



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

**Case Reference** : **MAN/32UH/PHI/2023/0006,0007,0009,0010,0011,0013,0014,0016**

**Property** : **6,8,10,17,17A,30,31 and 35 Harpswell Hill Park, Hemswell, Gainsborough, DN21 5UT**

**Applicants** : **Mr and Mrs Andrew James t/a James Park Homes**

**Respondents** : **Mr Robert Doy  
Mr and Mrs A J Walker  
Mr and Mrs Richard Rockall  
Mr J Clarke  
Mr Miller  
Mr John Rawlinson  
Mr and Mrs Roy Boniface  
Mr G J Stirrip**

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

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

**Date of Decision** : **15 May 2023**

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**DECISION**

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The monthly pitch fee payable by each of the Respondents for the year ending 30 November 2023 is the pitch fee indicated in the Pitch Fee Review Form fee served on him or her on or about 28 October 2022, as set out in the attached Schedule.

### **REASONS**

1. On or about 28 October 2022 the Applicants served a Pitch Fee Review Form on each of the Respondents, who occupy pitches on the Applicants' protected site known as Harpswell Hill Park, Hemswell, Gainsborough ("the Park"). The Pitch Fee Review Form advised each of the Respondents that their pitch fees were to be increased, with effect from 1 December 2022, to the figure set out opposite their names at column 3 of the attached Schedule.
2. Each form was accompanied by a letter from the Applicants advising each of the Respondents that in addition to the new pitch fee, they were to make a monthly payment of : "Water including Admin Charge for 2 resident(s): £24.12." or (where appropriate) "Water including Admin Charge for 1 resident(s): £12.29". Elsewhere the Applicants have confirmed that the administration charge is £5.48 per year or about 45 pence per month. It appears to be levied on each pitch rather than each resident.
3. The Respondents objected to the new pitch fee.
4. The Applicant followed the correct procedure for a pitch fee review as set out at paragraph 17 of Chapter 2, Schedule 1 to the Mobile Homes Act 1983 ("the Implied Terms"), and correctly calculated the increase in the Respondents' pitch fees at 12.6% in line with the Retail Price Index [RPI] adjustment over the previous 12 months.
5. The Tribunal was supplied with copies of the Written Statements of some of the Respondents and other residents, the most recent of them being dated 2021. These state that the cost of providing water and sewerage services to pitches on the Park is included in the pitch fee. The Tribunal has been given no reason to suppose that the same statement is not included in all Written Statements applicable to pitches on the Park.

## THE LAW

6. 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 to reflect simply 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;*

*(i) which are for the benefit of the occupiers of mobile homes on the protected site;.....*

*(aa) any deterioration in the condition, and any decrease in the amenity of the site or any adjoining land since [26<sup>th</sup> May 2013] (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].”*

7. 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 Wyldcrest 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 in 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.”

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

#### THE RESPONDENTS' OBJECTIONS

9. Each of the Respondents made the same objections to the increase in pitch fee. Mr Rawlinson added other objections, but these relate to contractual matters between himself and the Applicants, and do not affect the determination of his pitch fee as set out in the Implied Terms.
10. A number of the Respondents' objections did not relate to any deterioration in the condition or amenity of the Park or adjoining land. These were:
  - (a) the Applicants' non-compliance with the Mobile Homes (Pitch Fees)(Prescribed Form)(England) Regulations 2013 for some 9 years prior to 2022;
  - (b) the annual fee of £5.48 per pitch for administering the Park's water supply;
  - (c) the Applicants' failure to supply copies of the Park's water and electricity bills to enable the Respondents to check that their contributions have been correctly calculated;
  - (d) the Applicants' objection to the formation of a Qualifying Residents' Association;
  - (e) failure to supply salt or grit bins for use in icy weather;
  - (f) failure to supply copies of their Written Statements to some residents.

Some of these issues may be appropriate for an application to the Tribunal under section 4 of the Mobile Homes Act 1983, but they are not relevant to the present pitch fee review.

11. The Respondents' other objections relate to flooding of the road and some garages on the Park in heavy rainfall, failure of part of the sewerage system during heavy rainfall, the removal of the former carpark for use by residents and visitors, the removal of one or more footpaths on the Park, and the condition of the roads.

## THE INSPECTION

12. The Tribunal were shown round the Park by Mrs Boniface, Mr Rockall and Mr James. The weather was sunny and had been dry for over 24 hours.
13. The Park consists of an office together with 38 pitches, some dating back many years and others having been created on the site of the former carpark approximately 3 years ago. There are three parking spaces outside the office. Each pitch has a driveway on which at least one vehicle can be parked. In addition to the Park office and the roads, there are three communal garden or seating areas which are maintained by the Applicants. All other areas of the Park fall within the boundaries of the pitches and are maintained by the residents.

## FINDINGS

14. Following their inspection of the park and after considering the parties' written representations, the Tribunal finds as follows:
  - (a) the Park roads are showing signs of wear but are not currently in such a condition as to affect the residents' pitch fees;
  - (b) the Park occupies a low-lying sloping site, with the result that the garage at pitch 31 and the roadway at a junction near the Park entrance both flood in heavy rain. The Applicants say that a recent assessment of the drainage system has identified the need for some repair, which they say will be undertaken. Neither a copy of this assessment nor any report obtained by the Respondents was produced to the Tribunal. The Tribunal was not told which, if any, of the Respondents' garages flooded other than the garage at pitch number 31. There was no indication as to when the flooding problems first started. In the absence of evidence to the contrary

the Tribunal finds that any flash flooding in the road is likely to dissipate within a reasonable time, and that the intermittent flooding of the road and the garage at pitch 31 has been an issue for a number of years: Mrs Boniface told the Tribunal that she had had sandbags in place “more or less since I moved in” in 2017. This is therefore not considered to be a deterioration of the Park or a factor which would affect the pitch fee.

(c) as the residents have parking spaces on their pitches and the Tribunal has no evidence of specific difficulties arising from the removal of the communal car park some 3 years ago, this is not a deterioration or a factor sufficient to affect the pitch fees.

(d) the Park is small, and the removal of any footpaths will have resulted only in a short walk on the Park roads from any part of the Park to any other part. The main route through the Park is subject to a one way system, speed bumps and a speed limit. The removal of footpaths some years ago is not a deterioration sufficient to affect the pitch fee.

(e) the Tribunal was not provided with any detail regarding failures of the sewerage system during heavy rainfall, such as which Respondents are affected and to what extent, and since what date this has been an issue. There is no evidence that these failures are a deterioration in the Park which has arisen since 2013. There is insufficient evidence to find that they are a factor which should affect the pitch fee of any one or more of the Respondents.

12. The pitch fees include the cost of water and sewerage services. The additional cost of water claimed from the Respondents by the Applicants is not payable.

**Tribunal Judge A Davies**

**15 May 2023**

## SCHEDULE

<b>Case number</b>	<b>Respondent(s)</b>	<b>Pitch fee per month</b>
MAN/32UH/PHI/2023/0006	Mr R Doy	£187.65
MAN/32UH/PHI/2023/0007	Mr and Mrs Walker	£172.26
MAN/32UH/PHI/2023/0009	Mr and Mrs R Rockall	£136.74
MAN/32UH/PHI/2023/0010	Mr J Clarke	£199.46
MAN/32UH/PHI/2023/0011	Mr Miller	£165.87
MAN/32UH/PHI/2023/0013	Mr J Rawlinson	£212.09
MAN/32UH/PHI/2023/0014	Mr and Mrs Boniface	£165.87
MAN/32UH/PHI/2023/0016	Mr G Stirrip	£165.87