



**First-tier Tribunal
Property Chamber
(Residential Property)**

Case reference : CAM/12UC/PHI/2019/0019

Park Home Address : 9 The Drove Bedwell Park, Bedwell Hey Lane,
Witchford, Ely CB6 2JS
: 17 The Drove Bedwell Park, Bedwell Hey Lane,
Witchford, Ely CB6 2JS
: 30 The Drove Bedwell Park, Bedwell Hey Lane,
Witchford, Ely CB6 2JS

Applicant : Tingdene Parks and Tingdene Developments
Ltd

Representative : Ryan and Frost Solicitors – Mr Ryan

Respondent : Mrs Richards (9)
: Mrs Hazelwood (17)
: Mr Bottomley (30)

Date of Application : 6 June 2019 (received 20 June 2019)

Type of application : to determine the new pitch fee -
paragraph 18 of Schedule 1 to the
Mobile Homes Act 1983, as amended (“the
Act”)

The Tribunal : Mary Hardman FRICS IRRV(Hons)
Judge Wayte

DECISION

Crown Copyright ©

1. The Tribunal determines that the new pitch fee for the pitch known as 9 The Drove Bedwell Park, Bedwell Hey Lane, Witchford, Ely as from 1 April 2019, is **£1869.78 per annum**, for 17 The Drove Bedwell Park, Bedwell Hey Lane, Witchford, Ely as from 1 April 2019, is **£1844.88 per annum** and for 30 The Drove Bedwell Park, Bedwell Hey Lane, Witchford, Ely as from 1 April 2019 is **£1844.88 per annum**.

Reasons

Background

2. The Respondents are the occupier of park homes at the Park Home Addresses. They have not agreed to an increase in pitch fees for 2019. The site owner must

therefore apply to this Tribunal if it is to obtain an increase in pitch fee. The annual review date for pitch fees is 1 April 2019 as set out in the occupation agreement.

3. On the 29 January 2019 notice of the proposed new pitch fee, in the prescribed form, was served on the respondents, explaining that as from the 1 April 2019 the pitch fee would be increased by 2.7% in line with RPI for December 2018, in accordance with the Office for National Statistics RPI All Items table.
4. An application dated 6 June 2019 but received on 20 June 2019 was made to the Tribunal for determination of a new level of pitch fee. The Tribunal issued a directions Order on 10 July 2019 saying that the Tribunal proposed to deal with this application by considering the papers only, without a hearing, and would do so on or after 13 September 2019 unless any party requested an oral hearing which would then be arranged.
5. No such request was received. However the Tribunal did inspect the pitches during a visit to Bedwell Park in respect of other appeals where a hearing and/or inspection had been requested.

The Occupation Agreement

6. A copy of the original agreements has been produced by the Applicant in respect of 9 The Drove and 17 The Drove . The only material amendments since have been to give this Tribunal, rather than the County Court, jurisdiction to deal with the approval of pitch fees if agreement cannot be reached.
7. The original tenancy agreement in respect of 9 The Drove was between Tingdene Developments Ltd and Mrs G Herridge and Mr D M Hines and commenced on 19 April 2000. It was transferred by way of assignment to Mr and Mrs Richards on 7 September 2007
8. The original tenancy agreement in respect of 17 The Drove was between Tingdene Developments Ltd and Mr and Mrs M Harris and commenced on 6 October 2000. It was transferred by way of assignment to Mrs Hazelwood in December 2003
9. The original tenancy agreement in respect of 30 The Drove was not supplied. However, the papers supplied indicate that it was transferred by way of assignment to Mr Bottomley on 26 November 2014.

The Law

10. Paragraph 20 of the Implied Terms set out in Chapter 2, Part 1 of Schedule 1 to the Mobile Homes Act 1983 states that – unless it would be unreasonable to do so – it is presumed that the pitch fee will be adjusted annually by reference to the percentage increase or decrease in the Retail Prices Index based on the

difference between the latest index and that published for the month 12 months prior to the month to which the index relates.

11. The site owner must give the occupier written notice accompanied by a prescribed Pitch Fee Review Form. The Tribunal notes that the prescribed forms have been used in each case and the relevant time limits have been complied with.
12. Paragraph 18 (1) Chapter 2, Part 1 of Schedule 1 to the Mobile Homes Act 1983 of requires that

When determining the amount of the new pitch fee particular regard shall 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 paragraph 22(e) and (f) below; and*
 - (iii) to which a majority of the occupiers have not disagreed in writing or which, in the case of such disagreement, the appropriate judicial body, 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 (in so far as regard has not previously been had to that deterioration or decrease for the purposes of this subparagraph);

(ab) in the case of a protected site in England, 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 the date on which this paragraph came into force (in so far as regard has not previously been had to that reduction or deterioration for the purposes of this subparagraph);

13. Upon application, the Tribunal must determine two things. Firstly, that a change in the pitch fee is reasonable and, if so, it must determine the new pitch fee. +

Site Inspection

14. The site was inspected on 24 September 2019 by Mrs Hardman and Judge Wayte. They were accompanied by Mr Pearson, Operations Manager and Mr Ryan, Solicitor for Tingdene Developments . They also took the opportunity to view the sites of a number of other mobile homes which were the subject of applications to determine pitch fees.
15. The site consists of around 86 residential mobile homes in the original phase with an extension to the rear of the site for another 23 pitches. 7 of these are complete. The second phase of a further 16 pitches is still underway and is adjacent to the first phase.

16. The site is situated on the edge of the village of Witchford and around 3 miles from the centre of Ely
17. The site is occupied mainly by modern style mobile homes. The Park was well laid out with a site office towards the front of the site displaying site information both in the window and internally. The tribunal were advised that there is also use of an 'A' board to bring to residents notice any forthcoming works or items of note.
18. The roads to the main site were mainly hard surfaced although somewhat uneven in places with some potholes.
19. The ongoing development is visible from both 17 and 30 The Drove and the noise of the building work was clearly discernible from all three properties but particularly from 17 and 30 which the tribunal estimated were situated around 60m from the new development with 9 The Drove around 120m away.
20. To the rear of 17 and 30 The Drove the Tribunal observed Grunty Fen Catchwater Drain which is referred to in their submissions and the proximity to the rear of these two pitches.
21. The tribunal also observed unevenness in the paving slabs in the back garden of number 17 and number 30.

The Respondents' case

22. The Tribunal directions required the Respondents to file a response to the application, setting out why agreement cannot be reached on the suggested increase of pitch fee in accordance with the RPI.
23. In her statement of case Mrs Richards, 9 The Drove, stated that she did not agree that the pitch fee should be increased as they had been subjected to noise and dust from the first phase of the development over the last two years with no explanation from Tingdene as to what was going on nor any apology for the disruption. There had been significant amounts of construction traffic driving down The Drove creating noise and dust and creating foul exhaust fumes. She felt it was unreasonable for the pitch fee to be increased given the changes to the park over the last year.
24. In her statement Mrs Hazelwood, who is also the Secretary to Bedwell Park Residents Association, stated that the development of the site had created noise dust and contractors constantly moving heavy plant machinery about, sometimes from very early in the morning and on Sundays.
25. In addition, the pitch was adjacent to Grunty Fen Catchwater Drain and erosion of the bank is causing the paving slabs to move and the garden to slope towards the drain. She has been informed that Tingdene own the land and are responsible for any remedial work but they will not meet with those affected to discuss the problem. She is very concerned about the potential impact both on the saleability of the property.

26. As part of her submission she included some letters between the Residents Association and Tingdene in 2016 in respect of a number of issues with regards to both the development and the bank erosion. Not all of the chain of correspondence is included so it is not absolutely clear what all the issues were.
27. However, a more recent letter from Cambridge County Council in August 2018 is also included which refers to the planning application on The Lanterns. This states that the application was at the time subject to a holding objection whilst surface water drainage design queries and drainage matters were resolved.
28. The County Council were to write to Tingdene Parks referring them to their riparian responsibilities to maintain and stabilise the banks of Grunty Fen Drain and pursuing them for action to be taken regarding the instability of the banks and the associated flood risks.
29. Mrs Hazelwood did not believe that the works on the park were of benefit to existing residents, rather the contrary given the replacement of wildlife friendly gardens with sleeper, panel fencing trellis and artificial turf and the likely increase in traffic created by the new development.
30. In his submission Mr Bottomley, 30 The Drove, said that over the last 18 months there had been continual construction of the Phase 1 of the development with construction of 4 new bases and the siting of 3 new units with associated construction traffic, dust and pollution. Development of a new greenfield site at the rear of his home had also meant noise early in the morning and noise dust and pollution from heavy plant machinery and lack of privacy.
31. His home was also adjacent to Grunty Fen Catchwater Drain which meant that his garden was subject to landslip. This had affected the concrete slab below his shed and his decking, flower bed lawn and patio slabs. Tingdene were aware but nothing had been done to remedy matters
32. In addition, he believed that in developing an adjacent pitch Tingdene had removed a strip of land from his pitch. He did not accept that he had agreed to this and as a result it was difficult to manoeuvre his wheelie bins from their storage area.

The Applicant's case

33. The Applicant submitted a statement of case dated 14 August 2019 and a witness statement and exhibits dated 30 August 2019.
34. The Applicant was seeking a determination that the pitch fee for 9 The Drove, 17 The Drove and 30 The Drove should be increased by RPI as set out in Paragraph 20 of the Implied Terms set out in Chapter 2, Part 1 of Schedule 1 to the Mobile Homes Act 1983.

35. The park was an established park but over the last three years the Applicant company had been developing the park by adding 23 new pitches. The first phase of 7 (1-7 The Lanterns) were complete and the remaining 16 under construction.
36. In respect of all properties he acknowledged that they have experienced a small degree of inconvenience but that they were too far from The Lanterns (Phase 1) development for the inconvenience experienced, if any, to amount to a decrease in the amenity of the park. He also acknowledged that the replacement of the base next to number 9 may have caused some disturbance for a short period of time.
37. In respect of the claim by Mr Bottomley – 30 The Drove, that his plot was reduced in size it is the company's position that this was agreed with him and that the complaint relates to his pitch and not the park.

Discussions and Determination

38. The Tribunal has considered the submissions filed by all parties.
39. For the purposes of the 1983 Act, the Tribunal must consider whether there has been any deterioration/decrease in the condition or amenity of the park since the last review date which is 1 April 2019.
40. If it did find that there has been any deterioration/decrease in the condition or amenity of the park, then whether it would be unreasonable for the pitch fees to be increased on the basis of the increase in the retail prices index.
41. In respect 17 and 30 The Drove, the pitch boundaries are close to the Grunty Fen Catchwater Drain. There may be some movement and this is something which the occupiers will want to keep under review but is not something which has happened in the last year.
42. It would appear from the documentation that maintenance of the area around the drain is the responsibility of Tingdene and correspondence from the County Council would suggest that they were to pursue them to take action regarding the instability of the banks and the associated flood risks. The tribunal would urge Tingdene to take the action needed to stabilise the banks and reduce the flood risk
43. The tribunal accepts that it is necessary on a mobile home park to remove and re-site mobile homes from time to time and to re-lay bases on mobile home pitches. The tribunal did not believe that this activity had been excessive nor had it led to any significant detriment to the amenity of the site.
44. The tribunal does not accept the evidence put forward by Mr Ryan that they have only experienced a small amount of inconvenience. It prefers the evidence of the respondents that there has been an increase in noise and dust due to the significant amount of construction work going on to expand and develop the site - and that in respect of 17 and 30 they are able to both see and hear ongoing construction work from their pitches.

45. On that basis, the Tribunal finds that there has been sufficient disruption to cause a deterioration in the condition and a decrease in the amenity of the site.
46. The Tribunal finds that this is more significant in respect of 17 and 30 The Drove and finds that there should be no increase to the pitch fee for either property and that the pitch fee in respect of both should remain at **£1844.88 per annum** with effect from 1 April 2019.
47. In respect of 9, The Drove the Tribunal finds that the impact here is less severe and that this should be offset against the presumption of a rise on the basis of RPI and that the increase to be applied to the previous pitch fee should be only half the relevant RPI figure – which results in a revised pitch fee of **£1869.78 per annum** with effect from 1 April 2019

Mary E Hardman FRICS IRRV(Hons)
Deputy Regional Valuer

ANNEX - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.