

Y TRIBIWNLYS EIDDO PRESWYL
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

The Tribunal hereby amends its earlier decision dated the 3rd September 2018 and determines that the new monthly pitch fee is £151.88.This fee is payable from the 1st January 2018.Credit is to be given for sums already paid towards the NEA Wales discharge fee.

Background

1. This decision arises from an Application made by the Applicant to the Tribunal by way of a letter dated the 20th September 2018 wherein the Applicant sought permission to Appeal the decision of the Tribunal dated the 3rd September 2018.

2. The basis of the Application was stated to be that the Tribunal had made a “clerical error, accidental slip or omission “in failing to include the NEA Wales discharge fee in the pitch fee.
3. Pursuant to Regulation 33 (5) of The Residential Property Tribunal and Fees (Wales) Regulations 2016 (“the Regulations”) the Tribunal may correct any clerical mistakes in a decision document or any errors or ambiguities arising in it from an accidental slip or omission.
4. It is clear from the Application dated the 26th March 2018 and the accompanying witness statement of Steve Drew dated the 4th May 2018 that the inclusion of the NEA Wales discharge fee into the pitch fee did form part of the Application but did not feature in the decision.
5. Accordingly the Tribunal will to deal with the matter pursuant to regulation 33(5) of the Regulations.
6. The hearing took place on the 24th July 2018. The parties submitted to the Tribunal at the beginning of the hearing that the only contentious issue between the parties was the issue of including sewerage charges (as distinct from the NEA Wales discharge fee) into the pitch fee (see paragraphs 16 and 17 of the earlier decision dated the 3rd September 2018). On that basis the Applicant is correct that the NEA Wales discharge fee should have been included in the Pitch Fee.
7. On the 10th October 2018 the Tribunal wrote to the Respondents and asked if they agreed that the NEA Wales discharge fee should form part of the Pitch Fee as submitted by the Applicant.
8. On the 12th October 2018 Sue Richardson (on behalf of the Respondents) sent an e mail to the Tribunal which said that “We, the Respondents have no objection to the Applicants including the NEA Discharge fees for administration purposes in the pitch fee invoices providing that it is not subject to the CPI yearly increases “.
9. This position was different to the position stated at the hearing when the Respondents said that the only issue in contention was the additional sewerage charges being included in the Pitch Fee.
10. In light of this change of position by the Respondents, the Tribunal invited both parties to make written submissions on the issue by the 31st October 2018. An extension was subsequently granted extending the time for written submissions to the 7th November 2018.
11. The Respondents made their submissions on the 18th October 2018 and the Applicant made their submission on the 6th November 2018.

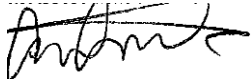
12. The Respondents repeated the position adopted in the earlier e mail from Sue Richardson dated the 12th October 2018.
13. The Applicant submitted that it was its intention to deduct the costs of the NEA Wales discharge fee from the current pitch fee, before applying the relevant CPI percentage to the remaining pitch fee. The NEA Wales discharge fee was then to be added back on to the pitch fee. The effect of this is that the NEA Wales discharge fee would not be subjected to the application of CPI each year. It would only be increased or decreased in subsequent years in line with actual increases or decreases in charges.
14. If the Applicant were to proceed in that manner it would have the effect of addressing the Respondents objections.

Decision

15. The Tribunal finds that it is reasonable to include the NEA Wales discharge fee as part of the pitch fee.
16. This was the position adopted at the hearing by the parties and the Respondents position has only changed latterly.
17. It is clear from the evidence that the Applicant is correct to assert that the sum in question should form part of the pitch fee and such an assertion is supported by the decision in P R Hardman & Partners v Greenwood and another (2017) EWCA Civ 52.
18. The Tribunal therefore amends its previous decision dated the 3rd September 2018 and finds that the new pitch fee should be £151.88 per month (broken down as follows)
- i Pitch fee - £146.38
 - ii CPI adjustment - £4.39
 - iii Increase for sewerage charge - £0.18
 - iv NEA Charge - £0.93
- New pitch fee - £151.88
19. Credit is to be given for sums already paid by the Respondents towards the NEA Wales discharge fee.
20. Paragraph 6 of the Applicants letter dated the 6th November 2018 invited the Tribunal to comment upon its proposed method of dealing with the NEA Wales discharge fee in subsequent years. Although issues relating to Pitch Fees in subsequent years does not form part of this application it may be of assistance to the parties to know the view of this Tribunal on this issue.

21. It would seem unreasonable on the facts as presented to increase the NEA Wales discharge fee by CPI if, in fact, those charges had not increased. Therefore, the proposed practice of removing the NEA Wales discharge fee prior to applying the CPI figure would seem to be a reasonable way of approaching this issue in the event that there have been no increase in charges in respect of that particular item. We hope this view provides some assistance to the parties going forward.

Dated this 6th day of December 2018.

A handwritten signature in black ink, appearing to read 'Andrew Grant', written over a horizontal dashed line.

Andrew Grant
Chairman.