FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/00EW/PHI/2016/0001**
Property	**:**	**Bartington Hall Park,Warrington Road, Bartington, Cheshire CW8 4QU**
Applicant	**:**	**Wyldecrest Parks (Management) Ltd**
Representative	**:**	**Mr D Sunderland**
Respondents	**:**	**See list in Annex**
Representative	**:**	**Mr A Green**
Type of Application	**:**	**Determination of new level of pitch fees – Mobile Homes Act 1983**
Tribunal Members	**:**	**Judge J Holbrook** **Mr I James**
Date and venue of Hearing	**:**	**18 May 2016 at Tribunal Office, 2 Piccadilly Plaza, Manchester, M1 4AH**
Date of Decision	**:**	**20 June 2016**

DECISION

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DECISION

The amount of the new pitch fee payable by each Respondent from 1 February 2016 is set out in the Annex hereto.

REASONS

Background

1. On 2 March 2016 the Tribunal received an application under paragraph 16 of Chapter 2 of Part 1 of Schedule 1 to the Mobile Homes Act 1983 ("the MHA"). The application was made by Wyldecrest Parks (Management) Limited ("the Site Owner"), the owner of a caravan site known as Bartington Hall Park, Warrington Road, Bartington, Cheshire CW8 4QU ("the Site"). The application sought a determination of the amount of the new pitch fees payable from 1 February 2016 by the occupiers of mobile homes stationed on 19 pitches on the Site.

2. The original Respondents to the application were the occupiers of those 19 pitches. However, during the course of the proceedings, the amount of the new pitch fee was agreed by the occupier of one of the pitches and the application against that occupier was withdrawn. The remaining Respondents are listed in the Annex to this decision.

3. There is no dispute that the Site is a "protected site" for the purposes of the MHA, or that the MHA applies to the agreements under which the Respondents occupy their mobile homes.

4. A hearing was held on 18 May 2016 at the Tribunal's hearing centre in Manchester. The Site Owner was represented at the hearing by its director, Mr D Sunderland. The Respondents were represented by one of their number, Mr A Green. Mr Green is the chairman of Bartington Hall Park Residents Association. The Tribunal heard oral submissions from Mr Sunderland and Mr Green. Both parties had also presented written submissions and documentary evidence in support of their respective arguments.

5. The Tribunal did not inspect the Site.

Law

6. Paragraph 17 of Schedule 1 to the MHA provides that the pitch fee payable by an occupier shall be reviewed annually as at the review date. A review is triggered by the site owner giving written notice to the occupier in prescribed form. However, by virtue of paragraph 16, the pitch fee can only be changed with the agreement of the occupier or, if the occupier does not agree, if the appropriate judicial body (which in this case is the Tribunal) considers it reasonable for the pitch fee to be changed and makes an order determining the amount of the new pitch fee.

7. Paragraph 20 of Schedule 1 provides that, 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 for the relevant period.

8. Paragraph 18(1) lists a number of factors to which particular regard shall be had when determining the amount of the new pitch fee. These factors include:

> *"(ba) … any direct effect on the 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;"*

9. In order to permit the Site to be used as a caravan site, a site owner must hold a site licence issued by the relevant local authority (in this case Cheshire West and Chester Council ("CWAC")). Licences are issued under the Caravan Sites and Control of Development Act 1960 ("the 1960 Act"), and section 5A(1) of the 1960 Act provides:

> *"A local authority in England who have issued a site licence in respect of a relevant protected site in their area may require the licence holder to pay an annual fee fixed by the local authority."*

10. Section 10A(2) of the 1960 Act provides that, before charging such a fee, the local authority must prepare and publish a fees policy.

11. Both section 5A and section 10A of the 1960 Act came into force on 1 April 2014 (having been inserted into the 1960 Act by the Mobile Homes Act 2013).

Agreed matters

12. The parties agree that:

- The review date is 1 February 2016.
- The last review date was 1 February 2015.
- The Site Owner has served a pitch fee review notice in the prescribed form on each of the Respondents and subsequently applied to the Tribunal within the permitted time period.
- The relevant increase in the Retail Prices Index is 1.1%.

Issue for determination

13. Each of the pitch fee review notices proposed that the pitch fee would increase by 1.1% plus £2.40 per month (being a proportionate share of the annual site licence fee payable to CWAC). Although the Respondents accept that it is reasonable for their pitch fees to increase by 1.1%, they challenge the Site Owner's right to include a share of the site licence fee in the new pitch fees.

14. The Site Owner asserts that it is entitled to recover the site licence fee by means of an addition to the pitch fees on the current review because the site licence fee is a cost of the kind described in paragraph 18(1)(ba) (see paragraph 8 above). The Respondents argue that, although the site licence fee is a cost which relates to the management of the Site, there are two reasons why it cannot be taken into account for the purposes of the current review:

    - First, a site licence fee has been payable to CWAC in respect of the Site since December 2014. As this predates the last review date, the Site Owner (or its predecessor in title) has foregone the opportunity to include the licence fee in the pitch fees payable by the Respondents given that it did not do so when pitch fees were reviewed in 2015.

    - Second, even if a site licence fee only became payable after the last review date, it is now too late for it to be taken into account for the purposes of the current pitch fees review. This is because section 5A(1) of the 1960 Act came into force before the last review date.

Discussion and findings

15. Dealing with the first ground of objection, we find that the Respondents' argument – whilst understandable given the factual background – is misconceived. It appears that CWAC did indeed demand payment of a site licence fee in 2014 from the previous owner of the Site. The licence fee was duly paid and the owner subsequently asked occupiers of the Site to reimburse her. However, she did not do this as part of the annual pitch fee review process and the occupiers therefore rightly declined to pay.

16. Nevertheless, accepting Mr Sunderland's evidence on this issue, we find as a fact that CWAC had on that occasion purported to charge a site licence fee without having first prepared and published a fees policy in accordance with section 10A(2) of the 1960 Act. CWAC did not in fact publish its fees policy until 28 April 2015 and it follows that it had no power to charge an annual licence fee prior to that date. The previous owner of the Site would have been entitled to refuse to pay the earlier demand, and the fact that she did not do so does not prevent the current Site Owner from seeking to rely on paragraph 18(1)(ba) of Schedule 1 to the MHA.

17. The annual site licence fee has become payable for the first time since the last review date. Mr Sunderland argues that this is sufficient to bring the fee within the description of costs described in paragraph 18(1)(ba).

18. Mr Sunderland argued that the policy underlying paragraph 18(1)(ba) is clear and well understood: having been inserted into the MHA by the Mobile Homes Act 2013 (which also gave local authorities the power to charge an annual site licence fee), the provision was intended to enable a site owner to take account of the licence fee on the first review of pitch fees following the introduction of the licence fee. Once included in pitch fees, the element attributable to the first year's site licence fee would, in subsequent years, be subject to increase or decrease in line with the Retail Prices Index in the same way as the rest of the pitch fee, irrespective of changes in the licence fee actually charged by the local authority. Mr Sunderland said that this interpretation is reflected in commentaries on the statutory framework in the following documents, extracts from which were produced in evidence:

- "Standard Note SN/SP/6438 on the Mobile Homes Act 2013" published by the House of Commons Library and last updated on 1 July 2014; and

- "Briefing Paper number 01080 on Mobile (Park) Homes" dated 4 January 2016, also published by the House of Commons Library.

19. As far as the wording of paragraph 18(1)(ba) itself is concerned, Mr Sunderland argued that, for the purposes of the time limit which operates by reference to the last review date, the relevant point in time is the date on which the "effect on the costs" comes into force, rather than the date on which the relevant "enactment" comes into force. He argued that this meaning is apparent from the absence of punctuation within the provision.

20. We do not agree that, given its ordinary and plain meaning, the provision can properly be interpreted in this way. The provision refers to the "effect on … costs … of an enactment which has come into force since the last review date". The word "enactment" must refer to a statutory provision (such as section 5A(1) of the 1960 Act): it is inapt to refer to a local authority's decision, for example, to charge an annual site licence fee or to the publication of its fees policy. In addition, the association of the reference to an enactment with the concept of something 'coming into force' is a common legislative drafting technique. There is nothing on the face of the provision which supports Mr Sunderland's contention that the provision should effectively be read as referring to the coming into force of the effect of the enactment on the costs in question. However, to what extent (if any) should the Tribunal's interpretation of the provision be influenced by the evidence concerning its alleged purpose and intention?

21. In construing the meaning of a statutory provision, a court or tribunal should not have regard to extraneous sources unless it first concludes that the provision is ambiguous or obscure or unless the literal meaning of the words used give rise to an absurdity. Even then, the material which may legitimately be relied upon in construing the provision is limited to clear statements by a Minister or other promoter of the Bill, together with such other Parliamentary material as is necessary to understand such statements and their effect (*Pepper (Inspector of Taxes) v Hart* [1993] ICR 291 (HL)).

22. In the present circumstances, we do not consider that paragraph 18(1)(ba) is ambiguous or obscure: for the reasons explained above we find that its meaning is plain and unambiguous. It seems to us that it is possible (and perhaps likely) that the provision does not wholly achieve the effect which might have been expected – Mr Sunderland rightly pointed out that the provision may give rise to some anomalies. However, this does not necessarily mean that the literal meaning of the provision gives rise to an absurdity. Nor does it entitle the Tribunal to disregard the provision in the form in which it has been enacted.

23. In any event, we do not consider that the extraneous evidence produced by Mr Sunderland (in the form of the documents mentioned in paragraph 18 above) could properly be relied on for the purpose of construing the provision: not only are these documents in the form of general briefing prepared by the House of Commons Library, as opposed to statements by a Minister or promoter of the Bill, but they were also apparently produced following the enactment of the 2013 Act, not at a time when the Bill was in Parliament. The documents therefore fail to meet the requirements described in *Pepper v Hart*.

Conclusion

24. Section 5A(1) of the 1960 Act came into force on 1 April 2014. This was before the last review date (1 February 2015). It follows that the cost of the annual site licence fee which became payable by the Site Owner to CWAC on or after 28 April 2015 is not a cost to which particular regard must be had when determining the amount of the pitch fees payable from 1 February 2016.

25. We consider that it is reasonable for the pitch fees payable by the Respondents to be changed with effect from 1 February 2016. However, the amount of the increase in those pitch fees shall be limited to 1.1% in line with the relevant increase in the Retail Prices Index. The resulting amounts of the new pitch fees are set out in the Annex hereto.

ANNEX

List of Respondents and Pitch Fees

Pitch	Respondent	Old Pitch Fee	New Pitch Fee (monthly from 1/2/2016)
1	Mr & Mrs Kenyon	£145.73	£147.33
2	Mrs Stead	£148.04	£149.69
4	Mrs Fletcher	£153.86	£155.55
5	Mr & Mrs West	£169.46	£171.32
6	Mr & Mrs A Green	£153.86	£155.55
7	Mr & Mrs J Green	£148.04	£149.67
8	Mr Balmer	£153.86	£155.55
10	Mrs Bottomley	£148.04	£149.67
11	Ms Burgess	£148.04	£149.67
12	Mr Motram	£115.92	£117.20
13	Mr & Mrs Heaton	£153.86	£155.55
14	Mr Lott	£148.04	£149.67
16	Mr & Mrs Lightfoot	£148.04	£149.67
17	Mr & Mrs McGuire	£148.04	£149.67
18	Mr & Mrs Kennington	£115.92	£117.20
19	Mr & Mrs Todd	£148.04	£149.67
20	Mr & Mrs Jump	£152.67	£154.35
21	Mr & Mrs Sefton	£153.86	£155.55