First-tier Tribunal
Property Chamber
(Residential Property)

Case reference	:	**CAM/22UH/PHI/2014/0019**
Site	:	**The Owl, Lippitts Hill, High Beech, Loughton, IG10 4AL**
Park Home addresses	:	**2, 3, 4, 5, 7, 8, 9, 15, 17, 18, 19 and 20 The Owl**
Applicant	:	**Elms Caravan Co. Ltd.**
Represented by	:	**Mr. P. Kelly, solicitor advocate**
Respondents	:	**Mr. and Mrs. P.M. McMillan (2) Mrs. M.F. Kenneally (3) Mr. M. Close (4) Ms. L. Franks (5) Mrs. D. Bindley (7) Mr. J.R. Wickens (8) Ms. L. Stevens (9) Mr. S. Spires (15) Mr. S. Roome (17) Mr. C. And Miss. S. Hill (18) Mr. F. Smith (19) Mr. M. Newbury (20)**
Represented by	:	**Mr. S. Roome, lay representative**
Date of Application	:	**10th July 2014**
Type of application	:	**to determine pitch fees for the addresses**
The Tribunal	:	**Bruce Edgington (lawyer chair) Stephen Moll FRICS Cheryl St Clair MBE BA**
Date and venue of hearing	:	**12th November 2014 Debden House, Debden Green, Loughton, Essex IG10 4AL**

DECISION

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1. The Tribunal determines that the pitch fees for the addresses shall be £162.85 per month. The £1.04 pence per month for the Epping Forest District Council licence fee is also payable by the Respondents and this shall be stated as a separate amount to which RPI shall not be added in future and any future reduction or removal of such fee must be passed on to the occupiers.

Reasons

Introduction

2. The Respondents are the occupiers of the above numbered pitches on the Applicant's park home site at High Beech, Loughton in Essex and they have not agreed to an increase in pitch fees for 2014 in line with the Retail Prices Index ("RPI"). In accordance with the terms of the pitch agreements, the site owner must therefore apply to this Tribunal if it is to obtain an increase in pitch fees. There does not appear to be any dispute that the annual review date for pitch fees is on 14th April.

3. The hearing bundle filed includes copies of letters written to all the Respondents, except Mr. Bindley (7) and Mr. Hill (18), dated 14th March 2014 explaining that following a pitch fee review, as from the 14th April the pitch fees would be increased in line with RPI. The letters enclose the completed Pitch Fee Review Form as prescribed by the relevant regulations. The Applicant says that the relevant RPI figure was 2.8% which seems to accord with the sheet of RPI index increases in the bundle. There appears to be no dispute that similar letters were written to the other two Respondents and that 2.8% is the correct RPI figure.

4. In addition, the Applicant seeks to add to the pitch fee a proportion of the new licence fee imposed by Epping Forest District Council i.e. a twentieth of the £250 fee, namely £1.04 pence per month.

5. As the Respondents did not agree the new pitch fee, this application was then made and the Respondents' written replies set out a number of complaints which can, perhaps, be summarised as follows:-

    - The 3 lamp posts for the whole site are 'woefully inadequate'.
    - The access way is an incline which slopes away sharply so that the paths are difficult to use.
    - The path outside number 9 had a handrail which fell into disrepair 10 years ago and promises to replace it have not been kept.
    - There are no handrails except outside number 15 which is wrong for a site where residents are 'older'.
    - There has been ankle deep flooding in the north-east of the car park for over 20 years.
    - People visiting The Owl public house use the site's car park which is not adequately signposted or made secure.
    - Because there are no speed restrictions, delivery vans, contractors vans etc. drive too fast.
    - Despite signs warning of clamping, no person parking on access roads or the car park has ever been clamped.
    - Residents have leaves and debris blocking downpipes and gutters every year

- There is no adequate ice and snow clearance
- There is no adequate management with 'no care or thought for the residents'.

6. The Respondents also do not see why they should have to pay towards the site licence fee which they argue is just an overhead and should be met by the Applicant.

7. The Applicant has written a response which, in summary, says that any allegation about a reduction in services or amenity must relate to the period after 26th May 2013 and the complaints are about matters which have not changed materially since then. A statement has then been filed by Dr. Claire Zabell on behalf of the Applicant which does actually attempt to answer all of the points made and produces records and invoices for maintenance undertaken. In particular there is an invoice which would suggest that the roads were resurfaced in early 2012.

The Occupation Agreements

8. The copy agreements produced seem to comply in all material respects with those terms imposed by the **Mobile Homes Act 1983** ("the 1983 Act") as it was. As from the 26th May 2013, there were considerable changes to the statutory position brought into effect by the **Mobile Homes Act 2013** ("the 2013 Act") because the terms of all occupation agreements for this sort of park home site changed. If the written agreements do not comply with the 2013 Act, then the Act prevails.

9. These terms are intended to provide protection to park home owners because the site owner is perceived to have the 'upper hand' in an unequal negotiating position. As far as pitch fees are concerned, the provisions are quite straightforward. The initial pitch fee is negotiated between the parties and the site owner can only increase the pitch fee annually with the agreement of the occupier or with the permission of this Tribunal.

10. There can be an annual review of the pitch fee. If there is, notice in a particular form then has to be given to the occupier of the result of that review within certain time constraints set out in the agreement prior to the 'review date'. There is no suggestion that the time limits have not been complied with.

11. As to the pitch fee set out in the agreement, this is a contractual matter. This Tribunal has no power to interfere with what was agreed. Unlike the jurisdiction of this Tribunal to assess fair and open market rents claimed in tenancy agreements, there is no suggestion in either the agreement or the 1983 and 2013 Acts that the Tribunal starts a *de novo* consideration of the open market position with regard to pitch fees either on the same site or other sites.

12. As to the amount of any increase or decrease in the pitch fee, the starting point is in clause 20 of the agreement i.e. a presumption that the pitch fee shall increase or decrease by no more than the RPI as from the last review date or the commencement of the agreement, whichever is the later. The wording of this provision is interesting and has a bearing on this case. Despite what is suggested by the Respondents, it does <u>not</u> say that that the change shall be 'up

to' the level of change in the RPI. It says that a change shall be 'no more than' the change in RPI.

13. This may appear to be a subtle difference, but it is significant because it says, in effect, that any change will be in line with the increase or decrease in the RPI unless there are other factors which come into play.

14. Clause 16 in the agreement says that, upon application, the Tribunal has to determine 2 things. Firstly that a change in the pitch fee is reasonable and, if so, it has to determine the new pitch fee. There is no requirement to find that the level of the pitch fee is reasonable.

15. Under the new provisions imposed by the 2013 Act, there are other matters which are to be taken into account, depending on the circumstances. Clause 18 says that when the pitch fee is determined, regard shall be had to:-

    - 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 26th May 2013 (in so far as regard has not previously been had to that deterioration or decrease) and

    - 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 26th May 2013 (in so far as regard has not previously been had to that reduction or deterioration) and

    - Any direct effect on costs payable by the owner in relation to the maintenance or management of the site of an enactment which has come into force since the last review date.

16. There is a quite separate obligation in clause 22(d) for the site owner to "*maintain in a clean and tidy condition those parts of the protected site, including access ways site boundary fences and trees, which are not the responsibility of any occupier of a mobile home stationed on the protected site*". That clause could be the subject of a declaratory judgment in the county court or this Tribunal (upon separate application having been made) i.e. a determination that there has been a breach. Alternatively, there could be a straightforward claim for damages for breach of contract or specific performance of the contract in the county court, if that is what is sought.

Site Inspection

17. The members of the Tribunal inspected the site in the presence of the representatives of the Applicant and the Respondents together with others who were not specifically identified. It was a reasonably warm late autumn day. It had been raining quite heavily just before the inspection but was just easing off.

18. The overall impression was that this was a pleasant park home site in quite a rural position in Epping Forest. Compared with other park home sites seen by members of the Tribunal, it appeared to be quite a pleasant environment to live in. Examples of the defects alleged in the papers were shown to the members of the Tribunal.

19. It was noted that the road did slope down at the end of the site but this was presumably the position when the park home owners moved in. It was pointed out to the Tribunal that there had been extensive works undertaken at that end to make the paths better and to renew and erect further handrails to the extent that those complaints were now no longer relevant.

20. As to the complaint about lack of speed restrictions, there was now a 10 mph restriction sign at the park entrance. The car park was viewed just after a heavy downpour of rain and although the water came above the drain in question, the car park was not 'flooded' as such.

Hearing

21. Those who attended the hearing were the 2 representatives plus Dr. Zabell from the Applicant and a number of the Respondents. The hearing was held sequentially to a similar application relating to the adjoining park home site known as The Elms. It must be said that these hearings were conducted in a civil and courteous atmosphere which was a credit to everyone there.

22. The Tribunal chair advised the Respondents in particular of the law relating to pitch fees, including the recent changes and that everyone should concentrate on changes to the amenity of the site and services provided since the 26th May 2013. He then took Mr. Roome through the Respondents' complaints as set out above and asked whether they still existed and whether there were any more.

23. He said, in essence, that because of work undertaken by the Applicant since this application had been made, the main complaints now were the output from the lamps at the site as tested by him; the speed restriction sign should be increased in size to make it more obvious; the car park drain still needed attention and the car park surface was deteriorating. He confirmed that the lighting had been there for upwards of 20 years.

24. He gave evidence of having spoken to one of the Applicant's workers a few weeks ago when he had just been working on the car park drain. He had said that he had removed some black 'gunge' out of it and claimed that it had been cleared. Mr. Roome said that the flooding was returning.

25. At the end of the hearing, prior to submissions, another park home owner said that, in his view, there was no adequate preventative programme in place and that there should be 'speed humps' to reduce the speeding problem.

26. On behalf of the Respondent, Mr. Kelly said that considerable work had been undertaken by the Applicant in response to the complaints and that the main thrust of the Respondents' cases were irrelevant because they were about long running complaints existing well before May 2013. He emphasised the records of maintenance work undertaken.

Discussion

27. As to whether a change in the pitch fee is reasonable, the Tribunal is conscious of the wording of clause 20 i.e. that the starting point is a change in accordance with RPI. Where, as in this case, there has been a change in RPI, one is

almost bound to conclude that a change is reasonable. The Tribunal does so find in this case.

28. It is perhaps convenient to pause here for a moment to refer to the judgment of Kitchen, J. in **Charles Simpson Organisation Ltd. v Martin Redshaw & Another** [2010] 2514 (Ch). That was an application for permission to appeal a decision on pitch fees which was refused. One of the issues raised was how the RPI is to be used. The following words from the judgment of the court below were quoted in paragraph 19 with approval:-

> *"....the benchmark for a rise or fall in the pitch fee is the increase/decrease in the RPI since the last (previous) review date. This is a clearly identifiable index whatever may be the factors that are used to arrive at the RPI.....It is...clear that paragraph 20 treats this index as the prescriptive commencement point for the calculation of the new pitch fee"*

29. There does not seem to be any dispute that the formalities imposed by the 1983 Act and the 2013 Act as to the undertaking of a pitch fee review, the service of notices of increase and the time limits for the application to this Tribunal have been complied with. Thus the Tribunal accepts that they have all been complied with.

30. Therefore, the only question for this Tribunal to determine is whether there has been any reduction in the amenity of the site or services to the site since 26th May 2013. What is the definition of an 'amenity'? This is the word used in the statutory form of the agreement. It is interesting to note that the word is singular i.e. it refers to the amenity of the site rather that the amenities or facilities for the site provided by the Applicant.

31. This was a relevant consideration in the **Simpson** case which has been referred to above. Kitchen, J at paragraph 32 of his judgment says *"In my judgment, the word 'amenity' in the phrase 'amenity of the protected site' in paragraph 18(1)(b) 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"*.

32. As to the debris from the trees and the lack of lighting, the Tribunal noted that these conditions had existed for many years. Furthermore, if a park home is bought by someone on a site with little lighting which is in or close to a forest with elderly oak trees, it cannot really be argued that a lack of adequate lighting together with leaves and acorns dropping from trees amount to a reduction in amenity or services. Likewise, in a wooded location with clay soils, hard surfaces and soakaways will always be a challenge.

Conclusions

33. As to questions raised by the Respondents, the Applicant says that there has been no reduction in the amenity of the site or any services since 26th May 2013 and this would appear to be the main point of difference between the parties. The evidence seems to show that the amenity of the site and services

supplied have not changed significantly since May 2013 which means that the basic pitch fee should rise in line with the RPI index.

34. As to the passing on of the cost of the site licence, it has been established that this is a cost of management and can be passed on under the new provisions. The new licence fees have been imposed as a result of other changes in the 2013 Act which have been brought into effect since the last review date.

35. However, the difficulty, as perceived by this Tribunal, is that if one allows this as a straightforward increase in the pitch fee, then it will be increased by the rate of inflation each year. Thus, in 2015, assuming a continuation of and no increase in licence fees, the amount to be recovered will be increased by RPI as part of the existing pitch fee. This would be an artificial and unwarranted increase which was not an increase in the cost of management.

36. Thus the Tribunal will allow the increase of £1.04 per month but as a separate service item so that it does not increase in any subsequent year unless the licence fee increases. In the event of a decrease or such fee ceases, the appropriate adjustment must be made.

Footnote

37. The Tribunal members noted that the hearing bundle was well over 400 pages long in 1 lever arch file. The Applicant's solicitors should note that the then President of the Family Division of the High Court said some years ago that a lever arch file used for a hearing bundle should never hold more than 350 pages. Otherwise, as has happened in this case, it becomes unwieldy and liable to become damaged.

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Bruce Edgington
Regional Judge
14th November 2014