



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

Case Reference : CHI/18/00HE/PHI/2022/0082

Property : 53 Pedna Carne, Higher Fraddon, St. Columb,
Cornwall TR9 6LF (The Park)

Applicant : Lifestyle Park Homes Ltd

Representative : Ms Kirsty Apps (Apps Legal Ltd)

Respondent : Mrs H Freeman

Type of Application : Review of Pitch Fee; Mobile Homes Act 1983 (as
amended) the “Act”

Tribunal Members : Mr R T Brown FRICS

**Date type and venue of
Hearing** : On papers 30th November 2022

Date of Decision : 30th November 2022

DECISION

1. The Tribunal orders that the Applicant may increase the Respondent's current pitch fees, in line with Retail Prices Index (RPI) by 7.8% from the 1st April 2022.
2. The Tribunal orders that the Respondent reimburse the Application Fee of £20.00 to the Applicant within 28 days of the date of this decision.

The application

3. The Applicant made an application dated 28th June 2022 to the Tribunal for the determination of the new level of pitch fee in respect of No 53 Pedna Carne.
4. Attached to the application:
 - a) a copy of the Pitch Fee Review Form served under The Mobile Homes (Pitch Fees)(Prescribed Form)(England) Regulations SI2013/1505 dated 25th February 2022.
 - b) a copy of the Written Statement under the Mobile Homes Act 1983.
 - c) a copy of the Schedule 4 Assignment Form (The Mobile Homes (Selling and Gifting)(England) Regulations 2013 SI 2013/981 transferring the agreement to Mrs Freeman.
 - d) a copy of the Office for National Statistics Retail Price Index (RPI) graph showing the increase in RPI between April 2021 and January 2022 to be 7.8%.
5. Directions dated 27th September 2022 were issued by the Tribunal's Legal Officer in respect of the application.
6. Direction 6 states that the Tribunal consider this is a matter which may be suitable for determination on the papers alone without an oral hearing. Direction 7 indicates that if there is no objection to Direction 6 the Tribunal will review the bundle and determine whether or not the matter shall proceed on the papers or with a hearing. In this case a hearing is deemed to be unnecessary
7. The Parties complied with Directions and a bundle of documents (comprising 132 pages) was prepared and included:
 - a) The Application and associated documents (above) which stand as the Applicants statement of Case.
 - b) The Directions
 - c) The Respondents Reply
 - d) The Applicants response to the Respondents Reply
 - e) Correspondence between the Parties

Inspection

8. Upon review of the Bundle the Tribunal did not consider an inspection would assist the determination but did however look at an aerial view Pedna Carne on the internet.
9. The site is located just to the south of the main A30 trunk road between Penhale and Higher Fraddon.

The Applicant's Case

10. In summary the Applicant's case is that the company served on 25th February 2022 a valid notice to increase the pitch fee by 7.8% with effect from 1st April 2022 in line with the Retail Prices Index. The increase is from £150.85 per month to £162.62 per month. No charges are included in the pitch fee for services (e.g. gas, water, electricity, sewerage etc).

Respondent's Case

11. The Respondent is not opposed to a pitch fee increase from 1st April but is not in agreement with the amount but has continued to pay the existing pitch fee.
12. There are ongoing water supply and drainage issues.
13. There is no full time manager anymore so savings are being made.
14. Repairs and upgrades promised to the entrance have been made but these have been carried out on a low budget. Some of the spoil was disposed of in the hedge opposite the entrance.
15. Some of the new signage is not standard or mis positioned so misunderstood by visitors to the site.
16. The roads on the older part of the site need resurfacing instead of patching and repatching.
17. Plot 15 seems to have been abandoned with no cutting back of weeds and undergrowth and is detrimental to the park.
18. The new pitch fee is not reflective of the standard of maintenance of the 'older' part of the site.
19. The site licence has been renewed but the bare minimum has been done.

The Applicant's Reply to the Respondent

20. Ms Apps of Apps Legal acting on behalf of the Applicant submitted a statement in reply which she said should be taken to include Mr Berryman's (Director of the Applicant company) witness statement.
21. The Applicant's case is that there has no deterioration in the condition of the Park or the amenity/pleasantness of the Park since May 2013.
22. Ms Apps set out the criteria for increasing the pitch fee and the factors which might be taken into account in when determining whether or not the presumption that the increase should be in line with the change in the RPI since last review.
23. In particular she referred to two recent decisions which she says provide guidance when considering whether or not to depart from the presumption of an increase in line with RPI:

Vyse v Wyldcrest Parks (Management) Ltd [2017] UKUT 24 (LC)

**Sines Parks Holding Ltd v Muggeridge and Others
CHI/43UB/OHI/2020/0046/0047/0048/0049**

24. The evidence is that the park is well run and maintained. There is no weighty reason to warrant the displacement of an RPI only increase.

25. Mr Berryman provided a witness statement in which he says he is the majority shareholder and managing director of the Applicant Company. Further he is a fit and proper person approved unconditionally by Cornwall Licencing Authority.
26. The Applicant has owned the Park since December 2016.
27. The Park is licenced for 94 mobile homes although there are only 82 on site at present. The Park has a dedicated community centre for the benefit of the residents.
28. Pitch Fee reviews in line with RPI have not been disputed since 2016.
29. The Pitch Fee review date for all homes on the site is 1st April each year and Notices were issued to all residents on 25th February. Mrs Freeman is the only person to object.
30. The Park is well maintained and the Applicant employs two part time managers who undertake routine tasks and oversee contractors.
31. A schedule (Appendix 4) showing work undertaken to maintain and improve the Park. Those works include:
 - a) Improved Park entrance and signage incorporating up lighting.
 - b) Improved signage throughout the Park.
 - c) A new Park Map.
 - d) Installation of defibrillator.
 - e) 3 additional visitor parking spaces
 - f) Repurchase of the dilapidated home on pitch 15PC for siting of a new home.
32. 20 new homes have been added to the park since 2018.
33. Historic and present day photographs (Appendix 10) demonstrate that the Park is being adequately maintained and that there has been no permanent deterioration in the standard or amenity of the Park.
34. Addressing the specific points raised by Mrs Freeman Mr Berryman says:
35. Leaking Water supply: The Applicants have carried out maintenance work as necessary. The infrastructure serves over 80 homes and occasionally pipes fail (often due to tree root damage to pipework). Issues that arise are addressed and Cornwall Council Licencing Authority has not raised concerns with the Applicant over water supply to or drainage from the Park. On one occasion there was a supply failure to the local area which affected the Park and other nearby properties. This was addressed by South West Water. The 20 new homes have new connections to the main supply made by South West Water.
36. There is no longer a full time manager leading to savings: Prior to the 2021 review, which was accepted by Mrs Freeman the company restructured the way in which some services were provided. This did not reduce the service the company is obliged to provide.
37. Repairs and upgrades to the entrance promised in last years review have been 'low budget' with spoil disposed of in the hedge opposite: The company carried out the work to a good standard as shown on the photographs attached.
38. Some of the signage is not standard and mis positioned: The company has made improvements to the signage and no compliance concerns were raised at the 2022 Site Licence inspection.

39. The roads are older and need resurfacing instead of patching: The company maintains and improves the roads over time including repairing potholes. No concerns have been raised by Cornwall Council.
40. The empty Plot 15 appears to have been abandoned: The old home has been removed and a new base installed in preparation for a new home to be sited.
41. The 'old site' is not maintained to a standard satisfactory to the original park residents: The company meets its obligations under the Mobile Homes Act and all other residents have agreed to the increase.
42. Money has been spent creating 'new' pitches and making that side of the site more desirable: It is clear that the new development has raised the standard of the park overall.
43. The licence has been renewed (in my opinion) but the bare minimum has been done: This is not a view shared by the company or Cornwall Council.
44. The pitch fee increase was calculated in line with the RPI for January 2022 at 7.8%.
45. The company requests repayment of the Application Fee of £20.00.

The Law

46. The relevant legislation with which a Park owner must comply is contained in the Schedule to the Act. The Tribunal were referred to the paragraphs 16 and 20 of the Mobile Homes Act 1983 by the Applicant. The Applicant also referred the Tribunal to some case law (above) in which the First-tier and Upper Tribunals have considered the question as to whether or not there are grounds for the First-tier Tribunal to depart from the presumption that the pitch fee should be increased by RPI during the preceding twelve month period.
47. Extracts from the legislation are set out in the schedule to this decision.

Reasons for the Decision

Pitch Fee

48. The Act formulates a presumption that the pitch fee will increase or decrease annually in line with the identified change in the Retail Price Index during a defined twelve month (para 20). The formula for calculating the increase has been followed by the Applicant. The Respondent does not dispute that the increase has been correctly calculated and that the procedure for informing them of the increase has been correctly followed.
49. Paragraph 18 of the Act refers to the matters to which the Applicant should have particular regard and which factors can displace the presumption in paragraph 20.
50. The Respondent has suggested which factors she considers should be taken into account to displace the presumption of the increase in pitch fees.
51. Case law has developed following previous tribunal decisions about pitch fee increases and it is helpful to refer to those cases which provide guidance as to which factors might displace the presumption of a statutory increase.

52. In **Britaniacrest Case v Bamborough and another [2016] UKUT 144 (LC)** the Upper Tribunal identified that the statutory framework for pitch fee review is shaped by three basic principles.
- a. Pitch fees may be reviewed annually;
 - b. Pitch fees cannot be changed unless the change is agreed or unless following an application, the FtT “considers it reasonable for the pitch fee to be changed”, and makes an order determining the amount of the new pitch fee;
 - c. Unless it would be unreasonable, having regard to the factors set out in section 18(1), there is a presumption that the pitch fee will change by no more than the percentage fluctuation in RPI since the previous review date (20(A1)).
53. In that case, the Tribunal made it clear that whilst the factors set out in paragraph 18 must be taken into account in every case these are not the only factors which might be relevant to a change in the pitch fee. The presumption of the change being limited to an increase or decrease in line with RPI might be displaced.
54. In the **Wyldecrest Parks Management Ltd v Kenyon and others [2017] UKUT 28 (LC)** the Tribunal stated that pitch fee review provisions give rise to at least three questions:-
- a. The pitch fee can only be changed if the appropriate judicial body “considers it reasonable for the pitch fee to be changed”. (paragraph 16(b));
 - b. What was the status of the factors set out in paragraph 18(1) to which “particular regard” is to be had?
 - c. What is the relationship between paragraphs 16(b) and 18(1)?
55. What that Tribunal was exploring is, starting with the presumption of a RPI increase, how strong was it and in what circumstances should other factors displace or rebut it.
56. In **Vyse v Wyldecrest Parks Management Ltd [2017] UKUT 24 (LC)**, to which the Applicant’s solicitor specifically referred in her written submissions, Judge Alice Robinson said that although the First Tier Tribunal may not alter the amount of a pitch fee unless it considered it to be reasonable to do so, the issue of reasonableness was not of itself a consideration for the Tribunal. “It is not open to the FTT simply to decide what it considers a reasonable pitch fee to be in all the circumstances. Reasonableness has to be determined in the context of the other statutory provisions”.
57. Judge Alice Robinson also offered guidance to the Tribunal in relation to the relative weight to be given to the RPI presumption when weighing it up against any other factors which could be taken into account in determining the pitch fee increase. She said that for the RPI presumption to be displaced the other consideration must be of considerable weight. “If it were a consideration of equal weight to RPI then, applying the presumption, the scales would tip the balance in favour of RPI. Of course it is not possible to be prescriptive as to precisely how much weight must be attached to an ‘other factor’ before it outweighs the presumption in favour of RPI”(para 50).
58. Applying the statutory requirements, having regard to the guidance provided in case law by the Upper Tribunal and having regard to the evidence submitted by the parties, the Tribunal has concluded that in this case:

- a. The presumption that the increase in pitch fees should reflect the increase in RPI has been applied correctly.
- b. The Respondent's submission does not demonstrate that there has been material deterioration in the condition of the Park since she first occupied her home.
- c. The Tribunal is satisfied that the Respondent has not submitted any evidence of a loss of amenity on the park during that period.
- d. **There is therefore no reason to displace the statutory presumption of the increase in the pitch fee.**

Application Fee

59. The Tribunal Procedure (First-tier)(Property Chamber) Rules 2013 S.I. 2013 No 1169 (L.8) say:

Rule 13(2); 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.

Rule 13(3) The Tribunal may make an order under this rule on an application or on its own initiative.
60. It follows from the findings of the Tribunal in this case that it is appropriate to order repayment of the application fee.

Appeals

1. A person wishing to appeal this decision to the Upper Chamber must seek permission to do so by making written application 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. Where possible you should send your further application for permission to appeal by email to **rpsouthern@justice.gov.uk** as this will enable the First-tier Tribunal to deal with it more efficiently.
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.

Schedule

**Extracted paragraphs from Mobile Homes Act 1983 as amended
Schedule 1 Part I Chapter 2**

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The pitch fee can only be changed in accordance with paragraph 17, either--

(a) with the agreement of the occupier, or

(b) if the *court* [appropriate judicial body], 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.

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(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 *court* [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 sub-paragraph);

(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 sub-paragraph);]

(b) [in the case of a protected site in Wales,] any decrease in the amenity of the protected site since the last review date; *and*

[(ba) in the case of a protected site in England, any direct effect on the costs payable by the owner in relation to the maintenance or management of the site of an enactment which has come into force since the last review date; and]

(c) [in the case of a protected site in Wales,] the effect of any enactment, other than an order made under paragraph 8(2) above, which has come into force since the last review date.

[(1A) But, in the case of a pitch in England, no regard shall be had, when determining the amount of the new pitch fee, to any costs incurred by the owner since the last review date for the purpose of compliance with the amendments made to this Act by the Mobile Homes Act 2013.]

(2) When calculating what constitutes a majority of the occupiers for the purposes of sub-paragraph (1)(b)(iii) each mobile home is to be taken to have only one occupier and, in the event of there being more than one occupier of a mobile home, its occupier is to be taken to be the occupier whose name first appears on the agreement.

(3) In a case where the pitch fee has not been previously reviewed, references in this paragraph to the last review date are to be read as references to the date when the agreement commenced.

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(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 since the last review date, unless this would be unreasonable having regard to paragraph 18(1) above.