



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

Case Reference : **CAM/33UE/PHI/2019/0008 & 0010**

Properties

A 18 Plumtree Park, The Street, Marham, Norfolk
PE33 9JH

B 20 Plumtree Park, The Street, Marham, Norfolk
PE33 9JH

Applicant : Steven Webb

Respondents

A Mr R Barker

B Mr & Mrs Goldspink

Type of Application : Application by site owner for determination of new
level of pitch fee
[MHA 1983, Sch 1, Pt 1, Chapter 2, para 16]

Tribunal Members : G K Sinclair & C Gowman BSc MCIEH MCM I

Date of determination : Friday 28th June 2019

DECISION
following a determination on the papers

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1. As both cases concern the same applicant, the same protected site, and the same issue they have been considered together and this decision deals with both. Also, as in neither case did the parties seek an oral hearing both have been determined on the basis of the documents submitted. Not all of these were included in the bundle which the applicant had been directed to file, but the tribunal was able to avail itself of the documents on the two tribunal office files.
2. For the reasons which follow the tribunal determines that in each of these linked cases the annual pitch fee shall be increased as from 5th April 2019 in line with inflation (as calculated using the RPI), as sought by the applicant. In the case of 18 Plumtree Park (Barker) the new pitch fee is therefore £160.50 per month, and in that of 20 Plumtree Park (Goldspink) it is £154.34 per month.

Introduction

3. The increase sought is one linked to the annual increase in the Retail Prices Index (“RPI”). The only issue taken by the respondents concerns the validity of the notices of increase or the procedure adopted for their service; it being alleged in each case that the notices of increase served by the applicant personally on 1st December 2018 failed to include page 7 of the prescribed form, were therefore incomplete and invalid. On 5th March 2019 the applicant’s solicitors wrote to the two respondents, referring to the earlier allegedly defective notices and serving two fresh ones, but necessarily taking effect at a much later date. These were served both by first class post and also by recorded delivery. It is also said that the appellant knocked on the door of each mobile home with a view to delivering a further copy by hand.
4. It is alleged that the respondents were “confused” by service of so many notices and that, having enquired of LEASE which was effective, they were told that it was only the first notice (LEASE seemingly not having been informed that the first notice was in each case defective and therefore invalid). No other point is taken by the respondents as to why an RPI-linked increase should not be allowed.

Material provisions in written statement

5. The written statements in each case are similar in their terms. Mr Barker’s agreement is dated 23rd November 2012, while the Goldspinks’ (by assignment) is dated 21st October 2003. In Mr Barker’s agreement paragraph 7 in Part 2 (Particulars) sets out the pitch fee and that it is payable from 1st December 2012 and thereafter monthly. Paragraph 8 identifies the annual pitch fee renewal date as 1st January, and paragraphs 16 to 20 in Part 2 (Implied terms) the mechanism for seeking an increase.
6. In the case of Mr & Mrs Goldspink paragraph 7(a) in Part IV of the written statement (express terms) identifies the initial pitch fee and that it is payable by twelve equal monthly instalments, and paragraph 7 provides that the pitch fee is reviewable annually on 1st January by reference to the RPI.

Applicable law

7. The relevant principles of law governing the subject of annual pitch fee increases appear in paragraphs 16, 17, 18 & 20 of Chapter 2 of Schedule 1 to the Mobile Homes Act 1983 (as amended). The material parts provide as follows :
16. 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.

- 17.(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.¹
 - (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 may apply to the appropriate judicial body 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 appropriate judicial body 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 28th day after the date on which the new pitch fee is agreed or, as the case may be, the 28th day after the date of the appropriate judicial body's order determining the amount of the new pitch fee.
 - (5–10) *[not relevant]*

- 18.(1) When determining the amount of the new pitch fee particular regard shall be had to—
- (a) *[not relevant]*
 - (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 force² (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)

20(A1) In the case of a protected site in England, unless this would be

¹ I.e. a document that complies with the Mobile Homes (Pitch Fees) (Prescribed Form) (England) Regulations 2013 [SI 2013/1505]

² i.e. 26th May 2013

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 percentage increase or decrease in the retail prices index³ calculated by reference only 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.

(A2) In sub-paragraph (A1), “the latest index”–

- (a) in a case where the owner serves a notice under paragraph 17(2), means the last index published before the day on which that notice is served;
- (b) in a case where the owner serves a notice under paragraph 17(6), means the last index published before the day by which the owner was required to serve a notice under paragraph 17(2).

8. By section 4 of the Act a tribunal has jurisdiction to determine this particular issue and it is therefore the “appropriate judicial body” referred to in the above provisions, and as defined in section 5.

Discussion and findings

9. The tribunal had before it a large, poorly assembled, repetitious yet incomplete bundle. None of the parties had filed any witness statements, but there were some submissions by the respondents concerning the various notices served upon them, advice supposedly received as the result of a telephone enquiry of LEASE, and about Mr Webb coming round to their respective homes and banging on the door in an attempt to serve yet another notice of increase.
10. Nothing either in the bundle or the tribunal office files gives any hint of a reason why, because of any reduction in services or amenity on the site, the pitch fee should not be increased in line with the RPI, which is the default position.
11. The tribunal is satisfied that the first, incomplete notices served by the applicant in December 2018 are invalid, as errors meant that they failed to comply exactly with the prescribed form. Being invalid, they can therefore be ignored.
12. The tribunal is also satisfied that the notices served by Tozers solicitors in March 2019, said to take effect from April 2019, are valid. The calculation of the RPI increase is based on the correct month’s figure and has been done correctly.
13. The only reason why the figures differ is because Mr & Mrs Goldspink withheld payment of the increase demanded in December 2017 (to take effect in January 2018) and this had not been challenged by the applicant in time (or at all).

Dated 28th June 2019

Graham Sinclair
First-tier Tribunal Judge

³ Although the “Retail Prices Index” or RPI is no longer recognised as an official national statistic due to its exaggerated effect it continues to be published by the ONS as an unofficial statistic and for the time being is still the index relied upon for various statutory purposes, such as rent capping, and it provides a presumed maximum or minimum in the case of pitch fee adjustments