



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

Case Reference : **MAN/32UH/PHI/2022/0088 - 0112**

Property : **LAKESHORE, BURTON WATERS, LINCOLN**

Applicants : **GEORGE JEFFORD and SALLY ANN JEFFORD**

Respondents : **RESIDENTS OF LAKESHORE, as attached
Schedule**

Type of Application : **Determination of pitch fee**

Tribunal : **A M Davies, LLB
P Mountain**

Date of Decision : **9 January 2023**

DECISION

The pitch fee payable by each Respondent with effect from 1 April 2022 is the amount set out in the Applicant's pitch fee review notice served on him and shown against his name in the attached schedule.

REASONS

1. The residential home park known as Lakeshore was created in 2015 and the first of the Respondents moved on to the site in that year. Others followed, and in 2018 the residents formed Lakeshore Park Qualifying Residents Association complying with paragraph 28 of Chapter 2, Schedule 1 to the Mobile Homes Act 1983 ("the Act") ("the Implied Terms").

2. Each resident was issued with a Written Statement complying with section 1 of the Act and providing that the date on which pitch fees could be reviewed in each year was 1 April.
3. On 23 November 2022 the Applicants became the site owner when they took a 950 year lease of Lakeshore. In doing so they inherited the rights pertaining to the residents' Written Statements and the continuing obligations of the previous site owners.
4. A pitch fee review was attempted in 2020 but when the residents objected the proposed pitch fee increase was not pursued and the residents continued to pay the original pitch fees set out in their respective Written Statements. These varied across the site, with the effect that there are three different levels of pitch fee being paid by residents.
5. The previous site owners served on each Respondent a notice advising that pitch fees were to be increased with effect from 1st April 2022. The pitch fee increase they proposed was calculated by reference to the Retail Prices Index (RPI) percentage increase in the 12 months prior to the review. The Respondents, who are all members of the Qualifying Residents Association, objected to the increase. Their objections were put forward initially and in these proceedings by Mr Rose, chair of the Association, who also represented the Respondents at the hearing.

THE LAW

6. Under paragraph 17(4) of the Implied Terms when a park resident fails to agree to an increase in pitch fee the park owner may apply to this Tribunal for a determination as to the correct pitch fee.
7. Paragraphs 18 and 20 of the Implied Terms govern pitch fee reviews and the matters to be taken into account if a pitch fee increase is not simply to reflect any increase or decrease in the RPI since the last review. So far as relevant they read:

“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*
- (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 dates of the Written Statements] (insofar as regard has not previously been had to that deterioration or decrease for the purposes of this sub-paragraph);*
- (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 dates of the Written Statements] (insofar as regard has not previously been had to that deterioration or decrease for the purposes of this sub-paragraph);*

20 (A1) *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 [RPI].*

8. How the Tribunal is to determine what might constitute an “unreasonable” change in the pitch fee was considered by the Upper Tribunal in *Vyse v Wyldecrest Parks (Management) Ltd* [2017] UKUT 24 (LC). Her Honour Judge Alice Robinson stated at paragraph 23 of her judgement “The overarching consideration is whether the [Tribunal] considers it reasonable for the pitch fee to be changed; it is that condition....which must be satisfied before any increase may be made (other than one which is agreed). It follows that if there are weighty factors not referred to in paragraph 18(1) which nonetheless cause the [Tribunal] to consider it reasonable for the pitch fee to be changed, the presumption in paragraph 20(1)...may be displaced.” She continued at paragraph 50: “This [factor] must be a factor to which considerable weight attaches.... 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 favour of RPI.... 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.”

9. The Applicants seek a determination as to the correct pitch fee to be paid by the Respondents.

LAKESHORE

10. The Tribunal visited Lakeshore on the morning of the hearing. The Applicants were not present and at that time no notice had been served to the effect that the Applicants were represented by solicitors or counsel. The Tribunal therefore inspected the site unaccompanied.
11. Burton Waters is a prestigious development of houses, apartments, shops and restaurants around a marina some 4 miles outside Lincoln, and includes adjacent protected sites for park homes. Lakeshore is one such protected site, extending alongside Foss Dyke and a lake on the northern part of the development. There are plans to extend the Burton Waters development into large areas of currently unoccupied land further north along the lakeside.
12. Residents at Lakeshore are required to be over 55 years old. On inspection the 29 pitches are very well maintained. The park is protected at the main entrance by locked vehicle and pedestrian gates. There is access to the lakeside via paths as well as potential access to a large island in the lake which forms part of Lakeshore and is intended to be available for the use of residents. The island is to be planted in due course, but currently remains bare and unused. The bridge to it is out of bounds. Final landscaping of the common parts of Lakeshore and the adjoining area is clearly still under way. The exit gates are not yet in place and at present the intended one way traffic system through the site is not in operation.

THE HEARING

13. Following the site visit but prior to the hearing Blacks, solicitors, who had been acting for the previous site owner, informed the Tribunal that they were now instructed by the Applicants. Mr Crozier of counsel, instructed by Blacks, appeared for the Applicants at the hearing.

14. Blacks provided a bundle of documents consisting of some 2250 pages. Despite this plethora of documents, there were no issues of fact to be determined by the Tribunal. The decision as to whether the RPI presumption at Implied Term 20(A1) was to be set aside depended firstly on whether the current grounds maintenance service at Lakeshore indicated a deterioration in that service which justified an adjustment under Implied Term 18(1)(ab), and secondly on whether delays in completing the development of the common parts of Lakeshore and surrounding areas amounted to a “weighty factor” which would render it unreasonable to apply an RPI increase to the pitch fee.

THE RESPONDENTS' OBJECTIONS

15. Mr Rose claimed that the work of the grounds maintenance contractors at Lakeshore had deteriorated. He said that this resulted in

- (a) grass clippings and leaves not being cleared away from the site as regularly as was formerly the case;
- (b) the grass on the communal areas not being fed and weeded regularly or sufficiently often;
- (c) the willow around the island not regularly being trimmed to a constant level as had been agreed in September 2021 with the then owners of the site;
- (d) the reed beds along Foss Dyke not being cut back and being allowed to extend into the water; and
- (e) trees overhanging the water not being cut back – although Mr Rose did acknowledge that these trees were on the land of a third party.

16. Mr Rose argued that his other points, taken together, amounted to a factor of sufficient weight to displace or partially displace the presumption of an RPI increase. These were:

- (a) There was no access over the bridge to the island, which the residents wished to use for walking and fishing. Use of the island, Mr Rose said, had been promised in 2018 and little progress had been made.

- (b) Following the grant of a lease to the Applicants, the adjacent land to the north is now in separate ownership and the residents no longer have access to it for walking and fishing as they had anticipated.
- (c) The then owners of the park initially indicated their intention to provide security gates at the exit to the park early in 2019. Subsequently they promised that work would start in January 2021, then in late summer 2021, and finally in the spring of 2022. Eventually the work was started in December 2022, and there is no gate currently in place. The access road is guarded instead with a Heras fence which can fall in windy weather and which can be insufficient to keep out intruders. Mr Rose told the Tribunal that he was aware of two occasions when there had been unauthorised entry on to the park.
- (d) The island remains undeveloped despite promises and discussions about its use dating back to 2018. Work on it has not yet begun.
- (e) The gardens of three of the Respondents are subject to surface water ponding in heavy rain. In 2021 the former owners promised to install a new land drain but no work has started as yet. Mr Rose said that these Respondents were “denied access to their pitches on occasion”, but also confirmed that the surface water ponding did not affect the driveways or access to the doors of the residents’ homes.
- (f) Until 2021 there were heaps of spoil in the area of the exit gate as a result of excavations and landscaping work, and this area remains under construction and unsightly.
- (g) The area between pitches 22 and 37 remains incomplete. There is a temporary fence at this point, which is the northern boundary of the area now leased by the Applicants.

THE APPLICANTS’ REPLY

17. In response to these points Mr Crozier argued for the Applicants that Lakeshore was a “development project” and that the Respondents had purchased their homes and

occupied their pitches on that basis. The development and completion of the park was making progress, although not as fast as the Respondents had wished.

18. He further said that even taking the Respondents' case at its highest, the fact that grounds maintenance is not currently to the standard requested by residents did not amount to a deterioration which outweighed the presumption for an RPI increase in pitch fee.
19. With regard to the surface water drainage problem, Mr Crozier dismissed this as "transitory" and said that a factor to be taken into account must be more than a passing circumstance.
20. Mr Crozier said that there had been no pitch fee increase since the Written Statements were issued to the Respondents, some as far back as 2015, despite the fact that during that time there had been increases of amenity in terms of development along the waterway. Generally, he said that the issues raised by the Respondents did not amount to a "weighty factor" capable of displacing the presumption for an RPI increase.

CONCLUSION

21. The Tribunal considers that the grounds maintenance issues do not amount to a deterioration (in the provision or quality of services under Implied Term 18(1)(ab)) which prejudices the residents to such an extent as to affect the pitch fee they should pay. For the time being at least the nature of the area surrounding the pitches is natural rather than landscaped as a garden. The pitch fee is paid for a number of benefits including rent of the pitch and management functions such as lighting, security, road and grounds maintenance and administration of service provision. The matters complained of, to the extent that they represent a deterioration at all, comprise a very minor element of such benefits.
22. The Tribunal has given careful thought to whether the other matters raised by the Respondents amount to factors of such weight as to displace the statutory presumption that an RPI increase should apply to the pitch fee on annual review. The conclusion is that they do not. The work to develop the site and surrounding area has been slower than the Respondents anticipated but it has been progressing, and the pandemic may have had an effect. It may also be unreasonable to expect the previous site owners to

have pursued plans (for example for development of the island) at a time when an imminent sale was anticipated and any such plans would become binding on the new owners. In terms of security, Heras fencing is generally effective and Lakeshore is a secluded area some miles outside Lincoln. The Respondents did not report that in 7 years or so any vandalism or other crime had taken place.

23. Despite the ongoing nearby development work Lakeshore presents as a very attractive site, and the Respondents' enjoyment of the benefits of living at Burton Waters is not materially compromised by the matters complained of. There does not appear to the Tribunal to be any good reason to limit the pitch fee increase.

24. The Tribunal is informed that the former Respondents Mr and Mrs Michael Hurley of 1 Bay Willow Road, Lakeshore sold their property during the course of this application to Mr and Mrs Sefton. The pitch fee increase sought by the Applicant was agreed in respect of that property.

SCHEDULE

RESPONDENT NAME	PITCH ADDRESS	PITCH FEE	CASE REF. NO
Graham Stinchcombe and Carole Stinchcombe	2 Bay Willow Road	£2,425.50	MAN/32UH/PHI/2022/0088
Mr and Mrs Sefton	1 Bay Willow Road	£1,994.30 BY CONSENT	MAN/32UH/PHI/2022/0089
Kathrine Gough	4 Bay Willow Road	£1,994.30	MAN/32UH/PHI/2022/0090
Anthony Wheal and Teresa Wheal	3 Bay Willow Road	£1,994.30	MAN/32UH/PHI/2022/0091
Martin Rose and Janet Rose	6 Bay Willow Road	£1,994.30	MAN/32UH/PHI/2022/0092
Alistair Lee and Rosemary Lee	9 Bay Willow Road	£1,778.70	MAN/32UH/PHI/2022/0093
Yvonne Dakiniewicz	10 Bay Willow Road	£1,994.30	MAN/32UH/PHI/2022/0094
Mike East and Myra East	12 Bay Willow Road	£1,994.30	MAN/32UH/PHI/2022/0095
Sandra Chard	8 Bay Willow Road	£1,994.30	MAN/32UH/PHI/2022/0096
Elaine Freeman	14 Bay Willow Road	£1,994.30	MAN/32UH/PHI/2022/0097

Timothy Barker and Judith Karen Barker	16 Bay Willow Road	£1,994.30	MAN/32UH/PHI/2022/0098
Peter Bayley and Stephanie Bayley	21 Bay Willow Road	£1,994.30	MAN/32UH/PHI/2022/0099
Terry John Lucas and Cindy May Lucas	17 Bay Willow Road	£1,994.30	MAN/32UH/PHI/2022/0100
Keith Batty and Sharon Batty	23 Bay Willow Road	£1,994.30	MAN/32UH/PHI/2022/0101
Stephen Holmes and Yvonne Holmes	29 Bay Willow Road	£2,425.50	MAN/32UH/PHI/2022/0102
John Binks and Janice Binks	7 Bay Willow Road	£1,994.30	MAN/32UH/PHI/2022/0103
Ian Urquhart	37 Bay Willow Road	£1,994.30	MAN/32UH/PHI/2022/0104
Geoffrey Smith and Sabine Iris Smith	31 Bay Willow Road	£2,425.50	MAN/32UH/PHI/2022/0105
Madeline Eccles	22 Bay Willow Road	£2,425.40	MAN/32UH/PHI/2022/0106
Ian Prince and Valerie Garner	35 Bay Willow Road	£1,994.30	MAN/32UH/PHI/2022/0107
David Fellingham and Carol Fellingham	33 Bay Willow Road	£1,994.30	MAN/32UH/PHI/2022/0108
Ronald Mallinder and Tiraje Hasibe Mallinder	25 Bay Willow Road	£1,994.30	MAN/32UH/PHI/2022/0109
Stephen Owen and Ruth Mary Owen	20 Bay Willow Road	£1,994.30	MAN/32UH/PHI/2022/0110
Paul Taylor and Sue Taylor	27 Bay Willow Road	£1,994.30	MAN/32UH/PHI/2022/0111
Deveril Winston Lindsay and Julia Isabell Vipond	28 Bay Willow Road	£2,425.50	MAN/32UH/PHI/2022/0112