



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

Case Reference : **BIR/47UG/PHI/2014/0014**

Park Home Site : **Severn Banks Park,
Blackstone, Bewdley, DY13 8DD**

Applicants : **Nelson Smith and Sadie Smith**

Representation : **Mr Edwards of Tozers, solicitors**

Respondents : **(1) Mr Trow - Number 67
(2) Miss McKinnon - Number 52
(3) Mr Sutton - Number 69**

Type of Application : **To determine a new Pitch Fee in
accordance with Paragraph 16 of
Chapter 2 Part 1 of Schedule 1 to the
Mobile Homes Act 1983 ('the Act')**

Date of Application : **10th October 2014**

**Date and venue of:
Hearing** : **9th January 2015 at the
Tribunal's Hearing Suite in
Birmingham**

Tribunal : **Judge W J Martin
Mr I D Humphries F R I C S
Mr P W Hawksworth**

Date : **3rd February 2015**

DECISION

Preliminary

- 1 On 10th October 2014 Nelson Smith and Sadie Smith ('the Applicants'), through their solicitors, Tozers, applied to the Tribunal for a determination under Paragraph 16 of Chapter 2 to Schedule 1 to the Act of the amount payable in respect of the pitch fees by the Respondents listed on the first page in respect of the pitches occupied by them at Severn Banks Park, Bewdley, DY13 8DD ('the Park'). The Tribunal received the Application on 28th October 2014.
- 2 The Application states that the Review Date in respect of all of the Respondents is 1st April 2014, and that the last Review Date before that was 1st April 2013. Copies of the Pitch Fee Review Form in respect of each Respondent were included with the Application. These disclose that the Pitch Fee current at the date of the service of the Form was in each case £147.22 per month and that the proposed new Pitch Fee, to take effect on 10th August 2014 was £151.19 per month.

Inspection

- 3 The members of the Tribunal inspected the Park on 9th January 2015 in the presence of, on the Applicants' side, Mr Nelson Smith, his solicitor, Mr Paul Kelly of Tozers and Mr Jackson, site manager (who is also a resident on the Park). Of the Respondents, Mr and Mrs Trow, and Mr and Mrs Sutton, were present. Councillor Yarranton also attended.
- 4 The Park comprises a mobile home park laid out for 76 mobile homes (of which 3 are vacant pitches awaiting sales). The pitches are arranged round a driveway leading from the main entrance, which splits into two and then returns on a one-way basis to the entrance. There are thus three more or less parallel drives (looped at the ends) with pitches arranged on either side. The Park is very close to the River Severn, but is banked up, thus avoiding flooding. Between the Park and the river bank is a lower grass terrace which the members of the Tribunal were told did flood when the river overflows.
- 5 During the Inspection the Tribunal were shown the following:
 01. The boundary fence to the right hand side of the Park, (adjoining a roadway), which is loose in places and is said by the Respondents to 'flap' in the wind. The fence at the rear of the office also suffers from the same problem the Respondents say.
 02. The pitch at 42 (Mr Jackson's home) where it is said by the Respondents that he parked a camper van in contravention of the Park Home Rules. The Tribunal's attention was drawn to the manhole cover, upon which the camper van was often parked. It was said by the Respondents that subsidence ensued, causing a backing up of raw sewage.
 03. The adjoining pitches to the above, whose amenity, it was said by the Respondents, was reduced owing to having to see the camper van.

04. The sewage plant, situated in a slight depression behind the office building. The Tribunal noted the smell emanating from it in the areas of the Park nearest to it.
05. The rear of pitch 46 where the brick paths appear to have sunk and where it is said by the Respondents that the steps at the rear are falling away towards the river due to subsidence.
06. The rear of pitch 58, where the shed is clearly leaning to one side.
07. Various places on the roadways where it was said by the Respondents that there is standing water after rain.

Hearing

- 6 Following the inspection a public hearing was held at the Birmingham offices of the Tribunal. This was attended by the same persons as the inspection, but in addition Miss MacKinnon was present, as were the following, all of them occupiers of Mobile Homes on the of the Park:

Mr and Mrs Woodward (58), Mrs Patricia Sutton (69), Mrs Bowater (8), Mr and Mrs Fereday (74), Mr Brian Beddall (54) Ms Christine Masefield (75), and Mr and Mrs D Slotta (42).

For the Applicants, Mr Kelly made oral submissions, with evidence given by Mr Smith, and by Mr Kelly, the Park manager. Each of the Respondents made oral submissions during the Hearing.

- 7 For the Applicants, Mr Kelly pointed out that the provisions of the Act relating to the pitch fee contain a presumption in favour of an increase in the Retail Price Index, unless there has been a reduction in the amenity of the site since 26th May 2013, when the provisions of section 11 of the Mobile Home Act 2013 came into effect. In the present case, the increase sought by the Applicants is slightly less than the change in RPI since the previous review.
- 8 Mr Kelly made reference to the previous decision of the Tribunal, in respect of the pitch fee review for 2012 ('the 2012 decision'). In that decision the Tribunal said that *'given the location of the plant it is inevitable that in some climatic conditions there may be a problem with odour, but it appears that in general all reasonable steps have been taken to contain the problem. In general terms, therefore, the Tribunal does not find that there has been a reduction in the amenity of the site since the previous review date'*. Mr Kelly said that the Applicant's position is that there has been no material change since the 2012 decision.
- 9 Because the Respondents have raised a number of issues concerning alleged reduction in amenity, Mr Kelly referred the Tribunal to a number of other First-tier Tribunal cases which, whilst not authorities, he said might assist the

Tribunal, as similar issues have been raised in the other cases. These cases, and the matters within them which Mr Kelly wished to point out, are set out below:

01. *MAN/00FD/PHI/2012/0005* - The Rushes, Barton Broads. At paragraphs 564 and 55 it was stated that there was no evidence of 'marked change' and that the issue was not whether park maintenance was satisfactory but whether there had been a reduction in amenity.
02. *CHI/40UD/PHI/2012/0020* - Primrose Hill Park. At 68 (f) the tribunal found that there is a difference between a breach of the agreement for quiet enjoyment, and a decrease in amenity, and that the amenity must relate to the site, rather than a particular mobile home.
03. *BIR/17UD/PGI/2012/0007* - Grasscroft Park. At paragraph 45 the tribunal found that the boundary wall is part of the structure of the site and is not an amenity.
04. *CAM/00MA/PHI/2012/0043* - Devon Close. Where a brick shed, agreed to be owned by the mobile home occupier, had subsided, the tribunal found that this was not something which related to the site, and should not be taken into account.

10 It became apparent that one issue which was of particular concern to the Respondents (and other residents on the Park) related to an agreement for the supply of natural gas to the Park in 2004. It is suggested that the Pitch Fee level includes an amount added to it for a limited period to fund each occupier's contribution. The Tribunal made it clear to the Respondents that it has no jurisdiction to consider this issue as part of the Application. The sole matter before it is whether the Pitch Fee should be increased from the amount being collected up to 10th August 2014, in accordance with the Applicants' proposal. The Tribunal informed the Respondents that jurisdiction may exist under section 4 of the Act for a tribunal to determine whether the Pitch Fee level should be adjusted to take account of the alleged agreement, but that any application under section 4 would need to be made by the Respondents as a separate matter.

11 The Tribunal also explained that, although the Act (in paragraph 18 of Chapter 2 in Schedule 1) specifies a number of matters that 'particular regard must be had to', it would appear from the written and oral submissions that the provisions of paragraph 18 (iii) (aa) are of particular relevance:

'(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 of any adjoining land which is occupied or controlled by the owner since the date on which this paragraph came into force (insofar as regard has not previously been had to that deterioration or decrease for the purpose of this sub-paragraph);'

12 Submissions were made by the parties on the following matters, which the Respondents allege are evidence of a deterioration of the amenity of the Park since 26th May 2013, this being the date upon which sub-paragraph (ii) (aa) came into force.

13 Mr Jackson's Camper Van

Mr Trow referred to the Park Rules, which were exhibited in the Respondents' bundle, in which at Rule 7 the following is provided:

'Parking spaces adjacent to homes and visitors parking spaces are intended for motor vehicles only and no commercial vehicles, caravans or motor homes or such other vehicles may be parked there'.

The Respondents say that during the period in question Mr Jackson has persisted in breach of the Park Rules, with the consent of the Applicants to park his camper van on his pitch. The residents who live near to Mr Jackson complain to the Residents' Committee about the visual loss of amenity suffered by them as a result of the presence of the van. After complaints to Mr Smith, Mr Jackson started to park the van in the area behind the office, where there are three vacant pitches. The Respondents say that even parked here, there is a breach of the Rules and a loss of amenity.

14 As a separate issue, it is alleged that the parking of the camper van has damaged the foul water drains in the drive to Mr Jackson's home, causing problems with sewage backing up through the sewers, and that this is also a reduction in amenity.

15 As part of his evidence, Mr Jackson confirmed that he owns a VW Transporter van converted into a camper van, which he has had for 14 months. Prior to that he owned a different van. It is true that he used to park his van at his pitch, but now he keeps it in storage, and only occasionally brings it to the Park at weekends, when something needs to be moved. He has taken this step to secure a 'quiet life' as he put it. He does not consider that the parking of the van has caused any damage to the sewers, and he has certainly experienced no problems personally, apart from the constant smell from the sewage plant. Upon being questioned by the Tribunal, he said that he thought this had worsened during the last two years.

16 Upon being questioned by the Tribunal, Mr Trow said he did not know the weight of a VW Transporter van of the type owned by Mr Jackson. The Tribunal pointed out that there was at least one other large SUV (Sports Utility Vehicle) on the Park at the inspection which might well weigh as much as Mr Jackson's van. It would have assisted the Respondents' case if they had produced evidence as to the relative weights of the vehicles regularly using the Park, given their assertion that Mr Jackson's van in particular was causing damage to the sewers.

- 17 Mr Kelly pointed out that, in order for there to be a finding of loss of amenity, the Tribunal would need to be satisfied on the evidence that there had been a definite change during the period, and that mere assertions are not enough.

Subsidence on the Park

- 18 The Respondents allege that the Park suffers from inadequate drainage, that this has deteriorated over the period and that it has caused subsidence in several places, but particularly to Number 46 and 58. Mr Smith said that the subsidence at number 46 was addressed by his contractor at his expense some years ago, and there have been no reports of problems since. Mr Smith pointed out that the shed at number 58 was not installed by him, but by a contractor employed by the homeowners. There is no evidence to back up the Respondents' assertions with regard to the alleged subsidence.

Drainage

- 19 Mr Trow referred to the photographs in the Respondents' bundle showing water standing on the roads, following heavy rain. He said this happens regularly and is because the drainage infrastructure is not adequate for the Park. There is an allegation that the drains are not kept clear of leaves and debris, and there is a photograph of a drain with leaves accumulated below the grill in the bundle. At one point the water around a drain bypasses it, indicating that the level of the road has dropped due to subsidence.
- 20 Mr Smith said that it should be remembered that the Park is at the foot of a hill, and it is inevitable that water will on occasions accumulate at levels too great for the drainage to cope with. However, it had rained quite heavily during the night before the Inspection and there was no evidence of any standing water on that occasion.
- 21 Mr Kelly pointed out that there is no evidence of a marked deterioration during the period since 26th May 2013. Many of the complaints are that the design of the drains is inadequate. This is not agreed to be the case by the Applicants, but if it were true, the situation has been the same since the Park was built, and there is no marked change within the reference period.

Boundary fencing and general Park maintenance

- 22 The Respondents suggest that the loose fence panels on the boundary fence and the fence behind the office, because they bang in the wind, are a loss of amenity. In addition to this Mr Sutton complained about the weeds on the patch of ground behind his Pitch (the other side of the fence behind the office from him). The Applicants removed some trees from this boundary and then used a

membrane with the chippings from the tree felling. However, the work was ineffective and there is a continual problem with rampant weed growth. Mr Sutton regards the appearance of this area to be an eyesore, and amounts to a reduction in the amenity of himself and others who overlook it.

- 23 A complaint was also made that there is no grit provided in case of bad weather, particularly on the long access road to the Park.
- 24 Mr Jackson said that, if the problems with the fences had been reported to him, they would have been fixed very quickly. All that is required are a few nails or screws to reattach the fence to the posts. With regard to the weeds, he acknowledged that he 'had something to learn' with regard to their control. He did spray them annually, however, as a matter of course.
- 25 Mr Smith said that the Park is looked after well. Mr Smith has appointed Mr Jackson as the manager and it is kept in good order. On any particular day it is possible to find something that needs attention, but this does not amount to a deterioration of amenity. Mr Smith also said that he has never provided grit. The access road in any case does not belong to him; there is only a right of way over it.
- 26 Mr Kelly said that the issues of Park maintenance discussed above are day to day matters which do not contribute to a material reduction in amenity. There is nothing in the evidence to establish that there has been a material reduction in the amenity of the Park as a whole during the relevant period. Only a small number of pitches overlook the area complained of by Mr Sutton, and it is submitted that this cannot be a reduction in amenity that affects 'the site' as required by sub-paragraph 18 (iii) (aa).

The odour from the sewage plant

- 27 As referred to in paragraph 5 (b) above, the Tribunal had noted that, at several locations within close proximity to the sewage plant there was a noticeable odour on the day of the Inspection. The Respondents say that the issue is constantly brought up at meetings of the Residents Association. Upon being questioned by the Tribunal, Mr Trow said that there had been a noticeable increase in the number of complaints over the last year or two. When asked to quantify the amount he said there had been perhaps half a dozen. However, it was clear from the reaction of the other residents present at the Hearing, that they felt there had been rather more than this number.
- 28 The matter is referred to in the Respondents' statement, on page 4:

'The following issues are constantly brought up at meetings, not by either Miss Mackinnon or Mr Trow:

B. Stench of sewage system. Mrs Powell again backed by other members at a meeting 12th December 2014.'

- 29 For the Applicants, Mr Kelly repeated what he had said at the beginning of the Hearing. The sewage plant has been there for a number of years, and Mr Smith has maintained it properly, emptying it at more frequent intervals than as recommended by the manufacturer. It is the Applicants' assertion that the position has not worsened during the past few years, and that the Tribunal should find, as it did in the 2012 decision, that the problems with odour are due to the position of the sewage plant and that climatic conditions dictate the level of odour on any particular occasion.

The Tribunal's Decision

- 30 The Tribunal's findings with regard to the particular matters put before it are as follows:

Mr Jackson's Camper Van

- 31 The Tribunal does not find that the parking of the camper van on his pitch during the relevant period amounted to a material reduction in the amenity of the Park. It is true that a few nearby residents strongly objected to its presence, and keeping it on the Park is of course a breach of the Park Rules. However, Mr Jackson's evidence is that he no longer keeps the van on the site, except occasionally at weekends. Additionally, the Tribunal notes that, although it is technically a camper van, it is not a large vehicle, and is probably no bigger than a number of the larger models of SUV at least one of which was present on the site parked on another pitch when the Tribunal inspected.
- 32 The Tribunal's decision is, therefore that there was insufficient material reduction in the visual amenity of the Park during the relevant period to warrant any reduction in the Pitch Fee to be paid.
- 33 With regard to the allegation that the weight of the van has damaged the sewers, the Tribunal agrees with Mr Kelly that there is no evidence to support the assertions which the Respondents have made.

Subsidence on the Park

- 34 The two particular examples of subsidence shown to the Tribunal at the inspection are within the curtilage of the individual pitches concerned (46 and

58). The Tribunal agrees with tribunal in the *Devon Close* case referred to in paragraph 9 above that such matters do not relate to the Park as a whole and should therefore not be considered by the Tribunal in the present case. In any case the Tribunal noted at the Inspection, with regard to the former, that there was no split from the foundation block for the mobile home, which would be expected in the case of subsidence, and that the ground in any case falls away very steeply at this point towards the river. At 58, the shed is clearly leaning dramatically, but there is no evidence as to whether this is caused by a general subsidence or is due to poor site preparation by the contractor who erected the shed. The same can be said about the block-paved paths at some locations which appear to have sunk in the centre.

- 35 The Tribunal does not find, therefore that there has been a deterioration in the amenity of the Park during the period since 26th May 2013, due to the alleged subsidence issues.

Drainage

- 36 The Tribunal agrees with Mr Kelly and Mr Smith. The Park's location means that water will gather at the foot of the hill after very heavy rain. There may be a problem with the one drain that the Respondents said is 'bypassed' by the water, but the Tribunal does not find that there has been a material reduction in the amenity of the Park during the relevant period owing to a deterioration of the drainage system.

Boundary fencing and general Park maintenance

- 37 The Tribunal does not consider that the issues relating to the loose fence panels are anything other than matters of ongoing maintenance. Similarly, since there has never been any provision of grit for icy weather, its absence can hardly be said to amount to a reduction in the amenity of the Park.
- 38 It was said by Mr Sutton that the weeds behind his and his neighbour's homes amount to an eyesore, and Mr Jackson acknowledged that more perhaps needs to be done to contain the problem. However, the Tribunal does not find that this relatively localised ground maintenance issue amounts to a reduction in the amenity of the Park as a whole within the relevant period.

The odour from the sewage plant

- 39 The Tribunal considered the following evidence was material:
- (a) Mr Jackson's statement (see paragraph 15 above) that the smell from the sewage plant is 'constant'. During the Hearing in respect of the 2012 decision there was said to be a problem of smell, but it was not suggested that it persisted all times.

(b) The evidence from Mr Trow (see paragraph 25 above) that there had been an increase in the number of complaints to the Residents Association regarding the smell during the period.

(c) The evidence from the Respondent's statement that the matter was brought up 'again' at a meeting in December 2014. This meeting was after the date of the Notice of Increase, of course, but the Tribunal finds that the use of the word 'again' indicates that it was an ongoing issue at the meetings of the Residents Association.

(d) The evidence of the odour at the Inspection, which took place on a winter's day. The Tribunal (which consists of the same members who determined the application leading to the 2012 decision) did not record in the 2012 decision that there was an odour on the day of the Inspection, whereas it was clearly prevalent on the day of the 2014 Inspection.

40 Based upon the above the Tribunal finds that it is inherently more probable than not that there has been an increase in the frequency of unpleasant smells emanating from the sewage plant since 26th May 2013. The Tribunal finds that an increase in such smells amounts to a material reduction in the amenity of the Park within the terms of sub-paragraph 18 (iii) (aa) to Chapter 2 of Schedule 1 to the Act and determines that the Pitch Fee payable by the Respondents from 10th August 2014 is reduced by £1.00 per month from the figure of £151.19 per month proposed by the Applicants, to £150.19 per month.

41 If either party is dissatisfied with this decision they may apply for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be made within 28 days of this decision (Rule 52 (2) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

Judge W.J. Martin