



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

**Case Reference** : **BIR/44UE/PHI/2015/0002**

**Property** : **5 Long Cast Mobile Home Park, Hunt  
Hall Lane, Welford- on- Avon,  
Warwickshire CV37 8HF**

**Applicant** : **Mr H Morrison**

**Representative** : **Tozers solicitors**

**Respondent** : **Mrs M Asquith**

**Type of Application** : **Paragraph 16 of Chapter 2 of Part 1 of  
Schedule 1 to the Mobile Homes Act  
1983 (as amended) ("the 1983 Act") to  
determine the level of the pitch fee**

**Tribunal Members** : **Robert Brown FRICS (Chairman)  
Judge W J Martin**

**Date and venue of  
paper  
determination** : **9th October 2015**  
**Tribunal Hearing Rooms, City Centre  
Tower, 5-7 Hill Street, Birmingham B5  
4UU**

**Date of Decision** : **3 November 2015**

## DECISION

1. The Tribunal determines that the pitch fee in respect of 5 Long Cast Mobile Home Park, Hunt Hall Lane, Welford- on- Avon, Warwickshire CV37 8HF is **£299.97 per 3 month period.**

## REASONS FOR DECISION

### The Application and Introduction

2. This determination follows an application dated 8th May 2015 following the Respondent's objection to paying the proposed increase in pitch fee with effect from 14th February 2015.
3. The parties were agreed that the matters at issue could be decided by the Tribunal on the papers submitted without an oral hearing under Rule 31 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.
4. The papers before the Tribunal comprise:
  - a) The application dated 8th May 2015.
  - b) The Applicant's bundle submitted under a letter from Tozers dated 31st July 2015 and includes the Applicant's response to the Respondent's submission.
  - c) The Respondent's bundle received at the Tribunal's office on the 28th August.
5. The current pitch fee is £292.24 per 3 month period and the proposed pitch fee is £299.97 ( $£292.24 + £4.67 + £3.06 = £299.97$ ).
6. Helpfully the Respondent was able to agree certain matters relating to the calculation of the pitch fee:
  - a) the review date: 14th February 2015.
  - b) the amount of the RPI part of the increase (1.6% - £4.67 per 3 month period).
7. The Respondent's dispute relates to the addition of the costs of the Site Licence Fee payable to the Local Authority in the sum of £12.26.00 per annum (£3.06 per 3 month period).

### The Law

8. The relevant law is set out in the Caravan Sites and Control of Development Act 1960 ('the 1960 Act' and the Mobile Homes Act 1983 ('the 1983 Act') as amended by the Mobile Homes Act 2013 ('the 2013 Act).

9. Of particular relevance to this case is the amendment made by the 2013 Act to Schedule 1 Paragraph 18 which now reads as follows:

In paragraph 18 (matters to which to have particular regard when determining new pitch fee)-

(a)in sub-paragraph (1), after paragraph (a) insert-

"(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 force (in so far as regard has not previously been had to that deterioration or decrease for the purposes of this sub-paragraph);

(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 sub-paragraph);",

(b)in that sub-paragraph, at the beginning of paragraph (b) insert " in the case of a protected site in Wales, ",

(c)in that sub-paragraph, omit the "and" following paragraph (b),

(d)in that sub-paragraph, after paragraph (b) insert-

"(ba)in the case of a protected site in England, any direct effect on the costs payable by the owner in relation to the maintenance or management of the site of an enactment which has come into force since the last review date; and",

(e)in that sub-paragraph, at the beginning of paragraph (c) insert " in the case of a protected site in Wales, ", and

(f)after that sub-paragraph insert-

"(1A)But, in the case of a pitch in England, no regard shall be had, when determining the amount of the new pitch fee, to any costs incurred by the owner since the last review date for the purpose of compliance with the amendments made to this Act by the Mobile Homes Act 2013."

10. Also relevant is the amendment to the 1960 Act at section 5(a) - **Relevant protected sites: annual fee at subsections (1) and (2)**

(1)A local authority in England who have issued a site licence in respect of a relevant protected site in their area may require the licence holder to pay an annual fee fixed by the local authority.

(2)When requiring a licence holder to pay an annual fee under this section, a local authority must inform the licence holder of the matters to which they

have had regard in fixing the fee for the year in question (in particular, the extent to which they have had regard to deficits or surpluses in the accounts for the annual fee for previous years).

### **Inspection**

11. The Tribunal inspected the property 9th October 2015 in the presence of Mrs Asquith, Mr Morrison and Mr J Bishop (No 7).
12. The site comprises a mobile home park for 26 mobile homes. One of which is occupied by the Applicant and the remainder are owner occupied.

### **The Applicant's submissions**

13. In his submission Mr Morrison explains that the 'review date' (14th February each year) for number 5 Long Cast (which is different from the other homes on the site) was determined by the Tribunal under reference BIOR/44UE/PHI/2012/0002 *Morrison v Asquith and Others*.
14. Notice of increase was served in accordance with the provisions of Implied Term 25A in Part 1 Schedule 1 to the 1983 Act. The notice was hand delivered to the Respondent before 4 pm on the 14th January 2105 and proposed a new fee from 14th February 2015.
15. The increase was calculated firstly by applying the movement in the Retail Prices Index (RPI) and secondly by adding the site licence fee payable to the local authority.
16. Section 5 of the 1960 Act confers a power of local authorities to grant a site owner a licence. Without such licence it is not lawful to use the land as a mobile home site.
17. Clause 5A(1) to the 1960 Act (above) was inserted by Section 1(3) of the 2013 Act as follows: *'A local authority in England and Wales who have issued a site licence in respect of a relevant protected site in their area may require the licence holder to pay an annual fixed fee to the local authority.* This provision became effective on 1st April 2015.
18. In accordance with Section 10A of the of the 1960 Act inserted by Section 1(6) of the 2013 Act the Stratford on Avon District Council published a fees policy (exhibited) on 3rd December 2014. The Applicant was notified of this policy by letter on 8th December 2014.
19. On 5th January 2015 the Applicant was invoiced for £469.00 being made up of:
  - a) caravan site inspection fee £120.00.
  - b) one off fee for the submission of the site rules £150.00.
  - c) cost for annual site licence £199.00.

20. The relevant charges are the caravan site inspection fee and the annual cost of the site licence a total of £319.00 (£120.00+199.00).
21. The site inspection fee is made up of:
  - a) Inspection, preparation costs, licence conditions and breaches (£20.00).
  - b) Basic inspection costs (£80.00).
  - c) Travelling time (£20.00).
22. The policy shows the annual service costs to be £2388.00 which divided by the 12 sites (within the local authority area) equals £199.00.
23. The Tribunal should have regard to this cost because:
  - a) The presumption created in paragraph 20(A1) of Schedule 1 Part 1 to the 1983 Act limiting the proposed increase to the RPI adjustment does not arise if that would be unreasonable having regard to paragraph 18(1)(BA) of the 1983 Act
  - b) In particular regard under 18(1)(ba) of the 1983 Act regard is to be had to: *"any direct effect on the costs payable by the owner in relation to the maintenance or management of the site of an enactment which has come into force since the last review date"*
24. The wording assumes a statute will impose an immediate cost on the running of the park. In this case the review date in question is 14th February 2015 and Section 5A of the 1960 Act came into force within the 12 month period (1st April 2104) prior to the review date. The site owner (Applicant) is therefore entitled to have particular regard to the cost.
25. The Applicant asks the Tribunal to have regard to two decisions of the Tribunal which found that the annual licence fee was recoverable through the pitch fee:
 

*Elms Caravan Co Ltd v McMillan and Others* CAM/22UH/PHI/2014/0019  
*Elms Caravan Co Ltd v Colley and Others* CAM/22UH/PHI/2014/0019  
 ('the Elms cases')

### **The Respondent's submissions**

26. Mrs Asquith submits that the charging policy issued by the local authority is unsatisfactory and has failed to publish a correct fee policy as required by the 2013 Act.
27. The 2013 Act amends the 1960 Act by inserting a new Section 10A which includes the following: '(2) *Before charging the fee, the local authority must prepare and publish a fees policy*'. The policy issued by Stratford on Avon District Council is an untidy document which does not itemise the fees but

lists a set of figures from which the reader is required to deduce the and calculate the site licence fee.

28. In February 2014 the Department for Communities and Local Government issued a guide for local authorities which includes at paragraph 15.5: *'The fee policy should set out: the fees payable for (a) applications for the grant of a site licence, (b) applications for the transfer of a site licence, (c) applications for alteration to the conditions of an existing site licence and (d) annual fee payable for an existing licence.'*
29. The Stratford document appears to be more concerned with the calculation of costs than informing the reader of the separate fees. The Cheltenham Borough Council Policy (exhibited) for example clearly sets the relevant fees.
30. It is inequitable that only one resident on the park should make a contribution to these fees. Although the Applicant may have the right to include this fee in the pitch fee without regard to the other residents it is contrary to natural justice for this technicality to override the rules of equitable conduct just because the Respondent has a different review date from other residents.
31. The Applicant states he will recover this fee from other residents in 2016 but the Respondent submits this is not possible. The implied term 18(1)(ba) of the 2013 Act states that when reviewing the pitch fee particular regard is to be had to: *"any direct effect on the costs payable by the owner in relation to the maintenance or management of the site of an enactment which has come into force since the last review date"*.
32. The relevant enactment Section 1 of the 2013 Act came into force on 1st April 2014 it cannot therefore be considered in respect of a pitch fee review on 1st January 2016.
33. The Applicant's argument fails for two reasons:
  - a) because the policy statement came into force on 3rd December 2014 it cannot be considered at pitch fee review after 3rd December 2015.
  - b) the policy is not an 'enactment' because there is no indication that it has been made as byelaw in accordance with Section 236 of the Local Authority Act 1972.
34. For the above reasons, the Applicant will not be able to recover the site licence fee from other residents on 1st January 2016 and the Applicant will therefore be the only person to contribute to the fee. The wording and spirit of the legislation is such the fee should be passed to all residents. It would be inequitable for the fee to be paid by the Applicant alone.

### **Applicant's response to Respondent's submission**

35. The local authority has issued a policy and therefore the site licence fee is a valid charge.
36. The principles of natural justice provide that every party has a right to a fair hearing and to be heard by an impartial tribunal. These principles have no bearing upon whether the pitch fee increase is reasonable. This part of the Respondent's argument should be disregarded.
37. At the time of serving the pitch notices in respect of those occupiers with reviews on 1st January 2015 the Applicant did not have knowledge of the annual site licence fee nor had the charge been published. The Applicant could not therefore take this cost into account when serving notices at or around the 25th November 2014. The Applicant intends to recover the annual site licence fee from the rest of the occupiers at the review on 1st January 2016.
38. In any event the content of another occupiers pitch fee is irrelevant to this application since the reviews are individual to each occupier.

### **The Tribunal's Deliberations**

39. The Tribunal considered all of the written evidence submitted by the Parties and summarised above.
40. The Tribunal finds as a matter of fact that Stratford upon Avon District Council did issue a fees policy on 3rd December 2014 and that it issued an invoice to the Applicant on 5th January 2015.
41. The Tribunal does not have jurisdiction to determine whether such fee policy is unsatisfactory when compared to the policy of another authority beyond the fact that it indicates that a charge (for the site licence) is to be made and the calculation of that charge.
42. The issue of whether or not the policy as issued is a bye-law is not relevant to these proceedings because it is a charge which arises out of the introduction of legislation (the amendment to the 1960 Act by the 2013 Act).
43. The issue of whether or not the site licence fee is recoverable from other occupiers in the future is not an issue before this Tribunal, and it has no jurisdiction to determine it. If the Respondent's view turns out to be correct, and the licence fee is not recoverable from the other occupiers, the Respondent may well feel aggrieved. However, as a matter of law, the Tribunal is satisfied that the proportion of the licence fee which the Applicant seeks to charge to the Respondent arises from a '*direct effect on the costs payable by the owner in relation to the maintenance or management of the site of an enactment which has come into force since the last review date*'. The question of whether or not it is inequitable or unfair to recover from the Respondent on this ground, because the it may transpire that the charge is

not lawfully recoverable from other occupiers is not a matter the Tribunal is permitted to consider.

44. In reaching its conclusions the Tribunal considered the two *Elms* cases quoted above and found that that if the pitch fee includes the site licence fee, as opposed to allowing it as a separate charge, that in the event of Stratford Upon Avon DC not increasing the fee the RPI adjustment will bear unfairly on the Respondent. Thus the Tribunal allows the site licence fee at £3.07 per 3 months but as a separate service item so that it does not increase in any subsequent year unless the local authority site licence fee increase. In the event of a decrease or should the fee cease, the appropriate adjustment must be made.
45. The Tribunal determines therefore that:
  - a) The Applicant is entitled to recover the increase in respect of the site licence fee.
  - b) the pitch with effect from 14th February 2015 is £296.91 (£292.24 + RPI £4.67) plus £3.06 (for the site licence) = **£299.97 per 3 month period.**

Robert T Brown  
Chairman

#### **ANNEX - RIGHTS OF APPEAL**

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.