FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/19UG/PHI/2022/0167 and 0176
Property	**:**	Pitch 22 and Pitch 63, Hoburne Park, Swanage, Dorset, BH19 2RD
Applicant	**:**	Beachtide Ltd
Representative	**:**	Anouska Musson (Tozers LLP)
Respondent	**:**	(1) Ms K Pigott & Ms C Saunders (pitch 22) (2) Mr Paul and Christine Dowling (pitch 63)
Representative	**:**	In person
Type of Application	**:**	Review of Pitch Fees: Mobile Homes Act1983 (as amended)
Tribunal member	**:**	Judge Mark Loveday Mr Paul Smith FRICS Mr Mike Jenkinson
Date of Hearing	**:**	27 July 2023
Date of Decision	**:**	8 August 2023

DECISION

Background

1. This decision relates to two pitch fee reviews for park homes at Hoburne Park, Swanage, Dorset BH19 2RD. The applicant is the site owner. The first respondents are the owners of pitch 22 and the second respondents are the owners of pitch 63.

2. Pitch fee review forms were served on each of the respondents dated 17 August 2022. The proposed fee for pitch 22 was £2,348.81 and the proposed fee for pitch 63 was £3,201.41 per year – each of which included an adjustment of the basic fee in line with the Retail Price Index. The Review Date in each case was 29 September 2022.

3. On 13 December 2022, the applicant sought determinations of the fees for both pitches. Directions were given on 22 February 2023 in both matters. The two applications have been case managed together and were listed for hearing on 27 July 2023 at Bournemouth Crown and County Court. The tribunal inspected the site and the two pitches before the hearing.

Inspection

4. Hoburne Park is located on the southern edge of Swanage on a sloping site. It comprises approximately 70 pitches, together with parking and landscaped areas. At least one public footpath runs along the northern edge of the site.

5. On the morning of the inspection, the weather was dry, although heavy rain had fallen overnight until 5am. In some of the streets in Swanage, there was standing water in streets where there appeared to be poor drainage.

6. On arrival, the site appeared generally well kept. The grass had been mown (apparently in the previous week) and was largely weed-free and shrubs had been trimmed and tended. The paths were clear of substantial litter. The tribunal was shown some areas of brambles and self-seeded plants adjacent to a car parking area, although these did not spread over the hard surfacing. A particular focus of the inspection was the car parking spaces at the foot of one of the steeply sloping estate roads, which corresponded with a photograph of flooding in the bundle. There was no sign of any water ponding evident at 10.30am, and no staining on the surface indicating any regular presence of standing water. The tribunal was shown a small gravel soakaway in a low-lying part of pitch 25 approx. 6ft below the level of the parking area at the foot of the hill. It was said this had been added by one of the occupiers to deal with flooding from the estate road and parking area. There were gullies set into the estate road which appeared clear of debris.

7. Leaving the parking area, the tribunal was taken down a path to the lower public pedestrian park entrance. Root heave was evident in the Tarmac surface. Although most hedges were neatly trimmed, some hedges within curtilage of the respective pitch owners were taller. For example, adjacent to the first respondents' pitch was a hedge between two pitches which had been trimmed on one side only, the untended part being over 2m in height. It was evident that this blocked light to the gardens and the views from the pitches. The tribunal then proceeded to the main entrance, noting some areas of self-seeding plants and wild shrubs, particularly along the perimeter of the site. In one place a line of laurel trees had grown significantly over 2m. The path along the boundary had a secluded and

somewhat natural feel, with small trees and shrubs on one side, and timber fencing with pedestrian rear garden gates leading to various homes on the other. The tribunal was also shown signage referring to dogs, such as "please keep your dog on lead in the park" and "no dog fouling". Other areas had no such signage.

The pitch fee agreements and site rules

8. Pitch 22 is occupied under an agreement dated 8 July 1978 and Pitch 63 is occupied under an agreement dated 11 September 2020. Copies of the agreements were in the two hearing bundles. They were subject to the following implied site owner's obligations at para 22 of Ch.2 of Pt.I of Sch.1 to the Mobile Homes Act 1983:

> " (c) be responsible for repairing the base on which the mobile home is stationed and for maintaining any gas, electricity, water, sewerage or other services supplied by the owner to the pitch or to the mobile home;
>
> (d) maintain in a clean and tidy condition those parts of the protected site, including access ways, site boundary fences and trees, which are not the responsibility of any occupier of a mobile home stationed on the protected site"

Attached to the agreements were the "Park Rules for Hoburne Park, Swanage". The rules included the following obligation on the part of the site owners:

> "2. You must not erect fences or other means of enclosure of more than 2 metres in height since to do so may interfere with your neighbours' enjoyment of their pitches."

The applicant's arguments

9. At the hearing, the applicant was represented by Ms Anouska Musson of Tozers LLP, and the respondents appeared in person. The tribunal is grateful to both Ms Musson and the respondents for their helpful submissions.

10. The applicant proposed a pitch fee of £2,348.81 per year for pitch 22, comprising:
    a. The current pitch fee of £ £2,084.57 per year.
    b. The RPI Adjustment of 12.3404% (£257.24) per year. The RPI adjustment was applied only to the pitch fee, excluding the annual site licence fee element, in accordance with established practice at the park.
    c. A contribution of £7 per year towards the local authority annual site licence fee for 2021-2022. After service of the Pitch Fee Review Forms, the applicant received an invoice from the local authority, which confirmed that there had been a reduction to the annual site licence fee from the previous year's figures.

    It also proposed a pitch fee of £3,201.41 per year for pitch 63, comprising:
    a. The current pitch fee of £2,843.51 per year.
    b. The RPI Adjustment of 12.3404% (£350.90) per year. The RPI adjustment was again applied only to the pitch fee.
    c. A contribution of £7 per year towards the local authority annual site licence fee for 2021-2022.

11. In essence, it relied upon the implied provision set out in para 20(A1) of Ch.2 of Pt.I of Sch.1 to the 1983 Act, which raises a presumption that the pitch fee will increase/decrease by a percentage which is no more than any percentage increase/decrease in the Retail Prices Index.

12. In response to the respondents' arguments about the condition of the site, the applicant argued that the site was in fact reasonably maintained. The applicant produced a copy of a letter from Warrens Gardens Ltd, the

gardening contactor dated 11 November 2022. The contractor charged for fortnightly 8-man visits between January and February and fortnightly alternating 8 and 16-man visits for the rest of the year. The charges included waste removal and hard standing chemical treatment.

The first respondents' arguments (pitch 22)

13. In their statement of case dated 16 March 2023, the first respondents argued that there was currently a campaign supported by many MPs for the consumer prices index (CPI) to be used as the basis for the calculation of the fees instead of the retail prices index (RPI). This would result in lower costs for pitch owners.

14. It would be reasonable to set the increase at a lower level during the current economic crisis, as has been the case on other residential park home sites across the country.

15. There is also the fact that some time ago approx.10 sets of residents were offered the opportunity to pay a lump sum in lieu of annual pitch fees. This arrangement reduced the pot of money available to the applicant for annual maintenance and it disadvantaged the rest of the residents.

16. There had also been poor maintenance of the site:
    a. Pathways, trees and hedges were poorly maintained.
    b. The site floods in heavy rain due to poor drainage.
    c. Water leaks were not managed effectively - although the chair of the Residents' Committee had done a sterling job over the years in relation to monitoring the water supply.
    d. There was poor enforcement of park rules. For example, hedges were continually allowed to be above 2m, contrary to the park's site licence and fire safety requirements.
    e. Members of the public had come onto the site and allowed their dogs to run loose and into people's gardens. This issue had been raised with management in September 2021 and March 2020. There was also an issue of dogs fouling on pathways or dog owners leaving mess in bushes and residents' gardens.

17. The first respondents developed these arguments in their oral submissions at the hearing by reference to photographs and correspondence.

The second respondents' arguments (pitch 63)

18. The second respondents' submissions were set out in a letter dated 15 September 2022:
    a. They argued the increase was not acceptable and seemingly unfair with all the other increases the second respondents were having to deal with in terms of fuel and energy prices in the current economic climate.
    b. They also drew attention by the proposals to change the basis of the uplift from RPI to CPI.
    c. Given the number of homeowners on this site, the September month percentage uplift need not be adopted. An increase based on the average RPI throughout the year would be enough to cover the increase in site costs.

    At the hearing, they supported the first respondents' general arguments about the condition of the site.

The law

19. Hoburne Park is a protected site within the meaning of the 1983 Act. The increase in pitch fee is governed by the terms of written agreements and

the implied provisions of the 1983 Act.

20. The applicant relies on para 20(A1) of Ch.2 of Pt.I of Sch.1 to the 1983 Act, which raises a presumption that the pitch fee will increase by a percentage which is no more than any percentage increase in the Retail Prices Index. This is calculated by reference to the latest index, and the index published for the month which was 12 months before that to which the latest index relates ("The RPI Adjustment"). The increase is presumed to be reasonable, unless this would be unreasonable having regard to various factors in paragraph 18(1). These include:

> "(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 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) ... 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)"

21. It is clear that "the factors which may displace the presumption are not limited to those set out in paragraph 18(1) but may include other factors": *Vyse v Wyldecrest Limited* [2017] UKUT 24 (LC) at [45]. In *Vyse*, the Upper Tribunal (Lands Chamber) described a relevant additional factor as follows:

> "By definition, this must be a factor to which considerable weight attaches ... it is not possible to be prescriptive ... 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."

22. A failure to carry out repairs and maintenance is capable of amounting to such an additional factor under s.18(1): see, for example, the very recent decision in *Wickland (Holdings) Ltd v Esterhuyse* [2023] UTLC 147 (LC).

Discussion

23. In this case, no question arises about compliance with the procedural requirements for a pitch fee review. The applicant has produced pitch fee review forms in prescribed form dated 17 August 2022 that were served on the respondents. The forms proposed new pitch fees effective from 29 September 2022, which was a date more than 28 days prior to the effective review date: para 17(2) of Sch.1. The applications to the tribunal to determine the pitch fees were made on 13 December 2022, which was a date within the period starting 28 days to three months after the review date of 29 September 2022. The tribunal therefore finds that in both cases the applicant has complied with the procedural requirements for a review.

RPI and affordability

24. The respondents all refer to the recent change in relevant inflation measures from RPI to CPI. But the tribunal considers it has no jurisdiction to substitute an increase based upon another measure of inflation such as CPI in this particular case. At the relevant date, the statutory presumption was based on an increase in line with RPI. Although the Mobile Homes (Pitch Fees) Act changed the inflationary index for annual pitch fee reviews from RPI to CPI, it has no effect where a pitch fee review notice was served before 2 July 2023. Indeed, the presumption of a change in line with RPI

is one of "the three basic principles" which shape pitch fee reviews: *Britanniacrest Ltd v Bamborough* [2016] UKUT 0144 (LC). Moreover, the tribunal has no power to adopt an average of RPI increases over a 12-month period, as suggested by the second respondents. The presumption in Ch.2 of Pt.I of Sch.1 Act quite clearly requires the use of the latest monthly RPI figure. Given that parliament has specified a methodology for the primary method of inflationary increase, the tribunal considers it does not have power to depart from this as an 'additional' factor under para 18(1).

25. As to the RPI figure, the applicant explained that it applied the RPI of 12.3404% as published in August 2022, being the last index published for the year to September 2022. The tribunal therefore also finds that the new pitch fees that appear in the relevant forms were calculated in accordance with the implied term at para 20(A1) of Ch.2 of Pt.1 of Sch.1 to the 1983 Act.

26. Under Sch.1 to the Act, the tribunal is generally required to determine whether the proposed *increase* in pitch fee is reasonable. The tribunal is not strictly speaking deciding whether the *level* of the new pitch fee is reasonable. Much that it has sympathy with the difficulties the respondents and other pitch owners face in meeting costs at a time of high inflation, that is not in itself relevant to the questions the tribunal has to deal with. The Act, quite deliberately, avoids questions of the overall reasonableness of the level of a pitch fee. Instead, rightly or wrongly, parliament has substituted a review machinery based on published measures for inflation.

27. Next was the suggestion that the practice of allowing some pitch owners to buy out their obligations to pay site fees had a detrimental effect on the maintenance of the site. This is not in itself a breach of any obligation on the part of the site owner. But in any event, this only goes to the reason for any poor maintenance and the general condition of the site. The tribunal therefore proceeds to consider this aspect of the application.

Site condition

28. The starting point is that the respondents did not suggest there had been any deterioration in the condition of the site over a longer period. The considerations in para 18(1)(aa) and (ab) of Ch.2 of Pt.I of Sch.1 to the Act do not therefore apply. The respondents' case was that lack of maintenance was an "other factor" which could be weighed against the RPI increase. In considering this, the tribunal necessarily has regard to the implied term that site owner must keep the retained parts in a "clean and tidy condition". There is no other material obligation on the site owner in either the pitch agreements or the site.

29. In reaching its assessment about whether the site owner has complied with its obligation to keep the site in a "clean and tidy condition", the tribunal necessarily places great weight on its inspection and on any correspondence or photographs that may support the contention that there has been a breach of the site owner's implied obligation.

30. It bears in mind that the site is in a steeply sloping and semi-rural coastal location. What is possible is constrained by the slope of the land and its exposure to the weather. For example, the slope means that trimming hedges may be challenging. The slope and the storm conditions mean that water run-off can be much more difficult to control. The semi-rural location means that some site areas can be expected to be kept in a more natural state rather than actively managed, and that established trees and hedgerows are encouraged, not controlled. The tribunal's general impression is that many of the issues complained of are simply a consequence of the very features of the site which make it such an attractive location for all concerned.

31. Garden/site maintenance. Turning to the detailed complaints, the first specific issue is garden and site maintenance. Standing back, the tribunal's inspection suggested this was in fact a comparatively well-maintained site. Even allowing for the fact that the inspection may have come soon after one of the gardening contractors' periodic visits, there was no evidence of irregular maintenance. These might be evidenced by such things as roots of well-established weeds in the grassed areas or thick branches on shrubs and hedges which had recently been cut back. But there were no such signs at Hoburne Park. The general maintenance seemed consistent with the garden maintenance specification provided to the tribunal at the hearing.

32. As to hedges across the site, these were mainly (but not always) on the pitches themselves. As explained, there is no express or implied obligation for the site owner to enforce the agreements with other pitch owners. The site rules did not require the site owner to keep the hedges and plants on its own retained areas to less than 2m. But in any event, the site owner's own shrubs and bushes seemed relatively well managed. Furthermore, some areas of self-seeding plants, untrimmed hedgerows, brambles etc. were consistent with good estate management of a site in a semi-rural location. This was particularly the case with the public path along the site perimeter and the area of the relatively high laurel trees. Root-heave on paths was also in evidence, but this is an inevitable consequence of having large established trees. Although there were areas where this had developed, taking the site overall, it could not be said the paths had deteriorated to the extent that they now require complete resurfacing or for the tree roots to be managed. The tribunal also takes into account the limited evidence of historic complaints about the condition of the site. There was a letter from the second respondent dated 1 September 2021 complaining about the height of the hedges at pitch 19, pitch 24 and pitch 25 (as well as dog owners). There was apparently a further complaint in August 2022, since there is a reply in the bundle dated 22 November 2022 which refers to a complaint about "maintenance of the site". There were also photographs showing root heave on the paths, but this was consistent with the inspection showing some areas where this had occurred. Overall, evidence of persistent complaints over time was lacking. In short, the tribunal does not consider there has been a general breach of the obligation to keep the site in a clean and tidy condition.

33. Flooding. The respondents say the site floods in heavy rain due to poor drainage. The bundle includes a dramatic picture of water flowing down the estate road and cascading over the edge of the parking area into pitch 25. But there was no other evidence of recurring floods. On inspection, after rain, the gullies were clear of debris, there was no ponding (unlike some surrounding areas of Swanage) and there were no signs of water stains to the surface of the parking area to suggest there was historic ponding. There were no persistent complaints about flooding in the bundle. The tribunal concludes that water run-off at the foot of the estate road is generally well managed by the gullies and the small soakaway within pitch 25, but that storms may occasionally overcome this provision for short periods. This is a reasonable response by the site owner to the challenges faced by the site location. The tribunal finds no breach of the site owner's obligations under para 22 (c) of the Ch.2 of Pt.I of Sch.1 to the 1983 Act arising from flooding.

34. Water leaks. The evidence of water leaks was limited, and the argument was not really developed by the respondents. There was a letter from the Hoburne Park Residents Association (apparently sent in 2022) which referred to a large leak found in the road in 2021 and another in the road by pitches 47 and 55 in 2022. The letter complained about excess water charges, not the lack of promptness in repairing the leaks. There was therefore no evidence to support a breach of para 22(c) of the Ch.2 of Pt.I

of Sch.1 to the 1983 Act arising from water leaks.

35. Enforcement of park rules. On inspection, and at the hearing, this appeared to be the issue of most concern to the first and second respondents. This was understandable, because the hedges in some other pitches appeared to restrict the outlook from their own pitch. The second respondent's email of 1 September 2022 states that the high hedges "are completely blocking my view to the sea." In places, hedges on some pitches were indeed over 2m in height. Some appeared to be kept deliberately high to preserve privacy (such as those adjacent to the public path), others were also caused by access difficulties because of the slope of the site, whilst others appeared to be neglect by the relevant pitch owners. But the simple point here is that pitch maintenance is a matter for the pitch owner. The applicant is not under any specific obligation to enforce the site rules, and there is no breach of any part of para 22 of Ch.2 of Pt.I of Sch.1 to the 1983 Act.

36. Dogs. This can be dealt with briefly. The tribunal was told that the problem here was with strangers who came onto the site and failed to control their dogs. The tribunal accepts it is hard for the applicant to control this problem if public footpaths cross the site. The applicant has taken measures to stop dogs fouling the site by putting up signage. It would be unduly onerous to require it to put up signs on every piece of grass across Hoburne Park, and in any event there is no evidence that signage alone would be an effectively remedy. The applicant is not under any specific obligation to prevent members of the public from coming on site, it has taken reasonable measures to deal with the dog problem, and there is no breach of any part of para 22 of Ch.2 of Pt.I of Sch.1 to the 1983 Act

Decision

36. Given the above circumstances, the tribunal determines that the proposed increase in the pitch fees is reasonable. It determines a pitch fee of £2,348.81pa for pitch 22 and £3,201.41pa for pitch 63, both of which take effect from 29 September 2022.

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.