to serve a notice under paragraph 17(2).

12. 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.

Inspection and hearing

13. The tribunal inspected the site at 10:00 on the morning of the hearing. Also present were Mr Edwards, Mr Manson and his counsel, Ms Drummond. Since the tribunal’s previous inspection in November 2017 a Portakabin office had been removed from the car park, making more room for vehicles, and the fence to the rear of the row of parking spaces was festooned with signs announcing that it was a visitors’ car park only (and threatening clamping of unauthorised vehicles⁶) or asking visitors to respect the privacy of residents of the park. One sign, on the fence near the front corner of Mr Edwards’ home, states “Merton Park Private” and “No photography”. Although strictly outwith the bounds of the licensed site, the park rules are displayed at the end of the car park nearest the public highway.
14. Opposite Mr Edwards’ pitch a boundary fence had been taken down, allowing an additional parking space next to the end apartment, 30E, where previously there had been a small garden. Whether the site boundary had been infringed upon was the subject of some dispute between Mr Edwards and Mr Manson, and while drawing imaginary lines from the fence next to his pitch to that along most of the fence (but not at the front) along the western side of pitch 1 suggested that there might be an infringement, the tribunal reminds itself that boundaries are not always straight lines, and there was no photographic or other evidence that might assist. In any case, this was not an issue which it had been asked to determine.
15. For the hearing the respondent, this time legally represented, had provided a bundle even though the directions issued on 7th June 2018 had thrust the task upon the applicant, who seemed needlessly aggrieved at being deprived of this burden. In addition to the application, directions orders and the applicant’s and respondent’s statements of case the bundle included witness statements by Mr Manson and Mr Miykov, a “statement” by Mr Edwards commenting on the respondent’s statement of case, the relevant but incomplete written statement, correspondence and miscellaneous aerial photographs and other documents.
16. Mr Edwards’ principal point, which he supported with his oral testimony and numerous photographs that he had taken, was that when he purchased the mobile home on his pitch in 2015 the dwellings opposite the car park were let on assured shorthold tenancies to residents, some of them elderly, and there was very little by way of regular vehicle movements in the car park near to him. This soon changed, and his enjoyment of his home had substantially diminished due to the noise and disturbance by vehicle movements and visitors arriving and departing, wheeling cases and wandering around – often across the invisible boundary into the site. Sometimes this was because they were looking for the correct apartment or seeking advice by asking park residents; on others it was in order to pose for photographs in front of some of his neighbours’ attractive floral

⁶ Notwithstanding the fact that section 54 of the Protection of Freedoms Act 2012 made clamping of vehicles on private land a criminal offence punishable summarily or on indictment by a fine

displays. Children sometimes played within the site, including kicking a football around. Careless parking or waiting outside the apartments, the only means of access to the Merton park site, also caused inconvenience and nuisance to the occupiers. Of all this Mr Edwards provided copious written and photographic evidence. He conceded, however, that he had struggled to interest nine other residents in supporting his cause. He put this down, in his own mind, to fear of intimidation by the park owner; an allegation firmly rejected by Mr Manson. The tribunal would require very strong and direct evidence of such an allegation if it were to be accepted as credible.

17. This, he argued, caused a decrease in amenity. In support he cited, at paragraph 23 in his “statement” (bundle page 33), a passage that is believed to be from an unreported case called *Charles Simpson Organisation v Redshaw*, heard by Kitchin LJ :

In my judgment, the word ‘amenity’ in the phrase ‘amenity of the protected site’ simply means the quality of being agreeable or pleasant. The court must therefore have particular regard to any decrease in the pleasantness of the site or those features of the site which are agreeable from the perspective of the particular occupier in issue.⁷

If passages are to be quoted then the tribunal should be provided with a full case reference and a copy of the actual judgment (or published report of it) so that it can read the passage relied upon in its true context.

18. Mr Manson lives in a house fronting the High Street just to the south of the park entrance, with his northern rear garden fence forming the boundary with the car park area. He said that he visited the site every day, although he has three other parks to look after as well. One is at Brandon, but he is usually there only four or five days per month. To assist with monitoring the site, and the car park area and apartments, security cameras were installed by Dent Security before 2000. The system had since been upgraded, and it was now possible to live stream from these cameras using his mobile phone. Although this upgrade had been carried out by Daniel Miykov he (Mr Manson) manages the system.
19. Questioned about evidence of disturbance or nuisance, he referred the tribunal to an annotated aerial photograph at page 23. Immediately to the north of the apartments is a house and grounds occupied by a Mr Hall, who has been there six years. He has never received a complaint from Mr Hall about noise, etc from the Waterhouse Apartments in all that time. Neither had he been challenged by park occupiers, and for the whole of this year he had received nothing except from Mr Edwards. The site has no other problems. If anyone on the park is causing problems “they get removed.” Shown photographs of awkwardly parked vans and other vehicles by the apartments he claimed that if this was seen by him he would have a word and the vehicle would be gone within a few minutes. He had

⁷ A transcript of this case is not available on Westlaw or BAILII but an on-line search reveals that it has been mentioned by several parties (perhaps different passages for different purposes) in written submissions to the Communities and Local Government Committee of the House of Commons, when it was enquiring into the subject of Park Homes in early 2012, in the period prior to the introduction and passing of what became the Mobile Homes Act 2013. It would appear to have been the oral hearing before Kitchin LJ of an unsuccessful application for permission to appeal a decision of the County Court; the probable reason for its non-availability other than to the parties and those others who have privately obtained a transcript of Kitchin LJ’s judgment

never known anyone's vehicular access to the park to be obstructed.

20. Daniel Miykov gave evidence. He said that he was on site every day at 10:00, to clean and prepare apartments for new visitors. His partner also visits every day. He checks occupancy through video monitoring, ensuring that the numbers are correct and match those who have booked. He installed the CCTV four years ago and monitors it using his phone app every hour. Asked why numbers had been removed from the parking spaces, he said that he did so because they became confusing for Merton Park residents. He had witnessed this maybe five times. Questioned by the tribunal, he said that there were a few parking spaces for visitors (i.e. residents' visitors).
21. Asked by Mr Edwards on the numbers and nature of the apartment guests Mr Miykov disputed the Booking.com figures quoted, commenting that the rooms are different, and some want to sleep in single beds. He has a limit of four people per apartment, even it has a king, double and two single beds. Even if a couple with three children, they can book two apartments. His terms and conditions forbid hen parties and the like. There was just one occasion, at the beginning, when he asked the guests to leave the property immediately. He said that he had never seen cars parked as shown on Mr Edwards' photographs : they were only stopped for a while. However, he agreed with the tribunal that when on site he was mainly stripping beds and making sure the apartments were clean he was largely indoors, except when crossing the road between properties.⁸ Despite this he said that he was outside for about half the time, a point challenged by Mr Edwards in cross-examination – disputing that he was present on site from 10:00 until 16:00 each day. Mr Miykov also conceded that he may have had to ask for a vehicle to be moved maybe four or five times.
22. Asked by the tribunal about when he first became aware that Mr Edwards was complaining about the disturbance, Mr Miykov said that it was only a few months ago, when he saw the new signs appear in the car park. He said he knew this business for many years, and that it is not good business to have parties in residential areas.
23. Although not strictly part of his application, towards the end of the hearing Mr Edwards also raised a point concerning the calculation of the rent, because the standing charge for water had not been deducted before calculating the inflation increase. He said that when agreeing a previous pitch fee increase neither this nor his principal point that the tribunal had to determine had been raised with Mr Manson as issues.
24. In closing submissions Ms Drummond, for the respondent, argued that there had been no deterioration in the amenity of the site or adjoining land since 26th may 2013. The only matter raised by the applicant pertains to the use of the adjoining land, the Cambridge Water House Apartments, and overflow of guests into the licensed site. Since the previous inspection the car park had been reconfigured so as to create additional parking spaces, with removal of the railway sleepers and Portakabin office. Mr Manson's evidence was that he had used the apartments for varying purposes over the years, and that there was no evidence of solid

⁸ His company also rents several apartments on the opposite side of the High Street

occupancy since 2015 (when Mr Edwards arrived). She questioned the photographic evidence of parking, as in most cases these were of vans stopping only briefly, save that two vehicles were actually connected with pitch 1 on the residential park. A “No photography” sign had been erected and there was no evidence of exactly when the photographs produced by Mr Edwards had been taken. There was no evidence of police involvement due to nuisance, and the height of it was the odd tourist stepping beyond the boundary of Merton Park.

Discussion and findings

25. Apart from the issue concerning the correct means of calculating an inflationary increase in the pitch fee, which the tribunal will address briefly later, much of the evidence presented to the tribunal was similar in nature to that presented to it on the previous occasion in November 2017 save that there were now further alleged incidents and the tribunal had now had the opportunity to hear from Mr Miykov of one of the two associated companies marketing the apartments as Cambridge Water House Apartments through at least one of the online accommodation websites.
26. While Foxa Ltd was incorporated in 2014 his partner Ms Ilieva’s Nice Stay Ltd did not emerge until May 2017, and the tribunal regards it as more probable that Foxa Ltd started its short-stay accommodation business on the opposite side of the High Street, later spreading to Mr Manson’s apartments by the entrance to Merton Park as they gradually emptied of residential tenants. Both companies then expanded in 2017, substantially altering the peaceful environment that prevailed when Mr Edwards purchased the mobile home on pitch 19 and acquired his assignor’s rights under the pitch agreement set out in what one hopes was a more complete version of the copy written statement eventually provided to Mr Edwards after the previous hearing.
27. The nature of the business run by Mr Miykov radically increased the amount of coming and going in taxis and other vehicles, often in the evenings, than the more limited vehicle movements in and about the car park when a few elderly tenants lived there in 2015 and early 2016. While Mr Edwards is retired and therefore sitting in his home quite a lot, with windows overlooking the car park area and park entrance, the tribunal is inclined to accept his evidence that his amenity, in the sense used by Kitchin LJ, or his “quiet enjoyment” (as wrongly understood by Mr Edwards) did suffer a deterioration in the few years that he had been there. Mr Manson’s insistence (as dealt with during the previous proceedings) that Mr Edwards reduce the height of his re-located boundary fence did not help, as that only served to reduce any sense of seclusion that he may otherwise have enjoyed.
28. It is noteworthy that he is the only one prepared to complain but the problem perhaps uniquely affects his pitch because of its physical location at the park entrance, within direct view of the apartments, and him because he is at home a lot and it therefore plays on his mind. While he may speculate that the reason why other residents that he approached declined to assist him was due to their unspoken fear of retribution from Mr Manson the tribunal will not lightly make such a judgment.
29. Mr Manson comes across as a rather hale and hearty individual who sometimes acts unwisely, as demonstrated on the previous occasion by his unwitting grant

of what he thought were assured shorthold tenancies of the apartments to one or other of two limited companies that intended to use them (to his knowledge) for business purposes. He had not bothered to take legal advice about his potentially creating business tenancies protected under Part II of the Landlord and Tenant Act 1954. A large man, some might view him as having an intimidating presence; but it is a very large leap from that to suggest that park residents act in fear of him, and/or that he knows that. On the evidence before it the tribunal rejects any assertion that, wittingly or unwittingly, he has threatened or attempted to threaten residents. Has it occurred to Mr Edwards that others' unwillingness to assist him may more realistically reflect a dislike of getting involved in what may be perceived as his pet campaign – and one which affects them little if at all?

30. For the above reasons the tribunal accepts that since the applicant's arrival in 2015 the amenity enjoyed – not by all park residents but uniquely by his pitch – has deteriorated and that this has not been reflected in any subsequent pitch fee increase. How best can that be assessed? When dealing with other aspects of its jurisdiction, such as rent assessments, the tribunal often chooses a percentage by which to discount what would otherwise be an appropriate "market rate". In the case of pitch 19 the tribunal determines that the deterioration in amenity since 2015 can best be assessed by discounting the pitch fee prior to the notice of increase by 10%.
31. While not strictly part of the task before the tribunal it notes the figures used in the supplementary statements of account produced at the hearing. Mistakenly, when assessing the percentage increase, Mr Manson's staff failed to deduct the standing charge for water as well as its actual cost before applying the percentage uplift. The standing charge should then have been added back after making this adjustment. The proposed 3.6% increase (which will affect the other pitches but not this) is therefore slightly higher than it should be – and this appears to have been compounded over several such pitch fee increases. That is a matter that Mr Manson must sort out between himself and the residents, but it ought to be a simple arithmetical exercise.

Dated 5th November 2018

Graham Sinclair

Graham Sinclair
First-tier Tribunal Judge