



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

Case Reference : **CHI/40UC/PHI/2019/0001**

Property : **41 Chiltern Park, Chiltern Trinity,
Bridgewater, Somerset, TA6 3JW**

Applicant : **Paul and Dawn Pickering**

Representative : **Anouska Musson, Tozers, Solicitors,
Exeter**

Respondents : **David and June Iles**

Type of Application: : **Application by a site owner for
determination of new level of pitch fee**

Tribunal Members : **Judge Professor David Clarke
Paul Smith FRICS**

Date of determination : **7 May 2019**

**DETERMINATION
and STATEMENT OF REASONS**

DETERMINATION

The Tribunal determines that the pitch fee for the Property should increase from the review date from £114.17 to £118.05 in accordance with the notice dated 3 August 2018.

STATEMENT OF REASONS

The Application

1. This is an application dated 22 November 2018 made by Mr Paul Edward Pickering and Mrs Dawn Pickering (“the Applicants”), the owners of the site known as Chilton Park, Chilton Trinity, Bridgewater Somerset TA6 3JW (“the Park”) for determination of the new level of pitch fee in respect of the mobile home known as 41 Chilton Park (“the Property”) which is owned by Mr David Iles and Mrs June Iles (“the Respondents”). The pitch numbered 41 is occupied by the Respondents by virtue of a written statement under the Mobile Homes Act 1983 dated 5 February 2010. The agreement was assigned to the Respondents on 29 November 2011.

2. Directions were issued on 9 January 2019 with a direction for determination on the papers but the Respondents objected. The hearing took place on 1 May. The hearing was attended by Mrs Pickering and the Applicants were represented by Ms Musson of Tozers, solicitors; the Respondents were both at the hearing.

The Facts

3. By a notice dated 3 August 2018, the Applicants gave notice to the Respondents that they proposed to review the pitch fee from the review date from £114.17 to £118.05. The notice complied with the Regulations and the proposed increase was in accordance with the specified adjustment by virtue of the Retail Prices Index. The Respondents did not in any way dispute the validity of the notice. It is however worth pointing out that the review date in the written statement is 1 September but the Tribunal was told that since 2014 a review date of 2 September has been used. It was said that none of the occupiers had challenged the change so it was contended that there had been a variation of the review date by conduct of the parties. Whether that contention is sound was not in issue before the Tribunal but Mr Iles did point out that it left him unsure how to calculate a September monthly payment.

4. The Property, which is neat and well maintained, is sited on a relatively recently developed and privately owned park which is still the subject of some future development. The Tribunal inspected the Park on 1 May prior to the hearing and found it to be an exceptionally clean and well maintained site. Both the Applicants as owner and the occupiers clearly take pride in the site and their homes. The Property is in one corner of the Park, at the top of what is primarily a ‘U’ shaped road layout. There is a small garage on the site, used we were told on inspection for storage and with hardstanding big enough

for one vehicle only. Some other pitches do have hardstanding which would easily permit parking for two cars; others, like the Property, are large enough only for one.

5. The Park has one car park for visitors, which is situated on the opposite part of the 'U' road design. The Respondents told us it was some 400 metres away from the Property and, having walked themselves from this visitor's car park, the members of the Tribunal have no reason to doubt that that is about the distance involved. The Applicants did not dispute the contention.

6. The Park Rules were properly promulgated for Chilton Park in 2015. The provisions relevant to this Application relate to vehicles and parking. They are as follows:

"24. You must not park more than two vehicles on the park. Any second vehicle must not be parked anywhere except in the visitor's car park.

25. You must not park on the roads or grass verges.

26. You must not park anywhere except in the one parking space allocate to your home.

27. Other than for delivering goods and services, you must not park or allow parking of commercial vehicles of any sort on the park, including:

* Light Commercial or light goods vehicles as described in the vehicle taxation legislation; and

* Vehicles intended for domestic use but derived from such a commercial vehicle".

The first three of these rules are tolerably clear allowing one vehicle per pitch with a second permitted in the visitor's car park. No parking is allowed on the roads or verges. However, while clearly prohibiting the regular parking of commercial vehicles, the opening words of rule 27 allow for delivery by commercial vehicles of goods and services. However, the rule does not clarify whether delivery can be made to individual homes or whether delivery must be to the visitor's car park. Moreover, rule 27 clearly does not apply to deliveries by private vehicles or to services supplied by persons visiting by private car - unless all such vehicles can deemed to be commercial. But even, as Ms Musson faintly suggested, all vehicles, including cars, which are being used for delivery of goods or services are covered by rule 27, there is still nothing said about where delivery is permitted to be made.

7. Mrs Iles has for some years suffered from poor health. She attended the hearing in a wheelchair. In 2015, she was employing a person to assist her and regularly had visits from care workers. In those circumstances, the Respondents sought advice in September 2015 about who is allowed to park outside their home. Mrs Pickering replied by email:

"Regarding rule 27 where it mentions delivering goods and services this just means when anyone is delivering a parcel etc. they can park for a short time. Obviously when a doctor or nurse or someone delivering a medical service and any emergency service needs to call that is allowed and also if anyone needs to drop off equipment that they need to treat you. But all other visitors need to park in the car park. I hope this clarifies matters for you'.

8. However, on 17 November 2016, over a year later, in a long letter dealing with various matters most of which need not concern the Tribunal, Tozers solicitors, acting for the Applicants, wrote to the Respondent's solicitors, about parking:

"Your clients and any visitors to their home, including those providing services or delivering goods, should not park on the road or on the grass verges. Any visitors, including those providing services or delivering goods, should park only in the visitor's car park".

9. Since that date, and before the Tribunal, that strict position on parking and the interpretation of the Rules has been maintained by the Applicants. Thus at the hearing, it was said that even an ambulance stopping on the road outside a home would be breaching park rules though it was said, of course, that no action would be taken.

Submissions of the Parties

10. It will be convenient to consider the submissions of the Respondents first as the core of the Applicant's submissions are directed to answering the Respondent's arguments. Both in their statement of case, and at the hearing, the Respondents had two arguments. As previously indicated, neither was concerned with the increase in pitch fee in itself. Indeed, Mr Iles candidly admitted that he had no objection to the increase proposed but the Respondent's refusal to agree was designed to bring to a head their unhappiness and distress about the parking rules as they have been interpreted.

11. Primarily, the Respondents contend that in determining the amount of the new pitch fee the Tribunal can pay particular regard to what they contend is a deterioration in the amenity of the site in relation to the parking facilities. They rely on paragraph 18 (1)(aa) of the Mobile Homes Act 1983, as amended, which directs the Tribunal to have particular regard to:

(aa) 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 comes into force (in so far as regard has not previously been had to that deterioration or decrease . . .).

12. The Respondents rightly argue that there is a significant difference between the interpretation of rule 27 in the 2015 e mail from Mrs Pickering and that set out in the 2016 solicitor's letter; and they contend that the difference amounts to a significant decrease in the amenity of the site within the terms of that sub-paragraph. The Respondents, since 2016, told the Tribunal that they have found that cleaners, medical staff such as chiropodists and care helpers have been unwilling to park so far away and walk, sometimes with equipment, to their home. Moreover, when visitors have briefly parked on the road, a neighbour has been particularly unpleasant in confronting such visitors. (In the paperwork, there is detail about a fracas involving the neighbour and a former park manger where the police became involved and issued a caution (not to the Respondents) but this does not directly impact on what the Tribunal has to decide).

13. The second contention of the Respondents, set out in their statement of case, is that they have been subject to unreasonable discrimination regarding the parking rules. Their contention that others have parked on the road for periods but not been prevented from doing so were supported by photographs. More tellingly, their contention that one home owner had requested and been granted permission to park two vehicles on his pitch was accepted by the Applicants although it was said that this had been agreed by a park manager without the authority of the park owner.

14. Ms Musson, for the Applicants, reminded the Tribunal of the provisions of Schedule 1 to the Mobile Homes Act and specifically paragraph 20 (A1):

“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 index . . .”

She rightly contended that that presumption should be applied unless the Tribunal considers it should have regard to any decrease in amenity under paragraph 18 (1)(aa).

15. Her primary contention was that paragraph 18 (1)(aa) is concerned with the amenities of the park or site not a particular pitch; and in support of that contention referred the Tribunal to three decisions: *Matthews v Burrows, re Devon Close Mobile Home Park* (RPT, 8 December 2002), *Vowles Park Ltd v Lane* (RPT, 11 September 2012) and *Smith v Trow, re Severn Banks Park* (F-tT 3 February 2015). She submitted that the Respondent's contentions, even if correct, related to the amenity of the Property, 41 Chiltern Park and not to the site as a whole and so paragraph 18 did not apply. She also submitted that there had been no change in the park rules since they had been made in early 2015 and therefore no reduction or change in the amenity relating to parking. Rather, there had been an erroneous interpretation of those rules in an email and that error had been corrected later by the 2016 letter. Discretion by the owner was not permitted and the rules needed to be applied equally to all.

Application of the Law

16. The relevant law in the Mobile Homes Act 1983, as amended, is in paragraphs 16-20 of Schedule 1 to the Act and the provisions of the Schedule relevant to this decision have been set out above. There is a presumption that the increase should take effect unless the Tribunal can see a decrease in the amenity of the site and it would be unreasonable not to have regard to it. Paragraph 18(1)(aa) does clearly refer to the amenities of the site and the three decisions to which the Tribunal were referred rightly stressed that point and applied it in the cases before them.

17. However, the right to parking of vehicles on the Park is clearly an amenity for the occupiers of the site as a whole. A site with a rule that only one vehicle can be parked has less amenity in that regard than a site, like this Park, which permits two. Moreover, the rules that restrict parking are an amenity as well, since a site which had no such rules and permitted unrestricted parking on the site roads might be considered much less desirable than a site, like Chiltern Park, where the roads are clear with open views and the site roads unobstructed.

18. The issue is whether the 2015 mail from Mrs Pickering to the Respondents changed the rules. For it to be a change in the rules relating to the site as a whole, it needed to be communicated to everyone and there is no evidence that that was the case. If it was not a change for the site as a whole, then the 2016 solicitor's letter was not a further change. Instead, the Tribunal regards the 2015 e mail as an understandable misinterpretation of the rules; and so the 2016 letter was a correction of that misinterpretation and not a withdrawal of the right to park in certain circumstances.

19. There might still have been a decrease in amenity of the site if the parking regulations were being applied inconsistently. There was some evidence to that effect with, on one occasion from the photos supplied, a car parked for some time on the road when visiting a neighbour. It is also very unfortunate that one resident appears to have been given a right to park a second vehicle on a pitch contrary to the rules. However, the Tribunal considers that the evidence before it was not sufficient to be able to say these points were material enough for the Tribunal to have regard to them in determining the pitch fee.

Determination

20. For these reasons, the Tribunal determines that the pitch fee for the Property should increase from the review date from £114.17 to £118.05 in accordance with the notice dated 3 August 2018. There was no significant decrease in the amenity of the site as it related to parking rules to allow the Tribunal to have regard to that in determining the pitch fee.

Closing remarks

21. During the course of the hearing, in response to a question from the Tribunal, Mrs Iles stated that she was a registered disabled person. As a result, Ms Musson for the Applicants recognised that the Equalities Act provisions probably give rise to a duty on the Applicants to make such reasonable adjustments as were necessary to meet that disability. Such matters are beyond the jurisdiction of the Tribunal but it is to be hoped that some adjustments will be possible as a consequence.

22. The Applicants also stated to the Tribunal that it was their intention to construct a second visitor parking area on the side of the Park close to the Respondent's home. The Tribunal recognises that there may be planning issues and procedures to follow but, if these are satisfied, such an area would provide a solution to most of the problems experienced by the Respondents. Moreover, it was evident on inspection that the site is still expanding and additional park homes bases are currently being prepared – indeed, one new home was arriving at the time of the inspection by the Tribunal. Given the current location and size of the visitor's car park, this may give rise in the future to reduction of amenity claims by existing residents unless additional car parking provision is made.

23. It may also be worthwhile at a suitable time to raise the question of whether rule 27 might be clarified and redrafted. A rule in the form of rule 27 which, as currently interpreted, prevents emergency vehicles stopping outside a home, or requires furniture removers to carry heavy deliveries from a visitor's car park some distance away, might be thought to be in need of reconsideration.

Right of Appeal

24. 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.

25. 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.

26. 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.

27. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result that the party who is making the application for permission to appeal is seeking.

Judge Professor David Clarke
7 May 2019