



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

Case Reference : **MAN/13UH/PHI/2020/0005**

Property : **16c CHERRY MEWS, ASHWOOD PARK,
MARSTON**

Applicant : **TINGDENE PARKS LIMITED**

Respondents : **DAVID WILLIAM CANHAM and
DAWN BEATRICE CANHAM**

**Type of
Application** : **APPLICATION FOR DETERMINATION OF
NEW PITCH FEE: Mobile Homes Act 1983,
Schedule 1, Part 1, Chapter 2, Para 16**

Tribunal Members : **A M Davies, LLB
P Mountain FRICS**

Date of Decision : **10 February 2021**

**Date of
Determination** : **15 February 2021**

DECISION

1. The pitch fee payable by the Respondents for the year commencing 1 April 2020 is £1,876.56.
2. The Respondents shall pay the Applicant the sum of £100 representing the application fee.

REASONS

BACKGROUND

1. On 24 June 2019 the Respondents entered into a contract with the Applicant for the purchase of the park home known as 16c Cherry Mews, Ashwood Park in Marston. Ashwood Park is a protected site as defined by the Mobile Homes Act 1983, as amended (“the 1983 Act”).
2. The Respondents’ initial pitch fee was £1,836.24. Their pitch agreement provides that the pitch fee review date is 1st April.
3. On 28 January 2020 the Applicant served a Pitch Fee Review Form requiring the Respondents to pay, from 1 April 2020, a pitch fee increased by reference to the RPI increase (2.2%) since the previous year. The Respondents failed to accept the proposed increase, and on 23 June 2020 the Applicant applied to the Tribunal for a determination as to the pitch fee the Respondents should pay.

BASIS OF DECISION

4. The decision was made on the basis of the parties’ written representations, no site inspection being required by either party.

THE LAW

5. Chapter 2 of Schedule 1 to the Mobile Homes Act 1983 (as amended) (“the Implied Terms”) sets out the terms implied into every contract between the owner and occupier of a pitch on a protected site.
6. Paragraph 17 of the Implied Terms provides for annual reviews on the review date and continues, so far as relevant, as follows:
 - “(8) *If the occupier has not agreed to the proposed pitch fee*
 - (a) *the owner may apply to the [Tribunal] 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 an order determining the amount of the new pitch fee is made by the [Tribunal]*
7. Paragraph 18 provides
 - “(1) *When determining the amount of the new pitch fee particular regard shall be had to –*
 - (a) *any sums expended by the owner since the last review date on improvements*

- (b) *any decrease in the amenity of the protected site since the last review date; and*
- (c) *the effect of any enactment*”

8. Paragraph 20 of the Implied Terms provides

“(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 index since the last review date, unless this would be unreasonable having regard to paragraph 18 (1) above.”

9. These provisions of the Implied Terms were annexed to the Respondents’ agreement with the Applicant and therefore easily accessible to them.

THE REASON FOR NON-PAYMENT

- 10. The Respondents do not dispute the RPI figure applied by the Applicant to reach the new pitch fee, and do not claim that there has been any procedural defect. Their reason for refusing to pay the pitch fee increase is that they and the Applicant discovered after their purchase that contractors tasked with building brick “skirts” round the park homes at Ashwood Park had failed in a number of cases to apply to damp-proof membrane. In the absence of such a membrane a minimum gap is required, between the brickwork and the park home, and this minimum had been breached. The Applicant had the work corrected but incurred a delay in having the repairs re-inspected and certified as acceptable.
- 11. The Respondents do not say that the work to their park home was not acceptable. They do not claim that their home or any others suffered damage as a result of the contractors’ failure.

FINDINGS

- 12. The Respondents do not claim that the site amenities deteriorated in the 12 months to 1st April 2020. There is therefore no reason to vary the assumption at paragraph 20(1) of the Implied Terms, that the pitch fee will increase by an amount equal to RPI. As this should have been clear to the Respondents on a reading of their contract, their failure to pay the increase is unjustifiable, and they are required to reimburse to the Applicant the fee paid to the Tribunal on this application.

Tribunal Judge A Davies
10 February 2021