



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

**Case Reference:** CHI/00HC/PHI/2022/0064

**Premises:** 2 Downside Park, Hyatts Wood Road,  
Backwell, Bristol BS48 3EE

**Applicant:** Donaldson & Newman Ltd

**Representative:** Nicholas David Newman

**Respondent:** Kevin Harris

**Representative:** None

**Type of Application:** Mobile Homes Act 1983, Schedule 1,  
paragraph 16 – Determination of pitch fee

**Tribunal Members:** Judge A Cresswell

**Date and venue of Hearing:** 28 October 2022 on the Papers

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**DECISION**

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## The Application

1. On 23 May 2022, the Applicant, the site owner, made an application to the Tribunal for the determination of a pitch fee for the premises for the year 2022 from 1 January 2022. The Tribunal accepted the application as being timely after extending the time.

## Summary Decision

2. This case arises out of the site owner's application, made on 23 May 2022, for the determination of a pitch fee for the year from 1 January 2022. The Tribunal has determined that the pitch fee for that period and from that date should be £143.13.
3. The Tribunal orders the Respondent to reimburse the Applicant the £20 application fee.

Property	Current Pitch Fee £	New Pitch Fee £	Date of New Pitch Fee
2 Downside Park, Hyatts Wood Road, Backwell, Bristol BS48 3EE	142.32	143.13	1 January 2022

## Directions

4. Directions were issued on 28 July 2022.
5. The directions provided for the matter to be heard on the basis of written representations only, without an oral hearing. No objection was received to this proposal.
6. The Tribunal directed that the parties should submit specified documentation to the Tribunal for consideration.
7. This Decision is made in the light of the documentation submitted in response to those directions.

## The Law

8. The law is contained in Mobile Homes Act 1983. Under Section 4, a Tribunal has jurisdiction to determine the issue of Pitch Fee. The Tribunal can decide if it is reasonable for the pitch fee to be changed and whether it is unreasonable for the fee to increase or decrease in accordance with the relevant Retail Prices Index for the

relevant period and has regard to all of the relevant evidence, but particularly to the factors detailed in Paragraph 18 of Schedule I, Part 1 of Mobile Homes Act 1983, as amended.

9. 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.
10. 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."

11. 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.
12. Two decisions of the Upper Tribunal, where the increase sought was above RPI, provide guidance: **Wyldecrest Parks (Management) Ltd v Kenyon** [2017] UKUT 28 (LC) and **Vyse v Wyldecrest Parks (Management) Ltd**, [2017] UKUT 24 (LC).

In **Vyse v Wyldecrest Parks (Management) Ltd**, HHJ Alice Robinson said as follows:

“There are a substantial number of mobile home sites in England occupied pursuant to pitch agreements which provide for relatively modest pitch fees. The legislative framework for determining any change in pitch fee provides a narrow basis on which to do so which no doubt provides an element of certainty and consistency that is of benefit to site owners and pitch occupiers alike. The costs of litigating about changes in pitch fee in the FTT and in the Tribunal are not insubstantial and will almost invariably be disproportionate to any sum in issue. I accept the submissions...that an interpretation which results in uncertainty and argument at

many pitch fee reviews is to be avoided and that the application of RPI is straightforward and provides certainty for all parties”

In **Wyldecrest Parks (Management) Ltd v Kenyon**, Judge Martin Roger QC established the following principles in respect of reviews of pitch fees:

a) The direction in paragraph 16(b) that in the absence of agreement the pitch fee may be changed only “if the appropriate judicial body ... considers it reasonable” for there to be a change is more than just a pre-condition; it imports a standard of reasonableness, to be applied in the context of the other statutory provisions, which should guide the tribunal when it is asked to determine the amount of a new pitch fee.

b) In every case “particular regard” must be had to the factors in paragraph 18(1), but these are not the only factors which may influence the amount by which it is reasonable for a pitch fee to change.

c) No weight may be given in any case to the factors identified in paragraphs 18(1A) and 19.

d) With those mandatory considerations well in mind the starting point is then the presumption in paragraph 20(A1) of an annual increase or reduction by no more than the change in RPI. This is a strong presumption, but it is neither an entitlement nor a maximum.

e) The effect of the presumption is that an increase (or decrease) “no more than” the change in RPI will be justified, unless one of the factors mentioned in paragraph 18(1) makes that limit unreasonable, in which case the presumption will not apply.

f) Even if none of the factors in paragraph 18(1) applies, some other important factor may nevertheless rebut the presumption and make it reasonable that a pitch fee should increase by a greater amount than the change in RPI.

13. Paragraph 20 of chapter 2 of Part 1 of Schedule 1 to the Act provides that the presumption is that the pitch fee shall increase or decrease in proportion to the movement in the RPI. The increase in the pitch fee can be greater, however, if the

presumption would produce an unreasonable amount. Paragraph 18 of chapter 2 specifies certain matters to which there must be paid particular regard in determining the amount of the new pitch fee.

14. The Tribunal has a wide discretion to vary the pitch fee to a level of a reasonable pitch fee taking into account all of the relevant circumstances, including factors not connected to improvements, and the increase in RPI in the previous 12 months is important, but it is not the only factor which may be taken into account. Factors not encompassed by paragraph 18(1) may nevertheless provide grounds on which the presumption of no more than RPI increases (or decreases) may be rebutted. If another weighty factor means that it is reasonable to vary the pitch fee by a different amount, effect may be given to that factor.
15. Paragraph 18(1A) and Paragraph 19 preclude regard being paid to certain matters on the review but none of those are relevant to the costs and expenses and the other sums in issue in these proceedings.
16. There is advice for the Tribunal about other factors in **Vyse v Wyldcrest Parks (Management) Limited** (2017) UKUT 0024 (LC):

*50. If there is no matter to which any of paragraph 18(1) in terms applies, then the presumption arises and it is necessary to consider whether any ‘other factor’ displaces it. By definition, this must be a factor to which considerable weight attaches. 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. This must be a matter for the FTT in any particular case. 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.*

*51. On the face of it, there does not appear to be any justification for limiting the nature or type of ‘other factor’ to which regard may be had. The paragraphs relating to the amount of the pitch fee expressly set out matters which may or may not be taken into account. “Particular regard shall be had to” the paragraph 18(1) factors and there are a number of matters to which the Act expressly states that “no regard shall be had”. If an ‘other factor’ is not one to which “no regard shall be had” but neither is it one to which “particular regard*

*shall be had”, the logical consequence is that regard may be had to it. In my judgment this approach accords with the literal construction of the words of the statute. Further, it is one which would avoid potentially unfair and anomalous consequences.*

17. The amount of the pitch fee rests solely on what the occupiers agree or the First-tier Tribunal determines to be reasonable on the annual review.
18. The relevant statute law is set out in the Appendix below.

### **The Agreed Background**

19. The Tribunal has been supplied with the Written Statement under the 1983 Act.
20. The Statement provides for a review of the pitch fee each year on 1 January. There is no issue raised about the date of review.
21. The Applicant gave notice on 28 November 2021 of a proposal to increase the pitch fee to £148.34 (from £142.32) in line with a 6% increase in RPI. There is no issue taken as to the timeliness of the notice, whether appropriate notice was given or the appropriate rate to apply.

### **The Dispute**

#### **The Applicant**

22. The Applicant argues that the pitch fee should consist of the original pitch fee (now reflecting annual increases) together with an element reflecting the site licence fee (total of £383.28 divided by 14 plots equals £2.281 pcm) and an element reflecting water charges (total of £872.74 divided by 14 plots equals £5.195 pcm).
23. It sets out how it calculated the RPI figure.
24. The water and site licence fee are included in the overall gross pitch fee (£142.32 for 2021). The proposed new 2022 net pitch fee excluding recoverable costs is the net pitch fee for 2021 times the inflation amount, added to the net pitch fee for 2021. ie.  $(£132.88 \times 0.06) + 132.88 = £140.85$ .
25. The recoverable costs per home per month for 2021 (water + site licence fees) was £7.49. Hence the overall gross pitch fee =  $£140.85 + £7.49 = £148.34$
26. The recoverable costs should have read £7.49 not £7.48 as printed on the review form. The total gross pitch fee is still correct at £148.34.

27. No operational costs are being sought. The only recoverable costs being sought are those costs attributable to owner occupiers that either form part of their mobile home agreement (water charges) or are recoverable by legislation, which forms part of the Mobile Homes Act 2013 (annual council site licensing administrative fee and the "fit and proper person application fee").
28. All other overheads and administrative costs for the company are expenses accounted for in the company's annual tax return.
29. It is seeking reimbursement of the Application fee of £20.

### **The Respondent**

30. The Respondent argues that there was some confusion in the Applicant's correspondence between inflation and RPI.
31. On the review details form, the Applicant stated that the water and site licence was included in the current pitch fee. The current pitch fee being £132.88, so why was he adding it on again?
32. Why does the Applicant believe it can recover operational cost from the occupiers?
33. It is charging occupiers money to pay for its site licence which then allows it to charge site fees. Why doesn't it recover operational cost from its yearly tax return?

### **The Tribunal**

34. There was no suggestion made by the parties that any considerations in paragraph 18 of Schedule 1, Part 1 applied here.
35. The Tribunal finds that the Applicant has complied with the correct process and used correct figures to establish the relevant RPI increase and that proper processes had been followed by the Applicant in notifying the proposed fee increase.
36. The site licence fee annual charge and the fee for a fit and proper person application (required from 2021 by reason of Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020 (SI 2020/1034)) are issues capable of being an '*other factor*' of *sufficient weight to outweigh the presumption in the context of the statutory scheme as a whole* (see **Vyse v Wyldecrest Parks (Management) Limited** above).
37. **In Wyldecrest Parks (Management) Ltd v Kenyon**, Judge Martin Roger QC said: *I am therefore satisfied that an additional cost which it is known will be payable by site owner in the period during which the reviewed pitch fee will apply is a matter capable of being taken into account in determining the amount of that pitch fee.*

38. The Tribunal finds the two fee payments to be such other factors having sufficient weight to outweigh the presumption in the context of the statutory scheme as a whole.
39. The Applicant has not, however, approached its pitch fee calculations in the correct manner.
40. The Express Terms of the Written Agreement separate out water charges from the pitch fee, such that they do not form a part of the pitch fee. Accordingly, this being an application relating solely to the pitch fee, the Tribunal has ignored the water charge element.
41. The Applicant having demonstrated a correct application of the RPI increase of 6%, and the Applicant not suggesting that the relevant figure of 6% should not for any reason apply here, the Tribunal accordingly finds that the pitch fee from 1 January 2022 should be  $(£132.88 \times 0.06) + £132.88 = £140.85$  plus £2.28 - the site licence/fit and proper person fee elements (total of £383.28 divided by 14 plots equals £2.28 pcm). This results in a total pitch fee of £143.13.

## **Fees**

42. The Applicant has made an application for payment by the Respondent of the £20 application fee.
43. The relevant law is detailed below:

### **Rule 13 The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (“the 2013 Rules”):**

#### *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.*

*(3) The Tribunal may make an order under this rule on an application or on its own initiative.*

44. In **Cannon v 38 Lambs Conduit LLP** (2016) UKUT371 (LC), the Upper Tribunal ordered the reimbursement of fees where *the tenants have succeeded on the principal substantive issue*.  
*“Reimbursement of fees does not require the applicant to prove unreasonable*



*conduct on the part of an opponent. It is a matter for the tribunal to decide upon in the exercise of its discretion, and (as with costs orders) the tribunal may make such an order on an application being made or on its own initiative.”*

45. Whilst the test to be applied under Rule 13(2) requires no analysis of whether a person has acted unreasonably, when all that is recorded above is weighed in the balance, the Tribunal finds that it would be appropriate to order the Respondent to reimburse the Applicant with the fees paid by it. There appears to the Tribunal to have been no other viable option open to the Applicant to resolve the issues save by making its application to the Tribunal. The Respondent is ordered to pay the sum of £20 to the Applicant in reimbursement of fees.

#### **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 [rpsouthern@justice.gov.uk](mailto:rpsouthern@justice.gov.uk) 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.

## APPENDIX

**Mobile Homes Act 1983**, as amended  
Schedule 1, Part 1:**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 [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.

**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) [A] 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 (in the case of a protected site in England) the occupier*] may apply to the [appropriate judicial body] 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 [appropriate judicial body] 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 [appropriate judicial body's] 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, in the case of an application in relation to a protected site in England, no later than three months after the review date*].
- (6) Sub-paragraphs (7) to (10) apply if the owner--
  - (a) has not served the notice required by sub-paragraph (2) by the time by which it was required to be served, but

(b) at any time thereafter serves on the occupier a written notice setting out his proposals in respect of a new pitch fee.

[(6A) *In the case of a protected site in England, a [A] notice under sub-paragraph (6)(b) which proposes an increase in the pitch fee is of no effect unless it is accompanied by a document which complies with paragraph 25A.*]

(7) If (at any time) the occupier agrees to the proposed pitch fee, it shall be payable as from the 28th day after the date on which the owner serves the notice under sub-paragraph (6)(b).

(8) If the occupier has not agreed to the proposed pitch fee--

(a) the owner [or (*in the case of a protected site in England*) the occupier] may apply to the [appropriate judicial body] 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 [appropriate judicial body] under paragraph 16(b); and

(c) if the [appropriate judicial body] makes such an order, the new pitch fee shall be payable as from the 28th day after the date on which the owner serves the notice under sub-paragraph (6)(b).

(9) An application under sub-paragraph (8) may be made at any time after the end of the period of 56 days beginning with date on which the owner serves the notice under sub-paragraph (6)(b) [but, *in the case of an application in relation to a protected site in England, no later than four months after the date on which the owner serves that notice*].

[(9A) A tribunal may permit an application under sub-paragraph (4)(a) or (8)(a) *in relation to a protected site in England* to be made to it outside the time limit specified in sub-paragraph (5) (in the case of an application under sub-paragraph (4)(a)) or in sub-paragraph (9) (in the case of an application under sub-paragraph (8)(a)) if it is satisfied that, in all the circumstances, there are good reasons for the failure to apply within the applicable time limit and for any delay since then in applying for permission to make the application out of time.]

(10) The occupier shall not be treated as being in arrears--

(a) where sub-paragraph (7) applies, until the 28th day after the date on which the new pitch fee is agreed; or

(b) where sub-paragraph (8)(b) applies, 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 [appropriate judicial body's] order determining the amount of the new pitch fee.

[(11) Sub-paragraph (12) applies if a tribunal, on the application of the occupier of a pitch *in England*, is satisfied that--

(a) a notice under sub-paragraph (2) or (6)(b) was of no effect as a result of sub-paragraph (2A) or (6A), but

(b) the occupier nonetheless paid the owner the pitch fee proposed in the notice.

(12) The tribunal may order the owner to pay the occupier, within the period of 21 days beginning with the date of the order, the difference between--

(a) the amount which the occupier was required to pay the owner for the period in question, and

(b) the amount which the occupier has paid the owner for that period.]

**18**

(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 [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);]

[(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]

[(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.

## 19

[(1)] When determining the amount of the new pitch fee, any costs incurred by the owner in connection with expanding the protected site shall not be taken into account.

[(2) *In the case of a protected site in England*, when determining the amount of the new pitch fee, no regard may be had to any costs incurred by the owner in relation to the conduct of proceedings under this Act or the agreement.]

[(3) *In the case of a protected site in England*, when [When] determining the amount of the new pitch fee, no regard may be had to any fee required to be paid by the owner by virtue of--

(a) section 8(1B) of the Caravan Sites and Control of Development Act 1960 (fee for application for site licence conditions to be altered);

(b) section 10(1A) of that Act (fee for application for consent to transfer site licence).]

[(4) *In the case of a protected site in England*, when [When] determining the amount of the new pitch fee, no regard may be had to any costs incurred by the owner in connection with--

(a) any action taken by a local authority under sections 9A to 9I of the Caravan Sites and Control of Development Act 1960 (breach of licence condition, emergency action etc);

(b) the owner being convicted of an offence under section 9B of that Act (failure to comply with compliance notice).]

## 20

[(A1) *In the case of a protected site in England*, unless [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).]

*(2) Paragraph 18(3) above applies for the purposes of this paragraph as it applies for the purposes of paragraph 18.*

**29** In [this Chapter]--

"pitch fee" means 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 and sewerage or other services, unless the agreement expressly provides that the pitch fee includes such amounts;