

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

Case Reference : **MAN/00FF/PHI/2022/0045,0046,0048,
0050,0051,0052,0053,0054,0055**

Property : **Various pitches at Mount Pleasant Park,
Acaster Malbis, York**

Applicant : **FLANNIGAN ESTATES LIMITED**

Respondent : **RESIDENTS AS SET OUT IN THE SCHEDULE**

**Type of
Application** : **Determination of new pitch fee: Mobile Homes
Act 1983 Schedule 1, chapter 2, paragraph 16**

Tribunal : **A M Davies, LLB
J Platt, FRICS**

Date of Decision : **8 March 2023**

DECISION
pursuant to Rules 51 and 53 of
The Tribunal Procedure (First-tier Tribunal)
(Property Chamber) Rules 2013 (“the Rules”)

The decision of the Tribunal dated 24 February 2023 (“the Decision”) is reviewed and amended by the insertion of

- (1) a new paragraph 20, and
- (2) the details of Mr and Mrs G C Loney at the end of the Schedule.

Reasons

Reference to the Applicants Mr and Mrs G Loney and their individual ground for opposing the increase in their pitch fee was inadvertently omitted from the published copy of the Decision.

The amended Decision is as follows:

DECISION

1. The pitch fee payable by each of the Respondents for the year ending 31 July 2022 is as set out in the schedule to this decision.

REASONS

1. On or about 30 November 2021 the Applicant served a Pitch Fee Review Form on each of the Respondents, who occupy pitches on the Applicant's protected site known as Mount Pleasant Park, Acaster Malbis. The Pitch Fee Review Form advised the Respondents that with effect from 1 January 2022 their pitch fees were to be increased by 6%, being the increase in the Retail Prices Index (RPI) over the previous 12 months.
2. The Respondents have objected to the new pitch fees.
3. The Applicant followed the correct procedure for a pitch fee review as set out at paragraph 17 of Chapter 2, Schedule 1 to the Mobile Homes Act 1983 ("the Implied Terms"), and correctly calculated the annual pitch fee increase in line with the Retail Price Index (RPI) adjustment over the previous 12 months.

THE LAW

4. Paragraphs 18 and 20 of the Implied Terms govern pitch fee reviews and the matters to be taken into account if a pitch fee increase is not to reflect simply any increase or decrease in the RPI since the last review. So far as relevant they read:

"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) *which are for the benefit of the occupiers of mobile homes on the protected site;.....*

(aa) *any deterioration in the condition, and any decrease in the amenity of the site or any adjoining land since [26th May 2013] (insofar as regard has not previously been had to that deterioration or decrease for the purposes of this sub-paragraph);.....*

20 (A1) *Unless this would be unreasonable having regard to paragraph 18(1), there is a presumption that the pitch fee shall increase or decrease by a percentage which is no more than any percentage increase or decrease in the [RPI]”.*

5. How the Tribunal is to determine what might constitute an “unreasonable” change in the pitch fee was considered by the Upper Tribunal in *Vyse v Wyldecrest Parks (Management) Ltd* [2017] UKUT 24 (LC). Her Honour Judge Alice Robinson stated at paragraph 23 of her judgement “The overarching consideration is whether the [Tribunal] considers it reasonable for the pitch fee to be changed; it is that condition....which must be satisfied before any increase may be made (other than one which is agreed). It follows that if there are weighty factors not referred to in paragraph 18(1) which nonetheless cause the [Tribunal] to consider it reasonable for the pitch fee to be changed, the presumption in paragraph 20(1)...may be displaced.” She continued at paragraph 50: “This [factor] must be a factor to which considerable weight attaches.... Of course, it is not possible to be prescriptive as to precisely how much weight must be attached to an “other factor” before it outweighs the presumption in favour of RPI.... 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.”

6. The Applicants seek a determination as to the correct pitch fee to be paid by each of the Respondents.

INSPECTION AND HEARING

7. The Tribunal inspected Mount Pleasant Park on 23 February 2023 in the presence of representative members of the Respondents, and Mr Flannigan senior and junior who currently manage the park. There had been rain during the night prior to the inspection.

8. The park roads are mainly tarmacked although the road in an older area including Beech Avenue has a concrete surface. The roads in that area of the park known as The Willows are bordered by brick soakaways designed to drain surface water. Where pitches have become vacant across the park the Applicant has been upgrading the infrastructure to bring gas and other services underground prior to introducing modern park homes. On Lilac Avenue this improvement programme has involved the removal of an area of common land nearly opposite Mr and Mrs Bennett's park home at 10 Lilac Avenue.
9. In the course of their inspection the Tribunal particularly examined the condition of the roads, the boundaries to the park in the Willows area, the Community Centre and adjacent ground, and the large workshop next to Mr and Mrs Anderson's property, Cedar House.
10. A hearing was held by video link after the inspection. Each Respondent attended and spoke for him or herself. The Applicants were represented by Mr Payne of LSL Solicitors. The Tribunal also had the benefit of written representations with supporting documents supplied by the parties.

CONDITION OF THE PARK

11. All the Respondents except Mr and Mrs Anderson (at Cedar House) cited the condition of the park as a reason for objecting to the increase in pitch fee. The objections were expressed in various ways and with different emphases. They are listed with the Tribunal's findings as follows:
12. Weeds in the soakaways
A number of the Respondents from The Willows complained that weeds were allowed to grow in the soakaways bordering some of the park roads, to a height of "6 – 8 inches" in the summer. The Applicant's workmen dealt with these weeds intermittently by means of weedkiller and sweeping, but those residents who found their presence unsightly also carried out work on clearing vegetation from the soakaways.
13. The Tribunal notes (and the respondents admitted) that this had been an issue on the park for a number of years. It was, for example, the subject of a decision dated 5 July 2013, at which time seasonal weeds had already been present for three or more years. Their presence is therefore not (as it was not in 2013) a decrease in amenity or a deterioration on the park occurring since 26 May 2013.

14. The Community Centre

There is a community centre on the park which has become too small to accommodate the residents following expansion of the park in recent years. This is not a deterioration. Adjacent to the community centre is a garden and storage area, which the Applicant uses to store materials and parts. The Respondents admitted that this area had been used for storage for a number of years. The Tribunal finds that this use - including any temporary storage of vegetation - is not a deterioration capable of affecting the pitch fees payable by the Respondents.

15. The roads

Some residents complained that the park roads were uneven so that puddles formed in wet weather. Apart from one area which had a puddle in the centre of the road (easily bypassed on foot) the Tribunal saw no evidence of poor drainage and did not find that any of the roads were in a condition which would affect the residents' enjoyment of the park. In particular no potholes or loose surfaces were noted, although there was some patchiness in places. The condition of the roads on the park is not currently such as to affect the level of pitch fee. The present application relates to the pitch fee increase on 1 January 2022 and therefore the condition of the park roads in 2021 is relevant. Apart from the inevitable effects of the covid pandemic on maintenance work during 2020 and 2021, the Tribunal finds that the Applicant is entitled to maintain the park according to a programme. If there were roads that needed repair or improvement in 2021 they have now been addressed. At the hearing the Tribunal suggested that the Residents Association should ask for, and be provided with, a copy of the Applicants' park maintenance schedule.

16. The storage shed

This is a very large structure near the entrance to the Park. Given the expansion of the park into an adjacent site (Westfield) over recent years, the Applicant has clearly wanted to keep materials and machinery secure in this shed. The Tribunal heard that during 2021 some vegetation was left there and was allowed to rot down. It became smelly prior to being cleared away. Miss Jones and Mr McPherson confirmed that use of the shed area for "storage of building and vegetation waste" had taken place over a number of years.

17. While the Tribunal accepts that the area around the shed was probably tidied up

prior to the inspection, it notes firstly that the residents of the pitch adjacent to it (other than Mr and Mrs Anderson) have not made any representations to the Tribunal about their pitch fee, secondly that the

storage of materials and waste does not directly affect the Respondents' enjoyment of the park, and thirdly that this use of the area seems to have continued for a number of years and is therefore not a relevant deterioration.

18. Fire Safety

The Tribunal was informed that fire safety equipment on the site did not appear to have been checked or maintained since 2020. The Tribunal accepts Mr Payne's point that the Applicant is under no obligation to provide fire safety equipment in the common parts of the site. Fire safety on the park is a licensing issue that may be taken up by the Residents Association if necessary. The condition of any equipment does not comprise a deterioration of amenity that could affect the pitch fee.

19. The pitch fee is paid firstly as "rent" for occupation of the pitch and secondly as a contribution to the cost of lighting, roads maintenance, grounds maintenance, infrastructure, insurance, licensing, administration and the provision of any communal facilities. As noted at paragraph 5 above, only a weighty factor can displace the presumption that an annual RPI increase (or decrease) is to be applied. The general condition of Mount Pleasant Park does not indicate that any such factor existed in the relevant year, 2021. Further, a number of the factors raised by the Respondents have been present on the park for years, and are therefore not capable of comprising a deterioration in amenity since the previous pitch fee reviews.

20. The bus stop

Among other points shared with other Applicants, Mr and Mrs Loney referred the Tribunal to the condition of the bus stop near the entrance to the park, which they said had been a trip hazard due to broken paving. This area was inspected by the Tribunal but the surface has been repaired by the Respondent since 2021. The bus stop waiting area adjoins the highway and while it may be within the ownership of the Respondent, it is outside the boundary of the park. The Tribunal does not consider that broken paving in this area is capable of constituting, either alone or taken jointly with other complaints, a deterioration which could affect the pitch fee. Further, the Tribunal had no information as to for how long the paving had been broken.

21. Lilac Avenue

In addition to their comments about the general condition of the park, Mr and Mrs Bennett at 10 Lilac Avenue included in their objections to the pitch fee increase the removal of the small area of common ground

to make room for new park homes on the area a short distance from and opposite their home. They complained that the siting of these homes was compromising their privacy and causing a nuisance in terms of lighting. The Bennetts also complain that their toilet blocks up regularly and attribute this to the drains being inadequate to cope with the new pitches. The Tribunal has no evidence on which to make a finding as to the drainage.

22. The Tribunal finds that the siting of the new park homes in the area is not yet complete and did not materially prejudice the Bennetts at 10 Lilac Avenue during 2021. Throughout the park the residents' homes are and always have been sited close to each other. The Applicant is entitled to make the best use of the space available, and was under no obligation to maintain the unused area on Lilac Avenue as an open space or communal facility, if in fact it was ever used as such. The addition of these now park homes is not a ground for displacing the presumption that an RPI increase in pitch fee will apply. Mr Bennett also told the Tribunal that the Applicant's old-fashioned street lamp which is situated in his garden was in poor condition. While this and other matters raised by the Respondents may be an issue for the Residents Association to take up with the Applicant, it does not affect the pitch fee.
23. Mr Bennett informed the Tribunal that his pitch fee had not been increased by the Applicant in the years 1 January 2017 to 31 December 2021. There does not appear to have been an express reason for this but the construction work on Lilac Avenue and on the extended park (Westfield) to the rear of 10 Lilac Avenue may have been a factor. A decision not to increase pitch fee in any year does not preclude a future increase. The Tribunal has not been made aware of any reason why the pitch fee for 10 Lilac Avenue should not be increased on 1 January 2022. Mr and Mrs Bennett and the Applicant agreed that the Pitch Fee Review Form contained incorrect figures, and the 6% increase is therefore applied to the correct previous pitch fee, £145.50 per month.
24. Beech Avenue
Mrs Jagger at 4 Beech Avenue also complains of the siting of new park homes and the redevelopment of pitches near her property. This is, from a different angle, the same development as has taken place on Lilac Avenue and the Tribunal's findings are the same. Mrs Jagger's photographs demonstrate that during the construction work there was loss of visual amenity in the area due to the siting of materials and machinery, and ground works. Mrs Jagger says that twice in 2021 the drains were blocked and her toilet was unusable. There is no evidence as to the cause of this regrettable problem, whether it affected other

Beech Avenue residents or whether the Residents Association took it up with the Applicant. The Tribunal does not find that temporary issues caused by the construction of new pitches – provided the work is carried on in a reasonable manner and without undue delay - are sufficient to affect the assumed RPI pitch fee increase.

25. Staffing levels

Most Respondents complained that there were insufficient grounds staff (either directly employed or contracted) to maintain which is now a large park, and that the park managers Messrs Flannigan did not attend the park sufficiently regularly or ensure that work was carried out effectively. As the Tribunal has found that maintenance of the park is currently of a reasonably high standard, the staffing levels do not affect the pitch fees. The Tribunal was told and accepts that the residents have a telephone number to use to report any problems on the site. Issues concerning communication and response should properly be addressed by the Residents Association. The Tribunal notes that there are complaints that the Applicant fails to communicate effectively with the Residents Association. This does not directly affect the current application, but it is clearly to the Applicant's advantage to liaise with the Association in order to minimise disputes over the pitch fees and other issues.

26. Boundary fencing at The Willows

Mr Covill-Lane, Mr and Mrs Whitaker and Mrs Smedley have pitches on The Willows which back on to the boundary of Mount Pleasant Park. The Applicant's boundary consists of a ditch and overgrown hedge (now trees) to which barbed wire has been attached. Approximately one metre within this boundary a board fence has been erected to mark the boundaries of the pitches. The affected Respondents told the Tribunal that the fence was in disrepair and that they had carried out some repairs themselves out of necessity. However they said that as a boundary fence, this was the responsibility of the Applicant. To support their claim, they told the Tribunal that the Applicant had in the past informed them that the fence was not to be altered, and that no plants were to be grown up it.

27. On inspection the fence was found to be generally in good repair, but some of the fence posts were rotting near the ground and will require replacement.

28. The boundary of the Applicant's property is not the same as the boundary of Mount Pleasant Park, which is situated within that property. The Applicant is responsible for its property boundary (depending on arrangements with adjoining owners) but the residents

are responsible for the boundaries to their pitches. The Applicant's refusal to maintain the pitch boundaries at The Willows is therefore not a breach of its obligations under the Implied Terms and does not affect the pitch fee payable by the Respondents. Any instructions given by the Applicant to residents regarding the fencing do not alter the situation, and if necessary an explanation and clarification can be sought by the Residents Association.

29. Cedar House

On inspection the Tribunal noted that the entrance to Mr and Mrs Anderson's home is situated along a narrow path between their home and the high gable end wall of the Applicant's storage shed. As a result, the path and their doorway receive little light. The impression is that the storage shed looms over their home. Mrs Anderson explained to the Tribunal that this was discussed with the Applicants when Cedar House was sold to them in July 2011, and it was agreed that at some unspecified point in the future the shed would be removed – or perhaps reduced in size – so as to extend the Andersons' pitch to allow for a 3 metre entrance way that could accommodate a drive. A note to this effect was added to the Andersons' Written Statement and the pitch fee was agreed at £120 per month.

30. At the hearing, Mr Payne said that there was a question over whether this agreement amounted to an enforceable contract, possibly being void for uncertainty. In any event, the Applicant has not found it convenient to reduce the size of the shed or to provide the Andersons with a larger plot as originally discussed. Consequently, they have not increased the pitch fee in any year until the year under discussion, when a 6% increase was proposed. The Andersons clearly have little appetite for the costs and uncertainties of litigation over the contractual issue, but are also aware that in its present state their home may be impossible to sell.

31. Mr Payne said that "the time had come" to apply an increase to the Andersons' pitch fee. The Tribunal makes no determination as to whether the agreement reached in 2011 is enforceable, but considers that if the time has come for an increase in pitch fee, then the time has also come for the Cedar House pitch to be extended. In particular, if a "reasonable" length of time was envisaged in 2011 for the Applicant to make alternative arrangements for its storage facility, then that reasonable length of time has now expired. This, in the view of the Tribunal, is an issue weighty enough to displace the presumption of an RPI related pitch fee increase. It would not be reasonable to expect the Andersons to pay an increased pitch fee while

the Applicant fails to honour its agreement with them, and the pitch fee for Cedar House is therefore to remain unchanged.

SCHEDULE

Respondent	Address at Mount Pleasant Park, Acaster Malbis	Case number	Monthly pitch fee in 2021	Monthly pitch fee from 1 January 2022
Mr and Mrs S Anderson	Cedar House	MAN/ooFF/PHI/2022/0048	120.00	120.00
Mr N Covill – Lane	34 The Willows	MAN/ooFF/PHI/2022/0045	180.89	191.74
Mr J McPherson & Miss M Jones	14 The Willows	MAN/ooFF/PHI/2022/0053	196.01	207.7
Mr and Mrs J Bennett	10 Lilac Avenue	MAN/ooFF/PHI/2022/0050	145.50	154.23
Mrs Anne Jagger	4 Beech Avenue	MAN/ooFF/PHI/2022/0046	134.45	142.52
Mrs Myrtle Smedley	4 The Willows	MAN/ooFF/PHI/2022/0054	196.01	207.77
Mr and Mrs A Smith	35 The Willows	MAN/ooFF/PHI/2022/0052	167.96	178.04
Mr and Mrs P Whitaker	33 The Willows	MAN/ooFF/PHI/2022/0051	208.15	220.64
Mr and Mrs G C Loney	31 The Willows	MAN/ooFF/PHI/2022/0055	167.96	178.04