FIRST-TIER TRIBUNAL
PROPERTY CHAMBER

(RESIDENTIAL PROPERTY)

Case References	**:**	**MAN/30UN/PHI/2022/0001, 0003, 0008, 0010- 0011, 0017, 0019-0021, 0023-0028 and 0035**
Properties	**:**	**various properties on Penwortham Park, Stricklands Lane, Penwortham, Preston, Lancashire, PR1 9YD**
Applicant	**:**	**Wyldecrest Parks (Management) Ltd.**
Respondents	**:**	**Various residents listed in annexed schedule**
Type of Application	**:**	**Under schedule 1 of the Mobile Homes Act 1983**
Tribunal Members	**:**	**Judge P Forster** **Mr J Faulkner FRICS**
Date of Decision	**:**	**27 March 2023**

DECISION

The Decision

The proposed increases in pitch fees from 1 January 2022 are not allowed in respect of each of the 16 park homes subject to the applications. The Respondents have rebutted the presumption that the pitch fees are to increase in line with the Retail Price Index.

The Background

1. There are 16 related applications made under Schedule 1 of the Mobile Homes Act 1983 ("the Act") for the Tribunal to determine the level of the pitch fee payable from 1 January 2022.

2. The applications relate to 16 pitches on Penwortham Park, Stricklands Lane, Penwortham, Preston, Lancashire, PR1 9YD ("the Site"). The Site is situated about 2 miles from the centre of Preston.

3. The Applicant is Wyldecrest Parks (Management) Ltd. and is the owner and operator of the Site. The Site is a licenced site under the Caravan Sites and Control of Development Act 1960 and is subject to the Act.

4. The Respondents to each application are the owners of park homes situated on various plots on the Site. Each of the Respondents and their respective plots are identified in the Schedule.

5. The issues are common to all 16 applications, but the pitch fee payable in respect of each plot varies between £96.59 and £165.48.

6. The Applicant served the Respondents with notices dated 23 November 2021 purporting to increase the respective pitch fees with effect from 1 January 2022. The notices were sent with a prescribed pitch fee review form. The Respondents do not take issue with the validity of the notices or the statutory process which has been followed.

7. The Tribunal issued Directions on 8, 18, and 19 June 2022 stating that the applications would be determined without a hearing subject to the right of any party to request a hearing. The Tribunal subsequently determined that a site inspection was necessary because the Respondents alleged that there was a deterioration in the condition and a decrease in the amenity of the Site.

8. The Directions provided that each party should provide a statement of case setting set out their respective positions and produce any documents on which they intended to rely. The parties have complied with the directions and have provided the Tribunal with bundles of documents.

9. Further directions were issued which sought to identify the issues in dispute. The Tribunal stated that the applications do not extend to any alleged breach of the site agreements and that when determining the amount of the new pitch fees, it would have particular regard to any decrease in the amenity of the Site since the previous review date. The alleged loss of amenity was stated to be the main issue to be determined by the Tribunal. This was clarified at the hearing by reference to paragraph 18(1)(aa) of the Act. The cases also include any alleged deterioration in the Site and the relevant point of reference is the 26 May 2013 in so far as regard has not previously been had to that deterioration or decrease for the purposes of the sub-paragraph.

10. The Tribunal inspected the Site on 1 March 2023 and the hearing was held immediately afterwards at Preston Magistrates Court. The Applicant was represented by Mr David Sunderland, its Estates Director, and the Respondents were represented by one of their number, Mr John Fulham. The Tribunal heard evidence from two of the Respondents, Mr Arthur Bradshaw and Mr John Duncan, and from Mr Julio Bassa who is the Maintenance Manager on the Site. The Tribunal considered the bundles of documents submitted by both parties and heard submission from Mr Sunderland and Mr Fulham before reserving its decision.

The Respondents' Case

11. It was appropriate for the Respondents to set out their case first, allowing the Applicant to respond to it.

12. The Respondents' case is set out in a joint statement. They say that since the Applicant took over the Site in December 2018, it has failed to discharge its obligation to maintain the Site "in a safe and acceptable state for the residents". The Respondents expressly complain about: (1) access ways, (2) boundary fences, (3) repair of water pipes, (4) exposed wires and cables, (5) structures, (6) roads and flooding, (7) street lighting, (8) drains and drainage, and (9) loss of amenities.

13. The alleged loss of amenity relates to a car park at the entrance to the Site and a green which used to be in the middle of the Site.

14. In respect of the car park, the Respondents say that it was used by residents and visitors, and after the Applicant took over the Site it was used as "a dumping ground". Large quantities of excavated earth were dumped there between February and June 2020. It is stated that the car park was "unusable and unsightly". The Respondents say that the car park is "now non-existent" because the Applicant has developed the area for three park homes.

15. In respect of the green in the middle of the Site, it is described as "*a beautiful manicured green… it had been a focal point of the park for many years. The first thing Wyldecrest did after buying the park in December 2018 was move the heavy plant machinery in to dig up the green in late spring early summer 2019… this once beautiful green now has six double park homes on it. The loss of this amenity was a big blow to the residents their family families, members of the public who used the public right of way and friends… the heart of the community had been ripped out and morale hit zero*". Photographs have been provided showing the green at various dates.

16. In conclusion, the residents feel that "*the heart of their Park community has been ripped out by the ongoing development by Wyldecrest Parks, the complete lack and dereliction of maintenance… and the loss of amenities. From 22 December 2018, when they got the keys to the Park all they have done is add park home after park home. No repairs/maintenance to benefit the upkeep of the Park or to benefit the well-being of residents has been*

undertaken… the green space and amenities that we had have now gone. The car park has disappeared and is now a very condensed park home area…".

The Applicant's Case

17. The 16 applications are to increase the pitch fees in accordance with the terms implied by the Mobile Homes Act 1983. The pitch fees can only be changed by agreement or by the Tribunal and some of the residents on the Site, the Respondents, have objected to the proposed increase leaving the Applicant to apply to the Tribunal. The pitch fees have been reviewed by reference to the Retail Price Index for October 2021 which provides for an increase of 6%. There is a statutory presumption that the pitch fees shall increase annually in accordance with the RPI.

18. The Applicant denies any claim made by the Respondents that there has been a deterioration in the condition or a decrease in amenity on the Site. It is submitted that the Respondents' case is about alleged maintenance problems which do not amount to deterioration or a reduction in amenity. The Applicant denies any breach of its obligations under the Act or any breaches of the site licence. The Respondent's allege that the Site has been over developed and under maintained. This is denied by the Applicant.

The Law

19. Provisions relating to the review of a pitch fee are contained in paragraphs 16 to 20 of Chapter 2 of Part 1 of Schedule 1 to the Act. The pitch fee can only be changed either with the agreement of the occupier, or by the Tribunal, on the application of the owner or the occupier. The pitch fee shall be reviewed annually as at the review date.

20. The owner serves on the occupier a written notice setting out the proposed new pitch fee. If it is agreed, the new pitch fee is payable from the review date. If it is not agreed, the owner may make an application to the Tribunal to determine the new pitch fee. Once decided, the new pitch fee is payable from the review date.

21. When determining the amount of the new pitch fee, particular regard shall be had to any sums expended by the owner since the last review date on improvements and any decrease in the amenity of the protected site since the last review date. Unless it would be unreasonable, 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.

22. "*Pitch fee*" is defined in paragraph 29 of Part 1 of Chapter 2 of Schedule 1 of the 1983 Act as meaning "*the amount which the occupier is required to pay by the agreement to the owner for the right to station the mobile home [park home] on the pitch and for the use of the common areas of the protected site and their maintenance but does not include amounts due in respect of gas, electricity, water and sewerage or other services unless the agreement expressly provides that the pitch fee includes such amounts".*

The Decision

23. The Site is in the suburb of Penwortham about two miles from Preston. The Applicant purchased it from the previous owner on about 22 December 2018. The Site is approached along a road which is about 150 metres long and contained within a triangle bordered by former railway embankments. A public footpath crosses the Site giving access to the River Ribble. There are 92 pitches on the Site. Some of the park homes date from the 1970s and eight were added recently, six on the green and two on the former car park.

24. The Tribunal is asked to determine the amount of the pitch fees payable from 1 January 2022. The fees claimed by the Applicant are shown in the 16 notices of increase dated 23 November 2021. The amount is calculated on the RPI applied to the existing pitch fees set in the previous notice of increase and applied from 1 January 2021. The 2021 pitch fees are not in dispute.

25. The allegations made by the Respondents fall to be considered in two parts: (1) deterioration in the condition and (2) decrease in amenity of the Site. The Respondents' statement of case focuses mainly on the alleged deterioration which counts for all but one of the heads of complaint.

Deterioration of the condition of the Site

26. The Respondents seek to rely on the Applicant's repairing and maintenance obligations as provided in the Act. In short, it is alleged that the Applicant is in breach of these obligations. This is not a matter for the Tribunal which is only concerned here with the pitch fees.

27. Complaints are made about the condition of the access ways and these are illustrated by photographs showing the Site as it is now. The Respondents point to standing water on the roads and potholes on the road surface. The allegations are supported by witness statements from the residents. The Tribunal has 17 statements which provide descriptions of the conditions on the Site.

28. The Respondents also complain about the boundary fence which they say has not been properly maintained with the result that it has collapsed in places and fails to retain the earthworks behind it. Again, photographs have been produced to illustrate what is being said. The Respondents also alleged that the water pipes are in a state of disrepair which has led to leaks on the Site. It is alleged that there are exposed cables on the Site.

29. The complaints extend to structures on the Site. This is a reference to an old park home which was dismantled by the Applicant. The allegations about the state of the roads is referenced again by complaints of flooding caused by the condition of the drains which is said to have been exacerbated by the loss of the green space in the middle of the Site. The street lighting is an issue of concern for the residents. It is alleged that 8 out of 24 lights on the site do not work.

30. The Applicant's position is set out in its statement of case. The Tribunal is reminded that the applications are about the level of the pitch fees and not any alleged breaches of the Applicant's repairing obligations. The Applicant relies on the evidence of Mr Bassa who has worked on the Site for 29 years and denies that the Site is "under maintained". It is accepted that whilst the roadways are worn in places, they remain serviceable and local repairs are made as and when necessary. It is pointed out that the Site is on a flood plain and therefore liable

to flooding from time to time but that it is subject to current improvements undertaken by the Council. It is asserted that the lighting meets the conditions of the site licence and that boundary fences which are the responsibility of the Applicant are maintained. In short, the Applicant denies the Respondents' allegations about the state of the Site.

31. The Tribunal notes the Respondents' complaints but formed the view that these are about alleged breaches of the Applicant's obligations to repair and maintain the Site which do not fall within the scope of the pitch fee reviews. The Tribunal considered whether the alleged disrepair could amount to a deterioration in the Site which is one of the matters that could be relevant to the amount of the pitch fees. The Tribunal concluded that all the alleged items of disrepair are capable of remedy and therefore are not of such a lasting nature that would result in a permanent deterioration to the Site.

Decrease in the amenity of the Site

32. The final head of complaint is the alleged loss of amenity on the Site. This is in two parts, (1) the loss of the car park at the entrance to the Site and (2) the loss of the green at the centre of the Site.

33. The Applicant refers the Tribunal to the site licence. This was transferred to the Applicant in March 2019 after it had acquired the Site from the previous owner. The licence is subject a list of standard conditions for permanent residential caravan sites that now appear rather dated when applied to modern life.

34. The conditions provide that "*suitably surfaced parking places shall be provided with a space for at least one car for every three caravan standings*".

35. The site licence also provides that "*space equivalent to about one-tenth of the total area shall be allocated for children's games and other recreational purposes*".

36. It is not in dispute that there was a car park at the entrance to the Site. The Respondents say that it was in daily use by residents, visitors and other

vehicular traffic. It is alleged that after the Applicant took over the Site in December 2018 it was used as a dumping ground for rubbish, soil and waste. Photographs have been produced dating from March and April 2020.

37. In about October 2020 the car park was cleared and developed to accommodate the pitches for three park homes. When the Tribunal inspected the Site, there were two park homes in situ. There were spaces for up to seven vehicles although some of those spaces appeared to be on the third pitch.

38. The car park and the use that was made of it is described in some of the Respondent's witness statements. Ms Simmons states that "visitors have nowhere to park which makes it difficult for families and friends to come therefore isolating people in their old age". Mr Coward says that "visitors and family coming to see us there is nowhere for them to park their cars…". This view is confirmed by Mr and Mrs Riddle who state that "we now have no where for our visitors to park and it is difficult to drive where cars are double parked".

39. The Applicant's general position is that development has taken place over the last few years to place new homes within the boundaries of the Site in accordance with the planning and site licence conditions. It is said that parking is provided to meet the conditions of the site licence and that it is sufficient. In respect of the green, it is submitted that there is no contractual requirement to provide any particular recreational space under the terms of the agreements and each pitch has its own private garden space. It is said that the addition of brand-new homes on an older park is an improvement "to the view of a park and not a loss of amenity".

40. The basic facts are not in dispute, there are two new park homes on the area of the former car park with provision for one more, and six new homes where the green used to be.

41. The question for the Tribunal is whether the loss of the car park and green amount to a reduction in amenity on the Site.

42. The word "amenity" is capable of a number of constructions. Neither of the parties addressed the Tribunal on their understanding of the word. It is necessary to look at the context in which it is used. "Amenity" refers to the quality or character of an area and elements that contribute to the overall enjoyment of an area. Residential amenity has a significant and valuable impact on the way in which people use their homes. The health and wellbeing of residents can be related to the level of amenity available to residents. The nature of "amenity land" varies but can include roads and open spaces available for the use and enjoyment of residents.

43. The Tribunal heard evidence from Mr Bassa who manages the Site on behalf of the Applicant. He has done this job for many years and has worked for a number of employers. Mr Bassa was keen to say in his witness statement that there have been many improvements over the years to upgrade the infrastructure on the Site. He states that the new homes enhance the look of the Site. Mr Bassa at the hearing denied any suggestion that there was insufficient car parking. He said that there used to be 10 or 12 spaces on the car park at the entrance to the Site and now there were 7 spaces. Mr Bassa's evidence in respect of the green was that the residents did not use it very much.

44. The Tribunal found that Mr Bassa was careful not to say anything that could be seen as damaging to the Applicant's case. He was in a difficult position because he wanted to support his employer. Mr Bassa's reluctance to accept that a number of the streetlights on the Site were not working undermined his evidence. Mr Bassa's evidence about the use of the green was at odds with the Respondents' witness statements which describe the attractiveness of the area and the use made of it by the residents.

45. The Applicant submitted that it had acted in accordance with the terms of the site licence. Compliance with the site licence is not a matter for the Tribunal but rather for South Ribble Borough Council. However, the licence provides for at least one parking space for every three "caravan standings". There are 92 pitches on the Site. The Applicant contends that the residents park on their own pitches which provide adequate space for their personal vehicles. This was evident when the Tribunal inspected the Site. The six new park homes, on the

site of the former green, have enough space to accommodate two vehicles which is in line with modern expectations. The site licence was drafted at a time when car ownership was much less than it is now. The Tribunal finds that each pitch can accommodate at least one vehicle but there is poor provision for visitor parking. The Respondents complain that there is an insufficient number of car parking spaces for their visitors.

46. Mr Bassa's evidence was that there used to be between 10 and 12 spaces at the entrance to the Site. He stated at the hearing there are now 5 spaces although when this was questioned by Mr Sunderland, he added 2 additional spaces. Based on the evidence and its own observations, the Tribunal finds that where there used to be spaces for up to 10 or 12 vehicles to park at the entrance to the Site there are now only 7 spaces. This amounts to a reduction in amenity.

47. The issue in respect of the green is addressed in the Respondents' witness statements which testify to its importance to the residents. Mr and Mrs Millington, whose home looked onto the green, say that it was "a lovely open bright space with a family of ducks and other wildlife, and families and children visiting and playing on the green, it was most uplifting and definitely helped Mr Millington's severe anxiety and mental health issues". Ms Simmons waited until a park home was available opposite the green before she bought her home. Mr Whitely states that one of the features that attracted people to the Site was the green: a grassy area in the middle of the site…it provided a play area for children as well as a pleasant outlook for residents…".

48. Mr Briggs says that the green used to be a place that was home to a family of ducks. It was a place where he could take his young nieces and nephews, "have a few moments of fun, laughter and let off steam… it was a place where I could spend a few moments on a regular basis enjoying the peace and tranquillity". Mr and Mrs Dickson states that the main reason they bought their home was the green "with all the wildlife coming onto it, was really something". Mr Coward says that the green was quiet and peaceful and an ideal place for him to enjoy his retirement. Ms Lenart describes the green as "a haven of peace and tranquillity". Mrs Fulham states that the green was one of the major attractions on the Site, "it made the park look more spacious and added colour and beauty.

49. There is a great weight of evidence in this vein. The view that confronts residents now is very different, as the Tribunal saw for itself. There are now six new park homes where the green used to be. There is nothing to distinguish this part of the Site from the rest of the park. The ducks have gone. The Panel was taken down a path that leads out of the Site to the River Ribble. The path was constructed and is maintained by the Council. The riverbank is an attractive area and benefits the park home residents but there was access to the river before. The Applicant has not provided anything to make up for the loss of the green.

50. Ms Simmons says in her witness statement that she is now completely overlooked and she feels she is living in a goldfish bowl. Mr and Mrs Whitelogg state that the view has been taken away "we now look straight into the living room of a huge dark grey building and feel totally hemmed in". They feel that the loss of the green has devalued their home.

51. It is evident that the Applicant appreciated how attractive the green was because until recently, it featured its sales material for the Site. However, the Applicant now downplays the green's attractions and denies that it was used as much as the Respondents claim.

52. The Applicant submitted that it is under no obligation to provide any recreational facilities but this does not accord with the conditions of the site licence. However, this is not for the Tribunal to consider. The fact is that there was a green which provided the residents with a useful and important amenity and it has been taken away from them. There can be no doubt this represents a reduction in amenity.

53. The economic reality is that the Applicant has benefitted from the sale of eight new park homes and now receives additional income from eight new pitch fees. The Applicant took a business decision to maximise the commercial value of the Site. The decision affects the existing residents. The Tribunal rejects the suggestion that the new park homes increases the amenity of the Site.

54. The Tribunal's approach when assessing the amount of the pitch fees is governed by Schedule 1 to the Act. There are four key provisions that set the basis for the determination of the pitch fees: (1) it can only be changed if the Tribunal "*considers it reasonable for the pitch fee to be changed and makes an order determining the amount of the new pitch fee*", (2) there are a number of matters to which "*particular regard shall be had*" and particularly in the present cases, paragraph 18(1)(aa), (3) there are a number of matters to which no regard shall be had, and (4) under 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" that specified in the relevant RPI".*

55. The Tribunal has particular regard to paragraph 18(1)(aa) which provides:

"*in the case of a protected site in England, 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 purposes of this subparagraph).*

56. The question is whether the findings the Tribunal has made in respect of the decrease in amenity on the Site are of sufficient weight to rebut the presumption that the pitch fees should be increased in line with the RPI? It is a matter for the Tribunal how much weight it gives to the reduction in amenity on the Site. The Applicant's case is that the reduction is insufficient to rebut the statutory presumption.

57. The reduction in the number of parking spaces at the entrance to the Site and the loss of the green considered separately and together amount to a significant reduction in amenity for the residents. The Tribunal has taken particular note of the great value placed on the green by the Respondents and the beneficial effects it had on their lives. The Tribunal concludes that the reduction in amenity is of sufficient weight and importance to rebut the presumption that the pitch fees will increase in line with the RPI.

58. The Tribunal determines that the current pitch fees in respect of each of the 16 pitches which are the subject of the applications are not be increased as proposed by the Applicant.

Judge P Forster
27 March 2023

Schedule

	Case number	Respondent
(1)	MAN/00EM/PHI/2022/0001	Allan Whiteley
(2)	MAN/00EM/PHI/2022/0003	Craig McGarry
(3)	MAN/00EM/PHI/2022/0008	John & Liz Duncan
(4)	MAN/00EM/PHI/2022/0010	Peter & Brenda Coward
(5)	MAN/00EM/PHI/2022/0011	Jim Briggs
(6)	MAN/00EM/PHI/2022/0017	John & Barbara Whitelegg
(7)	MAN/00EM/PHI/2022/0019	Dee & Peter Millington
(8)	MAN/00EM/PHI/2022/0020	Arthur Bradshaw & Carol Steed
(9)	MAN/00EM/PHI/2022/0021	Dorothy Wells
(10)	MAN/00EM/PHI/2022/0023	Jadz Lenart
(11)	MAN/00EM/PHI/2022/0024	Hazel Breteton
(12)	MAN/00EM/PHI/2022/0025	Norma Simmons
(13)	MAN/00EM/PHI/2022/0026	Stuart & Jean Riddle
(14)	MAN/00EM/PHI/2022/0027	Susan Gale
(15)	MAN/00EM/PHI/2022/0028	Melvyn Gardner
(16)	MAN/00EM/PHI/2022/0035	John & Jacqueline Fulham

RIGHT OF APPEAL

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e., give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking