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

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| **Case Reference** | **:** | **MAN/16UD/PHI/2022/0040** |
| **HMCTS code (audio,video,paper)** | **:** | **P:PAPERREMOTE** |
| **Property** | **:** | **1 The Caravan, "Heatherbank" Mowbray Road, Allonby, Maryport, Cumbria CA15 6PB** |
| **Applicant** | **:** | **Mrs J.Stevens** |
| **Respondents** | **:** | **Mr P.Frost and Mrs D.Cowling** |
| **Type of Application** | **:** | **For the determination of a pitch fee under the Mobile Homes Act 1983 – Schedule 1 Chapter 2 paragraphs 16-20** |
| **Tribunal Members** | **:** | **Judge J.M.Going**<br>**W.Reynolds MRICS** |
| **Date of Decision** | **:** | **5 December 2022** |
| **Date of these Reasons** | **:** | **12 December 2022** |

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**REASONS FOR THE DECISION**

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## The Decision and order

**The Tribunal orders that the pitch fee for the property be increased to £85.17 per calendar month with effect from 1 April 2022.**

## Preliminary

1. By an Application ("the Application") dated 1 May 2022 the Applicant ("Mrs Stevens") applied to the First Tier Tribunal Property Chamber-(Residential Property) ("the Tribunal") for an order to be made under paragraph 16(b) of Schedule 1 of the Mobile Homes Act 1983 ("the 1983 Act") determining the amount of a new pitch fee to be paid by the Respondents ("Mr Frost and Ms Cowling") should the Tribunal consider it reasonable for the pitch fee to be changed.

2. The Tribunal issued Directions on 11 July 2022 detailing a timetable for documents to be submitted confirming that it considered it appropriate for the matter be determined on the papers, unless either of the parties requested an oral hearing. Both parties later confirmed their consent to proceeding on this basis with the Tribunal carrying out an inspection.

3. The Tribunal inspected Heatherbank Residential Caravan Site ("the Site") on 5 December 2022 with both Mrs Stevens and Mr Frost in attendance.

4. The inspection was also relevant to a further application between the parties being dealt with by the Tribunal separately under reference MAN/16UD/PHC/2022/0003.

## Background

5. The following matters are evident from the papers or are of public record and have not been disputed unless specifically referred to.

6. The Site is a protected site within the meaning of the 1983 Act. Mrs Stevens is its owner and operator and Mr Frost and Ms Cowling have since February 2016 been the owners and occupiers of a mobile home stationed on the Site.

7. The parties have made various previous applications to the Tribunal, dealt with by different members of the Tribunal.

8. The Tribunal's Decision ("the 2019 Decision") dated 22 January 2019 under reference MAN/16UB/PHI/2018/0011 confirmed that the annual review date for the pitch fee is 1 April and determined that for the year beginning on 1 April 2018 it should be £75.06 per month.

9. Mrs Stevens ledgers show that the monthly pitch fee was increased to £76.93 on 1 April 2019 and then to £79.01 on 1 April 2020 and that the monthly payments to 31 March 2021 were fully paid by Mr Frost and Ms Cowling.

10. In 2021 Mrs Stevens calculated that the monthly pitch fee should be increased by reference to a 1.4% annual increase in the RPI to £80.12, but Mr Frost and Ms Cowling confirmed that they did not agree with the increase and continued to make payments of £79.01 per month.

11. A letter from Mr Frost to Mrs Stevens dated 8 April 2021 stated (inter alia) "until a determination regarding this matter has been reached in the lawful and correct manner, the pitch fee will remain lawfully at £79.01 per month".

12. On 19 February 2022 Mrs Stevens delivered a Pitch Fee Review Notice and a duly completed Pitch Fee Review Form as prescribed under the Mobile Homes (Pitch Fees) (Prescribed Form) (England) Regulations SI 2013/1505 (which are together referred to as "the Notice") to Mr Frost and Ms Cowling proposing a new pitch fee of £85.17 per month in place of £79.01 per month and with effect from 1 April 2022.

13. The increase was not agreed, and Mrs Stevens has applied to the Tribunal to determine the matter.

## Inspection

14. The Site is set in rural West Cumbria, just off the coast road between Maryport and Allonby. It is approached via a single-lane track, which is gated before it bends around Mrs Stevens' house and garden before entering the Site. There are five residential mobile homes on the Site, aligned parallel to each other, and pointing lengthways towards the Solway Firth. Immediately outside the Site boundary is a sixth static caravan owned by Mrs Stevens aligned parallel to the five within the Site.

## Evidence and submissions

15. The papers presented to the Tribunal included copies of the Application, the Notice, the 2019 Decision, which (inter alia) referred to a further earlier Decision of the Tribunal ("the 2018 Decision") dated 17 July 2018 under reference MAN/16 UB/PHC/2018/0001, a statement of truth from Mrs Stevens dated 27 July 2022, ledgers and various correspondence between the parties.

16. Mrs Stevens referred in her statement of truth to, at that point in time, not having received a copy of the letter from Mr Frost and Ms Cowling dated 28 April 2020 which was said to have set out their reasons why any further increase in the pitch fee would not be acceptable, and stated, inter alia, "All the other "Heatherbank" residents accepted the increase in pitch fee. I did not pursue the Respondent further about the increase in pitch fee amount in 2021… I had a painful condition throughout 2021 which rendered me well "under par" for most of the year. I did not need the extra workload of a Tribunal application. Because I did not apply to the Tribunal during 2021. I understand that I forfeit any entitlement to the extra pitch fee amount from pitch 1 for that year 2021/2022."

17. Mr Frost and Ms Cowling, citing their own health issues and caring commitments, asked for and were granted a limited extension of time to submit their statement in reply and any other relevant documents.

18. Mr Frost in a statement dated 14 September 2022, to which he attached a copy of the April 2020 letter and a Royal Mail proof of receipt form, said that it was untrue that Mrs Stevens had not previously received the letter or a valid explanation for the refusal to accept the proposal for a pitch fee increase being that "we had suffered a clear detriment to our right to quiet enjoyment of our pitch… I received no response to my complaint… The detriment… is remaining, our privacy is clearly invaded both within our home and garden and contrary to our right to quiet enjoyment, the applicant still refuses after numerous requests by both myself, Cumbria Constabulary and Allerdale BC to enter into mediation and my refusal to accept a further pitch fee increase until the detriment is removed, remains the same".

19. The letter dated 28 April 2020 had stated inter alia "I now give you formal and final notice that we will not entertain, or accept, any further increase in pitch fee for the following reasons:
The placement of your mobile home by yourself, in a position directly overlooking our home is a detriment to our rightful right, under the applicable legislation, to quiet enjoyment of our home/pitch.
We may not have a legal entitlement to a view, but we do have a legal right to privacy. Our windows and garden on this side of our home are completely overlooked by your actions. The camera which was placed within the middle section of your mobile home, pointing directly at our windows, is clearly visible behind the net curtains. Your deplorable actions in its placement are nothing short of intimidation and harassment.
I should also like to state that in placing this mobile home, outside the curtilage of your fenced garden, you are in breach of planning regulations no approval has been sought from Allerdale BC planning department.
Furthermore, its placement is also in breach of the required spacing rules regarding mobile homes on protected sites…".

20. Mrs Stevens in a response to the Tribunal dated 25 September 2022 refuted that the envelope which had been signed for had contained the stated letter and confirmed that her static caravan had been placed at the end of her garden, did not need planning permission, was not on the Site, and whilst not needing to satisfy the statutory separation distance of six metres between caravans, did in fact do so.

**The Law**

21. The provisions relating to the review of a pitch fee are contained in paragraphs 16 to 20 of Chapter 2 of Part 1 of Schedule 1 to the 1983 Act.

22. Paragraph 29 defines the pitch fee 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 the 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."

23. The pitch fee can only be changed either with the agreement of the occupier, or by the Tribunal, on the application of the site owner or the occupier (Para 16). The pitch fee shall be reviewed annually as at the review date (Para 17(1)). The owner serves on the occupier a written notice setting out the proposed new pitch fee (Para 17(2)). If it is agreed, the new pitch fee is payable from the review date (Para 17(3)). If it is not agreed, the owner (or an occupier on a protected site) may make an application to the Tribunal to determine the new pitch fee (Para 17(4)). Once decided, the new pitch fee is payable from the review date (Para 17(4)(c)). When determining the amount of the new pitch fee, particular regard shall be had to any sums expended by the owner since the last review date on improvements (Para 18(1)(a)) and any decrease in the amenity of the protected site since the last review date (Para 18(1)(aa)). Unless it would be unreasonable, 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 (Para 20(A1)).

24. The written notice proposing the new pitch fee will be of no effect if it is not in the prescribed form (Paras 17(2A) and 25A). It should be served at least 28 days before the review date (Para 17(2)) or, if late, with 28 days' notice (Para 17(7)). An application to the Tribunal 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 (Para 17(5)) unless the written notice was late in which case an application may be made after the end of period of 56 days beginning with the date on which the owner serves the notice, but not later than four months after the notice. (Para 17(9)).

**The Tribunal's Reasons and Determination**

25. The Tribunal had first to determine whether the Notice was valid.

26. The Notice was in the prescribed form and found to be valid and to have been served more than 28 days before the review date. The Notice correctly calculated the change in RPI over the specified period at 7.8%.

27. The Tribunal also found that the Application was made within the specified time limits.

28. Having been satisfied that Mrs Stevens had complied with the necessary procedural requirements the Tribunal then went on to consider the Application and if it is reasonable for the pitch fee to be changed.

29. The Tribunal carefully considered the evidence from the parties. It also had regard to its own inspection of the site.

30. The statutory provisions which are particularly relevant to the issues in this case are those set out in the following paragraphs of Part 1 of Schedule 1 to the 1983 Act:

"18 (1) When determining the amount of the new pitch fee particular regard shall be had to—

.....

(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 subparagraph);

(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 subparagraph);

.....

20 (A1) In the case of a protected site in England, 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".

31. Whilst it is abundantly clear from the papers, that there has been, and continues to be, very considerable personal animosity and ill feeling between the parties, the Tribunal's focus has to be on whether, since the pitch fee was last agreed, there have any been material changes in the condition or amenity of the Site or any adjoining land occupied or controlled by Mrs Stevens or the services that she supplies to the Site.

32. The Tribunal is required to determine whether an increase since the last agreed review is reasonable. It is not deciding whether the level of the pitch fee itself is reasonable.

33. Mrs Stevens confirmed in the Application that there had been no deterioration since the level of the pitch fee had last been agreed. Mr Frost and Ms Cowling however clearly take great exception to the location of Mrs Stevens' own static caravan.

34. The inspection revealed that there is a concrete panel site boundary fence, approximately two metres high, which separates Mr Frost and Ms Cowling's pitch from Mrs Stevens' static caravan on her adjoining land. It is in part covered and overgrown by a well-established climbing shrub or clematis growing from within the pitch.

35. The Tribunal also understands that the land on which Mrs Stevens' static caravan is now located previously had a large box trailer and touring caravan parked on it, as referred to in the 2018 Decision. It was noted that the 2018

decision had concluded in its penultimate paragraph that "the adjoining land on which the vehicles have been placed are not within the Site and there is no infringement of any right that goes with the occupation of *(Mr Frost's)* pitch".

36. The Tribunal found from its inspection that the siting of Mrs Stevens' static caravan next to the Site did not reduce the Site's amenity. It also found no compelling evidence that the amenity of the Site had decreased since the pitch fee had last been agreed.

37. Having carefully considered all the evidence, the Tribunal decided that an increase to the pitch fee, where there had been none for two years, is reasonable.

38. As the Upper Tribunal at paragraph 22 in *Britaniacrest Ltd v Bamborough [2016] UKUT 144 (LC)* made it clear, whilst the 12 months RPI adjustment presumption is not the beginning and end of a determination it is "a very strong steer that a change in the RPI in the previous 12 months will make it reasonable for the pitch fee to be changed by that amount".

39. The Tribunal concluded therefore that the pitch fee should be increased to £85.17 per calendar month with effect from 1 April 2022.