



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

Case Reference (1) : **BIR/17UJ/PHI/2019/0003**
(2) : **BIR/17UJ/PHI/2019/0004**
(3) : **BIR/17UJ/PHI/2019/0005**

Property (1) : **2 Millfield Park, Old Tupton, Chesterfield,
Derbyshire S42 6AD**
(2) : **Clywyd, Old Tupton, Chesterfield, Derbyshire S42
6AD**
(3) : **16 Millfield Park, Old Tupton, Chesterfield,
Derbyshire S42 6AD**

Applicant : **Ms Phoebe Willet**

Representative : **Ms K Apps of Apps Legal Ltd**

Respondent (1) : **Mrs E. Fawthrop**
(2) : **Mr and Mrs Henderson**
(3) : **Mr and Mrs Blogg**

Type of Application : **Pitch Fee Review**

Tribunal Members : **Judge T N Jackson**
Mrs A Rawlence MRICS

Date of inspection : **25th June 2019**

Date of Decision : **18th July 2019**

DECISION

Decision

We determine that the pitch fee for the Properties should increase from the review date of 1st January 2019 in accordance with the Notice dated 1st December 2018 in the amounts detailed below:

- a) 2 Millfield Park from £133.62 to £138.03 per month**
- b) 16 Millfield Park from £136.61 to £141.12 per month**
- c) Clywyd, Millfield Park from £136.61 to £141.12 per month**

Reasons for the Decision

Introduction

1. Each Respondent had signed a Written Statement in relation to their respective Property described above which detailed the pitch fee and contained an annual review date of 1st January. The pitch fee was last reviewed on 1st January 2018. The current pitch fees were £133.62; £136.61 and £136.61 in relation to Properties (1), (2) and (3) respectively.
2. By Notice dated 1st December 2018, the Applicant gave notice to each of the Respondents that she proposed to review the pitch fee from the review date of 1st January 2019. The proposed pitch fees were £138.03; £141.12 and £141.12 in relation to Properties (1), (2) and (3) respectively. The proposed increase related to the increase in the RPI Index only.
3. The Respondents did not agree to the proposed increase and did not explain to the Applicant their reasons for not so agreeing. They did not make an application to the Tribunal. On 29th March 2019, the Applicant applied to the Tribunal for a determination of new level of the pitch fee in relation to the three Properties.

The Inspection

4. We inspected Millfield Park ('the Park') on 25th June 2019 in the presence of the Applicant, her legal representative Ms K Apps and Mr J Windsor, the Site Warden. Respondent (3) and his wife attended and were accompanied by Mr Todd. Mr Todd lived at 1 Millfield Park and attended on behalf of Respondent (1). Respondents (2) advised the Judge at the inspection that they were happy to rely on Respondent (3)'s attendance at the inspection rather than attend themselves.
5. The Park was situated off Mill Lane with 5 units on the south west side of the road and the remaining 43 units to the north-east. There were three accesses to the Park, one for the south-western part; and two for the remaining park homes site, one of which was a shared access with the pub Bateman's Mill. There was no visitor parking on the Park, but the pub car park appeared to be used for this purpose.
6. The Park was well laid out with the site information noticeboard adjoining two flats that were previously converted from the old toilet block. We noted up to date certificates on the noticeboard and throughout the site adequate fire service units.

7. The Park is served by street lights and we noted that the light outside No 1 Millfield Park was outside the boundary of the protected site. With regard to the road surfaces, some areas had been re-tarmacked in April 2019. However, there were still some areas where the tarmac was patchy.
8. The Park is on a slope largely towards Mill Lane and drainage is a mixture of gulleys, soakaways and drainage grates and channels. It was a particularly wet day and areas of puddling were noticed outside park homes number 1, Clywyd, Crantock and at the further end of the Park near number 32.
9. There was evidence of some tree surgery having been carried out in the past. We paid particular attention to the birch tree at Clywyd. Our attention was also drawn to the fencing at the front and rear of Clywyd.

The Hearing

10. Neither party requested a hearing and we therefore considered the matter on the basis of the written submissions.

The Law

11. The relevant legislation is contained within Schedule 1 Part 1 Chapter 2 of the Mobile Homes Act 1983 (as amended). Paragraph 20 (1) states the presumption that the pitch fee will increase or decrease by a percentage which is no more than the percentage change in the RPI since the last review date.
12. Paragraph 18 sets out factors to which “particular regard” must be had when determining the amount of the new pitch fee. Paragraph 18(1) (aa) refers to “any deterioration in the condition, and any decrease in the amenity, of the Park or any adjoining land which is occupied or controlled by the owner since the date on which this paragraph came into force¹ (in so far as regard has not previously been had to that deterioration or decrease for the purpose of this sub paragraph)”.
13. We can also take account of improvements carried out since the date of the last review (paragraph 18(1)(a)) and also 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 force² (in so far as regard has not previously been had for the purpose of this sub-paragraph) (paragraph 18 (1) (ab)).
14. The decisions in **Wyldecrest Parks Management Ltd v Kenyon and others [2017] UKUT 28 (LC)** and **Vyse v Wyldecrest Parks Management Ltd [2017] UKUT 24 (LC)** both refer to it being possible for us to take into account other factors which are “weighty factors”.
15. For the RPI presumption to be displaced under the provisions of paragraph 18, the other considerations must be of considerable weight. “If it were a consideration of equal weight to RPI, then applying the presumption, the scales would tip the balance in favour of RPI”³.

¹ 26th May 2013

² 26th May 2013

³ Judge Robinson *Vyse v Wyldecrest Parks Management Ltd* [2017] UKUT 24 (LC)

The submissions

16. The Respondents' submission is a joint submission prepared by Respondent (3) and signed by Respondents (1) and (2) and three other residents who are not party to these proceedings.
17. The Respondents do not dispute the validity of the Notice itself but raise the following issues.

Different pitch fees

18. The Respondents query why some of the new residents are paying more 'ground rent'.
19. The Applicant confirms that there are different pitch fees and says that it is determined by whether the owner bought from the Applicant directly or by assignment from the previous owner.

Public liability insurance and electrical safety certificate

20. The Respondents say that the certificates were anything from 8 months to over a year out of date although they accept that they have now been brought up to date.
21. The Applicant says that the insurance is renewed annually and the electrical safety inspection is commissioned every 5 years. The latest electrical certificate was issued in January 2019, 3 months before the installation was due to be inspected and she provides a copy of the certificate. The Applicant accepts that the relevant certificates had not been updated on the Park's notice board which has since been corrected.

Road surface

22. The Respondents say that the roads have been an ongoing issue since 2002 and that nothing has been done on the roads since then. The Applicant says that the roads have been resurfaced using chip and tar three times since she has owned the Park and patched with tarmac in between. In November 2014 she consulted the residents regarding whether they wished to retain the roads in their present form (chip and tar) or whether they wanted a new road surface which would be reflected in a rent increase. The residents did not want to pay for the roads to be tarmacked and therefore the Applicant has continued to maintain the roads. She has budgeted to do the roads this year and the work had already commenced.

Drainage

23. The Respondents say that there is a lack of drainage on the Park with pooling water, sitting water and flooding. Several residents have reported the issue and have taken action themselves by installing or replacing driveways at their own expense. A plan is attached showing the areas most affected.
24. The Applicant says that in some areas of the Park water does pool before draining away after there has been a heavy down pour or when snow is melting away. This has been the position since she has owned the Park, some 25 years. A number of

residents have undertaken landscaping works where they have made their pitches more manageable by installing patios and gravelling over previously tarmacked areas. In relation to Mr Todd's driveway (Number 1 Millfield Park), the Applicant says that Mr Todd cemented over the drain to his property to redirect the flow of the surface water and Mr Todd had spoken to the Applicant at the time.

Footpaths

25. The Respondents say that the Park does not have any footpaths. The Applicant says the Park has never had any footpaths.

Grit/salt containers

26. Respondent (3) says that grit/salt containers were on site when he arrived on the Park but that they had been removed with no explanation. The Applicant says that the containers were provided by the former Residents Association and that she had neither provided nor removed them. This was confirmed at the inspection by the wife of the member of the Residents Association who said that her husband had made them from wood and that they had then subsequently disintegrated.

Lighting

27. The Respondents say that one of the streetlights has not worked for over 5 years. We were shown the particular light on the inspection and noted that it was located opposite Number 1 Millfield Park. The Applicant says that the streetlight is outside the boundary of the Park, is not owned by the Applicant and the electricity to it was supplied by the adjoining land owner.

Bases

28. The Respondents say that at least three units had cracked bases two of which had been reported. At the inspection, Respondent (3) did not wish to tell us which bases as he said they were subject to separate legal proceedings. The Applicant advised, and provided evidence, that a tree root had affected the concrete base on one pitch (Number 11 Millfield Park) and that she had made arrangements to have the tree removed but that she was unaware of any other reports of cracked bases.

Electrical installation

29. The Respondents say that there are concerns regarding the age of the wiring on the Park, surging fluctuations and the age of the meters. Respondent (3) says that the Applicant has said that occupiers would have to replace meters at their own cost. The Applicant says that she was unaware of concerns regarding the electrical installation until the Respondent's submission. She says that some meters were replaced with meters showing numbers rather than a clock so they were easier to read. The entire electrical installation was inspected in January 2019 and the necessary certificate was issued.

Water

30. The Respondents say that several residents have problems with the water supply in relation to drops in pressure causing boilers and showers to stop working and three

residents having black bits in their water. The Applicant says she has not received any complaints about the adequacy or otherwise of the water pressure or regarding black bits in the water until made aware by the Respondents' submission. Any concerns would need to be investigated to determine whether the problem was due to the pipework in the home or from the pipes from the ground to the home.

Site licence conditions

31. Respondents (2) say that the Park has a licence for 48 homes but there are 50. The Applicant says she has not received any contact from the local authority regarding alleged breaches of the Site Licence Conditions and that the Park was last inspected in May 2019.

Conversion of the toilet block

32. The Respondents say that the residents were not consulted regarding these improvements in 2015 and that consideration should have been given to converting the block into a communal hall for the residents considering the age and mobility of the residents. Respondent (3) refers to the Site Licence Condition 14 and implied term paragraph 22.
33. The Applicant says that she did not receive any complaints regarding the conversion at the time or afterwards until now. The residents use a nearby hotel, Bateman's Mill as a meeting place. The Applicant understands Site Licence Condition 14 to refer to green open space.

Caravan and Mrs Sparkes/Mr Todd

34. The Respondents' submission includes a letter from Mrs Sparkes regarding an issue where Mrs Sparkes had brought a caravan onto the Park to unload it and had been told to remove it by the warden and by the Applicant. The submission also includes a letter from Mr Todd regarding an instruction to remove a camper van from his pitch. Neither Mr Todd, nor Mrs Sparkes are parties to these proceedings.

Tree on Clywyd

35. The Respondents say that the silver birch tree on the pitch is dangerous as Respondent (3) had been advised by a tree surgeon that the tree has two rot spots. Respondent (3) says that he showed the tree surgeon a two to three foot crack in the main trunk at the base and says that the tree surgeon advised him to keep an eye on it. The Applicant says that tree surgery work was done on the tree in 2018 and submits a letter from a tree surgeon dated 3rd June 2019 referring to that work and to a further inspection to ensure that the tree was safe and in good condition. The letter states that in his opinion the tree was in good health at the time of the inspection but advised that it needed to be visually inspected annually with possible future work carried out to keep the tree balanced and to help maintain its health.

Request for electricity charges

36. The Respondents say that Respondent (3) has asked the Applicant for information on electricity prices from 2015 to date but they have not been provided. The Applicant says that she has not been asked to provide copies of electricity bills and she took the

correspondence between herself and Respondent (3) to mean that he was asking to receive the electricity supply from elsewhere to which she had no objection in principle but would need to understand the work to be undertaken and the implications for her. Respondent (3) would have to pay for the cost of any separate supply including any new fixed installation such as a meter.

Paving works

37. The Respondents say that a receipt for paving works for £4403 cannot have been for communal paving as there is no such paving on site. The Applicant says that the receipt relates to paving used in the conversion of the toilet block.

Decision

38. We considered all the written evidence submitted.

39. During the 12- month period applicable to this review, the RPI had risen by 3.3% and this is the increase which the Application seeks should be applied to the existing pitch fees to determine the new pitch fee.

40. The Respondents did not attempt to explain to the Applicant prior to this application why they would not agree to the proposed pitch fee increase. Neither did the Respondents apply to the Tribunal to dispute it.

41. For the purposes of the 1983 Act, the issue is not the actual condition of the site, nor indeed the actual amenity of the site. Whilst we may accept that the site has not always been maintained to a standard that the Respondent may reasonably expect, we have to consider whether there has been any **deterioration** in the condition or **decrease** in the amenity of the site in the relevant period, and, if we do so find, whether it would thereby be unreasonable for the pitch fee to be increased on the basis of the increase in the RPI index.

42. "Amenity" in this context means the quality of being agreeable or pleasant and so we must look at any decrease in the pleasantness of the site or those features of the site which are agreeable from the occupier's perspective.

Different pitch fees

43. We cannot determine whether the pitch fee itself is reasonable and cannot look at other pitch fees to determine whether the pitch fee the subject of this case is reasonable or fair. We must look at the pitch fee agreed at the outset, (or as subsequently reviewed by agreement or Tribunal determination), and then apply the provisions of the 1983 Act as described above.

Public liability insurance and electrical safety certificate

44. The failure to display up to date certificates, for a period of time, does not, in our view, amount to a deterioration in the condition or decrease in the amenity of the Park.

Road surface

45. From the inspection and evidence in the Respondents' documentation, which includes a letter dated 31st January 2019 which refers to pothole repairs approximately 'two years ago,' and photographs of patch repairs, we find that repairs and works have been carried out to the road surfaces. In the main we found the road surface to be satisfactory. We are not persuaded that there has been a deterioration in the condition or decrease in the amenity of the Park such as to displace the presumption of an increase in the pitch fee by the RPI Index.

Drainage

46. The evidence suggests that the current drainage system has been in situ for at least 25 years and has not been improved over this time. The residents have complained regarding 'flooding' for a significant period of time. We inspected the Park on a particularly wet day. We saw evidence of pooling of and sitting surface water, and noted that certain areas of the Park were more affected by others due to the topography. However, we did not see evidence of 'flooding' which we consider to be an exaggerated description. We note the photos submitted by the Respondents which, in our view, also show pooling and sitting of surface water rather than 'flooding'. In the absence in the relevant period of any significant change in the topography of the Park or works to the current drainage system which have made the drainage worse, it appears that the drainage system is the same as it has been for over 25 years and there has not been a deterioration or decrease in the condition or amenity of the Park in relation to drainage.

Footpaths

47. The Park has never had footpaths. Therefore, the lack of footpaths is not a deterioration or decrease in the condition or amenity of the Park.

Grit/salt containers

48. The containers were provided by the former residents' association and had fallen into disrepair and been removed. They were neither provided nor removed by the Applicant and, in our view, cannot therefore be considered to be part of the condition or amenity of the Park.

Lighting

49. The lighting column which was located opposite 1 Millfield Park is outside the boundary of the Park and is owned by the adjoining land owner who had also been responsible for the electricity supply to the light. As the light was outside the Park's boundary, any failures relating to the light cannot amount to a deterioration in the condition or decrease in the amenity of the Park.

Bases

50. In the absence of any evidence that the bases of the pitches of any of the Respondents has required maintenance or repair, we determine that there has not been a deterioration in the condition or decrease in the amenity of the Park.

Electrical installation

51. The Respondents did not produce any evidence such as previous complaint letters or an electrical report provided by the Respondents which would suggest that there are any significant issues with the electricity supply or installation. The fact that it is old, of itself, does not mean that it is unsatisfactory or dangerous. There is an up to date electrical installation certificate dated 15th January 2019 which describes the installation as ‘satisfactory’ and recommends a further inspection in no later than one year. We are not satisfied that there has been a deterioration in the condition or decrease in the amenity of the Park nor that there has been a reduction in the quality of the supply of electricity.

Water

52. The Respondents did not produce any evidence, such as previous complaint letters or investigation reports that would suggest that there were any significant issues with the water supply or installation. In the absence of any evidence that the concerns regarding pressure and black bits in water are the responsibility of the Applicant, we are not satisfied that there has been a deterioration in the condition or decrease in the amenity of the Park or that there has been a decrease in the quality of the supply.

Site licence conditions

53. The Site Licence states that the number of **caravans** on the Park shall not exceed 48. We note that there are two flats arising from the conversion of the toilet block which, of itself, does not appear to breach the Site Licence as they are not caravans. However, that is a matter for the licensing authority and we note that the Park was last inspected in May 2019. We have considered whether the introduction of the additional 2 flats are likely to have caused a deterioration in the condition or decrease in the amenity of the Park. Following the inspection of the Park, and in the absence of any evidence to support such an assertion, we find that it has not.

Conversion of the toilet block

54. Condition 14 of the Site Licence states that:

‘On sites where it is practicable to do so, suitable space equivalent to about one tenth of the total area of the site shall be allocated for recreational purposes, unless in the local authority’s opinion there are adequate recreational facilities within a close proximity to the site’.

55. Implied terms 22(e) refers to the owners’ obligation to:

‘consult with occupiers about improvements to the protected site in general, and in particular about those which the owner wishes to be taken into account when determining the amount of any new pitch fee’.

56. We understand that the residents are able to use the nearby Batesman’s Mill. The Respondents’ concerns appear to be regarding to a potential breach of Site licence conditions/implied terms which is not the issue before us. The Park has never had on site recreational facilities and that remains the case. There has not therefore been a **deterioration** in the condition or **decrease** in the amenity of the Park.

Caravan and Mrs Sparkes/Mr Todd

57. Neither Mrs Sparkes nor Mr Todd are parties to these proceedings. The matters relate to management (rather than a lack of management) of the Park regarding two incidents on pitches not the subject of these proceedings. They are not relevant in assessing whether or not there has been a deterioration in the condition of or a decrease in the amenity of the Park.

Tree on Clywyd

58. On a proper reading of the Respondents' submission, it is Respondent (3) who describes the tree as dangerous rather than a tree surgeon. The latter referred only to two areas of rot and not the crack in the tree's trunk. We do not have any written evidence from the tree surgeon concerned or any other evidence from the Respondents that the tree is dangerous as they state. We had regard to the Applicant's evidence in a letter dated 3rd June 2019 from a tree surgeon but noted that is not on letter headed paper, is not signed and refers to his opinion of the safety of the tree following a further inspection but does not refer to a date.
59. We consider that having a dangerous tree on a pitch, could potentially be a deterioration in the condition of or a decrease in the amenity of the Park, as the tree could fall and damage areas of the Park outside of the pitch. There was a lack of clarity as to whose responsibility it was to deal with a dangerous tree. However, we do not have to address that issue as we are not satisfied that the tree is dangerous. We attach limited weight to the Applicant's evidence regarding the tree for the reasons stated above. However, the Respondents have produced limited evidence to persuade us that the tree is dangerous. We also looked at the tree at the inspection. We did not consider, on the basis of the facts available, that the condition of the tree amounted to a deterioration in the condition of or a decrease in the amenity of the Park.

Request for electricity charges

60. Under implied term 22(b), the owner is required upon request to provide free of charge documentary evidence in support and explanation of any charges for electricity. The Applicant did not consider that the correspondence between herself and Respondent (3) was such a request. Regardless of the position, such a request is not relevant to the question we have to determine and an application can be brought by the Respondents to the Tribunal under other provisions if there is a refusal to provide such documents.

Paving costs

61. The costs relate to paving involved in the conversion of the toilet block and are not relevant to the issue we have been asked to determine.

Conclusion

62. We do not find that there has been any measurable deterioration in the condition or decrease in the amenity of the Park in the relevant period. The majority of the Respondents' concerns relate to alleged breaches of the Site Licence conditions or of

the implied terms and to site management by the Applicant. These need to be addressed by a different application to the Tribunal. Whilst a lack of site management could potentially amount to a deterioration in the condition or decrease in the amenity of the Park, in this case, it appears that the concerns with site management are that site management is taking place but that the Respondents do not agree with the action. Further, many of the Respondents' issues relate to the infrastructure of the Park which they wish to see improved (as distinct from being maintained) and therefore fall outside of these proceedings which is concerned only with deterioration in the condition or decrease in the amenity of the Park. We should add that any improvements requested by residents would likely be reflected in future pitch reviews.

- 63. There had been no improvements to the Park, or reduction in the services or the quality of services supplied by the owner since the last review.
- 64. We accept the presumption that the pitch fee should be increased in line with the increase in RPI index over the relevant period shall apply. We are not satisfied that the Respondents have provided sufficient evidence to displace that presumption.
- 65. We determine that the pitch fee for all three Properties should increase from the review date of 1st January 2019 in accordance with the Notice dated 1st December 2018.
- 66. If the Respondents have continued to pay the original pitch fee since that date, they must pay the difference to the Applicant.
- 67. We are not clear whether the Applicant has issued letters to the Respondents regarding arrears of pitch fees arising from the proposed increase. We confirm that the Respondents are not in arrears if they have continued to pay the pitch fee due before the service of the Notice of increase. The difference between the current pitch fee and the reviewed pitch fee becomes payable 28 days after this decision is issued (paragraph 17 (4)(c) Part 2 of Schedule 1 of the 1983 Act).

Costs

- 68. No party applied for costs and we make no such award.

Appeal

- 69. If any party is dissatisfied with this decision, they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties and must state the grounds on which they intend to rely in the appeal.

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Judge T N Jackson