

FIRST-TIER TRIBUNAL PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference : CHI/18UH/PHJ/2019/0001-0013

Property: 1 Olive Gardens, 3 and 7 palm Court, 2 and

3 bracken Way, 3 Hazelwood Drive, 4 and 8 Sycamore, 1 and 7 lakeside, 9 and 15 Beechwood on Dawlish Warren, Devon

EX7 oSZ

Applicant : Wyldecrest parks (Management) Limited

Representative: Mr David Sunderland, Estates Director

Respondents: Mrs P Burgess, Mrs jess Wright, Mr GM

Costa, Mr Herod, Mr JW Hayes, Mr & Mrs S Greene, Ms P Cole, Dr K Evans, Mr & Mrs Way, Mr & Mrs R Foster, Mr & Mrs Freeman, Mr & Mrs Denman and Mr &

Mrs Penny

Representative :

Type of Application: Improvements to be taken into account on

pitch fee review

Tribunal Member(s): Judge D. Agnew

Date and venue of CMH :

Date of Order : 25th April 2019

ORDER AND REASONS

Order

The Applicant's application under Paragraph 18(1)(a)(iii) of Part 1 of Schedule 1 to the Mobile Homes Act 1983 (as amended) shall be and is hereby **struck out**

Reasons

Background

- 1. The Applicant submitted an application dated 29th January 2019 under Paragraph 18(1)(a)(iii) of the Mobile Homes Act 1983 (as amended) ("the Act") seeking an order that certain improvements to be carried out at the Applicant's protected Mobile Home site at Beechwood Park, Warren Road, Dawlish Warren, Devon EX7 oSN should be taken into account when the pitch fees are next reviewed. Evidence submitted with the application showed that at a consultation meeting between the mobile home owners and the site owner's representative, a majority of home owners had not disagreed with the proposed improvements.
- 2. On 8th March 2019 Judge Tildesley OBE issued a notice that the Tribunal was minded to strike out the application on the basis that under the aforesaid paragraph 18(1)(a)(iii) the Tribunal has no jurisdiction where the majority of home owners agreed the improvements. The notice gave the parties until 22nd March 2019 in which to make representations on the proposed strike out.
- 3. Representations were received from the Applicant on 18th March 2019. Several Respondents also replied to the Tribunal and a copy of their responses will be sent to the Applicant with this determination for its information.
- 4. The Application form that the Applicant completed and submitted to the Tribunal clearly states that "This is the correct form to use if (a) you are a Park Home protected site owner who has consulted occupiers about proposed improvements to the site which you wish to be taken into account when determining the amount of any pitch fee and (b) the majority of occupiers have disagreed in writing to the proposed improvements and (c) you want the tribunal to order that the proposed improvements be taken into account".
- 5. That is not the situation here. The Applicant acknowledges that the majority of occupiers did not disagree with the proposed improvements. Paragraph 18(1)(a)(iii) is, therefore, not engaged.
- 6. The ability to apply to the Tribunal in situations where the occupiers did disagree with the proposed improvements is that, without such a provision, a site owner could always be prevented from having improvements taken into account simply by a majority of occupiers

disagreeing with them, no matter how unreasonable that disagreement was.

- 7. As it is, paragraph 18(1) makes it clear that where the improvements are for the benefit of the occupiers, where there has been consultation and the majority of occupiers have not disagreed that "When determining the amount of the pitch fee particular regard shall be had to sums expended by the owner since the last review date on improvements. So, the Applicant already knows that particular regard must be had to the improvements in question. The Applicant says that the Tribunal does have jurisdiction to determine any question arising under the Act or any agreement to which it applies and this is stated as a reason for the Tribunal not striking out the application. The Tribunal does indeed have jurisdiction to determine any such question but the Applicant did not apply under section 4 of the Act. If the Applicant wishes to make an application under section 4 it may do so but it should complete an appropriate application form and the application under paragraph 18 should be struck out.
- 8. As I understand it from the Applicant's representations in response to the notice minded to strike out the application, what the Applicant is looking for is some certainty that if it undertakes substantial works of improvement it will be certain of being able to recoupe that cost, if only over a period of years, through the pitch fees. The Applicant's objective in seeking this is understandable. However, and without pre-judging in any way any application that may be made under section 4 of the Act, there may be some difficulties in this for the Applicant under section 4. Such an application would be seeking in effect to determine something that is necessarily part and parcel of the pitch fee review prior to the review taking place. The amount spent on the improvements is a matter to which the Tribunal is required to have particular regard when coming to its overall decision on the level of the pitch fee and as one exercise. The pitch fee review mechanism set out in the act does not provide for anything other than a one-stage procedure.
- 9. Also, paragraph 18(1) requires the Tribunal to have particular regard to the expenditure on improvements. It does not necessarily follow that the amount actually expended will be recouped wholly or even in part. This is illustrated by the Rose in the Bush Park case referred to by the Applicant where HH Judge Huskinson found that the First-tier Tribunal "was plainly correct" in rejecting the Applicant's argument that the Tribunal should not merely take into account the cost of the improvements but that it should consider itself bound to reach the conclusion that the appropriate amount of the pitch fee was in the amount of £15 agreed by the other seven occupiers (and proposed at the consultation by the site owner).
- 10. Finally, paragraph 18(1) requires particular regard to expenditure **incurred** (emphasis added) by the site owner since the last pitch fee review date. The word "incurred" in the past tense implies that it is only after the expenditure has actually been incurred that the cost thereof

may be taken into account when the Tribunal determines the new pitch fee.

11. The comments in paragraphs 8-10 above are meant to be helpful. The Tribunal would expect any application under section 4 of the Act by the Applicant to address the points raised in those paragraphs.

Dated the 25nd April 2019

Judge D. Agnew

Appeals

- 1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
- 2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
- 3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.