



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

Case Reference : **BIR/00GA/PHI/2016/0010**

Property : **45 Linton Park, Worcester Road,
Bromyard, Herefordshire HR7 4DB**

Applicant : **Country Parks Ltd**

Representative : **Tozers, Solicitors**

Respondent : **Mr K G & Mrs S James**

Representative : **None**

Type of Application : **Application by site owner for
determination of a new level of pitch
fee under paragraph 16 of Schedule 2
Part 1 of the Mobile Homes Act 1983
("the Act").**

Tribunal Members : **Judge C Goodall LLB
Mr I D Humphries B.Sc.(Est.Man.) FRICS**

Date of Decision : **27th April 2017**

DECISION

Background

1. Linton Park is a mobile homes site in Bromyard, Herefordshire registered for sixty-eight mobile homes, and owned by Country Parks Ltd ("the Applicant").
2. On 25 February 2016, the Applicant served notice upon the occupiers of Linton Park of a pitch fee review to operate from 1 April 2016.
3. On 20 June 2016, the Applicant applied to the Tribunal for a determination of the pitch fee payable by eighteen occupiers at Linton Park under Paragraph 16 of Schedule 2 of Part 1 of the Mobile Homes Act 1983 (as amended) ("the Act"). It is assumed that these occupiers (as is their right) did not confirm agreement to the pitch fee review, which triggered a requirement for the Applicant to apply to the Tribunal for it to be determined, if they wished to obtain the benefit of a pitch fee review.
4. By a direction dated 6 October 2016, the Tribunal directed that one of the occupiers should be designated as lead respondent under the provisions of Rule 23 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the Rules"), and further directing that all other cases be stayed. In fact, that lead respondent declined to act as such, and the Tribunal therefore directed, on 3 November 2016, that Mr & Mrs Goddard should be substituted as lead respondent.
5. On 17 February 2017 the Tribunal issued a determination in Mr & Mrs Goddard's case ("the Lead Case").
6. Mr & Mrs James ("the Respondents") occupy the pitch referred to on the front page of this decision. Following the conclusion of the Lead Case, the Tribunal removes the stay on this case. This decision is the determination of the pitch fee payable for 2016/17 by the Respondents.
7. Rule 23 of the Rules provides that the decision in the Lead Case shall be binding upon the related cases in respect of common or related issues unless, within 28 days of the decision in the Lead Case, any party applies in writing for a declaration that the decision is not to be binding.
8. The issues determined by the Tribunal in the Lead Case were:
 - a) Country Parks Ltd must insert the correct current pitch fee in section 2 of their form proposing a new pitch fee. They did not do so in the Lead Case, and therefore their proposal for a new pitch fee for the 2016/17 pitch fee was invalid in that case (**Issue 1**).
 - b) In the Lead Case, the Goddards however failed in their argument that Country Parks Ltd were not entitled to include a fixed contribution of

£40.64 per pitch per annum for river-banking and street lighting works carried out in 2005. Any site owner who agreed in 2006 (however unwillingly) to pay the costs requested for work to the river bank and street lighting has in effect agreed to a variation of the pitch fee as from that year, and is now legally bound to pay a pitch fee each year until 31 March 2021 which includes the sum of £40.64 (**Issue 2**).

- c) A one-off payment of £4.53 per pitch could be included in the pitch fee for 2016/17 as a contribution towards improvements towards the security costs of the site (**Issue 3**).
 - d) In principle, the annual site licence fee is in effect included in the pitch fee each year as once included (as it was in 2015/16) it becomes a permanent addition to the pitch fee and can generally increase year on year by inflation (as defined in the Act). In fact, for 2016/17, Country Parks Ltd were seeking a payment of £22.58 per pitch (which was lower than the pitch fee included in the previous year) which Mr & Mrs Goddard agreed. The Tribunal would have determined this was payable if it had not been agreed (**Issue 4**).
9. By a letter dated 15 February 2017 the Respondents was notified of the decision in the Lead Case and were provided with a copy of that decision. The Respondents were informed of the requirements of Rule 23 and the need to inform the Tribunal within 28 days if they wished to apply for a direction that the decision in the Lead Case should not be binding in their case. The Tribunal has received no response from the Respondent.
10. The Tribunal is not aware of any issues raised by the Respondents that were not common or related issues as identified above.

Discussion

11. The pitch fee payable by the Respondents for 2016/17 depends on whether the Applicant inserted the correct fee into the notice of increase sent to the Respondents on 25 February 2016. The fee claimed as the current pitch fee for 2015/16 was £1,587.48, expressed as a monthly payment of £132.29 per month. If that was correct, the Applicant is, in accordance with the decision in the Lead Case, entitled to the new pitch fee proposed in that 25 February 2016 letter. If it was not, the Respondents are entitled to a determination, in accordance with the Lead Case on Issue 1, that the pitch fee will not increase from that which applied in 2015/16.
12. Changing a pitch fee is subject to the statutory controls contained in paragraph 16 of Schedule 1 to the Mobile Homes Act 1983 (as amended). The pitch fee cannot be changed unless the change is agreed or unless the appropriate judicial body (i.e. this Tribunal) considers it appropriate to be changed. The process for review is initiated by a notice in statutory form.

13. The Applicant requested that it be allowed to make submissions in writing on the issue at large in this case, and those submissions were received by the Tribunal on 4 April 2017. From the paperwork contained in them, the Tribunal notes that on 25 February 2015 the Applicant proposed a new pitch fee to the Respondent of £1,587.45 per year – up from a current fee of £1,546.81 per year, (which the Tribunal treats as being the correct fee for 2014/15 because it is the amount actually paid by the Respondent in that year). There is no record of that 2015/16 increase being agreed, and there was no application in 2015/16 for the Tribunal to determine the new pitch fee. The Respondent paid £1,546.92 in 2015/16.
14. Mr Kevin Surridge (for the Applicant) has supplied a statement in which he draws attention to two written documents which he says have the effect of being agreements to pay £1,587.45 as the pitch fee for 2015/16.
15. The first document is a defence to a county court claim for unpaid pitch fee with a date stamp of August 2015 in which the Respondent says:

“I am in dispute with Country Parks Ltd over what I consider to be illegal charges for maintenance to river banking and lighting carried out in 2005 at Linton Park...”
16. The second document is again part of a county court defence document date stamped September 2015 in which the Respondent repeats the words quoted above.
17. It is impossible to construe this documentation as being evidence that the Respondent agreed to pay a pitch fee of £1,587.45 for 2015/16. It says precisely the opposite. The Respondent expressly disputed a component of the pitch fee, and only agreed to, and paid, a lower amount.
18. It follows that the pitch fee for 2015/16 was not legally increased by the notice dated 25 February 2015 as there was no agreement or judicial determination to the proposed increase, so that when inserting the current pitch fee for the 2016/17 notice as £1,587.45, the Applicant was in error.

Decision

19. The Tribunal determines that it is not reasonable for the pitch fee for 2016/17 to be changed in this case as the notice to do so is invalid for lack of clarity and because incorrect information was inserted into the prescribed form. The pitch fee for 2016/17 remains the same as the pitch fee for 2015/16 except in so far as the Respondents have agreed any variation to it.
20. The Respondents are not free to raise again Issues 2 and 4, which were determined in the Lead Case as set out above. That determination is now binding upon the Respondents in respect of those issues.

21. In respect of Issue 3, the Tribunal considered it reasonable to include the sum sought in the 2016/17 pitch fee review in those cases where it approved an increase in the pitch fee for that year. As this decision determines that it is not reasonable to change the pitch fee for the Respondents for 2016/17, there is no basis for the Applicant to recover the amount the Applicant claimed for security costs within this case. The Tribunal makes no determination on the question of whether the Applicant is entitled to seek payment of the sum it approved for the security works in other cases, by claiming it in a subsequent year, or by a new notice.

Appeal

22. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Judge C Goodall
Chair
First-tier Tribunal (Property Chamber)