



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

Case reference	:	CHI/00HG/PHI/2022/0071
Property	:	46 Glenfield Way, Glenholt Park, Plymouth, PL6 7NL
Applicant Site Owners	:	The Berkeley Leisure Group Ltd
Representative	:	Stephen Drew
Respondent Park Home Owners	:	Roger Martin and Marion Martin
Representative	:	Joe Jones
Type of application	:	Determination of new pitch fee Mobile Homes Act 1983
Tribunal member(s)	:	Mrs J Coupe FRICS
Date of decision	:	8 February 2023

DECISION

Summary of the Decision

The Tribunal determines that the Applicant may increase the Respondents' current pitch fee to £135.41 per month with effect from 1 April 2022.

The reasons for the Tribunal's decision are set out below.

REASONS

Application

1. On 27 June 2022, the Applicant site owner sought a determination of a pitch fee of £135.41 per month payable by the Respondents as from 1 April 2022.
2. The pitch fee review notice, dated 16 February 2022, was served on the Respondent occupiers and proposed an increase to the pitch fee by an amount in line with the Retail Prices Index ("RPI"). The Respondents did not accept the review on the grounds that a review for the same period had been already been agreed, and the application was issued.
3. Directions were issued on 30 September 2022, advising that the application would be determined on the papers unless a party objected within 28 days. The Tribunal received no objections.
4. The application and accompanying documents stood as the Applicant's case. The Respondent was required, by 21 October 2022, to advise the Applicant whether they agreed or opposed the proposed increase. If opposed, the Respondents were required to send to the Applicant for inclusion in the bundle a statement of their case together with any documentation, any signed witness statements upon which they rely and a copy of their written agreement under the Mobile Homes Act 1983 where available. The Applicant was provided with the right of a brief reply and was to indicate in its reply whether it is seeking reimbursement of the application fee of £20.00.
5. Each party made representations and a hearing bundle extending to 79 pages was submitted by the Applicant. References in this determination to page numbers in the bundle are indicated as [].
6. The Tribunal has reviewed the papers and it is satisfied that the matter remains suitable for a paper determination.
7. Glenholt Park is a residential mobile home park for owners aged fifty and over. The site provides two hundred and sixty occupied pitches. Glenholt Park is governed by a licence issued by Plymouth City Council dated 29 September 2003 [12].
8. Neither of the parties sought to persuade the Tribunal that an inspection of the property was necessary or appropriate. The Tribunal concluded that the issues could be determined fairly, justly and efficiently on the material

available without such an inspection, consistent with the overriding objective of the Tribunal. However, the property and locality were viewed online by the Tribunal via publicly available digital platforms.

The Law

9. The relevant law is set out in the Mobile Homes Act 1983 (“the Act”), as annexed to this decision.
10. Under the Act terms are implied into all agreements to which the Act applies. Those implied terms are set out in Chapter 2 of Part 1 of Schedule 1 of the Act.
11. The relevant terms for the purposes of a pitch fee review are set out at paragraphs 16-20 of that part of the Schedule. A review of a pitch fee is governed by three statutory principles:
 - i. The pitch fee can only be changed either with the agreement of the occupier or by determination by the Tribunal;
 - ii. The pitch fee shall be reviewed annually as at the review date;
 - iii. A presumption that the fee will increase or decrease in line with the variation in the Retail Price Index (“RPI”).
12. Paragraph 18 requires the Tribunal, in determining the new pitch fee, to have regard to particular factors:
 - i. Any sums expended by the site owner since the last review date on improvements;
 - ii. Any deterioration in the condition and any decrease in the amenity of the site;
 - iii. Any reduction in the services provided by the site owner and any deterioration in the quality of those services;
 - iv. Any legislative changes affecting costs.

Background

13. The Applicant acquired Glenholt Park in January 2020.
14. The Respondents entered into an agreement for occupation of a park home situated on land at 46 Glenfield Way on 16 December 2016. The agreement provided for an annual review of the pitch fee on 1 April.
15. In their submissions both parties refer to an earlier Tribunal decision in regard to the same plot, that being reference CHI/00HG/PHI/2021/0020-0028. The Tribunal finds it convenient to summarise the determination in those proceedings in so far as they affect this application.

16. In that matter and on 25 June 2021, the Applicant applied to the Tribunal for a determination of a new pitch fee in respect of various properties at Glenholt Park, Plymouth, one of which was the subject property.
17. The application related to a notice of pitch fee review served on the Respondents on 18 February 2021, which proposed a new increased fee to take effect on 1 April 2021. The Respondents opposed the review.
18. On 4 October 2021, the Tribunal handed down its substantive decision, within which it found that the Applicant's notice proposing the pitch fee for 2021, dated 18 February 2021, was not valid. Accordingly, the Respondents were not liable to pay the reviewed pitch fee for 2021 as proposed in said notice.
19. Further to the Applicant's application for permission to appeal, the Tribunal reviewed its decision under Rule 55 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 on 13 December 2021 and, subsequently, handed down an amended decision on 24 January 2022 which provided an updated schedule of pitch fees. A further application by the Applicant for permission to appeal was refused by the Tribunal in a decision dated 15 February 2022.
20. The Tribunal has read all previous Tribunal decisions.

The Applicant

21. The Respondents occupy the home under a written statement dated 16 December 2017 [26] which provides a pitch fee review date of 1 April.

(The Tribunal note that the agreement to which the Applicant refers provides an agreement start date of 16 December 2016 and considers the Applicant's statement on the point a typographical error.)
22. Following the Tribunal's aforementioned decision, the Applicant wrote to the Respondent on 21 December 2021 to "*confirm the pitch fee for that [sic] would apply from 1st February 2022 ie £125.61. This was a late review from 1st April 2021*" [10].
23. The Applicant, in his witness statement, stated that the Respondents increased their pitch fee payment to £125.61 from 1 April 2021. A screen shot of Mr and Mrs Martin's account [65] showed amounts of:
 - £123.88 on 1 March 2021
 - £125.61 on 1 April 2021
 - £125.61 on 4 May 2021
24. On 16 February 2022, the Applicant proposed that the Respondents' pitch fee be increased from £125.61 to £135.41 per month with effect from 1 April 2022.
25. The proposed increase in pitch fee amounted to 7.8% and was calculated in accordance with the percentage change in the RPI for the twelve month period ending in January 2022.

26. The pitch fee review notice stated that the last review date was 1 April 2021.
27. On 7 July 2022, the Applicant wrote to the Respondents in an attempt to clarify the history of the pitch fee since the Applicant acquired the park. In its letter, the Applicant advised that, on 21 December 2021, the Applicant wrote to the Respondents providing a revised pitch fee review for the year from 1 April 2021 which would take effect from 1 February 2022. The letter continues *“The business records show that you accepted this pitch fee review.”* The letter then refers to further communication sent from the Applicant on 16 February 2022 in regard to its proposal to review the pitch fee as of 1 April 2022.
28. The Applicant states that the Respondents have not accepted the *“2022 proposal”*, by which the Tribunal understands this to refer to the latter 2022 proposal, and that they continue to pay pitch fees at £125.61 per month.
29. The Applicant contends that the pitch fee, payable from 1 April 2022, has been reviewed in accordance with statute and, by applying the RPI increase for the twelve month period ending January 2022, the appropriate revised monthly fee of £135.41 is payable from 1 April 2022.

The Respondents

30. The Respondents dispute that the date of the last review was 1 April 2021 as stated by the Applicant. They point to the previous Tribunal decision which determined that the notice served pursuant to said review was void.
31. The Respondent's contend that the last review date was 1 February 2022, when the pitch fee was increased, by agreement, to £125.61.
32. Further disputed is the Applicant's statement that the Respondents agreed to the 1 April 2021 review.
33. The Respondents state that the Applicant served them with a pitch fee review notice in January 2022, with an effective date of 1 February 2022. The Respondents state that they agreed this review and paid the increased pitch fee.
34. It is the Respondents case that having agreed the February 2022 review and having paid the increased fee each month thereafter, such action constitutes agreement that the review date has been amended, by consent, to 1 February. The Respondents claim that such action should be construed as binding *“in law”*. Furthermore, the Respondent relies upon their returning, to the Applicant, the signed acceptance slip provided with the notice of review.
35. The Applicant subsequently served a pitch fee review for 2022 with an effective date of 1 April 2022. It is the Respondent's understanding of the 1983 Act legislation that a site owner is prohibited from serving two pitch fee reviews in the same twelve month period other than if one was a late review. The Respondents consider neither the 1 February 2022 nor the 1 April 2022 review to be a late review.

36. The Respondents contend that in accepting the 1 February 2022 increase in pitch fee and subsequently paying such amount, the Applicant is prevented from proposing a further pitch fee review to commence within the same twelve month period.
37. The Respondents reject the Applicant's explanation that the previous review was a tool to "*catch up*" with fees previously lost and state that the Applicant never advised them that a second pitch fee review would be proposed just "*a few weeks later*".
38. The Respondents express feelings of harassment and worry at the situation and aver that the Applicant is showing disregard for proper procedure, whilst providing confusing and possibly misleading information to the Tribunal.
39. In summary the Respondents list four points:
 - i. The Respondents, on 1 February 2022, accepted the review for 2022.
 - ii. The Applicant's application form contains errors.
 - iii. The Applicant has not commented on or admitted the accepted February 2022 pitch review.
 - iv. Page 8 proves the Applicant misrepresented the last review date on the case application.

The Tribunal

40. Statute provides for an annual review of the pitch fee and does not exclude the possibility of more than one review taking effect in a single year. Paragraph 17(1) establishes a principle of annual reviews and paragraphs 17(6) to (10) specifically permits late reviews.
41. The Tribunal has considered the pitch fee review documentation, evidence and submissions. The Tribunal is satisfied that the Applicant is entitled to serve the Respondents with a notice of increase for the 12 month period commencing 1 April 2022 and, further, that the documentation served on 21 December 2021 was within the correct timescale for a late pitch fee review of 2021/2022.
42. For clarity, the Tribunal finds that the notice of increase served on 21 December 2021, which took effect from 1 February 2022, was a late pitch fee review for the period 1 April 2021 – 31 March 2022. The Tribunal was not provided with full documentation of that review however it is common ground between the parties that the Respondents accepted that review. Thereafter, the Applicant served a review notice on 16 February 2022 increasing the pitch fee with effect from 1 April 2022 in regard to the forthcoming year.
43. The Tribunal disagree with the Respondents that the findings of the Tribunal, handed down on 4 October 2021, prohibit the Applicant from initiating a revised, albeit late, pitch fee review for that year.
44. The Tribunal also disagree with the Respondent that, following the February 2022 review, the anniversary date upon which future reviews would occur has been amended, by consent, to 1 February. The Tribunal finds that the February 2022 review was a late review from April 2021 and

that the 1 April review date is thereby preserved.

45. However, before finding that the increased pitch fee is payable by the Respondents the Tribunal must consider whether the notice issued by the Applicant on 16 February 2022 was valid, particularly in regard to the date provided for the last review.
46. Such date was 1 April 2021. The Tribunal finds that this is incorrect. By their own admission, the Applicant served a late review, effective from 1 February 2022. The Tribunal considered whether such an error invalidates the notice and, for reasons that follow, find that, in this instance, it does not.
47. A pitch fee review is initiated by the site owner serving a written notice on the occupier. Paragraph 17(2) of Chapter 2 of the Act requires the site owner to serve on the occupier, at least 28 days before the review date, a written notice setting out his proposals in respect of the new pitch fee. Paragraph 17(2A) goes on to say that such notice is of no effect unless it is accompanied by a document which complies with paragraph 25A.
48. Paragraph 25A states that such document must:
 - a. be in such form as the Secretary of State may by regulations prescribe,
 - b. specify any percentage increase or decrease in the retail price index calculated in accordance with paragraph 20(A1),
 - c. explain the effect of paragraph 17,
 - d. specify the matters to which the amount proposed for the new pitch fee is attributable,
 - e. refer to the occupier's obligations in paragraph 21(c) to (e) and the owner's obligations in paragraph 22(c) and (d), and
 - f. refer to the owner's obligations in paragraph 22(e) and (f) (as glossed by paragraphs 24 and 25).
49. The question for the Tribunal is therefore whether the review notice complied with paragraph 25A in light of an incorrect last review date.
50. The Tribunal finds that the review notice met the requirements of subparagraphs a – f above.
51. The Tribunal then directed itself to the decision of the House of Lords in *Mannai Investment Co Ltd v Eagle Star Life Assurance Co Ltd* [1997] AC 749 which concerned the proper construction of contractual notices containing an obvious error, whereupon it was decided that if notwithstanding a defect in its form, a reasonable recipient of such a notice would have been left in no doubt what it was intended to achieve, the notice would be valid.
52. In this instance the Tribunal finds that the Respondents were in no doubt what the Applicant was intending to achieve in serving the notice, that being a reviewed fee of £135.41 payable from 1 April 2022, calculated in accordance with the RPI published in January 2022.

53. The Applicant's notice and accompanying document were only a proposal and could not give rise to a new pitch fee unless and until the proposal was either agreed by the Respondents or determined by the Tribunal. Accordingly, the Tribunal finds the inclusion of an incorrect last review date is not fatal to the validity of the notice.
54. Having considered the Applicant's pitch fee review documentation, evidence and submissions the Tribunal is satisfied that the Applicant was entitled to serve the Respondents with a notice of increase effective from 1 April 2022 and that valid documentation has been served within the correct timescale.
55. The Tribunal is satisfied that the RPI increase, calculated as at January 2022, was 7.8%.
56. The Respondents advanced no grounds as to why the statutory presumption in favour of the RPI representing the increase in pitch fee should be displaced or any challenge to the calculation of the revised fee in line with the RPI for January 2022.
57. Further, the Tribunal is satisfied that no evidence of any other factors relevant to a pitch fee review have been advanced by the Respondents.
58. The Tribunal determines that the proposed increase in pitch fee is calculated in accordance with the Act. The Tribunal determines that the Respondents are required to pay a pitch fee £135.41 per month, with effect from 1 April 2022 until further review.

Costs Application

59. The Applicant has made no application for reimbursement of the £20.00 application fee and the Tribunal therefore makes no order in this regard.

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 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.

Annex: The Law

Chapter 2 of Part 1 of Schedule 1 to the Mobile Homes Act 1983

The pitch fee

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) In the case of a protected site in England, 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 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;

(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 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 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 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.

25A

(1) The document referred to in paragraph 17(2A) and (6A) must—

- (a) be in such form as the Secretary of State may by regulations prescribe,
- (b) specify any percentage increase or decrease in the retail prices index calculated in accordance with paragraph 20(A1),
- (c) explain the effect of paragraph 17,
- (d) specify the matters to which the amount proposed for the new pitch fee is attributable,
- (e) refer to the occupier's obligations in paragraph 21(c) to (e) and the owner's obligations in paragraph 22(c) and (d), and
- (f) refer to the owner's obligations in paragraph 22(e) and (f) (as glossed by paragraphs 24 and 25).

The Mobile Homes (Pitch Fees) (Prescribed Form) (England) Regulations 2013

Application, citation and commencement

1. These Regulations, which apply in relation to England only, may be cited as the Mobile Homes (Pitch Fees) (Prescribed Form) (England) Regulations 2013 and come into force on 26th July 2013.

Pitch fees: Prescribed form

2. The document referred to in paragraph 17(2A) and (6A) of Chapter 2 of Part 1 of Schedule 1 to the Mobile Homes Act 1983 shall be in the form prescribed in the Schedule to these Regulations or in a form substantially to the like effect.