



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

**Case Reference** : CHI/45UB/PHI/2022/0018

**Property** : 6 Haigh Close, Broadway Park, The  
Broadway, Lancing, West Sussex, BN15  
8NR

**Applicant** : The Berkeley Leisure Group Ltd

**Representative** : -

**Respondents** : Mr D McLenahan

**Representative** : -

**Type of Application** : Review of Pitch Fee: Mobile Homes Act  
1983 (as amended)

**Tribunal Member** : Mr W H Gater FRICS

**Hearing** : Decision on Papers

**Date of Decision** : 11 August 2022

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DECISION

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## **Background**

1. On 14 March 2022 the Applicant site owner applied for a determination of the pitch fee of £173.53 per month payable by the Respondent as from 1 January 2022.
2. A Pitch Fee Review Notice dated 18 November 2021 was served on the occupier proposing to increase the pitch fee by an amount which the site owner says represents only an adjustment in line with the Retail Prices Index.
3. The Applicant confirmed by letter on 10 March 2022 that the application had been served on the Respondent.
4. On 12 May 2022 the Tribunal directed the Application to be determined on the papers unless a party objected within 28 days. The Tribunal received no objections.
5. The Tribunal accepted the application as the Applicant's case. The Respondent was directed to confirm agreement or file a statement of case, and the Applicant was given the right of reply.
6. The Respondent submitted a written response and on 14 June 2022 the Applicant issued a bundle containing the submissions of both parties.
7. The Tribunal has had regard to all submissions in making its determination.

## **Evidence**

8. The Applicant states that the last review was by agreement on 1 January 2021 and submits no evidence of improvements, relevant costs or reduction in services since that date.
9. The Applicant has restricted the increase in pitch fee having regard to the percentage increase in the RPI.
10. The Respondent states that there has been a problem with overflowing sewerage in the rear garden of his pitch. The issue has been occurring for a long period of time.
11. It has been reported to the various site managers, but nothing has been done. He states that he cannot entertain family or friends outdoors as a result.
12. The Respondent considers that the reason overflowing occurs is that there are two float operated pumping stations serving all the homes on Broadway Park. They pump sewerage and wastewater to the main sewer. In order to reach the main sewer the waste passes through the drainage system and through a T junction manhole at the rear of his property. It is

then diverted through the property directly behind. This property is not part of Broadway Park although was once owned by Berkeley Leisure, probably for the sole purpose of installing a drainage outlet to the main sewer. Putting Health and environmental issues under pressure in today's climate is not the way forward.

13. The Respondent has sought help from the Environmental team at the Local Authority. Whilst not included in the bundle, the Respondent provided a copy of an email from the Local Authority indicating that there are issues with sewage overflow in neighbouring Bristol Avenue where the sewer from Broadway Park joins. Alternatively, the problem may be one of under-capacity of the drain. The investigations continue.
14. The Respondent also points out that pitch fees continue to rise, and this issue appears to be one Berkeley Leisure do not want to address. "It is they who should compensate me for the suffering and inability to use my outdoor space".
15. The Applicant provided correspondence with the Respondent which concluded that the issues come from a shared drain managed by the water authorities and that they were seeking to have the pump adopted by Southern Water.

## **The Law**

16. One of the important objectives of the 1983 Act is to standardise terms on which mobile homes are occupied on protected sites. All agreements to which the 1983 Act applies incorporate standard terms which are implied by the Statute. In the case of protected sites in England the statutory implied terms are those in Chapter 2 of Part 1 of Schedule 1 to the 1983 Act.
17. The Pitch Fee: Paragraphs 16-20 of those terms concern the pitch fee. A review of a pitch fee is governed by three statutory principles:
  - an annual review,
  - no change unless either agreed or determined by the Tribunal, and
  - a presumption of a change in line with the variation in RPI.

Paragraph 18 sets out factors to which the Tribunal must have particular regard in determining a pitch fee. The factors include improvements carried out or legislative changes affecting costs, and changes in amenities or services which have not previously been taken into account.

## **Consideration**

18. Broadway Park is a protected site within the meaning of the Mobile Homes Act 1983 (the 1983 Act).
19. The Respondent's right to station a mobile home on the pitch is governed by the terms of the Written Agreement with the Applicant and the provisions of the 1983 Act.
20. Date of review: The Applicant supplied a copy of a written agreement which has a commencement date of 29 April 2002. The pitch fee review date is shown in the Express Terms as 1 January in each year. That agreement was last assigned on 14 May 2010.
21. The Act provides that the pitch fee may only be reviewed annually as at the review date.
22. The increase in pitch fee. The Tribunal is required to determine whether the proposed *increase* in pitch fee is reasonable. The Tribunal is not deciding whether the level of pitch fee is reasonable.
23. Pitch fee is defined in paragraph 29 of Part 1 of Schedule 1 of the 1983 Act as:

"The amount which the occupier is required by the agreement to pay to the owner for the right to station the mobile home on the pitch and for use of the common areas of the protected site and their maintenance but does not include amounts due in respect of gas, electricity, water, sewerage or other services, unless the agreement expressly provides that the pitch fee includes such amounts."
24. The Tribunal is required to have regard to paragraphs 18, 19 and 20 of Part 1 of Schedule 1 of the 1983 Act when determining a new pitch fee. Paragraph 20(1) introduces a presumption that the pitch fee shall increase by a percentage which is no more than any percentage increase or decrease in the RPI since the last review date.
25. The Applicant has restricted the increase in pitch fee having regard to the percentage increase in the RPI shown on the notice at 6%.
26. The Notice of Pitch Fee Review 18 November 2021 was made on the prescribed form. It proposes to increase the current fee of £163.71 per month to £173.53 per month.
27. This is based on an increase of £9.82 per month or + 6%.
28. The Tribunal finds as a fact that the stated RPI figure of 6% is in line with published data at the time the notice was served.
29. The Tribunal has carefully considered all submissions in detail.
30. Whilst the Tribunal appreciates that the Respondent is aggrieved by the sewer problem, which clearly must be sorted out, it must determine

whether this should displace the assumption that the pitch fee should rise by the RPI.

31. The Tribunal notes the Applicants evidence that the sewer is the responsibility of South West Water and that repair is beyond the site owners control. The Local Authority point to the backing up from the public sewer in Bristol Avenue as a possible cause.
32. In order to engage paragraph 18 of Sch 1 of the Act the Respondent would need to demonstrate that there has been a deterioration in the site as a whole since the last review.
33. The Tribunal is satisfied that the evidence provided is not sufficient to displace the presumption that the pitch fee should be increased in line with RPI as noted. The Tribunal, therefore, confirms the increase.

### **Decision**

34. The Tribunal determines that the proposed increase in pitch fee is reasonable, and the Tribunal determines a pitch fee of £ 173.53 with effect from 1 January 2022.
35. The Tribunal is minded to order the Respondent to reimburse the Applicant with the Tribunal application fee of £20. This order will take effect unless the Respondent makes representations in writing to the Tribunal on why they should not reimburse the fee by 14 days.

### **RIGHTS OF APPEAL**

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.