



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

**Case References** : **BIR/47UC/PHI/2023/0003-14**

**Property** : **Wheatfield Park Callow End Worcester  
WR2 4UP**

**Applicants** : **Mr Moses Cooper (1)  
Mrs Julie Cooper (2)  
Mr Tom Cooper (3)**

**Representative** : **Wolferstans LLP**

**Respondents** : **Mr & Mrs Westaway (42)  
Mrs Whelan (5)  
Mr Sims (14)  
Mrs Maund (30)  
Mr & Mrs Roberts (31)  
Mr & Mrs Richards (46)  
Mrs Barnfield (49)  
Mrs Megson (54)  
Mrs Hennessey (47)  
Mr & Mrs De Garis (71)  
Mrs Ashford (50)  
Mr & Mrs Eskdale (9)**

**Representative** : **Stallard March & Edwards LLP**

**Type of Application** : **Pitch Fee Review (9 January 2023)**

**Tribunal Members** : **Judge C Payne  
Mr I Humphries BSc FRICS**

**Date of Inspection** : **26 July 2023**

**Date of Decision** : **28 September 2023**

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**DECISION**

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**We determine that the pitch fee for the Property should increase from the review date of 9 January 2023 in accordance with the Notices dated 29 October 2022 to the amounts detailed below:**

|                    |                    |
|--------------------|--------------------|
| 42 Wheatfield Park | £90.08 per 2 weeks |
| 5 Wheatfield Park  | £68.49 per 2 weeks |
| 14 Wheatfield Park | £90.08 per 2 weeks |
| 30 Wheatfield Park | £74.18 per 2 weeks |
| 31 Wheatfield Park | £85.58 per 2 weeks |
| 46 Wheatfield Park | £90.08 per 2 weeks |
| 49 Wheatfield Park | £67.85 per 2 weeks |
| 54 Wheatfield Park | £68.49 per 2 weeks |
| 47 Wheatfield Park | £70.72 per 2 weeks |
| 71 Wheatfield Park | £85.58 per 2 weeks |
| 50 Wheatfield Park | £70.72 per 2 weeks |
| 9 Wheatfield Park  | £90.08 per 2 weeks |

## **Reasons for the Decision**

### **Introduction**

1. The Applicants are the Park Owners and the Respondents are occupiers of the Properties described above. Each Respondent had signed a Written Statement in relation to their respective Property described above which detailed the pitch fee and contained an annual review date of 30 November. The pitch fees were last reviewed in November 2021, when each Respondent agreed the pitch fee. The current monthly pitch fees are set out below:

|                    |                    |
|--------------------|--------------------|
| 42 Wheatfield Park | £80.00 per 2 weeks |
| 5 Wheatfield Park  | £60.83 per 2 weeks |
| 14 Wheatfield Park | £80.00 per 2 weeks |
| 30 Wheatfield Park | £65.88 per 2 weeks |
| 31 Wheatfield Park | £76.01 per 2 weeks |
| 46 Wheatfield Park | £80.00 per 2 weeks |
| 49 Wheatfield Park | £60.26 per 2 weeks |
| 54 Wheatfield Park | £60.83 per 2 weeks |
| 47 Wheatfield Park | £62.81 per 2 weeks |
| 71 Wheatfield Park | £76.01 per 2 weeks |
| 50 Wheatfield Park | £62.81 per 2 weeks |
| 9 Wheatfield Park  | £80.00 per 2 weeks |

2. By Notices dated 29 October 2022, the Applicants gave notice to each of the Respondents that they proposed to review the pitch fee from the review date of 9 January 2023. The proposed pitch fees are set out below:

|                    |                    |
|--------------------|--------------------|
| 42 Wheatfield Park | £90.08 per 2 weeks |
| 5 Wheatfield Park  | £68.49 per 2 weeks |
| 14 Wheatfield Park | £90.08 per 2 weeks |

|                    |                    |
|--------------------|--------------------|
| 30 Wheatfield Park | £74.18 per 2 weeks |
| 31 Wheatfield Park | £85.58 per 2 weeks |
| 46 Wheatfield Park | £90.08 per 2 weeks |
| 49 Wheatfield Park | £67.85 per 2 weeks |
| 54 Wheatfield Park | £68.49 per 2 weeks |
| 47 Wheatfield Park | £70.72 per 2 weeks |
| 71 Wheatfield Park | £85.58 per 2 weeks |
| 50 Wheatfield Park | £70.72 per 2 weeks |
| 9 Wheatfield Park  | £90.08 per 2 weeks |

3. The proposed increase related to the increase in the **RPI** Index only, namely 12.6%.
4. The pitch fee does not include payment for water, sewerage, gas, electricity or any other services. Water and electricity bills are charged separately.
5. The Respondents did not agree to the proposed increase and did not make an application to the Tribunal. The Applicants applied to the Tribunal for a determination of new level of the pitch fee in relation to the Properties.
6. Directions were issue to the parties by the Tribunal on 17 May 2023. The Directions set out time limits for submission of bundles. The Applicants and Respondents through their Representatives both submitted statements and bundles of supporting documentation.
7. All Respondents have paid previous pitch fee increases.

### **The Law**

8. The relevant legislation is contained within Schedule 1 Part 1 Chapter 2 of the Mobile Homes Act 1983 (as amended) ('the 1983 Act'). Paragraph 20 (1) provides that unless it would be unreasonable having regard to paragraph 18 (1), there is a presumption that the pitch fee will increase or decrease by a percentage which is no more than the percentage change in the RPI since the last review date.
9. Paragraph 18 (1) sets out factors to which "particular regard" must be had when determining the amount of the new pitch fee.

*'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) to (iii) ...

*(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 (**26 May 2013**) (in so far as regard has not previously been had to that deterioration or decrease for the purpose 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 (26 May 2013) (in so far as regard has not previously been had for the purpose of this sub-paragraph).'*

10. The decisions in **Wyldecrest Parks Management Ltd v Kenyon and others [2017] UKUT 28 (LC)** and **Vyse v Wyldecrest Parks Management Ltd [2017] UKUT 24 (LC)** both refer to it being possible for us to take into account other factors which are "weighty factors".

11. In **Vyse v Wyldecrest Parks Management Ltd [2017] UKUT 24 (LC)** the Upper Tribunal considered the operation of the 1983 Act and the appropriate approach to be taken. It was held that:

- (a) The starting point is that there is a presumption that a pitch fee shall not increase or decrease by more than the relevant RPI percentage unless it is unreasonable to do so.
- (b) The presumption operates unless it is displaced by other competing matters which renders the increase unreasonable.
- (c) Particular regard must be given to the matters at paragraph 18(1) of the schedule, but other 'weighty matters' may also displace the presumption

12. For the RPI presumption to be displaced under the provisions of paragraph 18, the other considerations must be of considerable weight. "If it were a consideration of equal weight to RPI, then applying the presumption, the scales would tip the balance in favour of RPI" (Judge Robinson *Vyse v Wyldecrest Parks Management Ltd [2017] UKUT 24 (LC)* ).

13. Schedule 1 Part 1 Chapter 2 of the 1983 Act sets out terms implied in all Written Statements including:

Site Owners obligations:

Paragraph 22  
The owner shall-

*(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 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.*

### **The Inspection**

14. The Tribunal inspected the Park on 26 July 2023. Mr Tom Cooper attended on behalf of the Applicants and Mrs Ashford (50 Wheatfield Park) attended on behalf of the

Respondents.

15. Wheatfield Park is a mobile home site located half a mile from the village of Callow End and 4 miles from Worcester, with a regular bus service that stops at the entrance to the site. The site consists of 114 park homes with its main entrance/ exit off the B4424 Upton Road and includes an Estate office and several visitor car parking areas. Callow End has various local amenities including a convenience store, post office and public house.

### **The Issues**

16. The Respondents variously gave the following reasons for disputing the reasonableness of the pitch fee increase:
- (a) Lights are out of sequence with the seasons
  - (b) No lights at the entrance to the site
  - (c) Light broken in car park adjacent to 27 Wheatfield Park
  - (d) Lamp post leaning outside 47 Wheatfield Park
  - (e) Light not operating rear of 46 Wheatfield Park
  - (f) Light on back path of 50 Wheatfield Park not operating
  - (g) Hedgerow by footpath overgrown and hedges on site are higher than 1 meter
  - (h) Plastic Screened Enclosure being used for waste and burning of noxious materials
  - (i) Mole hills in public areas
  - (j) Rat infestation under 45 Wheatfield Park
  - (k) Rental Properties in poor state of repair
  - (l) Vacant property used to store flammable materials Tree next to 50 Wheatfield Park not maintained
  - (m) Pipes exposed near manhole cover adjacent to 71 Wheatfield Park
  - (n) Residents using wooden sheds on site
  - (o) Fence Panel missing from Boundary Fence
  - (p) Concrete bases of some parks homes are cracked
  - (q) Walkway by entrance overgrown
  - (r) Residents not provided with individual electricity meters ~~and~~ or bills
  - (s) Recommendations raised by Malvern Hills District Council in a letter dated 27 May 2015 have not been addressed
  - (t) Mr and Mrs Westway of 42 Wheatfield Park paid 12 month pitch fee in advance when purchasing their home and are paying a monthly pitch fee
  - (u) Only Mr Tom Cooper of the Applicants signed the Notices and Pitch Fee Review Form
  - (v) Demands for arrears have been made
  - (w) Cracking on Concrete Paths

## **Submissions**

(a) Lights are out of sequence with the seasons

17. The Respondents submitted that the lights did not always come on as it becomes dark. The Applicant submitted that the timers are adjusted regularly and upon request. They currently come on at 9pm and turn off at 5am. The Tribunal were not presented with any evidence of a reduction in the condition or amenity of the site resulting from this issue.

(b) No lights in the entrance to the site

18. The Tribunal noted that there is a large central light within the entrance to the site. The road outside the site is not lit and never has been. The Tribunal were not presented with any evidence of a reduction in the condition or amenity of the site resulting from this issue.

(c) Light broken in car park adjacent to 27 Wheatfield Park

19. At the time of the inspection the light was in working order.

(d) Lamp post leaning outside 47 Wheatfield Park

20. The parties agreed during the inspection that the post was hit by a resident's car over 20 years ago, prior to May 2013, and has not moved since. Mr Cooper confirmed that the condition of the post is regularly monitored.

(e) Light not operating rear of 46 Wheatfield Park

21. At the time of the inspection the light was in working order.

(f) Light on back path of 50 Wheatfield Park not operating

22. Mrs Ashford submitted that the low-level path light disappeared several years ago. The Applicants say they did not remove it. The path remains able to be used at night, though Mrs Ashford makes use of a torch as needed. The Tribunal were not presented with any evidence of a significant reduction in the condition or amenity of the site resulting from this issue.

(g) Hedgerow by footpath overgrown and hedges on site are higher than 1meter

23. The Tribunal noted that the hedge grows adjacent to the path and had recently been cut back prior to the inspection. The parties agreed that it was cut regularly. The Tribunal were able to traverse the paths on site during the inspection and observed evidence of regular maintenance taking place. The Tribunal were not presented with any evidence of a reduction in the condition or amenity of the site resulting from this issue.

24. The hedges that are taller than `1 meter around the edge of the site were noted. The Applicant confirmed that these were there to shield the site from a neighboring property and had been there since the 1980s. The Tribunal were not presented with any evidence of a reduction in the condition or amenity of the site resulting from the height of these

hedges.

(h) Plastic Screened Enclosure being used for waste and burning of noxious materials

25. Mr Cooper explained to the Tribunal that the area in question has been used since the 1980s for storage including as a holding area for older park homes. Two years ago the storage area was reduced in size and in the last year plastic sheeting has been added to the previously open fencing to make the compound look smarter. It was accepted by Mrs Ashford that the size of the compound had reduced, and its appearance had improved. There was no evidence of items being burned in the compound that created noxious fumes.

(i) Mole hills in public areas

26. There was no evidence of mole hills evident during the Tribunal's inspection. Mr Cooper and Mrs Ashford agreed that they do occasionally appear and are dealt with by maintenance. The Tribunal were not presented with any evidence of a reduction in the condition or amenity of the site resulting from this issue.

(j) Rat infestation under 45 Wheatfield Park

27. The Applicants submitted that the area was recently inspected with traps put down but no evidence of rats was found. The Tribunal saw no evidence of rats during their inspection. The Tribunal were not presented with any evidence of a reduction in the condition or amenity of the site resulting from this issue.

(k) Rental Properties in poor state of repair

28. All occupiers are required to maintain their homes to a reasonable standard. The Tribunal noted that some occupiers maintained the curtilage of their plots to a higher standard than others but did not observe any plot being in such poor condition that it might be considered to decrease the overall condition or amenity of the site.

(l) Vacant property used to store flammable materials

29. The parties agreed that a vacant unit is being used as a storage unit by the Applicants. No evidence was provided to the Tribunal that flammable materials were being stored or that the use of the unit for storage was having any detrimental impact on the amenity or condition of the site.

(m) Tree next to 50 Wheatfield Park not maintained

30. The parties agreed that the tree had been in situ since before May 2013 and was not adjacent to any homes. Another apple tree was previously situated adjacent, but was removed when it became dangerous. Mr Cooper and Mrs Ashford agreed that the tree in question was cut back 5 years ago. Mr Cooper submitted that it is monitored by the Applicants and would be removed should it become dangerous, as happened with the other tree. The Tribunal were not presented with any evidence of a reduction in the condition or amenity of the site resulting from this issue.

(n) Pipes exposed near manhole cover adjacent to 71 Wheatfield Park

31. The metal pipe had been removed and plastic hose was in situ at the time of the inspection. The hose is used to access the water from the manhole for the purpose of washing down maintenance vehicles to avoid mud being transferred to the site roads. The manhole has been used for this purpose since 1981 and, as such, represents no reduction in the condition or amenity of the site.

(o) Residents using wooden sheds on site

32. The sheds are on individual pitches and do not impact on the condition or amenity of the site.

(p) Fence Panel missing from Boundary Fence

33. The fencing was put in place in 2014 after a line of conifer trees were removed. Mrs Ashford agreed that the fence is an improvement, allowing the site more light. One fence panel is missing. Mr Cooper submitted that a replacement gate is on order and it will be installed shortly. The Tribunal were not presented with any evidence of a reduction in the condition or amenity of the site resulting from this issue.

(q) Concrete base of some parks homes are cracked

34. The Tribunal was directed to the plot of 54 Wheatfield Park during the inspection. Cracking in the footpath on the pitch, which is the responsibility of the occupier, was noted. No evidence of cracking to the base was evident. The cracking to the footpath on the pitch does not constitute a deterioration in the condition or amenity of the site.

(r) Walkway by entrance is overgrown

35. Upon inspection the Tribunal noted that landscaping work had taken place around the entrance area and improvements had been made to the bus stop area. The residents need to walk out of the main entrance to access the bus stop area. The parties agreed that this had always been the case and Mr Cooper submitted that access has not changed since at least 1981. The amenity of the front entrance with the landscaping added around the bus stops appears to have improve the amenity of the site. The Tribunal were not presented with any evidence of a reduction in the condition or amenity of the site resulting from this issue.

(s) Residents not provided with individual electricity meters or bills.

36. The respondent suggested separate meter readings were not available. The Applicant submitted that there were separate sub meters on site and had been since at least 1981, which are read quarterly. No evidence was presented to the Tribunal to indicate that the metering arrangements had changed since May 2013 or that there had been any impact on the amenity of the site during the relevant period resulting from this issue.

(t) Recommendations raised by Malvern District Council in a letter dated 27 May 2015 have not been addressed



37. The Council recommended additional separation between pitches in its letter of 27 May 2015. This is a breach that is expected to be remedied as homes are removed. This is not an issue which relates to individual pitches that have been in existence since 26 May 2013 which are the subject of this application.

(u) Mr and Mrs Westway of 42 Wheatfield Park paid 12 month pitch fee in advance when purchasing their home and are paying a monthly pitch fee

91. The parties agreed that a sum equivalent to 12 months of pitch fees was paid by Mr and Mrs Westaway initially and that they have then made regular payments fortnightly of the specified pitch fee. The Respondents claimed Mr and Mrs Westaway were paying twice for the same period and were being charged more than other residents. The Applicants submitted that there was an agreement between the parties that a 12 month deposit was paid, with pitch fees then falling due periodically in the usual way. Such matters are not relevant to the applications before the Tribunal (which relate solely to pitch fee increase) and are separate legal issues that need to be resolved between the relevant Respondent and the Applicants.

(v) Only Mr Tom Cooper of the Applicants signed the Notices and Pitch Fee Review Form

38. Mr Cooper confirmed that he had signed the notices and application on behalf of the Applicants. The Tribunal accepted Mr Cooper's submission that he had authority to sign on behalf of the Applicants and notes that there is no requirement for each of the site owners to sign the notices or the application form.

(w) Demands for Arrears have been made

39. The Applicants accepted that the Respondents were not in arrears as a result of their objection to the application.

(x) Cracking on Concrete Paths

40. The additional point was raised by Mrs Ashford during the inspection. The Tribunal noted that there was evidence of cracking on some paths that had appeared over time. The Tribunal noted that the paths had been repaired in numerous places and Mr Cooper confirmed this was part of the ongoing maintenance of the site. The paths were able to be used and there was no evidence of a reduction in the amenity of the site as regular maintenance and repair work has been taking place.

## **Decision**

41. The Tribunal considered all the written and photographic evidence submitted. We also had regard to the inspection we carried out and the submissions of Mr Cooper and Mrs Ashford during the inspection.

42. During the 12 month period applicable to this review, we agree that the RPI had risen by 12.6 %.

43. For the purposes of the 1983 Act, the issue is not the actual condition of the park, nor the actual amenity of the park. Even if the Tribunal were to accept that the park has had not always been maintained to a standard which the Respondents might expect, it has to consider whether there has been a deterioration or decrease in the condition or amenity of the park during the relevant period (i.e. since 26 May 2013). If the Tribunal does so find, it must consider whether allowing an RPI increase would generate an unreasonable result having regard to our decision on the reasonableness of the pitch fee increase generally.
44. "Amenity" in this context means the quality of being agreeable or pleasant and so we must look at any decrease in the pleasantness of the Park or those features of the Park which are agreeable from the occupier's perspective.
45. The Tribunal was not persuaded that it would be unreasonable for there to be a pitch fee increase as a result of deterioration in the condition or decrease in the amenity of the Park, or otherwise in the relevant period.
46. There have been no improvements to the Park since the last review for which the Applicant is seeking to recover their costs by an increase in pitch fee. There has been no reduction in the services or the quality of services supplied by the owners in the relevant period
47. We therefore accept the presumption that the pitch fee should be increased in line with the increase in RPI index over the relevant period shall apply. We are not satisfied that the Respondents have provided sufficient evidence to displace that presumption.
48. We determine that the pitch fee for the Properties should increase from the review date of 9 January 2023 in accordance with the Pitch Fee Review Notice dated 29 October 2022.
49. If the Respondents have continued to pay the original pitch fee since that date, they must pay the difference to the Applicant.
50. We are not clear whether the Applicant has issued letters to the Respondents regarding arrears of pitch fees arising from the proposed increase. We confirm that the Respondents are not in arrears if they have continued to pay the pitch fee due before the service of the Notice of increase. The difference between the current pitch fee and the reviewed pitch fee becomes payable 28 days after this decision is issued (paragraph 17 (4)(c) Part 2 of Schedule 1 of the 1983 Act).

## **Conclusion**

51. Having inspected the site, considered the parties' written submissions and the oral evidence of Mr Cooper and Mrs Ashford during the inspection, the Tribunal finds the points raised by the Respondents to be insufficient to over-turn the presumption of fee increase in the Mobile Homes Act 1983 Schedule 1, Chapter 2, and accordingly determines that an uplift of 12.6% in line with RPI is applied to the pitch fees from 9 January 2023.

## **Costs**

52. No party applied for costs and we make no such award.

## **Appeal**

53. If either party is dissatisfied with this decision, they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties and must state the grounds on which they intend to rely in the appeal.

Judge C Payne