



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

**Case Reference** : BIR/41UG/PHI/2017/0024

**Property** : 36 Lodgefield Park, Baswich Lane, Stafford, ST17 0YE

**Applicant** : Mr A. Hartley t/a Hartley Park Homes

**Representative** : Mr A. Hartley

**Respondent** : Ms D. Jennings

**Representative** : Mrs A. Barradine

**Type of Application** : Determination of new pitch fee pursuant to paragraph 16, Chapter 2, Part 1, Schedule 1 of the Mobile Homes Act 1983 (as amended)

**Tribunal Members** : Mr I.D. Humphries B.Sc.(Est.Man.) FRICS  
Mr P.J. Hawksworth

**Date and Venue of Hearing** : 13<sup>th</sup> October 2017 at the First-tier Tribunal (Property Chamber), City Centre Tower, 5-7 Hill St., Birmingham, B5 4UU

**Date of Decision** : 26<sup>th</sup> October 2017

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**DECISION**

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## Introduction

- 1 This is an application by the owner of Lodgefield Park Home site for determination of the pitch fee payable for Pitch 36 Lodgefield Park, Baswich Lane, Stafford, ST17 0YE.
- 2 The site owner, Mr Hartley, served a Pitch Fee Review Form on the occupier, Ms Jennings, dated 27<sup>th</sup> February 2017 proposing an increase in the pitch fee from £1,684.82 p.a. to £1,728.62 p.a. with effect from 1<sup>st</sup> April 2017.
- 3 The Notice was in accordance with paragraph 25A(1), Chapter 2, Part 1, Schedule 1 to the Mobile Homes Act 1983 ('the Act') and the increase calculated in accordance with the increase in retail price index over the relevant period.
- 4 Ms Jennings disputed the increase and Mr Hartley applied to the Tribunal on 4<sup>th</sup> July 2017 for the amount to be determined by the Tribunal.

## The Law

- 5 Section 2 of the Act provides that the terms of Part 1 of Schedule 1 to the Act shall be implied and shall have effect notwithstanding the express terms of the Pitch Agreement. Paragraphs 16 to 20 of Chapter 2 of Schedule 1 to the Act were introduced by the Mobile Homes Act 1983 (Amendment of Schedule 1) (England) Order 2006. The relevant provisions of the legislation that apply to this decision are as follows:

- 6 Paragraph 16 provides:

*The pitch fee can only be changed in accordance with paragraph 17, either—*

- (a) *with the agreement of the occupier, or*
- (b) *if the court, on the application of the owner or the occupier, considers it reasonable for the pitch fee to be changed and makes an order determining the amount of the new pitch fee.*

- 7 Paragraph 17 provides:

- (1) *The pitch fee shall be reviewed annually as at the review date.*
- (2) *At least 28 clear days before the review date the owner shall serve on the occupier a written notice setting out his proposals in respect of the new pitch fee.*
- (2A) *In the case of a protected site in England, a notice under subparagraph (2) which proposes an increase in the pitch fee is of no effect unless it is accompanied by a document which complies with paragraph 25A.*
- (3) *If the occupier agrees to the proposed new pitch fee, it shall be payable as from the review date.*
- (4) *If the occupier does not agree to the proposed new pitch fee—*
  - (a) *the owner or (in the case of a protected site in England) the occupier may apply to the court 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 the new pitch fee is agreed by the occupier or an order determining the amount of the new pitch fee is made by the court under paragraph 16(b); and*

- (c) *the new pitch fee shall be payable as from the review date but the occupier shall not be treated as being in arrears until the 28<sup>th</sup> day after the date on which the new pitch fee is agreed or, as the case may be, the 28<sup>th</sup> day after the date of the court order determining the amount of the new pitch fee.*
- (5) *An application under sub-paragraph (4)(a) may be made at any time after the end of the period of 28 days beginning with the review date.*
- (6) *Sub-paragraphs (7) to (10) apply if the owner—*
  - (a) *has not served the notice required by sub-paragraph (2) by the time by which it was required to be served, but*
  - (b) *at any time thereafter serves on the occupier a written notice setting out his proposals in respect of a new pitch fee.*
- (6A) *In the case of a protected site in England, a notice under subparagraph (6)(b) which proposes an increase in the pitch fee is of no effect unless it is accompanied by a document which complies with paragraph 25A.*
- (7) *If (at any time) the occupier agrees to the proposed pitch fee, it shall be payable as from the 28<sup>th</sup> day after the date on which the owner serves the notice under sub-paragraph (6)(b).*
- (8) *If the occupier has not agreed to the proposed pitch fee—*
  - (a) *the owner or (in the case of a protected site in England) the occupier may apply to the court 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 the new pitch fee is agreed by the occupier or an order determining the amount of the new pitch fee is made by the court under paragraph 16(b); and*
  - (c) *if the court makes such an order, the new pitch fee shall be payable as from the 28<sup>th</sup> day after the date on which the owner serves the notice under sub-paragraph (6)(b).*
- (9) *An application under sub-paragraph (8) may be made at any time after the end of the period of 56 days beginning with date on which the owner serves the notice under sub-paragraph (6)(b), but in the case of an application in relation to a protected site in England no later than four months after the date on which the owner serves that notice.*
- (9A) *A tribunal may permit an application under sub paragraph (4)(a) or (8)(a) in relation to a protected site in England to be made outside the time limit specified in sub-paragraph (5) (in the case of an application under sub-paragraph (4)(a)) or in the case of sub-paragraph (9) (in the case of an application under subparagraph (8)(a)) if it is satisfied that, in all the circumstances, there are good reasons for the failure to apply within the applicable time limit and for any delay since then in applying for permission to make the application out of time.*
- (10) *The occupier shall not be treated as being in arrears—*
  - (a) *where sub-paragraph (7) applies, until the 28<sup>th</sup> day after the date on which the new pitch fee is agreed; or*
  - (b) *where sub-paragraph (8)(b) applies, until the 28<sup>th</sup> day after the date on which the new pitch fee is agreed or, as the case may be, the 28<sup>th</sup> day after the date of the court order determining the amount of the new pitch fee.*

- (11) *Sub-paragraph (12) applies if a tribunal, on the application of the occupier of a pitch in England, is satisfied that—*
- (a) *a notice under sub-paragraph (2) or (6)(b) was of no effect as a result of sub-paragraph (2A) or (6A), but*
  - (b) *the occupier nonetheless paid the owner the pitch fee proposed in the notice.*
- (12) *The tribunal may order the owner to pay the occupier, within the period of 21 days beginning with the date of the order, the difference between—*
- (a) *the amount which the occupier was required to pay the owner for the period in question, and*
  - (b) *the amount which the occupier has paid the owner for that period.*

8 Paragraph 18 provides:

- (1) *When determining the amount of the new pitch fee particular regard must be had to –*
- (a) *any sums expended by the owner since the last review date on improvements-*
    - (i) *which are for the benefit of the occupiers of mobile homes on the protected site;*
    - (ii) *which were the subject of consultation in accordance with paragraphs 22(f) and (g); and*
    - (iii) *to which a majority of the occupiers have not disagreed in writing or which, in the case of such disagreement, the court [tribunal] on the application of the owner, has ordered should be taken into account when determining the amount of the new pitch fee;*
  - (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 [26<sup>th</sup> May 2013] (in so far as regard has not previously been had to that deterioration or decrease for the purposes of this subparagraph);*  
...

9 Paragraph 20 provides:

- (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 increase or decrease in the retail price index calculated by reference 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.*

## **Site Inspection**

- 10 The Tribunal inspected the site before the Hearing with Mr Hartley, his Site Manager Mrs Whittingham and Mr D.Broadhead B.Sc.(Hons.) MCMi MRICS representing the site owner, and Ms Jennings the occupier with her representative Mrs Barradine.
- 11 Lodgefield Park is located on the outskirts of Stafford to the south of the Staffordsire & Worcestershire Canal. It occupies an 11 acre site with 120 mobile homes and a site office. The subject plot No.36 is on the north side of the site and the mobile home occupies a fairly level plot near the top of a bank sloping down to the canal.

- 12 The parties showed the Tribunal cracks in the brick skirt below the home and both parties referred to a crack or cracks in the slab, but there was insufficient access for the Tribunal to see the cracks on this inspection.

## **Submissions**

### Applicant

- 13 Mr Hartley sent written submissions and gave oral evidence at the Hearing. He said Ms Jennings had not agreed the increase because there was a dispute about a crack in the concrete slab supporting the mobile home and on this aspect, he had taken advice from a firm of Chartered Surveyors, DCB Professional Services Ltd. of Telford, whose report was attached to the submission.
- 14 However, in Mr Hartley's opinion, this was a separate issue from the pitch fee. The implied terms contained a presumption in favour of increase in paragraph 20 and there had been no reduction in the condition or amenity of the site or any adjoining land as envisaged by paragraph 18(1)(aa), to displace the presumption. Accordingly he asked the Tribunal to confirm the proposed increase.
- 15 Although not relevant to this Hearing, he submitted that Ms Jennings' remedy regarding the cracked slab lay in paragraph 22 of the implied terms. However, before any action could be taken (if required), it would be necessary for both his and Ms Jennings' advisers to monitor the cracks over a suitable period.

### Respondent

- 16 Ms Jennings referred to the cracks and had obtained reports from a firm of Structural Engineers, David Preston Associates of Bridgnorth and also a chassis refurbishment company, Park Home Chassis Services Ltd. and Mrs Barradine of Insulated Homes who represented her at the Hearing. There was general discussion at the Hearing during which both Mrs Barradine and Ms Jennings agreed with Mr Hartley and the Tribunal that the cracks in the slab related to the 'pitch', rather than the 'site'.
- 17 This was the only ground of objection to the proposed increase that is to say, the Respondent did **not** allege deterioration in the condition or decrease in amenities at the site or any adjoining land occupied or controlled by the site owner. Her issues were entirely related to the pitch itself.

## **Decision**

- 18 The Tribunal is unable to comment on the cracks because it has insufficient evidence from the parties or any professional advisers they may wish to consult and they were not the subject of the application. It was agreed by the parties that any cracking in the slab related to the specific pitch rather than the site as whole, and there was no reduction in the condition or amenity of the site as envisaged by paragraph 18(1)(aa) of the implied terms to displace the presumption in favour of increase in paragraph 20.
- 19 If an application under Section 4 of the Act were made to determine the question of whether the presence of the crack placed the site owner in breach of the obligation to maintain the pitch (see Schedule 1 Part 1 Chapter 2 Implied Term 22(c) of the Act), the Tribunal would be likely to have jurisdiction to determine the question but in determining solely an RPI pitch fee increase issue, the Act requires the Tribunal to focus not on the pitch but on the condition of the site itself or amenities on the site or adjoining land occupied or controlled by the site

owner. As stated above, the Respondent and her representative specifically confirmed to the Tribunal at the Hearing when this point was raised, that there had been no such deterioration or decrease.

- 20 Thus as there was no evidence before it whatsoever, as to a deterioration in the condition of or decrease in amenities of the site or any adjoining land occupied or controlled by the site owner since the last pitch fee review, the Tribunal finds in favour of the Applicant and determines the amount payable from 1<sup>st</sup> April 2017 to be the amount proposed on the Pitch Fee Review Form dated 27<sup>th</sup> February 2017 of £1,728.62 per annum.

I.D. Humphries B.Sc.(Est.Man.) FRICS  
Chairman

Date: 26<sup>th</sup> October 2017

### **Appeal to the Upper Tribunal**

Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal and the result sought by the party making the application.