FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/43UM/PHI/2022/0130
Property	**:**	Warren Farm Home Park, Warren Lane, Pyrford, Woking, Surrey, GU22 8XF
Applicant	**:**	Warren Farm Home Park Partnership
Representative	**:**	Tozers LLP
Respondent	**:**	The pitch numbers as on the attached schedule
Representative	**:**	
Type of Application	**:**	Review of Pitch Fee: Mobile Homes Act 1983 (as amended)
Tribunal members	**:**	Judge D Whitney Regional Surveyor D Banfield FRICS Mrs J Coupe FRICS
Date of Decision	**:**	12 June 2023

DECISION

Background

1. On 30 September 2022 the Applicant site owner sought a determination of the pitch fee for 64 pitches of the amounts specified in the pitch fee review forms payable by the Respondents as from 1 July 2022 and proposed as a late review.

2. A Pitch Fee Review Notice dated 1 June 2022 was served on each of the occupiers proposing to increase their pitch fee by an amount which the site owner says represents only an adjustment in line with the Retail Prices Index.

3. Directions were issued on 18th January 2023 providing for the matter to be determined on the papers.

4. Various applications have been withdrawn save for determination as to reimbursement of the Tribunal fees. Those pitches which remain as Respondents are set out in the Schedule attached to this determination.

5. A combined bundle of 2076 electronic pages has been supplied. References in [ ] are to the pdf pages.

DECISION

6. The Tribunal is satisfied that whilst various objections have been raised the matter remains suitable for determination on the papers. Both sides have made detailed written submissions and there appears to this Tribunal to be little factual dispute.

7. The Applicant has provided a written statement of case [494-504]. In each case the Applicant as the site owner served on 1st June 2022 a notice of a new pitch fee. An example for Pitch 2 is at [749-751]. Each notice was in similar form.

8. Each notice was to take effect from 1st July 2022. Each notice proposed the current pitch fee adjusted by RPI and on top a contribution of £24.11 per month for what are termed service costs.

9. In the main (save as set out below) it was this addition of service costs which was contentious to the various Respondents who have filed objections to this application. A covering letter was sent with each notice (see [748] for example) which explained that the additional £24.11 was to pass on the costs of operating and maintaining the private sewage system and cost of third party meter reading charges. It is said these are recoverable costs which it is intended are to become part of the pitch fee moving forward.

10. The statement of case refers to the charges as "Service Charges". It states that in 2020 the Applicant decided to stop making separate charge for these sums. As part of the 2021 pitch fee review it is

proposed that these should be included within the pitch fee moving forward. It suggests that these will give homeowners greater certainty as to the amounts and it will make the system simpler to administer.

11. The Applicant sets out in Section L [500-502] the legal basis allowing these sums to be added to the pitch fee.

12. For the avoidance of doubt we find and are satisfied that the notices served are valid pitch fee notices. No Respondent disputes this. Likewise, we are satisfied that the proposed RPI increase of the base pitch fee has been properly calculated. Save for comments by two homeowners which we deal with below there is no challenge to the Applicants right to an increase on the pitch fee by the RPI amount and we find the Applicant is entitled to this sum.

13. The Applicant suggests that the Court of Appeal decision in PR Hardman & Partners v Greenwood & Another 2017 [EWCA] Civ 52 is authority that the Service Charge costs may be recoverable under the pitch fee. We were also directed to two Upper Tribunal decisions in Britaniacrest Limited v Bamborough [2016] UKUT 0144 (LC) and Wyldecrest Parks Limited v Kenyon [2017] UKUT 0028 (LC) .

14. Copies of all the authorities were within the bundle and we have read all, paying particular regard to the paragraphs drawn to our attention.

15. We have considered each of the Written Statements which are included within the bundle. Attached to this decision is a schedule of the Respondents with details of the relevant terms in connection with the service charges and the sum we have determined is payable.

16. Our starting point was to look at the agreements. It appears to be accepted that up until 2020 the Applicant would re-charge certain costs to the Respondents in addition to pitch fees. This was on the basis that each of the statements relied upon allowed recovery of costs incurred by the Applicant for the provision of services to each of the pitches.

17. Various statements of case have been filed by the Respondents [671-729]. Whilst there are some variations essentially the arguments raised are similar. In short it is that each of the Respondents has always understood they would be billed separately for these charges. It is suggested it would be advantageous to allow the Applicant to include these in this year as the costs are high and once included will then year on year increase by RPI. It is suggested that the homeowners would not benefit if in the future there are any savings and for this reason these sums should be dealt with separately as is provided for within the written statements.

18. We are not persuaded that the authorities relied upon require the Applicant to now include all such charges within the pitch fee. The starting point as we have said is the written statements. All are clear (and it is not disputed by any Respondent) that costs of outgoings may

be recovered as separate charges. That has always been the position under the written statements upon which the Applicant relies. These would have been produced by the Applicant or any predecessor in title. In our judgment the requirements are clear.

19. We agree with the Respondents that it may be inequitable to now seek to make a further addition to the pitch fee. When the pitch fee was initially fixed no doubt the Applicant in so doing considered what services it would be providing and it was for them to ensure that either it allowed for recovery or to take account in determining the pitch fee. By dealing with these amounts separately the Applicant may recover the actual cost they incur and the Respondents are only liable for the actual cost. The Applicant benefits in that they have certainty of recovery and the Respondents in that they benefit if there are any savings.

20. We do accept that in certain circumstances other factors and sums need to be considered in determining the correct pitch fee and whether other sums should be taken account of in determining an increase. This is not in our judgment such a case. The Applicant retains their ability to recover sums under the written statements and we are not satisfied that such arrangement should be changed.

21. Certain Respondents look to challenge (see [672]) the administration charge for meter reading. Again, we prefer the Respondents' case on this point. If such cost is not recoverable under the Written Statement (and we make clear we have made no findings as to this as it is not relevant to our determination and each Written Statement will fall to be considered upon its own terms) then we agree consideration to this administration charge should have already been given when the Pitch Fee was set. The Applicant has produced no evidence to show that this is a cost which it only now started to incur. In our judgement any such costs which cannot be recovered is already included within the pitch fee and without any further evidence we find the RPI increase is appropriate to cover any cost the Applicant may be liable for.

22. We therefore find that the addition of £24.11 to each of the disputed pitch fees is not allowable. We do make clear that the Applicant may be entitled to recover costs separately under the Written Statements.

23. Mr Copcutt (Pitch 61) [725 & 726] includes additional words to his response. He refers to the cost of living and seems to suggest that this is further reason for not including the Service Charges within the pitch fee increase. He also refers to the appearance of the estate being poor but gives little further information.

24. The Applicant denies the appearance of the estate is poor.

25. We had no evidence to support the suggestion the appearance was poor. We note only Mr Copcutt raised this as an issue. We are not satisfied on balance that this should lead us to depart from allowing the statutory increase in the pitch fee by RPI.

26. Mr Collins (Pitch 77) also challenges the increase on the basis that the septic tank is not fit for purpose and that he has also struggled to obtain evidence from the Applicant for the charges levied as Service Charges in earlier years.

27. This last point is not a matter for this Tribunal. We would remind the Applicant it is of course for them to be able to provide the evidence to support such charges.

28. As to his first point again we have found charges for services should be charged separately. If the Applicant undertook works of a capital nature it may, dependant upon the circumstances, be entitled to seek an increase greater than the statutory presumption. We find that there is no evidence that services and the like are not being provided to an appropriate level which would lead to us reducing the pitch fee.

29. We are asked by the Applicant to order reimbursement of the Tribunal fees including for applications which were withdrawn following agreement save in the case of Pitch 15. Such orders are at the Tribunal's discretion.

30. In respect of those applications withdrawn following agreement, given the Respondents in those applications have taken no part, we believe it is reasonable that the Respondent in those cases (Pitches 6, 23 ,38 and 91) should reimburse the Tribunal fee of £20 payable by each within 28 days unless the Respondent home owner makes representations to the Tribunal within 28 days of the date of this decision.

31. Essentially the main area of dispute arose since the Applicant looked to now moving forward include service charges within the pitch fee whereas in the past these had been separately calculated and paid. We have found that in our judgment this is not allowable on the facts of this case. For that reason we decline to make an order requiring the Respondents, other than those referred to in paragraph 30 above, to reimburse the Tribunal fee.

32. For the reasons set out above we determine the pitch fees as per the amounts set out in the schedule to this decision.

SCHEDULE OF RESPONDENTS

2 Mr Dennis George Wilson & Mrs Gwyneth Elizabeth Wilson
3 Mr John Bannell
5 Ms Lisa Michelle Norris
6 Mrs Jennifer Whitehead
10 Mr Tony Straughan
11 Mr and Mrs C Cuckow

12 Mr G Trow
13 Mr Richard Godleman
15 Mr L Hardes
16 Miss Christine Hughes
19 Mrs Julie Priestly
20 Mr Steve Saunders
23 Mrs Angela Edwards
27 Mrs Paul Archer
28 Mr Kenneth Bagnall
31 Mr Terence Collins
32 Mrs Marijke Lewis
33 Mr Stephen Foden and Mrs Margaret Foden
34 Mr and Mrs Geoff Hambly
35 Ms Hanna Neumann
37 Mr James Godden
38 Mr S Brant
42 Mr L Lain
45 Mr David Anthony Martin
46 Mr Trevor Mitchell
47 Mr Alex Rezai-Fard
48 Mrs M Guenigault
51 Mr Michael Parker
53 Mrs Pauline Robinson
54 Mr N Haworth
55 Mr George Walsh
56 Mr Gary Cockburn and Mrs Debbie Cockburn
58 Ms Emma Measor and Mr Jack Scully
60 Mr M Fisher
61 Mrs M Copcutt
62 Mr Christopher Warren
64 Mr J A C Guerra and Ms T L-M Rapoz-D'Silva
66 Mr and Mrs N Godwin
67 Mrs Donna Crittenden
68 Ms R Holden
69 Ms Zoe Powell
72 Mr and Mrs R J Mitchell
74 Mr Andrew Mellett
77 Mr Jim Collins
79 Mrs Jacquelyn John
80 Mr Paul Brindley
81 Ms Deidre Finch
82 Mrs Diana Kim Quin and Mr Russell John Hales
83 Ms Sarah Walters and Ms Georgina Moody
84 Mr P Griffiths
85 Mr Edward Mainwaring
88 Mrs Gillian Brown
89 Mr and Mrs M Boon
90 Mr Kevin Cooper

91 Mr Michael Dams
92 Mr Frank Risdon
94 Mr Robert McPherson
95 Mr David Risby
96 Mrs Christine Flynn
97 Miss Z Waite
98 Mr A Waite deceased c/o Miss Z Waite
100 Mr Matthew Hockin
102 Mr D Berry and Mrs D Taylor
103 Mr Malcolm Rayner and Mrs Susan Rayner

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

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.