



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

Case Reference : CHI/18UH/PHI/2020/0050

Property : 25 The Crescent Pathfinder Village Exeter
Devon EX6 6BY

Applicant : Avondale Property (Holdings) Limited

Representative : Tozers LLP
k.mclennan@tozers.co.uk

Respondent : Mr Stephen J Blake

Representative :

Type of Application : Pitch fee review

Tribunal Member(s) : Judge J Dobson

Date of Directions : 6th April 2021

DECISION

SUMMARY OF DECISION

- 1. The increase in the pitch fee is reasonable. The pitch fee is determined as £1167.47 as from 1st October 2020.**
- 2. The Tribunal being minded to order the Respondent to reimburse the Applicant with the Tribunal application fee, unless the Respondent makes representations in writing to the Tribunal by 20th April 2021 as to why he should not reimburse the fee, the Respondent shall so reimburse the Applicant of £20 within 28 days.**

BACKGROUND AND HISTORY OF APPLICATION

3. The Applicant made an application dated 8 December 2020 seeking a determination in respect of an increase to £1167.47 to the pitch fee payable for 25 The Crescent, Pathfinder Village, Exeter, “the Property”.
4. The Directions given identified that the issue for the Tribunal is whether the increase in pitch fee is reasonable. The Directions also explained that the Tribunal is not dealing with the increase in water charges, which this Decision therefore leaves to one side. Those Directions were given by Judge Tildesley and principally dealt with the preparation of the parties’ cases and providing for the application to be determined on the papers.
5. The application came before me when the Applicant applied to vary one of the Directions, being the date for the Applicant to confirm that the Respondent had been provided with the documents before 11th January 2021 such that the Applicant complied with the requirement. I granted that application, noting that the important matter was that the Respondent had been provided with the documents by the time directed and so had the opportunity provided for to prepare and send a suitable response to the application.
6. I also considered the case at that time and stated that the application remained suitable for determination on the papers. The Directions 2nd March explained that the Tribunal would determine the Application on the papers received, including reimbursement of the application fee and would inform the parties no later than 26 March 2021.
7. I have considered the papers further. This is the Decision made having done so.

CONSIDERATION

8. Pathfinder Village is a protected site within the meaning of the Mobile Homes Act 1983 (the 1983 Act).

9. The Respondents' right to station his mobile home on the pitch at Pathfinder Village is governed by the terms of the Written Agreement with the Applicant and the provisions of the 1983 Act.
10. The Applicant supplied a copy of a written agreement. Under the Agreement the Respondent is liable to pay a pitch fee "by equal quarterly payments in advance on the 29th of each quarter"- clause 3. (a) of the Express Terms of the Agreement.
11. Review of the pitch fee is provided for in clause 7 of the Express Terms of the Agreement. That gives the review date as 29th September in each year. It is said that regard shall be had to the Index of Retail Prices ("RPI"), together with sums expended by the site owner and any other relevant factors, including the effect of applicable legislation.
12. The agreement for occupation of the pitch was entered in to on 16th September 2000. The last review date was 1st October 2019. The last review is said to have been by agreement between the parties.
13. Notice of review was served dated 28 August 2020, which was more than 28 days prior to the review date, proposing a reviewed pitch fee of £1,167.47 payable from 1st October 2020.
14. The Respondent has not agreed to the new pitch fee.
15. The Applicant explained that it applied the RPI of 2.1 per cent as published in October 2019 which was the latest published 12- month RPI figure available before the notice of review was served in August 2020.
16. The application to the Tribunal dated 8 December 2020 was within the period starting 28 days to three months after the review date.
17. The Applicant's solicitors explained in the covering letter with which the application was sent, that as a matter of convention the pitch fees have been reviewed as at the 1st October in each year, in contrast to the provision of the agreement that refers to the review date being 29th September in each year.
18. It was asserted on behalf of the Applicant that the residents have never objected.
19. It was also stated on behalf of the Applicant that the Applicant considers that there has been an oral variation of the review date.
20. It was the Applicant's position that the above is sufficient to enable the pitch fee to be reviewed on 1st October of the given year.
21. It was said that a witness statement would be provided by a director of the Applicant. I have not had sight of such a statement, which is not within the Tribunal file.

22. However, in any event, I consider that the Applicant's argument in the letter seeks to conflate two separate matters- an oral variation on the one hand and the lack of objection on the other hand. It is not explained in the letter as to the basis on which a lack of objection on the one hand is an oral variation capable of varying the written agreement between these parties on the other, or indeed that such an oral variation is possible.
23. It is, on a more specific note, not asserted what the position of this Respondent was, if anything, and that there was any oral variation of his agreement by him.
24. I have no specific evidence of an oral variation, whether in general or in sufficiently detailed terms in particular, to demonstrate a concluded agreement in any given terms in relation to the agreement in question. I also have no case authorities as to whether there can be a valid pitch review other than on the review date set out in the agreement in the absence of a formal variation of the agreement or on any other given basis. I have no authorities as to whether an oral variation would suffice and none as to whether acquiescence could suffice.
25. However, the Respondent has not taken the point and so in the absence of that I have concluded that I should assume for the purposes of this application that it is accepted that the Applicant can review the pitch fee on 1st October of a given year and despite the provision in the written agreement. I make no finding in respect of any argument which might have been raised but has not been and make no related factual findings.
26. I make no other comment on the discrepancy in the date, considering that any consideration of the point is best left to a case, if any, in which the matter is specifically argued and can be considered accordingly.
27. I am satisfied on the cases presented that the Applicant had complied with the procedural requirements of paragraph 17 of Part 1 of Schedule 1 of the 1983 Act to support an application for an increase in pitch fee in respect of the pitch occupied by the Respondent.
28. The Tribunal is required to determine whether the proposed increase in pitch fee is reasonable. The Tribunal is not deciding whether the level of pitch fee itself was or is reasonable.
29. Pitch fee is defined in paragraph 29 of Part 1 of Schedule 1 of the 1983 Act as:
- "The amount which the occupier is required by the agreement to pay to the owner for the right to station the mobile home on the pitch and for use of the common areas of the protected site and their maintenance, but does not include amounts due in respect of gas, electricity, water, sewerage or other services, unless the

agreement expressly provides that the pitch fee includes such amounts."

30. The Tribunal is required to have regard to paragraphs 18, 19 and 20 of Part 1 of Schedule 1 of the 1983 Act when determining a new pitch fee. Paragraph 20(1) introduces a presumption that the pitch fee shall increase by a percentage which is no more than any percentage increase or decrease in the RPI since the last review date.
31. The Applicant has restricted the increase in pitch fee to the percentage increase in the RPI.
32. Two decisions of the Upper Tribunal are of note and merit reference, namely, *Wyldecrest Parks (Management) Ltd v Kenyon* [2017] UKUT 28 (LC) and *Vyse v Wyldecrest Parks (Management) Ltd, 2* [2017] UKUT 24 (LC), where the increase sought was above RPI.
33. In *Vyse*, HHJ Robinson said as follows:

"There are a substantial number of mobile home sites in England occupied pursuant to pitch agreements which provide for relatively modest pitch fees. The legislative framework for determining any change in pitch fee provides a narrow basis on which to do so which no doubt provides an element of certainty and consistency that is of benefit to site owners and pitch occupiers alike. The costs of litigating about changes in pitch fee in the FTT and in the Tribunal are not insubstantial and will almost invariably be disproportionate to any sum in issue. I accept the submissions...that an interpretation which results in uncertainty and argument at many pitch fee reviews is to be avoided and that the application of RPI is straightforward and provides certainty for all parties"

34. In *Kenyon*, Judge Martin Roger QC established the following principles in respect of reviews of pitch fees:
 - a) The direction in paragraph 16(b) that in the absence of agreement the pitch fee may be changed only "if the appropriate judicial body ... considers it reasonable" for there to be a change is more than just a pre-condition; it imports a standard of reasonableness, to be applied in the context of the other statutory provisions, which should guide the tribunal when it is asked to determine the amount of a new pitch fee.
 - b) In every case "particular regard" must be had to the factors in paragraph 18(1), but these are not the only factors which may influence the amount by which it is reasonable for a pitch fee to change.
 - c) No weight may be given in any case to the factors identified in paragraphs 18(1A) and 19.

- d) With those mandatory considerations well in mind the starting point is then the presumption in paragraph 20(A1) of an annual increase or reduction by no more than the change in RPI. This is a strong presumption, but it is neither an entitlement nor a maximum.
 - e) The effect of the presumption is that an increase (or decrease) “no more than” the change in RPI will be justified, unless one of the factors mentioned in paragraph 18(1) makes that limit unreasonable, in which case the presumption will not apply.
 - f) Even if none of the factors in paragraph 18(1) applies, some other important factor may nevertheless rebut the presumption and make it reasonable that a pitch fee should increase by a greater amount than the change in RPI.
35. Given that the Respondent has chosen not to respond to the application in any manner, no argument has been presented that an increase to the pitch fee is unreasonable. By way of example only, there is no suggestion of a deterioration in the condition of the site.
36. I accept, a change to the level of the pitch fee. I consider that it is reasonable for the pitch fee to increase. There is nothing raised to indicate that any factors weigh against an increase in the pitch fee and I am unable to identify any factors that should do so.
37. There is nothing presented to rebut the presumption that the change to the pitch fee be an increase in line with RPI.
38. There is no need to consider whether any factors may affect the amount of increase reasonable such that any greater increase may have been reasonable and I have not done so.
39. I therefore confirm that the increase in the fee in line with RPI is reasonable.
40. I determine that the pitch fee is £1167.47 as from 1st October 2020.
41. I am also minded to order the Respondent to reimburse the Applicant with the Tribunal application fee of £20 within 28 days. This part of the Decision will take effect unless the Respondent makes representations in writing to the Tribunal by 20th April 2021 as to why he should not reimburse the fee.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28- day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28- day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking