

MINUTES OF TRIBUNAL HEARING HELD AT SOUTHEND COUNTY COURT 19<sup>TH</sup> OCTOBER 2023

JUDGES :- Mr Shepherd Mr Smith J1 & J2

ATTENDEES:-

APPLICANTS Thorney Bay Park Ltd - Gemma (SMITH) (GS) and Carl Canham (CC)

RESPONDENTS Gillian Clues (GC)

Jenny Humphries (JH)

Tim Mehan (TM)

Keith Williamson (KW)

Spokesperson - Gary Wakeling (GW)

J1 & J2 visited Sandy Bay Park at 10am on 19<sup>th</sup> October, they were accompanied on the visit by the applicants representatives GS & CC together with the respondents GC, JH, T M, K W, and GW.

All then travelled to Southend County Court for the formal hearing of the appeal against the pitch fee set by Sandy Bay.

Hearing started approximately 11.20 am.

J1 asked who was speaking for each party and who would speak first, it was agreed that CC would speak first for Thorney Bay Park Ltd (TB).

J1 Asked who is the applicant?

CC Thorney Bay Park Ltd. CC explained that Thorney Bay Park Ltd was originally owned by the King Family, on 18.3.2022 the park was sold, CC believed it had been sold to Royal Life (RL) but found out very recently that was not the case as RL were a management company appointed by the new owners.

J2 Searched Land Registry – Thorney Bay Park Ltd are registered as owners of SB

J1 Asked why the pitch fee had been increased?

CC “We’re allowed” and explained that the 1<sup>st</sup> notice of increase was set at RPI 12.7% this was then reduced to 6% as a goodwill gesture.

J1 Goodwill gesture relevant to what?

CC It was a goodwill gesture from the ‘new owners’ (RL?)

Discussion followed between the judges and CC as to who made decisions regarding the increase, questioning the legality of RL setting pitch fees as they were not the owners? CC advised that it was set by Thorney Bay Park Ltd on the advice of RL.

J1 asked CC “Any other comments to add”?

CC The increase was to cover increased costs, we have figures to support.

J1 What costs?

CC General supplies and wages

J1 Have there been any sums spent on improvements? Have there been any improvements?

CC Just overall running costs

J1 Reviewed a pitch fee review notice and noted there have been no recoverable costs relative to the 6% increase.

J1 asked CC Has there been any decrease in amenities?

CC No

J1 what about the complaints re gardens?

CC I believe they're in reasonable shape, gardeners are on site all the time, Monday – Friday.

J2 asked 'Number of staff on site'?

CC 15 – 20 between TB and SB, they have various shared tasks and move between sites.

J2 Asked if Bar staff and Pool staff are for those specific areas (confirmed), and Security?

CC We have more than a couple of years ago.

J1 But people are encroaching on site?

CC Security are on site 24/7 but they must take breaks and deal with issues.

(At this point J2 advised that he had been searching Companies House and it appears that the King family are not involved in ownership of TB or SB, it is a complicated trail and the name that appears to link connected companies is Arthur Weiss.)

TM Questioned If the site had been sold surely there would be new account details for pitch fee payments, there has been no change to Direct Debits?

J2 Advised that as TB are still the owners of SB the same bank account would apply.

J2 went on to explain that Arthur Weiss appears to be the controlling person.

SUN HOLDINGS UK LTD appear to be the owners with 7 officers listed.

J1 Moved to GW to hear on behalf of the respondents.

GW In response to points made by CC, GW explained

the 'Goodwill Gesture' was prompted by SBRA writing to RL suggesting that residents may be willing to pay a smaller increase. This was after 5 months of RL failing to acknowledge or meet with the committee.

During King's ownership they had 5 gardeners, several have gone and for many months there have been only 1 or 2. Sharing the gardeners with TB means a reduced service on SB,

residents rarely see them. GW challenged the claim of them being 'on site every day'. The Sales/Pool/Entrance areas are maintained for the benefit of new and potential purchasers.

GW Introduced pictures of the grounds taken over a period of time, J1 asked for these to be viewed by CC for comment.

CC I see various shades of green, I don't see a problem.

J1 & J2 viewed the pictures, J2 explained that it's important for pics to be dated for comparison, it's also difficult to introduce evidence at this stage of the proceedings. GW referred J1 & J2 to pictures included in the original pack appendix, submitted prior to the hearing. GW also referred them to the satisfaction survey illustrating that 80.39% of residents at that time were not happy with the facilities.

There followed some discussion regarding the evidence packs provided, GW had submitted only 1 pack on behalf of the residents represented by him. CC advised that multiple packs had been submitted by TB, this may have led to some confusion.

J1 Referred to P16 – para 3 which confirms that the pitch fee covers the items listed.

GW Referred to P15, copy emails between GW and Lee Skinner (LS) - questions from GW to LS asked for confirmation that the ground rent was to include the 'new improved facilities'

J2 This could be open to interpretation, depending on how the question was phrased? It could be presumed to refer to the existing facilities rather than not increasing for the new facilities?

GW It was not only referring to the existing.

**J2 " There may be a case for misrepresentation"**, that may be relevant to the pitch fee. LS could be saying the pitch fee covers the existing facilities, it's not clear that he's referring to the new.

GW The building of the new facilities was not started in the time frame given, building was to commence as part of phase 2 which has clearly not happened.

J1 To clarify, TB are not claiming for cost towards improvements, the increase is only RPI/CPI.

**I don't blame you for feeling mis sold or that there has been misrepresentation** BUT the % requested is less than CPI for that year.

GW Advised we have asked many times for staff numbers on site but this information has been refused, TB claiming it is against GDPR.

J1 Referred to paperwork relating to the pitch fee increase. **This hearing has jurisdiction only relating to pitch fees, this is the wrong place for a mis selling claim.** Pitch Fee increases can only be challenged if a deterioration in services can be demonstrated. You need to focus on the reduction in service provision.

GW Those items would be the reduction in parking from 3 to 2 vehicles per property, reduction in waste removal from 3 to 2 times weekly, etc.

J1 We would need to see the written statement relating to car parking.

GW LS showed an example of the written statement but residents did not receive this document until the 2<sup>nd</sup> payment was made, this was payment of £5000 non refundable, there was no sight of documents prior to the payment.

J2 The brochure is very clear but in this instance is not relevant, **the issues relating to the facilities not delivered is not lost on us** but this review can only focus on proven reductions in service.

GW We would argue that the clubhouse is not fit for current numbers of residents.

J1 So there is loss of use due to the number of residents increasing.

GW Yes, there are currently 343 residences including phase 2, at the time of purchase there were less than 50% of that number.

J1 Asked CC for comments.

CC The external covered area has increased the capacity, I can't speak for a size increase.

J2 The reduction in waste collection from 3x to 2x ?

J1 What reductions in services have there been? Focus on actual reductions.

GW The Bar and the pool, limited numbers due to lack of lifeguards present.

J1 Clarified that 1 lifeguard can be in charge of the pool with 35 people, 2 lifeguards = 70 people, etc.

GW The pool has been run with just one lifeguard for multiple weeks and the child's pool has not been open at all.

J2 Asked how long has the child's pool been closed, was it open during previous years?

GW Confirmed the children's pool had been closed for the whole season. It was open for the first couple of years so that was a reduction in service.

Discussion followed regarding areas of responsibility for gardens & maintenance, J2 referred to Occupiers obligation to maintain their pitch plus fences and outbuildings on their pitch, would that include shrubs / screens? GW & KW advised that the gardeners would be responsible for all shrubs, grass areas and gardens. Both judges viewed an example pitch plan (14 Sandbank Rd) JH advised that she is responsible for maintenance of the astro turf and the paved parking and rear access areas within the outline of that property.

CC On the question of deterioration we accept that the waste removal has been reduced.

KW Path clearance has been very much reduced, there used to be a 'walk behind' machine (Billy Goat manual path sweeper)) used to clear the pathways, that's no longer used and nothing has replaced it.

GC Security used to have 1 at the front gate and 1 at the 2<sup>nd</sup> gate, there are often none at either gate in the early hours and they are often open with no-one there. Also Jack King drive has a temporary fence which is open to all for the entire day.

GW Agreed that there have been more staff very recently although the main gate is frequently unmanned and their breaks frequently occur on Friday and Saturday pm, Security also manage Thorney Bay which takes them away from Sandy Bay.

CC Advised that there are 3 security guards on day shift and 3 on night shift giving 24/7 cover.

TM Raised the question of the buggies, for the first 2 or 3 years these provided transport for disabled residents to and from the clubhouse, they have not been available for at least a year.

CC Was unaware of the buggies being available for transport for residents. The respondents confirmed that this was the case.

GC Confirmed that the parking reduction from 3 to 2 vehicles was contrary to the site rules, GC had been in email conversation with SB regarding this. GC was asked to forward the relevant emails to the tribunal.

GC I would like to point out that the starting point is wrong. The pitch fee was agreed at that rate to include the new facilities, as these have not materialised the initial fee was too high.

J2 That is possibly relevant and could be taken into consideration.

J1 Having heard from all parties I must reiterate that only the pitch fee can be considered in this case, I add that Misrepresentation can be a very difficult case.

GW Plans for the facilities were to have been made available but that hasn't happened. Is the evidence we've provided more relative to mis selling?

J1 Yes, though I would advise that it is better to talk rather than litigate.

**J1 & J2 We will give 7 days for you to provide any additional information or documents in support of your application.**



