



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

Case Reference : **MAN/00DB/PHI/2020/0006**

Property : **92 WILLOW LANE, OAKLAND HILL PARK
HOME ESTATE, FRYSTON LANE
FERRYBRIDGE WF11 8AJ**

Applicant : **PERRY SOUTHALL**

Respondents : **FRANK WRIGHT and IRENE WRIGHT**

Type of Application : **APPLICATION FOR DETERMINATION OF
NEW PITCH FEE: Mobile Homes Act 1983,
Schedule 1, Part 1, Chapter 2, Para 16**

Tribunal Members : **A M Davies, LLB
P Mountain**

Date of Decision : **16 April 2021**

Date of Determination : **28 May 2021**

DECISION

1. The pitch fee payable by the Respondents for the year commencing 1 April 2020 is £139.50 per month.
2. The Respondents shall pay the Applicant the application fee of £100.

REASONS

BACKGROUND

1. The Respondents have owned a mobile home at 92 Willow Lane, Oakland Hill Park Home Estate near Ferrybridge since 2011. Oakland Hill Park Home Estate (“Oakland Hill”) is a protected site as defined by the Mobile Homes Act 1983, as amended (“the 1983 Act”). Since the Respondents moved to Oakland Hill, the park has changed hands more than once: the Applicant bought it in 2017 and now lives on site.
2. The Respondents’ pitch agreement provides that the pitch fee review date is 1 April. When the Applicant sought to increase the Respondents’ pitch fee to £140.15 per month with effect from 1 April 2019, the Respondents together with other Oakland Hill residents did not agree the increase. The Applicant sought a determination from the Tribunal, which was made at a hearing on 3 March 2020. As a result of that decision, the Respondents’ pitch fee payable from 1 April 2019 was reduced to £135.83.
3. On 28 February 2020 the Applicant served a Pitch Fee Review Form requiring the Respondents to pay an increased pitch fee, calculated as the relevant RPI increase over the pitch fee she had claimed for the previous year (£140.15). Following receipt of the Tribunal’s decision of 3 March 2020, the Applicant applied the RPI increase to the lower figure, resulting in £139.50 per month payable from 1 April 2020.
4. The Respondents did not object to recalculation of the pitch fee or to the Applicant’s amendment of the Pitch Fee Review Form dated 28 February 2020. However they failed to pay the proposed increase, and on 3 October 2020 the Applicant applied to the Tribunal for a determination as to the pitch fee the Respondents should pay.
5. In view of the delay in listing the hearing on 3 March 2020 and issuing the Tribunal’s decision of that date, the Applicant was permitted to make the application out of time.

OAKLAND HILL

6. The Tribunal members have previously inspected Oakland Hill. A further inspection of the site was not carried out, the application being dealt with without a hearing on the basis of written representations and documents supplied by the parties.
7. 92 Willow Lane is situated adjacent to the sewage treatment plant that serves Oakland Hill.

EVIDENCE

8. The Tribunal has seen the decision of a differently constituted tribunal dated 31 October 2014 (“the 2014 Decision”), when a determination was made as to the pitch fees payable by the current Respondents and a number of other Oakland Hill residents. The 2014 Decision, while not binding on the Tribunal, is persuasive, and the Tribunal has not seen any reason to depart from its findings of fact.
9. In a letter to the Applicant dated 29 July 2020 the Respondents’ stated that the reason for objecting to the proposed pitch fee increase was “the constant terrible odours in our home and garden or what renders as our garden totally unusable”. In written representations to the Tribunal dated 9 February 2021 the Respondents say “we were objecting to the 2020/21 increase due to the increasing odours from the treatment plant seriously affecting our quality of life and the quiet enjoyment of our pitch.....The noxious smells from the treatment plant are seriously affecting our health and quality of life...”
10. Subject to this objection to the increase, the Respondents accept that the correct RPI percentage increase has been applied by the Applicant to the 2019/2020 pitch fee as determined by the Tribunal.

THE LAW

11. Chapter 2 of Schedule 1 to the Mobile Homes Act 1983 (as amended) (“the Implied Terms”) sets out the terms implied into every contract between the owner and occupier of a pitch on a protected site.
12. Paragraph 16 of the Implied Terms provides that

“the pitch fee can only be changed in accordance with paragraph 17, either –

 - (a) with the agreement of the occupier, or*
 - (b) if the Tribunal considers it reasonable for the pitch fee to be changed and makes an order determining the amount of the new pitch fee.”*
13. Paragraph 17 of the Implied Terms provides for annual reviews on the review date and continues, so far as relevant, as follows:

“(8) If the occupier has not agreed to the proposed pitch fee

 - (a) the owner may apply to the Tribunal 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 an order determining the amount of the new pitch fee is made by the Tribunal*

.....

- (10) *The occupier shall not be treated as being in arrears*
- (b) *where sub-paragraph (8)(b) applies, until the 28th day after the date of the Tribunal’s order determining the amount of the new pitch fee.”*

14. Paragraph 18, so far as relevant, provides

“(1) *When determining the amount of the new pitch fee particular regard shall be had to –*

.....
(b) *any decrease in the amenity of the protected site since the last [pitch fee review] date;*

15. Paragraph 20 of the Implied Terms provides

“(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 since the last review date, unless this would be unreasonable having regard to paragraph 18 (1) above.”*

FINDINGS

16. The presence of the sewage treatment plant adjacent to the Respondents’ home must cause them great distress and serious inconvenience. Their problems are exacerbated by the unfortunate animosity between themselves and the Applicant’s family. None of the efforts made by the Applicant and Environmental Health advisers to reduce the treatment plant problems have been successful. However the 2014 Decision described the smell from the treatment plant as “on occasions unbearable”, and there is no evidence that it has become even worse.
17. It follows that the Tribunal has seen no evidence of deterioration in the amenity of the site since 1 April 2019, as required by paragraph 18(1)(b) of the Implied Terms cited above, to justify retaining the pitch fee at its 2019/2020 level, or reducing it.
18. Since this decision reflects previous decisions of which the Respondents are aware and no additional evidence has been produced, the Respondents are to reimburse the application fee paid by the Applicant.

Tribunal Judge A Davies

16 April 2021