



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

Case reference : **CHI/45UC/PHI/2023/0126**

Property : **11 Harbour View Park Rope Walk
Littlehampton West Sussex BN17 5DQ**

Applicant : **David Stenning**

Representative : **None**

Respondent : **Lisa Davis**

Representative : **None**

Type of application : **Review of Pitch Fee: Mobile Homes Act
1983 (as amended)**

Tribunal members : **Judge H. Lumby
Mr K. Ridgway MRICS
Ms T. Wong**

Date of hearing : **14 July 2023**

Date of decision : **23 August 2023**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the proposed increase in the pitch fee is reasonable. Further the tribunal determines a pitch fee of £ 209.52 per month with effect from 1 January 2023.
- (2) The tribunal determines that a fee of £1.30 per month payable by the Respondent towards the Arun District Council licence fee is reasonable.
- (3) The tribunal refuses the Applicant's request for her application fee to be reimbursed to her by the Respondent.

The reasons for the decision are set out below.

Background

1. The Applicant is the park site owner and operator of Harbour View Park, a static mobile homes site. The Respondent occupies 11 Harbour View Park pursuant to a written statement commencing in 2016.
2. On 29 March 2023 the Applicant sought a determination of the pitch fee of £209.52 per month, an increase of 14.2% on the existing fee of £183.47. In addition, the Applicant sought to recover an additional £1.30 per month in respect of the annual cost of the licence fee payable to Arun District Council, the local council (£15.65 per annum).
3. On 21 and 23 November 2023 the Applicant sent a pitch fee form and pitch fee review notice to the Respondent in accordance with paragraphs 17(2) and 17(2A) of the implied terms, proposing to increase the pitch fee from 1 January 2023 by an additional £26.05 per month, in line with the increase in the Retail Price Index over the previous 12 months. The Applicant stated that the Review Date was 1 January each year. The Applicant relied on paragraph 18(1)(ba) of the implied terms to recover the Arun District Council licence fee, also stating that she had absorbed this cost in the past.
4. The Applicant has provided copies of the relevant notices to the Respondent and a statement of case in support of her application.
5. The Respondent has objected to the increase and provided a statement of case to the tribunal setting out his reasons for this dated 5 June 2023. This centred around the lack of maintenance of the park, leading to a deterioration in its quality.
6. A response to the Respondent's statement of case dated 19 June 2023 was provided to the tribunal by the Applicant, denying the points raised

by the Respondent and maintaining her request for an increase at the level applied for.

7. The tribunal visited the Property on 14 July 2023. It generally appeared to be in a good condition and there was evidence that improvements had recently been carried out, including the installation of a fence to the rear of the Property.
8. Following the inspection, the tribunal heard representations from the parties at the Havant Justice Centre and asked questions to both sides. It was provided with a bundle running to 54 pages. Additional documentation was also provided at the hearing, which was accepted. The tribunal thanks both sides for their contributions and helpful approach both to the site visit and the hearing.

The parties' cases

9. The tribunal summarised the Respondent's objections to the increase at the hearing as follows and this was agreed by the Respondent:
 - the hedge to the rear was in a dangerous condition, it had been cleared badly and his privacy was compromised by its removal (there is a golf course beyond)
 - the park lacked a safety electrical certificate
 - there was a lack of a working fire hose on the park
 - there was a deep ditch beside a corner on the road through the park which hindered access by emergency vehicles, was a hazard to pedestrian visitors and otherwise a safety hazard
 - general park management by the Applicant
10. Each of these objections were considered in turn, with both parties making representations in relation to them. The tribunal then heard from the parties in relation to the additional claim for the local authority licence fee.

The hedge to the rear

11. The Respondent explained that the hedge to the rear had for the last two years been in poor condition but nothing was done to address it. There was some rough conservation land behind, backing onto the golf course. Previous maintenance had been poor, killing the hedge. However, its presence did provide privacy from the sixteen tee of the golf course beyond it. He explained that insufficient notice was given of the works to remove them, the workmen were abusive and had left a mess with stumps left lying around.
12. The Applicant explained that the hedge was not on her land but it has been agreed with the adjoining landowner she could maintain it.

Maintenance was not possible during covid and she was only notified of the issue shortly before Christmas 2022. She said it was maintained every two years or so and had not received complaints from other residents. She had now replaced it with a fence. Whilst she appreciated the privacy issue, she could not control what occurred on land outside her ownership and wanted to maintain good relations with her neighbour. She was in continuing discussions with them in relation to replacement planting but ultimately this was a decision for the neighbouring landowner.

13. The tribunal inspected the area in question on its site visit. Any debris from the clearance had now been removed and the new fence was in good condition. It concluded that any mess had been cleared up by the Applicant who had actively sought to address concerns about the poor condition of the hedge. It was not on land under her control but she had tried to address the issue on behalf of the Respondent and other residents of the park. It was not an issue which it considered should impact on the pitch fee increase.

Safety Electrical Certificate

14. The Respondent argued that in the nearly eight years he had been resident in the park there had been no safety measures taken or electrical inspections. One person allegedly had to move out after her meter melted. The electricity regularly tripped. He had raised this with the local council, following which a box in his shed was replaced by a new one.
15. The Applicant argued that she has used the same electrician for twenty years, who regularly inspected. She was up to date with her safety certificates and the council inspected the site annually. She could not produce to the site safety certificate to the tribunal although said they are made available to the council when they inspect. Issues with homes were not her responsibility, only the park itself.
16. Questions were asked by the tribunal about the replacement box in the Respondent's shed. The Respondent accepted that since the replacement, the tripping issues have ceased. The Applicant explained that it was changed to meet new regulations, on the advice of her electrician.
17. The tribunal considered this issue and concluded that there was insufficient evidence to ascertain whether the problem was with individual homes or the park itself. However, the local council would have taken action if the park had not been compliant and the tripping issue has now been resolved. Accordingly, it did not consider that this was an issue which should impact on the pitch fee increase.

Fire hose

18. The Respondent argued that the fire hose on the park near his site had been removed just after Christmas as the corrosion of its batteries has stopped the alarm working. It was otherwise also in poor condition with the taps unable to be turned on and the hose had perished. It has been replaced with an alarm bell with no instructions on how to use it, it was placed on a wooden post and there was no fire assembly point. He asserted that Arun District Council require a clear sign but this is not present.
19. The Applicant provided evidence that there was an annual inspection of the fire equipment and she asserted the local council had no issues at present. She argued that residents should call the fire brigade rather than use a fire hose to tackle fires themselves and should have their own equipment in accordance with the park rules (these were not produced). There was no fire assembly point as there was no room for one.
20. The tribunal were satisfied that the issues with the fire hose were being addressed and that there was not an ongoing issue on fire safety. It therefore concluded that this issue did not impact on the pitch fee increase.

Ditch

21. There is a 90 degree bend by number 8. The Respondent argued that a ditch has formed on this corner and that on the week of the inspection bollards were also installed on the corner. The result is that an ambulance cannot get around the corner, constituting a danger to residents and visitors. He had raised this about four years ago and had been told two years ago by a maintenance man that it was a major job to fix.
22. The Applicant argued that there had been bollards there twenty years ago but neighbours kept moving them. The works had been programmed for this week as they could not be done earlier due to the hardness of the ground. She denied it was a ditch and said that numerous ambulances had visited before without issue. The Respondent responded that he had never seen bollards there over his seven years on the park and could not see residents moving them.
23. The tribunal inspected this corner when on site and, having heard the parties' arguments, agree with the Applicant that there is no ditch on this corner and there is a sufficient room for an ambulance to access. Whilst works to improve this corner had clearly recently been done, it was in the tribunal's view in acceptable condition and not a reason to impact on the pitch fee increase.

General park management

24. The tribunal also considered whether, in the context of the various issues raised and the Respondent's comments, there was an issue with the general management of the park. Based on the evidence provided to it, the tribunal was satisfied that the Applicant had not behaved in an unreasonable manner and generally ran the park in a competent fashion, evidenced by her regular maintenance programme and inspections by relevant trades. She had clearly made an effort to clear up the park and address issues before the inspection but this did not suggest poor management. The tribunal therefore concluded that the general park management should not impact on the pitch fee increase.

The Arun District Council licence fee

25. The tribunal invited the Applicant to explain the basis upon which she was seeking to pass the Arun District Council licence fee onto the residents.
26. She said that this had been introduced by the council in 2019; there were 21 sites on this park and 8 on the adjoining Candy Park, but the council had sought to charge the same fee for both sites. She had therefore had ongoing discussions with them and had covered the fee herself until sorted. She argued that this fee was preferable to the alternative which was a fit and proper person fee – the latter would cost £700 per annum against the total of £328.65 payable for the park under this proposal. She had avoided adding it to the pitch fee so that it would continue to be a true recharge of the actual cost, rather than increasing subsequently with RPI. All other residents had paid. Finally, she argued that she was allowed to recharge the fee to residents pursuant to paragraph 18(1)(ba) of the implied terms.
27. The Respondent's position is that it should be paid for by the Applicant. He was not against increased fees generally if there were improvements but there had been no improvements and the pitch fee should not be increased on the basis proposed or the licence fee charged to residents.

Pitch fee review

28. Harbour View Park is a protected site within the meaning of the Mobile Homes Act 1983 (the '1983 Act').
29. The Respondent's right to station his mobile home on the pitch at Harbour View Park is governed by the terms of the Written Agreement with the Applicant and the provisions of the 1983 Act.
30. The Written Agreement provides for the pitch fee review date to be 1st January in each year. It provides that:

“in determining the amount of the reviewed pitch fee regard shall be had to:

- (i) the Index of Retail Prices
- (ii) sums expended by the owner for the benefit of occupiers of mobile homes on the park
- (iii) any other relevant factors including the effect of legislation applicable to the operation of the park”

31. The Applicant served the Respondent with the prescribed pitch review form proposing the new pitch fee effective from 1 January 2023 on 23 November 2022 which was more than 28 days prior to the effective review date. The Application to the Tribunal to determine the pitch fee was made on 29 March 2023 which was within the period starting 28 days to three months after the review date of 1 January 2023. The Applicant explained that it applied the RPI of 14.2 per cent as published in November 2022 being the last index published prior to service of the notice.
32. Having regard to its findings above, the Tribunal is satisfied that the Applicant had complied with the procedural requirements of paragraph 17 of Part 1 of Schedule 1 of the 1983 Act to support an application for an increase in pitch fee in respect of the pitch occupied by the Respondent.
33. The Tribunal is required to determine whether the proposed increase in pitch fee is reasonable. The Tribunal is not deciding whether the level of pitch fee is reasonable.
34. Pitch fee is defined in paragraph 29 of Part 1 of Schedule 1 of the 1983 Act as:

"The amount which the occupier is required by the agreement to pay to the owner for the right to station the mobile home on the pitch and for use of the common areas of the protected site and their maintenance, but does not include amounts due in respect of gas, electricity, water, sewerage or other services, unless the agreement expressly provides that the pitch fee includes such amounts."
35. The Tribunal is required to have regard to paragraphs 18, 19 and 20 of Part 1 of Schedule 1 of the 1983 Act when determining a new pitch fee. Paragraph 20(1) introduces a presumption that the pitch fee shall increase by a percentage which is no more than any percentage increase or decrease in the RPI since the last review date.
36. The Applicant has restricted the increase in pitch fee to the percentage increase in the RPI.
37. The tribunal considered the decision of the Upper Tribunal in *Vyse v Wyldecrest Parks (Management) Ltd*, [2017] UKUT 24 (LC), where the increase sought was above RPI.

38. In *Vyse*, HHJ Alice Robinson said as follows:

“There are a substantial number of mobile home sites in England occupied pursuant to pitch agreements which provide for relatively modest pitch fees. The legislative framework for determining any change in pitch fee provides a narrow basis on which to do so which no doubt provides an element of certainty and consistency that is of benefit to site owners and pitch occupiers alike. The costs of litigating about changes in pitch fee in the FTT and in the Tribunal are not insubstantial and will almost invariably be disproportionate to any sum in issue. I accept the submissions...that an interpretation which results in uncertainty and argument at many pitch fee reviews is to be avoided and that the application of RPI is straightforward and provides certainty for all parties”

39. The Tribunal’s starting point is that the pitch fee should be increased in line with RPI. In determining whether the presumption applies, the Tribunal must have regard to the matters identified in paragraphs 18 and 19 Part 1 of Schedule 1 of the 1983 Act. In this case paragraph 19 did not apply because there was no evidence that the increase in the pitch fee included costs which were specifically excluded by that paragraph. Similarly, the Applicant was not including costs of any improvements within the proposed increase. It appears to the Tribunal that the Respondent’s case rested on the condition of the site and the manner in which the site was managed.

40. The Tribunal accepts that the Respondent is dissatisfied with the current state of the site and wishes for improvements to be carried out. The issue is however whether the condition of the site has deteriorated or is adversely impacted by bad management. Whilst evidence has been submitted identifying shortfalls in the condition of the site, these are generally being addressed. The tribunal’s consideration on each issue is referred to above. Overall it is not satisfied that the issues identified individually or taken as a whole or its general management are sufficient to displace the presumption that the pitch fee should be increased in line with RPI.

41. The tribunal therefore confirms the increase.

Arun District Council Licence fee as a charge to the Respondent

42. The tribunal next considered whether the Respondent was liable to pay the contribution to the Arun District Council licence fee being charged by the Applicant.

43. The Applicant is relying on paragraph 18(1)(ba) of the implied terms which are contained in schedule 1 to the 1983 Act. This provides that in determining the amount of the new pitch, particular regard shall be had to:

“any direct effect on the costs payable by the owner in relation to the maintenance or management of the site of an enactment which has come into force since the last review date”

44. The Arun District Council licence fee would fall within this but the issue is that the licence fee was introduced before the last review date and has been absorbed previously by the Applicant. It would appear therefore that this cannot be charged as it is not a new enactment since the last review date. However, the Applicant has argued that the reason for the delay in charging it on was the delay in establishing the correct fee with the council – this was as a result of the different treatment of this park and the adjoining Candy Park.
45. A similar situation was considered by the Upper Tribunal in the case of *Wyldecrest Parks (Management) Limited v Kenyon and Others* [2017] UKUT 28 (LC). In that case, the local authority was slow in issuing its new licence fee charging policy, meaning that it was first charged on by the site owner the year after its enactment. The Upper Tribunal held that the charge could be included in the pitch fee as the delay was due to the local authority.
46. Applying *Kenyon* to this case, the delay in charging on the licence fee was due to the delay by Arun District Council in ascertaining the correct fee. Once ascertained, the Applicant passed on the fee; the delay was not due to the Applicant and so she should not be penalised as a result. In addition, all other residents at the park have accepted the fee.
47. The tribunal therefore determines that a proportionate part of the licence fee can be charged onto the Respondent and is payable by it.

Application fee

48. The Applicant applied to the tribunal for her application fee to be reimbursed by the Respondent. Although she had been successful on the substantive points, the Respondent has fully participated in the process and raised legitimate objections. It was evident that works had been carried out to the park in response to these. The tribunal did not therefore consider it appropriate that the Respondent should be responsible for the application fee. Her application is therefore refused.

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.