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RESIDENTIAL PROPERTY TRIBUNAL

IN THE MATTER OF SECTION 17(1)(B),17(1)(6)A AND 17(11)(A) OF SCHEDULE 2 CHAPTER 2 AND PARAGRAPH 47(1)(B),47(5)(A) AND 47(9)(A) AND 47(11) OF SCHEDULE 2 CHAPTER 4 OF THE MOBILE HOMES (WALES) ACT 2013

REFERENCE: RPT/0005/04/10
RPT/0006/04/18
RPT/0007/04/18
RPT/0008/04/18
RPT/0009/04/18

PROPERTIES: 8 Birch Way, 3 Nicholas way,4 Oak Way,5 Oak Way and 81, The Dell, Caerwnon Park, Builth Wells, LD2 3RP

APPLICANT: The Berkeley Leisure Group Limited

RESPONDENTS: Mr. and Mrs. Harrison, Mr. and Mrs. Roberts, Mr. and Mrs. Shortland, Mr. and Mrs. Richardson and Mr. Mountford.

TRIBUNAL: Mr. Andrew Grant
Mr. Kerry Watkins
Dr. Angela Ash.

DECISION

Background

1. The Berkeley Leisure Group Limited ("The Applicant") is the Freehold owner of a mobile home site situated at Caerwnon Park , Builth Wells , LD 2 3RP ("the Park").

2. The Park has capacity to site up to 182 mobile homes.

3. On the 23rd November 2017 the Applicant served upon the occupiers of the site notice of a proposed new pitch fee ("the Notice") which, if agreed, would take effect on the 1st January 2018.

4. The current pitch fee is £146.38. The Notice proposed an increased figure of £155.66 which comprised the current fee of £146.38 together with a CPI adjustment of £4.39 and a contribution of £4.89 to service costs.

5. Nine (9) of the occupiers ("the Respondents") objected to the proposed increase namely, Mr. and Mrs. Harrison (8 Birch Way), Mr. and Mrs. Roberts (3 Nicholas Way), Mr. and Mrs. Shortland (4 Oak Way), Mr. and Mrs. Richardson (5 Oak Way) and Mr. Mountford (81 The Dell). In consequence, The Applicant made five separate applications, one in respect of each property, to the Tribunal seeking a determination as to the level of the proposed new pitch fee.

The Application

6. On the 26th March 2018 the Applicant submitted 5 separate Applications to the Residential Property Tribunal seeking a formal determination in respect of the proposed increased pitch fee pursuant to section 17 of the Mobile Homes (Wales) Act 2013.

7. The Tribunal issued directions on the 20th April 2018 which provided for all of the Applications to be determined together in accordance with Regulation 13 (2) of the Residential Property Tribunal Procedures and Fees (Wales) Regulations 2016.

8. The Tribunal further directed the Applicant to file and serve a witness statement in support of the Application by 12 noon on the 9th May 2018. The Tribunal directed the Respondents to file and serve a witness statement in response by 12 noon on the 25th May 2018.

9. The Applicant filed and served the written statement of Mr. Steve Drew dated the 4th May 2018 in support of its application. The Respondents relied upon a written statement prepared by Mr. R. G Mountford which was undated. The statement was to stand as the evidence of all of the Respondents.

10. The matter was listed for hearing on the 24th July 2018.

The Inspection

11. The Tribunal inspected the Park on the 24th July 2018.

12. The Applicant was represented at the inspection by Ms. Musson (solicitor), Mr. Drew, Mr. Williams, Mr. D Curzon, Mr. O Curzon and Ms. K Keogh. The Respondents were represented by Mr. Mountford.

The Hearing

13. The hearing was listed to take place at The Town Hall, Builth Wells on the 24th July 2018 at 10.30 am.

14. The Applicant was represented by Ms. Musson (solicitor), Steve Drew, Mark Williams, David Curzon, Oliver Curzon and Karen Keogh all of The Applicant Company. The following Respondents also attended – Mr. Mountford, Mr. and Mrs. Roberts, Mr. and Mrs. Richardson, Mr. Harrison, Mrs. Shortland and Ms. Court.

15. Mr. Mountford, Mrs. Richardson and Mr. Roberts spoke on behalf of the Respondents

The Submissions

16. Ms. Musson opened her application by stating that this application sought to increase the pitch fee payable by the occupiers. The Application was brought pursuant to section 17 The Mobile Homes (Wales) Act 2013 and that the only contentious issue in respect of the proposed increased charges related to the increase being claimed in respect of the sewerage charges.

17. Mr. Mountford confirmed that was agreed.

18. Ms. Musson directed the Tribunal to the authorities bundle and in particular the decision of the Court of Appeal in the case of P R Hardman & Partners v Greenwood and another (2017) EWCA Civ 52 and stated that the Tribunal were bound by that decision to allow the Applicant to claim the contested charges as part of the Pitch fee as opposed to having to recover the sums under a separate clause of the written agreement which the parties had entered into.

19. The Tribunal asked Ms. Musson if the charges in issue were charges imposed by the Applicant or whether the charges consisted entirely of charges from third parties which the Applicant proposed to recover by way of the Pitch fee. Ms. Musson said that the charges consisted entirely of charges imposed by third parties upon The Applicant and which the Applicant sought to recover.

20. The Tribunal asked Ms. Musson if it was contended by her client that the charges in question could not be recovered under the terms of the Written Agreements and Ms. Musson confirmed that to be the case.

21. That being the case, the Tribunal enquired as to how the charges had been recovered historically and Ms. Musson informed the Tribunal that it had formed part of the invoices that had been sent out to the occupiers but the charge had not been clear on the face of the invoices. Thus, it was submitted that the sewerage charge had previously been invoiced separately to the pitch fee.

22. Mr. Mountford submitted, on behalf of the Respondents, that the sewerage charge had always formed part of the pitch fee. He said that it had never been charged separately and that if the charge was now added to the pitch fee as proposed by the Applicant it would mean that the Respondents were being charged twice for that service.

23. Mr. Harrison submitted that historically invoices had never included reference to the Sewerage charge but the NEA charge (referring to the Environment Agency charge) was always less than they had been asked to pay so they had been overcharged.

24. Mr. Mountford submitted that it had been agreed with the previous owners that the Sewerage charges had formed part of the pitch fee and in that regard he referred to the documents which he had submitted to the Tribunal with his statement.

25. The Tribunal asked Ms. Musson if she accepted that there had been an agreement to include sewerage charges in the pitch fee and she denied that there had been any such agreement.

26. The Tribunal asked how the charges had been calculated. She confirmed that the charges had been divided by 182 even though there were not that number of units on the park as the park was not fully occupied.

27. Ms. Musson went on to submit that if the Tribunal were to find as a matter of fact that there was an agreement that sewerage charges were to form part of the pitch fee then the Applicant's increasing charges in providing the services were a weighty matter and were a factor for the Tribunal to take into consideration when deciding upon the level of pitch fee.

28. The Tribunal were informed that the Applicant was facing increasing costs in providing the sewerage service and said that in the year ending February 2016 the costs were said to be £9,274.00 whilst in the year ending February 2017 the costs were £10,107.00.

<u>The Law</u>

29. By Virtue of section 17(1) of Schedule 2, part 1, chapter 2 of the Mobile Homes (Wales) Act 2013 ("The Act") the pitch fee can only be changed in accordance with this paragraph either with the agreement of the occupier (s17 (1) (a)) or if a Tribunal, on the application of an owner or an occupier, considers it reasonable for the pitch fee to be changed (s17 (1) (b)).

30. Section 18(1) of schedule 2, part 1, chapter 2 of the Act requires that when determining the amount of the new pitch fee particular regard is to be had to –

(a) any sums expended by the owner since the last review date on improvements –

(i) which are for the benefit of the occupiers of mobile homes on the protected site,

(ii) which were the subject of consultation in accordance with paragraph 22(1)(e) and (f), and

(iii) to which a majority of the occupiers have not disagreed in writing or which, in the case of such disagreement, a tribunal, on the application of the owner, has ordered should be taken into account when determining the amount of the new pitch fee,

(b) any deterioration in the condition and any decrease in the amenity, of the protected site or any adjoining land which is occupied or controlled by the owner since the date when this sub 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).

(c) any reduction in the services which 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 sub 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), and

(d) any direct effect on the costs payable by the owner in relation to the maintenance or management of the site of any enactment which has come into force since the last review date.

31. Section 19 (1) of schedule 2, part 1, chapter 2 of the Act states that "When determining the amount of the new pitch fee, any costs incurred by the owner in connection with expanding the protected site are not to be taken in to account. Section 19(2) states that when determining the amount of the pitch fee no regard may be had to –

(a) any costs incurred by the owner in relation to the conduct of proceedings under this part or the agreement.

(b) any fee required to be paid by the owner by virtue of section 6 or 13, or

(c) any costs incurred by the owner in connection with –
    (i) any action taken by a local authority under sections 15 to 25, or
    (ii) the owner being convicted of an offence under section 18.

32. Section 20 (1) of schedule 2 of the Act states that "unless it would be unreasonable having regard to paragraph 18(1), there is a presumption that the pitch fee will increase or decrease by a percentage which is no more than any percentage increase or decrease in the consumer prices index 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.

Deliberations

33. This is an application brought by the Applicant which is the Park owner seeking to increase the pitch fee charged to the occupiers of the Park.

34. The Respondents to the Application are nine residents that occupy five of the mobile home pitches on the Park.

35. The only contentious aspect of the proposed increase is the proposed charge in respect of providing sewerage services.

36. Each occupier resides under the terms of a written agreement copies of which have been provided to the Tribunal.

37. Each agreement contains a provision in identical terms at Part 4 clause 3 (b) which provides that the occupiers must “pay and discharge all general and / or water rates which may from time to time be assessed charged or payable in respect of the mobile home or the pitch (and /or a proportionate part thereof where the same are assessed in respect of the residential part of the park) and charges in respect of electricity gas water and telephone and other services “.

38. The Applicant contended in evidence that it is unable to recover the charges for sewerage provision under this particular clause and that it should form part of the pitch fee and are matters to which regard should be had on a review (paragraph 2 of the witness statement of Steve Drew). In that regard it relies upon the decision of the Court of Appeal in PR Hardman and Partners v Greenwood and Another (2017 EWCA Civ 52) and in particular paragraphs 49 and 50 of that decision.

39. It is quite clear from the above decision that in principle there is nothing to preclude the park owners from including costs, expenses and other sums in issue as part of the pitch fee.

40. However, in the facts of this particular application, it is alleged that payment of the sewerage charges already form part of the pitch fee.

41. In the current Application the documentary evidence shows that from at least June 2004 until January 2013 the invoices submitted by the Applicant to the Respondents did not show a separate charge for Sewerage. This appears to have changed in January 2013 when, for the first time, a separate charge for sewerage appears.

42. This continued until 2017 when the Applicant informed the Respondents that its invoicing system could no longer separate out the charges to give a breakdown of each itemised cost.

43. The Applicant asserts that charges for the sewerage system were included in the invoices at all times but were not clear on the face of the documents and hence the change in 2013.

44. On the documents before the Tribunal it is clear that Mr. and Mrs. Roberts challenged the charges and refused to pay that element of their charges that related to Sewerage charges. They paid everything else. Those complaints resulted in the arrears on Mr. and Mrs. Roberts account being removed by the Applicant as confirmed in a letter from Steve Drew to Mr. and Mrs. Roberts dated the 4th July 2017.

45. The Tribunal is unconvinced by the Applicants submission that sewerage charges had always been charged separately even though it could not be identified from the invoices. There seems to be no reason why this charge could not have been itemised separately and the Applicant advanced no reason in evidence.

46. The fact that the arrears on Mr. and Mrs. Roberts account were subsequently written off by the Applicant also tends to suggest that the charges were not considered legitimate by the Applicant.

47. Amongst the papers before the Tribunal was an e mail from Shelley Green to Mrs. Richardson dated the 27th August 2012. Shelley Green previously worked at the Park and in the e mail she confirmed that the sewerage charges were included in the pitch fee.

48. In the circumstances the Tribunal finds as matter of fact that the charges for sewerage were included as part of the pitch fee.

49. In those circumstances Ms. Musson invited the Tribunal to take into account the increased costs facing the Applicant when making a determination on the pitch fee.

50. The Tribunal is able to have regard to matters outside of those specifically set out in sections 18 and 19 of The Act and this much is made clear at paragraph 49 of the decision in P R Hardman & Partners v Greenwood and another (2017) EWCA Civ 52.

51. Similarly, The Tribunal is not bound to apply the presumption in Paragraph 20 of the Act if it would result in an unreasonable amount.

52. In that regard the Tribunal notes that on the evidence supplied on behalf of the Applicant the charges rose by a sum of £833 between the period ending February 2016 and February 2017 which is an increase of 9% on the previous year.

53. This equates to a charge of £4.57 per pitch based upon the Applicants evidence that there are 182 authorised pitches at the site and that all charges are divided by 182.

54. On that basis the CPI increase pleaded at £4.39 (and this figure was agreed) is insufficient to cover the actual charges incurred as there is a shortfall of 18p per pitch.

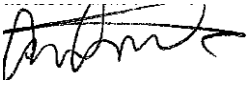
55. Therefore, the Tribunal finds it reasonable to increase the charge by 18p per pitch and determines a reasonable figure to be £150.95.

56. This enables the costs to be covered by the owner in full and is a sum which the Tribunal finds to be reasonable.

Decision

57. The Tribunal determines that the new monthly pitch fee is £150.95. This fee is payable from the 1st January 2018.

Dated this: 3rd day of September 2018.



A Grant
Chairman