



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

Case Reference : **MAN/30UL/PHI/2022/0004, 0006, 0007**

Property : **(1) 32 Oak Ridge, Three Rivers Woodland Park, West Bradford, Clitheroe BB7 3JG**
(2) 71 Ribble View, Three Rivers Woodland Park, West Bradford, Clitheroe BB7 3JG
(3) 110 Woodlands, Three Rivers Woodland Park, West Bradford, Clitheroe BB7 3JG

Applicant : **Three Rivers Park Limited**

Respondents : **(1) Mr W Howard**
(2) Mr and Mrs P A Whaley
(3) Mr A Smith

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

Tribunal Members : **A M Davies, LLB**
I James, MRICS

Date of Decision : **2 February 2023**

DECISION

The pitch fees payable by the Respondents with effect from 5 November 2021 are:

- (1) Mr Howard: £488.32 per quarter
- (2) Mr and Mrs Whaley: £503.67 per quarter
- (3) Mr Smith: £671.97 per quarter.

REASONS

Background – pitch fee review dates

1. The Applicant purchased Three Rivers Woodland Park near Clitheroe in 2017 and inherited the Written Statements entered into prior to that date by the park residents, including the three Respondents. Mr Howard's Written Statement has been located and provided to the Tribunal. It provides for an annual review date of 1 September. The Written Statements of Mr and Mrs Whaley and Mr Smith have not been produced to the Tribunal and it is not known what, if any, review date is specified in them.
2. The Applicant says:

“The Applicant has historically always made their pitch fee proposal in late September. This was also the practice adopted by the previous park owner. The Applicant has always used the last available RPI figure, which is the RPI for August in any given year.”

Mr Howard does not deny this but relies on the wording of his Written Statement. The Tribunal has seen no evidence that Mr Howard has agreed to a variation of his Written Statement, and therefore adopts the review date stated in it.
3. The Applicant acknowledges that a pitch fee review notice served on or after 28 September is a late review notice to which the provisions outlined at paragraph 5 below apply.
4. The Applicant chose not to increase the Respondents' pitch fees in 2020. On 28 September 2021 the Applicant served a pitch fee review form on each of the Respondents, applying an RPI increase of 4.8% to their pitch fees. This is the increase published in August 2021 for the previous 12 months. Because of a defect in the first forms, a second pitch fee review form was served on the Respondents on 5 October 2021. This provided that the new pitch fee would be payable from 5 November 2021. This second form was otherwise in the same terms as that served previously. Both were served late, ie after 28 days prior to the review date, whether the review date was 1st or 29th September. The Respondents did not agree to the increase, and on 9 February 2022 the Applicant applied to this Tribunal.

The Law

5. 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.

6. Paragraphs 18 and 20 of Chapter 2, Schedule 1 to the Mobile Homes Act 1983 (“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 Retail Prices Index (“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

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

5. A pitch fee review notice must be served not later than 28 days prior to the review date. Paragraph 17(6) of the Implied Terms provides that a park owner may serve a notice later, and if he does so the new pitch fee shall be payable as from the 28th day after the date on which the notice is served. Paragraph 17(8) provides that if there is no agreement as to the new pitch fee and the Tribunal makes a determination, *“the new pitch fee shall be payable as from the 28th day after the date on which the owner serves the notice...”*
6. Paragraph 20(A2)(b) provides that where the pitch fee review notice is served late under paragraph 17(6), the RPI figure to be applied is the last index published before the date by which the owner would have had to serve a notice that was not late: ie the date 28 days before the pitch fee review date specified in the Written Statement.

RPI increases

7. The Tribunal noted that there was no evidence as to the review dates specified in the missing Written Statements of Mr and Whaley and Mr Smith. In view of the Applicant’s assertion that 29 September had “historically” been used as the annual review date – an assertion that was not contested by Mr and Mrs Whaley or Mr Smith – that date is accepted by the Tribunal. Accordingly, the relevant RPI increase for 71 Ribble View and 110 Woodlands is that published in the month prior to 1

September 2021. This is 4.8%, as applied by the Applicant in its pitch fee review notices.

8. As noted above, Mr Howard's Written Statement for his pitch, which was issued initially on 7 November 2005 and assigned to him on 29 November 2011, states that the annual review date is 1 September. Mr Howard informs the Tribunal that he has not agreed to any other review date. The latest date by which a pitch fee review notice (other than a late notice) should have been served was 3 August 2021 and the RPI increase for the previous 12 months is that published in July 2021. This was 3.8% and (subject to any appropriate variation) results in a new pitch fee of £488.32.

The Respondents' case

9. With the consent of the parties, the Tribunal has made its determination on the basis of written representations and the documents supplied by the parties, without an inspection or hearing. The documents supplied include photographs of various areas of Three Rivers Woodland Park.
10. All three Respondents objected to paying the increased pitch fee on the ground that the condition of the Park had deteriorated in terms of maintenance and services. The Tribunal has seen photographs showing overgrown areas of the park, potholes and uneven surfaces on roads and paths, an incomplete outbuilding, and untidiness around the bin store area. The Applicant has opened the Park's leisure facilities (including clubhouse, café, bar, gym and swimming pool) to members of the public. The swimming pool is sometimes closed for private events. At the time when representations were made in this application there was no bar manager and bar facilities were said to be reduced. The café facilities were also alleged to have deteriorated.
11. The Respondents say that that recent development of the park is a breach of planning regulations. Breaches of the Applicant's site licence are also alleged, specifically with regard to compliance with fire safety requirements. Further, the Respondents query why the park residents should pay an increased pitch fee when the Applicant has had the benefit of government grants during the covid epidemic.
12. The Respondents say that there are no published park rules and allege, without giving examples, that the Applicant applies rules inconsistently to different residents.

The Applicant's reply

13. In response, the Applicant says that occasional closure of the pool does not materially affect the Respondents, who are free to use the facilities of

the park. It says that planning and licence considerations are not relevant to the issue of a pitch fee increase, and that maintenance of the park is scheduled and carried out periodically. Further, in the 18 months prior to the pitch fee review notice work on the park was affected by covid restrictions. The Tribunal notes that in September 2020 the Respondent chose not to increase the pitch fees in recognition of the exceptional circumstances caused by the pandemic.

14. The Applicant points out that business issues such as the receipt of government grants to which it may be entitled are not relevant to determination of the pitch fee.

Findings

15. The Tribunal notes that Three Rivers Woodlands Park is extensive and includes riverbanks and woodlands as well as the more developed areas. Residents may well have chosen the park because it encompasses open spaces, woodland walks and wildlife.
16. A pitch fee is paid in return for many benefits, including occupation of the pitch and lighting, security, insurance, social facilities, infrastructure, administration of services, upkeep of roads and grounds maintenance. The examples of poor, outstanding or incomplete grounds maintenance described by the Respondents are not so serious or permanent as materially to affect the pitch fee payable by the Respondents for the general facilities of the park. The Tribunal finds that use of the park by the public does not prejudice the Respondents to the extent that their pitch fees should be affected. Equally any temporary or partial effect of changes in the services available on the park are not sufficient to dispel the presumption that an RPI increase is appropriate.
18. The Applicant is under no obligation to have published park rules, and the Tribunal notes that there is an active Residents Association with whom any intended park rules will be discussed prior to adoption. The Tribunal agrees with the Applicant that planning and licensing issues are not factors to be taken into account in considering what pitch fee increase is to be applied. Neither are the government grants and loans made available to businesses during the covid pandemic.
19. As provided by paragraph 17(8) of the Implied Terms, the new pitch fee is effective from 28 days after service of the pitch fee review notice, ie 2 November 2021, but the Applicant arranged for payment of the increase to start on 5 November 2021.

Mr and Mrs Whaley's pitch

20. Mr and Mrs Whaley have informed the Tribunal that for some time their pitch has been adversely affected by sewage smells originally emanating from a broken sewage pipe running under their home. The Applicant blames the breakage on Mr and Mrs Whaley having installed decking, for which the Applicant itself gave permission. However the Tribunal is inclined to accept the explanation given by Mr and Mrs Whaley that the presence or removal of large boulders on their pitch are more likely to have caused the disruption of the pipe. In any event, the Applicant undertook work to by-pass the broken pipe in March or April 2021.
21. Mr and Mrs Whaley continued to complain of unpleasant smells affecting their enjoyment of their home. Investigations were eventually carried out by the Applicant's contractors, who reported that there was no continuing problem with the drainage. The Tribunal concludes that the soil below 71 Ribble View has been saturated with sewage in the past and is likely to emit smells, especially in wet weather, for some time. Eventually this problem will disappear. Meanwhile it is unlikely that such residual smells can be eliminated entirely.
22. The Tribunal finds that the damaged sewerage system was duly repaired by the Applicant, which is responsible for the infrastructure of the park. There is no evidence of undue delay. In previous pitch fee review cases the Upper Tribunal has considered when it is appropriate to set aside the statutory presumption of an RPI increase indicated at paragraph 20(A1) of the Implied Terms. The consequence of these Upper Tribunal decisions is that only a "weighty" factor may render an RPI increase unreasonable.
23. While the Tribunal has considerable sympathy for Mr and Mrs Whaley, the lingering presence of a sewage smell should not affect the level of their pitch fee. The problem does not, in the opinion of the Tribunal, amount either to a deterioration in the amenities or services afforded by the park or to a factor sufficiently weighty to displace the presumption of a pitch fee increase equivalent to the relevant RPI increase.