



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

Case Reference	CAM/11UE/PHI/2021/0024
Property	Site -The Orchards Residential Park, Trenches Lane, Slough, Berkshire, SL3 6QD – Park home address - 23 Blenheim Close, The Orchards, Trenches Lane, Langley, Berkshire (and others))
Applicant	Tingdene Parks Limited
Representatives	Ryan & Frost Solicitors
Respondent	Mrs & Mrs M Pearce and others as listed in the application
Representative	In person
Type of Application	To determine pitch fees under paragraph 16 of Schedule 1 Chapter 1 to the Mobile Homes Act 1983
Tribunal Members	Judge Professor Robert Abbey Mary Hardman FRICS IRRV (Hons)
Date and venue of Hearing	8 June 2022 by a face-to-face decision
Date of Decision	16 June 2022

DECISION

Decisions of the tribunal

- (1) The tribunal determines that: -
- (2) The annual pitch fee payable by the Respondents from 1 October 2021 is £1964.88.
- (3) The Respondents shall not be required to pay the £20 application fees to the Applicant.

The application

1. By an application dated 15 December 2021 and received by the First-tier Tribunal (Property Chamber; (Residential Property) the Applicant applied for a determination by the Tribunal under the Mobile Homes Act 1983 (as amended) (“the Act”) of a new level of the pitch fee in relation to the Site -The Orchards Residential Park, Trenches Lane, Slough, Berkshire, SL3 6QD – Park home address - 23 Blenheim Close, The Orchards, Trenches Lane, Langley, Berkshire (and 89 others)). This was in response to the challenges and objections by the Respondents to the proposed increase in the pitch fee.
2. The Respondent is the occupier of the mobile home which is situated on the pitch known as 23 Blenheim Close, The Orchards, Trenches Lane, Langley, Berkshire under the terms of an agreement made between Mr Pearce and his wife) and the applicant which commenced on 27 March 1982 (“the Agreement”). The Applicant is the current site owner of the Site -The Orchards Residential Park, Trenches Lane, Slough, Berkshire, SL3 6QD (“the Park”). This is a residential mobile home park. It is a protected site within the meaning of the Act.
3. On the 29 July 2021 the Applicant wrote to the respondents to give them notice that a pitch fee increase was proposed. It was to be increased by the change in the Retail Price Index (RPI) over the 12-month period. The relevant percentage was 3.9% from the month of June 2021. Applying this to the previous pitch fee of £1891.20 produced a new annual pitch fee of £1964.88 with effect from 1 October 2021. The increase was included and detailed in appropriate statutory forms required by the Act issued by the applicant and sent to the respondents.
4. Subsequently Mrs Hardman issued Directions on behalf of the Tribunal on 26 January 2022 whereby Mr and Mrs Pearce would be the lead respondents and directions were issued as to how the parties should prepare for the hearing. Accordingly, Directions requiring the parties to take specified steps by specified dates in order to progress the case to the earliest hearing date were made. Regrettably, the respondents failed to comply with these Directions. Consequently, it was explained to the

Respondents at the time of the hearing that in the absence of any witness statements the respondent's statement of case filed with the Tribunal would represent the totality of the respondent's case.

The hearing

5. The tribunal had before it two trial bundles of documents prepared by the applicant and the respondents and were thus used by the parties and the Tribunal during the face-to-face hearing when many of the other respondents also attended.
6. Prior to the hearing but on the same day the Tribunal carried out a site visit in the presence of the parties to observe physical features on the ground that were referred to in the Trial bundles. The Tribunal made an extensive walking tour of the site that took in several of the site roadways and visits to the rear gardens of some homes.
7. Rights of appeal can be found in an annex to this decision.

The background and the issues

8. In the Act at paragraph 32 of Schedule 1 a "pitch fee" is defined as –

pitch fee" means the amount which the occupier is required by the agreement to pay to the owner for—
(a)the right to station the mobile home on the pitch and for use of the common areas of the protected site and their maintenance; and
(b)water and sewerage services, unless the same are specifically excluded from forming part of the pitch fee by the agreement;
but the pitch fee does not include amounts due in respect of gas, electricity or other services, unless the agreement expressly provides that the pitch fee includes such amounts;

9. Paragraph 16 of Schedule 1 confirms that the pitch fee can only be altered in specific circumstances –

16 The pitch fee can only be changed in accordance with paragraph 17, either—
(a)with the agreement of the occupier, or
(b)if the tribunal, on the application of the owner or the occupier, considers it reasonable for the pitch fee to be changed and makes an order determining the amount of the new pitch fee.

10. With regard to annual reviews of the pitch fee Paragraph 17 of Schedule 1 states that -

“17 (1) The pitch fee shall be reviewed annually as at the review date.

(2) At least 28 clear days before the review date the owner shall serve on the occupier a written notice setting out his proposals in respect of the new pitch fee.

(2A) Notice under sub-paragraph (2) which proposes an increase in the pitch fee is of no effect unless it is accompanied by a document which complies with paragraph 25A.

(3) If the occupier agrees to the proposed new pitch fee, it shall be payable as from the review date.

(4) If the occupier does not agree to the proposed new pitch fee—

(a) the owner or the occupier 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 the new pitch fee is agreed by the occupier or an order determining the amount of the new pitch fee is made by the tribunal under paragraph 16(b); and

(c) the new pitch fee shall be payable as from the review date but the occupier shall not be treated as being in arrears until the 28th day after the date on which the new pitch fee is agreed or, as the case may be, the 28th day after the date of the tribunal order determining the amount of the new pitch fee.

(5) An application under sub-paragraph (4)(a) may be made at any time after the end of the period of 28 days beginning with the review date but no later than three months after the review date.

11. Finally, and in relation to the involvement of RPI, Paragraph 20 of Schedule 1 states that –

20 (A1) Unless this would be unreasonable having regard to paragraph 18(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 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.*
- (A2) In sub-paragraph (A1), “the latest index” –*
 - (a) in a case where the owner serves a notice under paragraph 17(2), means the last index published before the day on which that notice is served;*
 - (b) in a case where the owner serves a notice under paragraph 17(6), means the last index published before the day by which the owner was required to serve a notice under paragraph 17(2).*

Decision

12. The tribunal is therefore required to consider whether the change to the pitch fee complies with the statutory requirements. To do this the Tribunal will consider the fee in dispute, taking into account the oral and written representations made on behalf of the respondents and the applicant.

13. At the hearing the respondents confirmed that they took no issue with the review date or the notice procedure and in fact confirmed their agreement to the RPI increase. However, they said they had another issue that in fact arose from paragraph 18 of Schedule 1 which states that –

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

14. Accordingly, it is the respondent's case that residents had not seen any improvements or indeed maintenance work carried out on the Park for 10 to 12 years. In his evidence Mr Jeremy Pearson, the Operations Director for the applicant accepted what the respondents said about improvements but not about maintenance. He asserted that the Park was maintained and kept in good order and condition. The Tribunal, when it conducted its site visit was able to observe a neat and tidy Park area where it was clear that this was a Park that was looked after. However, there were issues brought to the Tribunal's attention that were issues between the parties such as uneven and possibly dangerous road surfaces and roadways with inadequate lighting but in general the Park seemed suitably maintained.

15. The residents also say that they asked the applicant to erect parking notices but failed to do so. Additionally, they asked for dog mess bins to be located around the Parks but again the applicant failed to respond to this request.

16. However perhaps the main cause of disquiet among the residents arises from the drainage ditch running to the side of the Park known as the Horton Drain. The respondents say that residents who live in Meadow View and Morello Drive and who back onto the ditch have for several years been asking the applicant to carry out maintenance works to the northern bank being within their ownership. There are issues arising from the bank slumping down and the Tribunal were able to see rear gardens of Homes where it was apparent that garden areas were being adversely affected by the drain bank problem. The Tribunal was able to see an engineer's report produced by the applicant where it was stated that there is evidence of slippage at various locations in the Park but that this may arise from bank adjustments made by residents. Either way the Tribunal noted the issue but could not find a link to the Pitch fee review before it.

17. Improvements are covered by Paragraph 18 of Schedule 1. The applicant says that in respect of paragraph 18 factors:

(1) Paragraph 18(1): The applicant has not carried out any improvements since the last review date (1st October 2020) and so has not included any sums expended on improvements.

(2) Paragraphs 18(1) (aa) and (ab): There has been no deterioration in condition or decrease in amenity or reduction

in services or the quality of services since 26th May 2013 (the operative date for the two sub-paragraphs. The applicant therefore relied upon on its witness evidence notes that all respondents agreed the last pitch review which took effect from 1st October 2020.

Accordingly, as there are no paragraph 18 factors to have regard to, the applicant asserts that a presumption arises under paragraph 20 that it would not be unreasonable to increase the pitch fee in line with RPI, and no other factors arise to rebut the presumption.

18. The Tribunal noted that the applicant was clear in saying that there had been no improvements since the last review of the pitch fee and hence there was no claim for an increase in that regard as a result. The Tribunal was therefore of the view that there was no reason to alter the proposed increase linked to RPI for the pitch fee. In all these circumstances and in the light of the above this Tribunal came to the inescapable conclusion that the new pitch fee increased by RPI at 3.9% was payable by the respondents from 1 October 2021.

19. As in many pitch fee disputes, the real issue is not the amount of the fee but other matters of contention between the residents and the site owner. In the present case, it appeared to the Tribunal from the oral evidence from the respondents on occasions failed to talk to the respondents and has left them feeling ignored and angry. With good will on both sides and renewed communication and consultation between the parties this should hopefully, resolve the problem.

20. Rule 13 allows for the refund of Tribunal fees. Rule 13(2) states that

“The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.”

21. The Tribunal thought that the Respondents clearly had concerns that they felt needed airing and they chose the Tribunal as the venue for this. The Tribunal were able to see and hear about problems at the Park that were unresolved and on-going. It was also apparent to the Tribunal that communication issues were evident between the parties and that this contributed to the resident’s sense of grievance. In all these circumstances the Tribunal decided that they would not make an order for the reimbursement of fees.

Name: Judge Professor Robert
Abbey

Date: 16 June 2022

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.