



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

Case Reference : **BIR/37UC/PHI/2017/0001**

Property : **12 St. Oswalds Park, Dunham-on-Trent, Newark, Nottinghamshire, NG22 0UB**

Applicant : **Mr J Holland t/a J&J Holland Park Homes**

Representative : **Tubervilles Solicitors**

Respondent : **Mr and Mrs Richards**

Type of Application : **Mobile Homes Act 1983
Determination of Pitch Fee**

Tribunal Members : **Judge S McClure
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Date of Decision : **14 June 2017**

DECISION

The Background

1. The Applicant is the owner of St Oswald's Park, a protected site within the meaning of the Mobile Homes Act 1983, as amended (the Site).
2. The Respondents are the owners and occupiers of a residential park home stationed on pitch 12 on St Oswald's Park (the Park Home).
3. On 30 November 2016 the Applicant served a Pitch Fee Review Form proposing a new pitch fee of £129.51 per month in place of the current pitch fee of £126.98 per month. The new pitch fee would take effect from 1 January 2017.
4. On 2 January 2017 the Respondents notified the Applicant in writing that they did not agree to pay the increased pitch fee. They gave 2 reasons for this. Firstly, the cumulative effect of the annual increases in pitch fee since their purchase of the Park Home in November 2011 from £110.46 to the proposed new fee of £129.51 is too high for pitch 12. Secondly, the back garden path is starting to drop and divide, and is dangerous.
5. On 9 February 2017 the Applicant submitted his application to the Tribunal for determination of a new level of pitch fee.

Inspection

6. On 5 May 2017 the Tribunal conducted an inspection of the Site. In attendance were Mr Holland and his son, and Mr and Mrs Richards.
7. The Site is relatively small, with a licence for 45 pitches, 43 of which are currently occupied. The Site was clean and tidy, and the common areas, such as the road, appeared to be satisfactorily maintained.
8. To the rear of the Respondents' Park Home, and included within the demise of pitch 12, is a paved area used by the Respondents mainly as a patio/seating area (the Patio). The Patio is paved with paving slabs. In some areas the slabs are uneven, and gaps have appeared between them. The Respondents' have provided photographs of the Patio at page 38 of their bundle.
9. There are steps down from the Patio to a narrow strip of earth, used by the Respondents for growing produce. This area is not part of the demise of Pitch 12, and is the retained land of the Applicant. It has been utilised by the Respondents for growing produce. This area is referred to by the parties as the ditch.

Submissions

10. The Applicant's submissions are set out in a witness statement dated 2 March 2017, and exhibits. The Respondents' submissions are set out in an undated statement, submitted to the Tribunal on 4 April 2017.
11. Neither party requested an oral hearing, nor did the Tribunal find that an oral hearing was necessary. The Tribunal came to its decision on the findings from the inspection and on the basis of the written submissions of the parties.

The law

The Mobile Homes Act 1983

Schedule 1

18 (1) When determining the amount of the new pitch fee particular regard shall be had to—

(a) -

[(aa) in the case of a protected site in England, 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 came into force ...

20 [(A1) In the case of a protected site in England, 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 calculated by reference only to—

(a) the latest index, and

(b) the index published for the month which was 12 months before that to which the latest index relates.

(A2) In sub-paragraph (A1), “the latest index”—

(a) in a case where the owner serves a notice under paragraph 17(2), means the last index published before the day on which that notice is served;

Determinations

RPI increase

12. Paragraphs 20(A1)(a)&(b) and 20(A2)(a) provide that, for a notice of pitch fee review served in November 2016, the relevant RPI months are October 2015 and October 2016.
13. The RPI for October 2015 is 259.5, and for October 2016 264.8. The 5.3 point difference between the 2 figures equates to a % increase of 2.04%, rounded down by the Applicant to 2%. 2% of £126.98 is £2.5396, rounded down by the Applicant to £2.53.
14. The Respondents' calculation is incorrect.

Amenity

15. Paragraph 20 provides that there is a presumption that the pitch fee will increase or decrease in accordance with the relevant RPI figures, in this case a 2% increase. However, this is only a starting point, and this may be departed from if it will produce an unreasonable result.
16. The Applicant is correct in his submission that the Respondents' objections relate only to 1 of the 4 paragraph 18 factors, that of whether there has been any decrease in amenity of the site or any adjoining land. The Applicant says there has been no such decrease, and the Respondents say there has been.
17. The Act refers to the amenity of the site. The Act does not define amenity, however the term is in common usage. Amenity refers to those matters which enhance the agreeability and pleasantness of the site. The Patio area of pitch 12 is not an amenity. Any problems relating to the Patio are not matters to which the Tribunal must have particular regard.

Reasonableness

18. The factors set out at paragraph 18 are not the only factors to be taken into consideration, but are simply matters to which the Tribunal must have particular regard. The statutory presumption for the RPI increase should be waived if it would be unreasonable to apply it.
19. The Tribunal finds that, whether or not the Patio is an amenity, it would not be reasonable for the pitch fee increase of 2% to be reduced on account of the problems alleged with the Patio because they are

insufficient to affect the general use and enjoyment of the space in question.

20. The other matters complained of by the Respondents, set out in full in their statement, are not factors that mean the Tribunal should depart from the statutory presumption of a 2% increase. They are not factors that affect the Respondents' use and enjoyment of the site and their plot to such a degree that there should be a departure from the statutory presumption.
21. In summary, the Tribunal finds that the statutory presumption set out in paragraph 20 applies, and the pitch fee is to increase by 2%.

Decision

22. The pitch fee is to be increased to £129.51 per month in place of the current pitch fee of £126.98 per month, from the effective date of 1 January 2017.

In reaching their determination the Tribunal has had regard to the evidence and submissions of the parties, the relevant law and their own knowledge and experience as an expert Tribunal but not any special or secret knowledge.

If either party is dissatisfied with this decision they may apply for permission to appeal to the Upper Tribunal (Lands Chamber). Prior to making such an appeal, an application must be made, in writing, to this Tribunal for permission to appeal. Any such application must be made within 28 days of the issue of this decision which is given below (regulation 52 (2) of The Tribunal Procedure (First-Tier Tribunal) (Property Chamber) Rule 2013) stating the grounds upon which it is intended to rely on in the appeal.

Name: Judge S McClure

Date: 14 June 2017