



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

Case Reference : **BIR/17UJ/PHI/2021/0008-0014**

Property : **Poplar Drive, Queen Victoria Road, New Tupton,
Chesterfield, S42 6EE**

Applicant : **Michael Mark Anthony White (1)
Olive White (2)
trading as White Park Homes**

Representative : **Blacks Solicitors**

Respondents : **Mr Kevin Brice and Mrs Lesley Brice (29)
Mr Norman Browning and
Mrs Shirley Browning (12a)
Mr David Cobb and Mrs Dawn Cobb (43)
Mr Richard Renshaw and
Mrs Patricia Renshaw (3)
Mr Ray Sutcliffe and Mrs Enide Sutcliffe (16)
Mr Steven Woulde and Mrs Gillian Woulde (41)
Mrs Karen Roberts (7)**

Type of Application : **Pitch Fee Review (2021)**

Tribunal Members : **Judge T N Jackson
Mr I Humphries B.Sc. (Est. Man.) FRICS**

**Date and venue of
Hearing** : **8th November 2021
Midland Residential Property Tribunal**

Date of Decision : **6th December 2021**

DECISION

Decision

By the payment of the increased pitch fee and arrears, we determine that the Respondents have agreed the increased pitch fee under the provisions of paragraph 16(a) of Schedule 1 Part 1 Chapter 2 of the Mobile Homes Act 1983 (as amended).

We order each Respondent to reimburse the Applicants the £20 application fee within 28 days of the date of this Decision.

Reasons for Decision

Introduction

1. The Applicants are the joint freehold owners of Poplar Drive, Queen Victoria Road, New Tupton, Chesterfield (“the Park”). They are the owners and operator of the Park in accordance with section 5 of the Mobile Homes Act 1983.
2. The Respondents are residents at the Park residing in the mobile home stationed on the pitches detailed above. Each Respondent had signed a Written Statement in relation to their respective Property which detailed the pitch fee and contained an annual review date. Through conduct, the review date is 1st April. The pitch fee was last reviewed on 2nd April 2020.
3. On or around 25th February 2021, the Applicants gave notice to each of the Respondents that they proposed to review the pitch fee from the review date of 2nd April 2021. The proposed increase related to the increase in the RPI Index only, namely 1.4 %.
4. The Respondents did not agree to the proposed increase and continued to pay the current pitch fee. Some Respondents raised concerns regarding maintenance issues as a reason for not paying the proposed increased fee. No Respondents made an application to the Tribunal. On 23rd June 2021, the Applicants applied to the Tribunal for a determination of the new level of the pitch fee in relation to the Properties. With the application, the Applicants sought, and were granted, a stay of one month which was to allow negotiations to take place.
5. Paragraph 3 of the Directions dated 10th August 2021 directed that any Respondent who disagreed with the proposed pitch fee and failed to submit a Statement in Response setting out their full reasons for opposing the proposed new pitch fee shall be deemed to have agreed to the proposed new pitch fee.
6. Paragraph 1 of Further Directions dated 8th November 2021 directed that any Respondent who failed to respond to the Further Directions shall be deemed to have agreed to the proposed new pitch fee.

The Inspection/ Hearing

7. Neither party requested an inspection or a hearing and we therefore considered the matter on the basis of the written submissions.

The submissions

8. The Applicants' representative submitted a Statement of Case.
9. The Respondents who occupy pitches 29, 12a and 7 submitted Statements of Reply setting out the reasons they opposed the proposed pitch fee. The remaining Respondents did not submit a Statement of Reply.
10. The Applicants' representative submitted a detailed Statement of Reply in response to the Respondents' Statements of Reply.
11. On the morning of the Tribunal's determination on the papers, we received a Supplemental Statement from the Applicants' solicitors advising that, with the exception of the occupier of Pitch 7 where a correspondence exchange had not yet been completed, each of the Respondents had paid the increased pitch fee and any arrears that had accrued since April 2021.
12. The Applicants' representative submits that payment of the increased pitch fee by a Respondent is deemed as an acceptance of the pitch fee increase in accordance with paragraph 16(a) of Schedule 1 Part 1 Chapter 2 of the Mobile Homes Act 1983 (as amended) ("Implied Terms") and requests an Order in those terms. They also apply for an order for the reimbursement of the application fee of £20 in relation to each Respondent.
13. We issued Further Directions dated 8th November 2021 to allow the Respondents to respond to the Supplemental Statement and directed that, if a Respondent failed to respond to the Directions, they would be taken to have confirmed that they had agreed the increased pitch fee and had no comments on the application for the reimbursement of the application fee.
14. With the exception of the occupiers of Pitch 43, all Respondents responded to the Supplemental Statement and confirmed that they had paid the increased pitch fee and any arrears. Such payments had taken place after the date of the Applicants' application to the Tribunal. They also stated that they objected to the application to reimburse the application fee.

The Law

15. Paragraph 16 of the Implied Terms 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 appropriate judicial body, 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."*

16. Paragraph 17 sets out the process required to propose a new pitch fee. Paragraph 20 establishes the presumption that the pitch fee will increase/decrease by a percentage based on the Retail Prices Index. Paragraph 18 sets out matters to which a Tribunal should have regard when determining whether it would be unreasonable to apply the presumption.

Decision

17. With the exception of the occupiers of pitch 43, each Respondent has confirmed that they have paid the increased pitch fee. The occupiers of Pitch 43 have paid the increased fee, and in accordance with the Further Directions, are deemed to have agreed to the increased fee by their failure to respond to the Further Directions.
18. Having read the responses to the Further Directions and in the absence of any evidence to the contrary, we accept that in this particular case, payment of the increased pitch fee amounts to the agreement of the occupier, as set out in paragraph 16(a) of the Implied Terms. We therefore have no jurisdiction to determine the pitch fee.

Costs

19. The Applicants' representative applies, under Rule 13 (1) (c) Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 ("the Rules"), for the reimbursement of the £20 application fee incurred by the Applicants in making the application to the Tribunal. They submit that the Respondents have acted unreasonably in that they have agreed to pay the increased pitch fee after the Applicants' incurred significant costs, (including in correspondence with the Respondents prior to issue of proceedings to seek an agreement), in issuing proceedings and providing a detailed Statement of Reply which was served in advance of the payment by the Respondents of the increased pitch fee and arrears.
20. Some of the Respondents suggest that, following the service of the Pitch Fee Review Notice, the Applicants should have used the Site Warden, the residents committee or liaised with the individual Respondents directly to explore the residents' concerns regarding maintenance and that this would have avoided the need to make an application to the Tribunal.
21. We are unclear as to the reference to Rule 13(1) (c) as that relates to costs in a land registration case.
22. Rule 13 (1)(b) provides that we may make an order for costs if a party has acted unreasonably in bringing, defending or conducting proceedings in a residential property case.
23. Rule 13(2) provides that we may make an order requiring a party to reimburse to any other party the whole or part of any fee paid by the other party which has not been remitted by the Lord Chancellor.
24. Rule 13(3) provides that the Tribunal may make an order under Rule 13 on an application or on its own initiative.
25. As the application clearly relates to the reimbursement of fees, as distinct from costs, Rule 13(2) applies. We find that the Applicants were required to apply to the Tribunal for a determination of the pitch fee as, by the date of the application, the Respondents had not agreed to the increased pitch fee nor had they themselves applied to the Tribunal for a determination. We note that the Applicants' sought and were granted a month's stay to allow negotiations to take place and that some issues were resolved during this period which resulted in some Respondents paying the increased fee. However, we consider that residents should not wait until served with

a Pitch Fee Review Notice to raise matters of concern with Site Owners. This should be done as and when the issues arise. If such issues are not resolved during the year, the records of raising such complaints can form useful evidence regarding any future proposals to increase the pitch fee. We determine that, within 28 days of the date of this Decision, each Respondent reimburse the Applicants' the £20 application fee.

Appeal

26. If either 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