FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/24UJ/PHI/2021/0001/0002
Property	**:**	9 and 108 Church Farm Close, Dibden, Near Hythe, Southampton SO45 5TF
Applicant	**:**	The Berkeley Leisure Group
Representative	**:**	Tozers, solicitors
Respondents	**:**	Ms P J Purnell (9) Mr T B Richards & Miss D McNab-Weir (108)
Representative	**:**	Miss D McNab-Weir
Type of Application	**:**	Determination of new pitch fee – Mobile Homes Act 1983
Tribunal Member(s)	**:**	Judge Tildesley OBE Mr M J F Donaldson FRICS
Date of Hearing	**:**	24 August 2021 Havant Justice Centre
Date of Decision	**:**	10 September 2021

DECISION

Summary of the Decision

1. The Tribunal dismisses the applications to increase the pitch fees for 2021 in respect of 9 and 108 Church Farm Close.

Background

2. On the 12 March 2021 Applicant applied for a determination of a new pitch fee in respect of 9 and 108 Church Farm Close. The Applicant proposed a new pitch fee of £190.79 in place of the current pitch fee of £182.25 for 9 Church Farm Close and £195.78 in place of the current pitch fee of £187.07 for 108 Church Farm Close.

3. Church Farm at Church Farm Close in Dibden near Southampton ("the Park") is a protected site within the meaning of the Mobile Homes Act 1983 ("the 1983 Act"). The licence for the site dates back to 25 May 1990 and gives permission for 83 park homes to be located on the Park. The licence is in the name of Mr J R Berkeley. The Park is owned by the Appellant, which operates 51 residential parks with around 6,000 pitches nationwide.

4. The Respondents are the owners of mobile homes stationed on pitches 9 and 108 Church Farm Close. Ms Purnell is entitled to station her mobile home on pitch 9 by virtue of an agreement under the 1983 Act entered into on 22 February 2014. Mr Richards and Miss McNab Weir are entitled to station their mobile home on pitch 108 by virtue of an agreement under the 1983 Act entered into on 6 June 2013.

5. On 19 November 2020 the Applicant notified the Respondents of the proposed new pitch fee to take effect on 1 January 2021. The Respondents did not agree to the new pitch fee. On 12 March 2021 the Applicant applied to the Tribunal to determine the new pitch fee.

6. On 15 April 2021 the Tribunal issued directions in each case.

7. On 21 April 2021 Miss D McNab-Weir provided written authority to act for Ms PJ Purnell. Miss McNab-Weir asked for (1) the two cases to be heard together (2) permission to serve documents by post and (3) extension of time to submit the case on behalf of the Respondents.

8. The Applicant's solicitors consented to the application and helpfully indicated they would provide a hard copy of the determination bundle to the Respondents as well as an electronic copy to the Tribunal.

9. On 22 April 2021 the Tribunal directed that the two applications would be heard together and that they would be dealt with on the papers without a hearing. The Tribunal also required the parties to exchange their respective statements of case.

10. On 17 June 2021 the Respondents supplied the Applicant with their statement of case.

11. On 6 July 2021 the Applicant applied to withdraw the application on the ground that having read the Respondent's case it was not proportionate to proceed. The Applicant described its application to withdraw as a "commercial decision". The Respondents objected to the withdrawal.

12. On 7 July 2021 the Tribunal issued directions seeking sight of the Respondent's case. The parties made subsequent representations which were considered by the Tribunal.

Determination on the application for withdrawal

13. The Respondents' principal objection to the application for withdrawal was that they wished to argue for a reduction in the pitch fee on the grounds of significant deterioration or decrease in the amenity of the Park and of a reduction and or deterioration of services supplied by the Applicant to the Park. The Applicant in response stated that the effect of the withdrawal was that the Respondents would continue paying the pitch fee at the level fixed in 2019. Further the Applicant asserted that it was undertaking a programme of works which should address the Respondents' concerns.

14. Under rule 22(3) of the Tribunal Procedure Rules 2013 a notice of withdrawal does not take effect unless the Tribunal gives its consent. The Tribunal has a discretion whether to give consent unconditionally or conditionally. The Tribunal's discretion must be exercised in accordance with the overriding objective. The Tribunal does not require the agreement of the other party to the Notice of withdrawal, although it would be a relevant factor in the exercise of its discretion.

15. In the Tribunal's view, the decisive factors in this case were that (1) the Respondents have prepared their case (2) The Applicant's decision to withdraw was based on the Respondents' case, and there had been no offer to settle the case (3) The Respondents would be deprived of their right to argue for a reduction in the pitch fee because there was no provision in the primary and secondary legislation for occupiers to instigate their own review of the pitch fee.

16. The Tribunal, therefore, decided on the 20 July 2021 not to give consent to the withdrawal, and issued further directions to bring the dispute to a hearing on 24 August 2021.

17. The Tribunal indicated at the hearing that it would only consider the question of the pitch fee proposed for 2021. The Tribunal stated that it would not instruct the Applicant to implement the following matters as requested by the Respondents because the Tribunal had no powers to do so within the Tribunal's jurisdiction for determination of a pitch fee

under paragraph 16(b) in Chapter 2 of Part 1 of Schedule 1 to the 1983 Act. The issues were:

i. Correct and permissible procedures employed in ALL future pitch fee reviews.
ii. Correct calculations employed in all future pitch fee reviews and sample documents.
iii. The unconditional reinstatement of the physical amenities of speed bumps and footpath across the green, which were removed without consultation or communication with the residents.
iv. Any resultant reduced pitch fee sum remained until all directives issued by the Tribunal were put in place by the Applicant and comply with the standard and conditions as set out by the Tribunal.

The Hearing on 24 August 2021

18. Mr Neil Darby of Tozers represented the Applicant at the hearing. Mr David Curson, the Operations Director for the Applicant was also in attendance to speak to his witness statement dated 5 August 2021. The Respondents appeared in person. Miss Donna McNab-Weir was accompanied by Mr Thomas Richards, whilst Ms Patricia Purnell had the support of her son, Mr Chris Purnell. Miss McNab-Weir acted as spokesperson for the Respondents.

19. The Tribunal admitted the bundle of documents in evidence together with a separate bundle off photographs. The page numbers of the documents referred to in the decision are in [ ]. Following the inspection the Applicant provided the Tribunal with a copy of the site plan and a quotation for the planned resurfacing of the road and car park.

20. Prior to the hearing the Tribunal inspected the Park in the presence of Mrs Julie Lloyd, Operations Manager for the Applicant, and Miss McNab-Weir.

The Parties' Cases

21. The Applicant conceded that it had made errors with the calculation of the pitch fees for 2021. The Applicant accepted the Respondent's revised calculations which were £184.70 for 9 Church Farm Close and £189.68 for 108 Church Farm Close [6].

22. The Respondents pointed out that they had re-calculated the pitch fees to demonstrate that the Applicant had not done them correctly in accordance with the legislation. The Respondents stated that they were arguing for a lower pitch fee than the recalculated ones. They expected the Tribunal to fix a reasonable pitch fee based on the circumstances of the case.

23. Miss McNab-Weir stated that they were hoping that the Tribunal would arrive at a decision on a fair pitch fee. According to Miss McNab-Weir,

the purposes of the exercise were to enable them to live peaceably in their home, not to be obstructed by the Applicant's staff and for the Applicant to maintain the Park to a reasonable condition. Ms Purnell said that she wanted to enjoy her home without harassment and pay the appropriate pitch fee.

Reasons

24. One of the important objectives of the 1983 Act is to standardise terms on which mobile homes are occupied on protected sites. All agreements to which the 1983 Act applies incorporate standard terms which are implied by the Statute. In the case of protected sites in England the statutory implied terms are those in Chapter 2 of Part 1 of Schedule 1 to the 1983 Act. Paragraphs 16-20 of those terms concern the pitch fee. A review of a pitch fee is governed by three statutory principles: an annual review, no change unless either agreed or determined by the Tribunal, and a presumption of a change in line with the variation in RPI. Paragraph 18 sets out factors to which the Tribunal must have particular regard in determining a pitch fee. The factors include improvements carried out or legislative changes affecting costs, and changes in amenities or services which have not previously been taken into account.

25. Paragraphs 17 and 25A govern the process for reviewing a pitch fee. Paragraph 17(2) requires the Owner to serve a written notice setting out his proposals in respect of the new pitch fee at least 28 days before the review date. Paragraph 17(2A) states that a Notice under sub-paragraph (2) is of no effect unless accompanied by a document which complies with paragraph 25A.

26. Paragraph 25A states that the document accompanying the notice must (1) be in the prescribed form; (2) specify any percentage increase or decrease in the retail prices index calculated in accordance with paragraph 20A(1); (3) explain the effect of paragraph 17; (4) specify the matters to which the amount proposed for the new pitch fee is attributable; (5) refer to the occupier's obligations in paragraph 21(c) to (e) and the owner's obligations in paragraph 22(c) and (d); and (g) refer to the owner's obligations in paragraph 22(e) and (f).

27. The Tribunal makes the following findings of fact in respect of the procedure for notifying the pitch fee in this Application:

    a) On 19 November 2020 the Applicant sent the Respondents a letter notifying them of its proposal to increase the pitch fee to £190.79 and £195.78 for 9 and 108 Church Farm Close. The Notice was accompanied by a document headed "Pitch Fee Review 2021".

    b) The letter stated: "I draw your attention that the form ("Pitch Fee Review 2021") has been amended from the prescribed form in the introduction and on page 2 in section (B) The RPI

adjustment. The relevant sections appear in bold in square brackets. We have made these changes because the RPI adjustment we proposed from 1 January 2020 did not take effect. Our proposed adjustment from 1 January 2021 is therefore calculated as the percentage increase in the Retail Prices Index (RPI) over 24 months".

c) The accompanying document "Pitch Fee Review 2021" read: "This form is as prescribed under paragraphs 25A(1) of Chapter 2 Part 1 of Schedule 1 to the Mobile Homes Act 1983" (This particular form has been amended. This is because the RPI adjustment we proposed from 1 January did not take effect. Our proposed adjustment from 1 January 2021 is therefore calculated as the percentage increase in the Retail Prices Index (RPI) over 24 months by reference to the RPI published for October 2020 which was 3.4 per cent).

d) Section 4 of "The Pitch Fee Review 2021" document for a property contained the calculation for the proposed new pitch fee. The calculation was expressed as a formula of (A)+(B)+(C) – (D) where (A) is the current pitch fee, (B) is the RPI adjustment, (C) is the recoverable costs, and (D) is the relevant deductions. The Applicant accepted that the figures inserted for A, B and D were incorrect for 9 Church Farm Close, and that the figures inserted for B and D were incorrect for 108 Church Farm Close. The Applicant had inserted £182.25 instead of £182.15 for A in respect of 9 Church Farm Close, 3.4 per cent instead of 1.3 per cent for B and £10.49 instead of £13.05 for D in respect of 9 and 108 Church Farm Close.

e) The Applicant's explanations for the errors in the Notice and the accompanying document were (1) Current Pitch Fee for 9 Church Farm Close: a typographical error. (2) RPI: the Applicant had not realised that the Respondents had disputed the 2020 review of pitch fee. The Applicant stated that it was too late to refer the matter to the Tribunal so it intended to recover two years RPI in the 2021 review [74]. (3) Relevant Deductions: The software used by the Applicant was not configured to calculate a review over two years. The software applied the deductions for 2020 rather than those for 2019 [387].

28. The Tribunal concludes on the above facts that the process undertaken by the Applicant to review the pitch fee for 2021 was flawed. The pitch fee specified in the Notice was incorrect. The accompanying document, "The Pitch Fee Review 2021" did not comply with the requirements of paragraph 25A of Schedule 1. The Applicant modified a prescribed form contrary to paragraph 25A(a). The Applicant's calculation of the RPI was not in accordance with paragraph 20(A1) of Schedule 1 which is prescribed by paragraph 25A(b). The Applicant used the wrong figures for those matters to which the new pitch fee was attributable contrary to paragraph 25A(d).

29. The Applicant argued that despite the errors in the pitch fee review form the Tribunal should determine the 2021 pitch fee. The Applicant relied on the fact that the Tribunal had refused consent to its application to withdraw the proceedings. The Applicant referred to the Tribunal's reliance on the overriding objective when it refused consent. The Applicant contended that it was in the interests of justice for the application to proceed because both parties wanted a determination, the evidence had been heard, and the Applicant had accepted the Respondents' revised calculations. Likewise the Respondents asked the Tribunal to proceed but to fix a lower pitch fee than the revised one using the correct figures.

30. The Tribunal's refusal of the application to withdraw was not relevant to the issue of the effect of the Applicant's non-compliance with the statutory procedures for pitch fee review. The Applicant's reason for its application to withdraw the proceedings was on commercial grounds. The Applicant cited in support of its application that it did not want to incur the costs of a response to the Respondents' case and that one of its key employees was unavailable for medical reasons to help in the preparation of the response. The Applicant at no stage raised the possibility that the Notice for the new pitch fee was defective.

31. The Tribunal returns to the question of what is the effect of the Tribunal's finding that the Applicant did not comply with the statutory requirements for the review of the 2021 pitch fees in connection with 9 and 108 Church Farm Close.

32. The current requirements for the conduct of pitch reviews came into force on 26 May 2013 through section 11 of the Mobile Homes Act 2013 which amended the implied terms in chapter 2 of Part 1 of Schedule 1 of the 1983 Act relating to pitch fees. The purpose of these changes was to improve the transparency of pitch fee reviews:

> "This is why we propose legislation should be introduced which requires the site owner to use a statutory notice when proposing a higher pitch fee. That form will require the operator to specify how the new pitch fee has been calculated, including all the charges and what they are for. Home owners will be more able to determine whether the charges are eligible and reasonable. The form will also contain prescribed information about the rights and obligations of the parties. If the form is not used, then the pitch fee review is invalid and not payable".
> Para. 3.74 DCLG, Summary of consultation responses and next steps, October 2012

33. Paragraph 6A of Part 1 of Schedule 1 of the 1983 Act provides that a notice under sub paragraph 6b which proposes an increase of pitch fee is of no effect unless it is accompanied by a document which complies with paragraph 25A of the 1983 Act. The Tribunal has found in this case that the document accompanying the Notice entitled "The Pitch Fee Review 2021" did not comply with paragraph 25A of the 1983 Act. It,

therefore, follows that the Applicant's notice proposing the pitch fee for 2021 dated 19 November was not valid.

34. The next question is whether the Tribunal can proceed to determine the pitch fee 2021 in the "interests of justice" despite the non-compliance with paragraph 25A. The Upper Tribunal in *Shaw's Trailer Park v Mr Sherwood and others* [2015 UKUT 0194 (LC)] decided that it could not. At [32-33] Martin Rodger QC, Deputy President said

> "32. In its recent decision in *Natt v Osman* [2014] EWCA Civ 1520, which concerned the validity of a notice under s. 13 of the Leasehold Reform, Housing and Urban Development Act 1993, the Court of Appeal considered the modern approach to the consequences of noncompliance with the process or procedure laid down by a statute for the exercise or acquisition of some right in relation to property conferred by that statute. The Chancellor, with whom Lord Justice Patten and Lady Justice Gloster agreed, emphasised that the proper approach in such cases (in contrast to cases involving challenges to the decisions of public bodies, or compliance with procedural rules in litigation) is not to ask whether there had been substantial compliance or to consider the particular circumstances of the recipient of the notice or the degree of prejudice which may or may not have been caused by the non-compliance. On the contrary (at [31]):"The Court of Appeal cases show a consistent approach in relation to statutory requirements to serve a notice as part of the process for a private person to acquire or resist the acquisition of property or similar rights conferred by the statute. In none of them has the court adopted the approach of "substantial compliance" as in the first category of cases. The court has interpreted the notice to see whether it actually complies with the strict requirements of the statute; if it does not, then the Court has, as a matter of statutory interpretation, held the notice to be wholly valid or wholly invalid."
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> 33. This stricter approach has the great advantage of certainty in relation to property rights. It seems to me to be applicable to the procedures, statutory in origin, for initiating a review of pitch fees under agreements to which the 1983 Act applies. Perhaps more importantly, paragraph 17(6A) of Chapter 2 of Part 1 of Schedule 1 to the Act is explicit in prescribing that a notice which proposes an increase in the pitch fee "is of no effect unless it is accompanied by a document which complies with paragraph 25A". That express statement of the consequences of non-compliance removes any doubt, and leaves no room for considerations of whether any prejudice has been suffered as a result of the non-compliance. The only relevant question is therefore whether the first review form complied with paragraph 25A".

35. The Tribunal, therefore, decides that the Notice proposing the 2021 pitch fee is invalid and that the Respondents are not liable to pay the proposed pitch fee for 2021.

36. The effects of the Tribunal's decision are that (1) the Tribunal has no jurisdiction to consider the matters put forward by the Respondents which they say would reduce the pitch fee paid by them; (2) the Respondents are to continue paying the pitch fee fixed at the review date of 1 January 2019 until the pitch fee is next reviewed, namely

£182.15 per month for 9 Church Farm Close, and £187.07 per month for 108 Church Farm Close.

37. The Tribunal notes that the Respondents stated in the hearing that they did not agree to the 2019 pitch fee review. The Tribunal understands that both Respondents having been paying the 2019 pitch fee since 1 January 2019 which in the Tribunal's view, amounted to an acceptance of the 2019 pitch fee.

38. The Tribunal has decided not to comment upon the various matters raised by the Respondents regarding the alleged interference of their quiet enjoyment of their home and the alleged deterioration in the condition of the site and in the services provided by the Applicant. These are matters which maybe the subject of further applications and as such are best left to be determined by a subsequent Tribunal.

Decision

39. The Tribunal dismisses the applications to increase the pitch fee for 2021 in respect of 9 and 108 Church Farm Close.

Rights of appeal

1. By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

2. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

3. The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application. The application should be send by email to rpsouthern@gov.uk

4. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

5. The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

6. If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).