



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

Case Reference : **BIR/47UD/PHI/2023/0022**

Property : **Avon View Park, Oxford Road, Coventry, CV8
3EB**

Applicant : **Mr Peter Owen and Mrs Helen Owen**

**Applicant's
Representative** : **Tozers LLP**

Respondents : **As listed in the Schedule**

Type of Application: **Pitch Fee Review (1 January 2023)**

Tribunal Members : **Judge C Payne
Mr RP Cammidge Dip LA
(Hons) FRICS**

Date of Decision : **19 October 2023**

DECISION

We determine that the pitch fee for the Property should increase from the review date of 1 January 2023 in accordance with the Notices dated 27 November 2022 to the amounts detailed below:

1 Avon View Park	£198.18
2 Avon View Park	£172.12
5 Avon View Park	£198.18
10 Avon View Park	£198.18
11 Avon View Park	£198.18
12A Avon View Park	£198.18
13 Avon View Park	£198.18
17 Avon View Park	£198.18
17A Avon View Park	£198.18
18 Avon View Park	£198.18
19 Avon View Park	£198.18
20 Avon View Park	£198.18
23 Avon View Park	£198.18
24 Avon View Park	£198.18
26 Avon View Park	£198.18

Reasons for the Decision

Introduction

1. Avon View Park is a well-established mobile home site situated approximately 3.50 miles to the south east of Coventry City centre. The site leads off Oxford Road with the access being between two other residential properties leading to the site itself. There is a fall on the site towards the cul- de- sac end and it comprises a single surfaced spine road with pitches located to both sides of the access road. The site includes 27 park homes and in order to reach the site access is over a section of unregistered but surfaced road. We understand that the area is serviced by regular bus services with stops close to the site entrance.
2. 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 which detailed the pitch fee and contained provisions for an annual review. The pitch fees were last reviewed in January 2022, when each Respondent agreed the pitch fee. The current monthly pitch fees are set out below:

1 Avon View Park	£173.54
2 Avon View Park	£150.72
5 Avon View Park	£173.54
10 Avon View Park	£173.54
11 Avon View Park	£173.54
12A Avon View Park	£173.54
13 Avon View Park	£173.54

17 Avon View Park	£173.54
17A Avon View Park	£173.54
18 Avon View Park	£173.54
19 Avon View Park	£173.54
20 Avon View Park	£173.54
23 Avon View Park	£173.54
24 Avon View Park	£173.54
26 Avon View Park	£173.54

- By Notices dated 27 November 2022, the Applicants gave notice to each of the Respondents that they proposed to review the pitch fee from the review date of 1 January 2023. The proposed pitch fees are set out below:

1 Avon View Park	£198.18
2 Avon View Park	£172.12
5 Avon View Park	£198.18
10 Avon View Park	£198.18
11 Avon View Park	£198.18
12A Avon View Park	£198.18
13 Avon View Park	£198.18
17 Avon View Park	£198.18
17A Avon View Park	£198.18
18 Avon View Park	£198.18
19 Avon View Park	£198.18
20 Avon View Park	£198.18
23 Avon View Park	£198.18
24 Avon View Park	£198.18
26 Avon View Park	£198.18

- The proposed increase related to the increase in the **RPI** Index only, namely 14.2% based on the formula set out in the Regulations and as described in the notes to the prescribed form.
- The pitch fee does not include payment for water, sewerage, gas, electricity or any other services.
- 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.
- Directions were issue to the parties by the Tribunal on 18 May 2023. The Directions set out time limits for submission of bundles. A statement from all Respondents, save for Mr Doherty, was received by the Tribunal on 31 May 2023, which is before the Tribunal's deadline of 8 June. A copy of this statement was not served on the Applicants until 17 June 2023. The Applicants objected to the late provision of the statement, but they and their advisor did not require additional time and they were able to submit a substantive statement to the Tribunal on 20 June 2023. As the

Applicants were still able to make submissions in line with the directions and did not feel it necessary to request further time it is not considered that the late service of the Respondents' statement on the Applicants has caused any disadvantage. As such, that evidence is accepted.

8. Mr Doherty of 1 Avon View Park made written submission to the Tribunal on 2 August 2023. It does not appear a copy of his submission was provided to the Applicants. The letter relates to the cutting of the hedge opposite 1 Avon View Park and raised no new issues relevant to this application as hedge maintenance had already been addressed in the group statement from the Respondents and been replied to by the Applicants in their submissions. As such the Tribunal allows this late submission, there being no detriment to the Applicants in doing so.
9. All Respondents have paid previous pitch fee increases.

The Law

10. 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.
11. 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).'

12. 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".

13. 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

14. 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)*).

15. 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

16. The Tribunal inspected the Park on 2 October 2023. The Applicants, Mr and Mrs Owen, attended. The following Respondents were in attendance:

Mr Doherty (1 Avon View Park)

Mr and Mrs Newey (2 Avon View Park)

Mr Parker and Ms Dunning (10 Avon View Park)

Mrs Rawbone (11 Avon View Park)

Ms Higgins (13 Avon View Park)

Mr Wall (18 Avon View Park)

Mr Haughton (19 Avon View Park)

Mr Finch (23 Avon View Park)

Mrs Freeman (24 Avon View Park)

Discussion

17. The Respondents variously gave the following reasons for disputing the reasonableness of the pitch fee increase:

The Accessway

18. Access to Avon View Park is via a single track Accessway leading from Oxford Road to the site. The Tribunal were advised by the Applicants that the Accessway is unregistered and does not form part of the site. The Applicants submitted that there was a right of way over the track with no maintenance obligation tied to it. No evidence of the title to the site or the status of the Accessway was before the Tribunal.
19. The Respondents noted that there was no lighting where the Accessway meets the Oxford Road and that the signage was small, which might make the entrance more difficult to locate. All parties agreed there had never been additional lighting or a larger sign in situ.
20. Potholes in the road had been patch filled by Mr Owen. Cars and pedestrians were able to traverse the Accessway without issue. The Respondents agreed that the condition of the Accessway had not altered.
21. The Accessway is not gritted in icy weather. The parties agreed that it never has been gritted.
22. The neighbouring properties are responsible for the fences and hedging lining the Accessway. On the left of the Accessway facing towards site, the Applicants have, with the agreement of the neighbouring landowner, put in place new fencing and a gravel edging bed with a substrate of weed inhibitor. The Applicants have removed rubbish when it has been left by neighbouring parties to obstruct the Accessway. The other neighbouring properties are not maintaining their boundary hedging, trees and fencing. The Applicants do not own or control the neighbouring properties.
23. If the Accessway is unregistered and does not form part of the site, then it would not be a consideration under s18(1) of the 1983 Act. In any case, there was no evidence of any deterioration in the condition or any decrease in the amenity of the Accessway.

Site Maintenance

24. The Respondents submitted that professionals were not engaged to carry out regular maintenance at the site. The parties agreed that an individual who lives on the site had previously been employed to carry out regular maintenance and that role was now fulfilled by another contractor.
25. The boundary hedge abutting the agricultural land to the south of the site belongs to the neighbouring landowner. Permission has been given to cut back the side of the hedge adjacent to the site, but access has not been granted to enable the other side of the hedge to be cut back. The hedge is cut back each October, after bird nesting season, most recently

with the engagement of a contractor using a tractor in October 2022. It is then cut back on occasion by hand by the maintenance contractor or the Respondents. The Respondents agreed that it is currently of a height consistent with its historical level.

26. The fencing to the north of the site is owned by the neighbouring property which is not owned or controlled by the Applicants. The fencing is in disrepair in parts. The Applicants submit that they are in discussions with the neighbouring landowner regarding renewal of the fencing. The parties agreed that the fence has been in disrepair for a considerable period of time.
27. During the Inspection, the Tribunal noted that there was evidence of the trees having been cut back at the bottom of the site and that the occupiers of the adjacent pitches were not parties to this application. The trees on the neighbouring property adjacent to 26 Avon View Park have also been cut back to the boundary. There was no evidence of any deterioration in the condition or amenity of the site resulting from the condition of the trees.
28. The Respondents had suggested the door to the electricity cupboard required repair. The doors to both electricity cupboards were noted to be in good condition at the time of the Inspection.

Pitch Maintenance

29. Each of the Respondents had entered into a Written Statement under the Mobile Homes Act 1983 on the same terms. Notably, Part IV, paragraph 3(f), states:

The Occupier undertakes with the Owner... To keep the pitch and all the fences, sheds, outbuildings and gardens thereon in a neat and tidy condition...

30. The Respondents drew the Tribunal's attention to a number of cracked or loose paving stones on various pitches, noted work required to sheds and the poor condition of some brickwork to the skirt installed by the occupier of 12A Avon View Park. The condition and maintenance of dividing hedges within the curtilage of pitches, which would form part of their garden, were also drawn to the Tribunal's attention.
31. The issues with the individual pitches are the occupier's responsibility and do not impact the overall condition or amenity of the site.

32. *Condition of Adjacent Land*

33. The land to the north and south of the site is not owned or controlled by the Applicants. Both are overgrown. However, the Applicants are unable to force the neighbouring landowners to maintain their property and this would not be an issue to which s18(1) of the 1983 Act might apply.

Decision

34. The Tribunal considered all the written evidence submitted. We also had regard to the Inspection we carried out and the submissions made by the Applicants and

Respondents during the Inspection.

35. During the 12-month period applicable to this review, we agree that the RPI had risen by 14.2 %.
36. 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 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.
37. "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.
38. 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.
39. 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
40. 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.
41. We determine that the pitch fee for the Properties should increase from the review date of 1 January 2023 in accordance with the Pitch Fee Review Notice dated 27 November 2022.
42. If the Respondents have continued to pay the original pitch fee since that date, they must pay the difference to the Applicants.

Appeal

43. 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

SCHEDULE

Mr and Mrs Doherty (1 Avon View Park)
Mr and Mrs Newey (2 Avon View Park)
Mr and Mrs Plant (5 Avon View Park)
Mr Parker and Ms Dunning (10 Avon View Park)
Mr and Mrs Rawbone (11 Avon View Park)
Ms Storch (12A Avon View Park)
Ms Higgins (13 Avon View Park)
Mr and Mrs Harrison (17 Avon View Park)
Mr Hardman (17A Avon View Park) (Deceased)
Mr Wall (18 Avon View Park)
Mr Haughton (19 Avon View Park)
Ms Shepherd (20 Avon View Park)
Mr and Mrs Finch (23 Avon View Park)
Mrs Freeman (24 Avon View Park)
Mrs Perry (26 Avon View Park)