



**First-tier Tribunal
Property Chamber
(Residential Property)**

Case reference : CAM/00KC/PHI/2022/0036

Park Home Address : 26 Three Star Park, Bedford Road, Lower Stondon, Bedfordshire SG16 6DU

Applicant : Tingdene Parks Limited

Representative : Ryan and Frost

Respondent : Mrs S Bennett

Date of Application : 28 July 2022

Date Decision : 12 October 2022

Type of application : to determine the new pitch fee - paragraph 18 of Schedule 1 to the Mobile Homes Act 1983, as amended (“the Act”)

The Tribunal : Mary Hardman FRICS IRRV(Hons)

DECISION

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Background

1. The Respondent, Mrs Bennett, is the occupier of the park home at 26 Three Star Park, Bedford Road, Lower Stondon, Bedfordshire SG16 6DU.
2. Mrs Bennett has not agreed to an increase in pitch fees for 2022. The site owner must therefore apply to this Tribunal if it is to obtain an increase in pitch fee. The annual review date for pitch fees is 1 May 2022 .
3. Notice of the proposed new pitch fee, in the prescribed form, was served on the respondent, explaining that as of 1 May 2022 the pitch fee would be increased by 7.8% in line with RPI for January 2022, in accordance with the Office for National Statistics RPI All Items table.
4. An application dated 28 July 2022 was made to the Tribunal for determination of a new level of pitch fee. The Tribunal issued a directions Order on 25 August

2022 saying that the Tribunal proposed to deal with this application by considering the papers only, without a hearing, and would do so on or after 3 October 2022 unless any party requested an oral hearing which would then be arranged.

5. No such request was received.

The Occupation Agreement

6. A copy of the original agreement has not been provided by the Applicant

The Law

7. Paragraph 20 of the Implied Terms set out in Chapter 2, Part 1 of Schedule 1 to the Mobile Homes Act 1983 states that – unless it would be unreasonable to do so – it is presumed that the pitch fee will be adjusted annually by reference to the percentage increase or decrease in the Retail Prices Index based on the difference between the latest index and that published for the month 12 months prior to the month to which the index relates.
8. The site owner must give the occupier written notice accompanied by a prescribed Pitch Fee Review Form. The Tribunal notes that the prescribed forms have been used in each case and the relevant time limits have been complied with.
9. Paragraph 18 (1) Chapter 2, Part 1 of Schedule 1 to the Mobile Homes Act 1983 of requires that

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 appropriate judicial body, on the application of the owner, has ordered should be taken into account when determining the amount of the new pitch fee;*
- (aa) in the case of a protected site in England, 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 subparagraph);*
- (ab) in the case of a protected site in England, 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 subparagraph);*

10. Upon application, the Tribunal must determine two things. Firstly, that a change in the pitch fee is reasonable and, if so, it must determine the new pitch fee.

The Respondent's case

11. The Respondent, Mrs Bennett has been in a dispute for some time with Tingdene, the landlord, regarding a tree to the rear of the pitch. A pitch fee application made by the landlord on 27 July 2021 was withdrawn on 22 December 2021 on the basis that the parties had reached a settlement.
12. The settlement appears to be, evidenced by a letter of 16 December 2021, that Mrs Bennett would pay the pitch fee increase for 2021 and that, as 'a gesture of goodwill', the landlord would be attending to the cutting back of the boundary hedge/trees at the rear of the pitch.
13. Mrs Bennett disputed that there are any trees on her pitch and in June 2022 Tingdene, the landlord, wrote to Mrs Bennett to say that they would write to her neighbour and request that they maintain the tree to their plot to eaves height, in accordance with the park rules.
14. Mrs Bennett then wrote to the tribunal on 23 September 2022, received 10 October 2022, to say that, as the tree had not been seen to, late last winter there was a freak storm with very high winds and rain which damaged the fence adjacent to the tree. She had asked the park manager if he knew of anyone who could repair it at reasonable cost, and he said that he didn't but that it would be joint cost with the neighbour.
15. At about that time a gardener was sent by Tingdene to look into the tree and damage to the fence. The gardener spoke to both Mrs Bennett and the neighbour seeking to come to a solution. He took copies of paperwork, plans etc. and said he would look into it but nothing further was heard.
16. She approached Kerry Wild at Tingdene who said that the gardener was supposed to get back but didn't.
17. Mrs Bennett says she is prepared to pay the increase of £1.88 per month if the 'goodwill gesture' as agreed last year of cutting the tree is completed.

The Applicant's case

18. The Applicant relies on pitch fee review forms served on the Respondent dated 28 February 2022. Sections 2 and 3 of these forms state that the previous review date had been 1 May 2021 and that the new reviewed pitch fee of £1763.76 per annum would take effect on 1 May 2022. The Applicant indicates that there have been no changes in the site since the last review. The increase was on the basis of an adjustment of +7.8% to the previous pitch fee of £1,636.20, in line with the movement in the Retail Prices Index over the 12 months to January 2022.

Discussions and Determination

19. The Tribunal has considered the submissions filed by both parties.
20. The Tribunal is firstly required to consider whether the change to the pitch fee complies with the statutory requirements.
21. The Respondent has not taken any issue with the review date or the notice procedure and the Tribunal find that this accorded with the required statutory procedure.
22. For the purposes of the 1983 Act, the Tribunal must then consider whether what Mrs Bennett complains of constitutes a deterioration/decrease in the condition or amenity of the park.
23. If it did find that there has been any deterioration/decrease in the condition or amenity of the park, then it must decide whether it would be unreasonable for the pitch fees to be increased on the basis of the increase in the retail prices index.(RPI)
24. In *Vyse v Wyldecrest Ltd* [2017] UKUT 24 (LC) HHJ Alice Robinson noted [at 45] that: “...*the factors which may displace the presumption are not limited to those set out in paragraph 18(1) but may include other factors...*” and said [at 50] that: “...*By definition, this must be a factor to which considerable weight attaches ... it is not possible to be prescriptive ... What is required is that the decision maker recognises that the “other factor” must have sufficient weight to outweigh the presumption in the context of the statutory scheme as a whole.*”
25. In this case, whilst the tribunal empathises with Mrs Bennett on the longstanding concerns regarding this tree it does not find that it is a factor to which, in this case, considerable weight attaches and that it outweighs the presumption that the pitch fee will increase by the RPI.
26. It finds that the pitch fee increase is reasonable and that the revised pitch fee of **£1763.76 per annum** is payable from 1 May 2022.
27. However, it also notes that Tingdene, in advising the tribunal in December 2021 that the previous application for determination of pitch fee was settled, attached a letter to Mrs Bennett saying that as a goodwill gesture on that settlement, it would be attending to the cutting back of the boundary hedge/trees at the rear of the pitch.
28. It appears that it sent a representative to look into this but unfortunately, they do not appear to have followed through with this.
29. It then wrote to Mrs Bennett in June 2022 to say that they would write to her neighbour and request that they maintain the tree to their plot to eaves height, in accordance with the park rules.

30. This appears to the tribunal to be a matter that is easily resolved once and for all. The tribunal would strongly urge Tingdene to carry through in its undertakings to close this matter and avoid further distress to Mrs Bennett.

Mary E Hardman FRICS IRRV(Hons)

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.