



**First-tier Tribunal  
Property Chamber  
(Residential Property)**

**Case Reference** : **CAM/26UE/PHI/2023/0082-90 (check)**  
**HMCTS Code** : **F2F**

**Site** : **Bushey Hall Park, Bushey Hall Drive,  
Bushey, Watford WD23 2GE**

**Park Home addresses** : **4, 6a, 7, 7a, 11, 13, 18 and 19 Bushey Hall  
Park**

**Applicant** : **Heritage Park Homes**

**Respondent** : **Park homes owners of the above  
properties**

**Type of application** : **Determination of pitch fee**

**Tribunal** : **Regional Judge Wayte  
Regional Surveyor Hardman**

**Date** : **21 November 2023**

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## **Decision**

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**The tribunal determines that:**

**The monthly pitch fees for the properties with effect from 1  
December 2022 are as follows:**

<b><u>Property</u></b>	<b><u>Pitch Fee</u></b>
<b>4 Bushey Hall Park</b>	<b>£208.44</b>
<b>6a Bushey Hall Park</b>	<b>£187.22</b>
<b>7 Bushey Hall Park</b>	<b>£187.22</b>
<b>7a Bushey Hall Park</b>	<b>£189.56</b>
<b>11 Bushey Hall Park</b>	<b>£202.18</b>
<b>13 Bushey Hall Park</b>	<b>£171.80</b>
<b>18 Bushey Hall Park</b>	<b>£187.22</b>
<b>19 Bushey Hall Park</b>	<b>£187.22</b>

NB. The pitch fee determined does not include the share of the site licence fee.

## **Background**

1. By an application dated 10 February 2023, the applicant site owner sought a determination that the pitch fees for each respondent park home owner be increased by 12.6% (the change in RPI for September 2022) with effect from 1 December 2022, being the contractual review date specified in the respective written statements. The pitch fee is the amount payable to the site owner for the right to station the mobile home on the pitch and for use of the common areas and their maintenance.
2. Bushey Hall Park is a protected site within the meaning of the Mobile Homes Act 1983 (“the 1983 Act”). Amongst other protections, paragraphs 16-20 of the terms implied by Chapter 2 of Part 1 of Schedule 1 to the 1983 Act sets out provisions for the determination of an annual pitch fee increase, in the absence of agreement between the parties. Those provisions are set out in an Annex to this decision for ease of reference.
3. The Upper Tribunal has considered the provisions on a number of occasions. In *Wyldecrest Parks (Management) Ltd v Kenyon and others* [2017] UKUT 0026 (LC) the Deputy President, having reviewed the previous decisions and the draft decision in *Vyse v Wyldecrest (Management) Ltd* [2017] UKUT 0024, summarised their effect as follows:

*(1) The direction in paragraph 16(b) that in the absence of agreement the pitch fee may be changed only “if the appropriate judicial body ... considers it reasonable” for there to be a change is more than just a pre-condition; it imports a standard of reasonableness to be applied in the context of the other statutory provisions, which should guide the tribunal when it is asked to determine the amount of a new pitch fee.*

*(2) In every case “particular regard” must be had to the factors in paragraph 18(1) but these are not the only factors which may influence the amount by which it is reasonable for a pitch fee to change.*

*(3) No weight may be given in any case to the factors identified in paragraphs 18(1A) and 19.*

*(4) With those mandatory considerations well in mind the starting point is then the presumption in paragraph 20(A1) of an annual increase or reduction by no more than the change in RPI. This is a strong presumption but it is neither an entitlement nor a maximum.*

*(5) The effect of the presumption is that an increase (or decrease) “no more than” the change in RPI will be justified, unless one of the factors mentioned in paragraph 18(1) makes that limit unreasonable, in which case the presumption will not apply.*

*(6) Even if none of the factors in paragraph 18(1) applies, some other important factor may nevertheless rebut the presumption and make it reasonable that a pitch fee should increase by a greater amount than the change in RPI.*

4. The use of RPI (Retail Prices Index) in the provisions was slightly curious as it had ceased to be the official measure of inflation by 2013. That is currently CPI (Consumer Prices Index), which produces a consistently lower figure – 10.1% over the relevant period in this case. Having made a commitment to alter the rate to CPI some years ago, a private member's bill was passed with Government support this summer (the Mobile Homes (Pitch Fees) Act 2023) replacing RPI with CPI for all new pitch fee reviews from the date the 2023 Act came into effect (2 July 2023).
5. That said, since 2013 both measures of inflation remained low until late 2021 and 2022 when there was a substantial increase, peaking at 14.2% (RPI) in October 2022. It is well known that this was largely driven by external factors such as the war in Ukraine and the Covid pandemic, leading to an extreme increase in the cost of energy in particular. That change meant that the usually uncontroversial increase of the pitch fee "in line with" inflation has resulted in a large number of applications to the tribunal for determination in the absence of agreement, including the eight respondents on this site.
6. Directions were issued on 31 July 2023 for both parties to provide a hearing bundle setting out their case. Having reviewed the bundles the tribunal decided to inspect the site prior to the hearing. The inspection and hearing at Watford Civil and Family Court took place on 25 October 2023. Both were attended by Mr Ball, who operates the site under his Heritage Park Homes brand, his representative Mr Clements of IBB Law and the majority of the respondents, who were represented by Mrs Linwood, the owner of number 19 and former site manager.

### **Inspection**

7. The site was established some 50 to 60 years ago, with some of the original concrete surfaces still in use today. The site is compact, being 28 homes in total, with 3 rented and the rest owner-occupied. The homes are in close proximity to each other. The entrance drive runs past a busy repair garage to the communal car park, which is where almost all of the residents park their cars. That car park has a mixed surface of concrete and tarmac, with some deterioration to the surface, in particular within the marked parking bays and to the original concrete surfaces. Several footpaths lead off the drive and car park to the homes. The footpaths are narrow and either paved or surfaced in concrete. One in particular was covered in moss and was slippery underfoot as a result. It was said to be rarely used as it runs along the rear of the pitches. The tribunal were also shown the steps from the car park to another path, which were said to flood in wet weather, although were dry on the date of inspection. There

was a ramp as an alternative, but this was too narrow to permit wheelchair access, due mainly to a large conifer hedge surrounding one of the pitches. That same path had been repaired by another resident who was said to have fallen on the loose concrete and required hospital treatment.

8. The homes themselves varied in terms of their appearance, with those available for rent looking rather unkempt. The tribunal were shown the pitch for number 4, which was located somewhat precipitously on the edge of the site as the ground fell away to a wooded area. A verandah had been erected on supports around that side of the home but the owner was concerned that there appeared to be some slippage of one of the supports, causing the garden shed to lean, although no damage was visible. The tribunal were also shown a dilapidated line of fencing to pitch 25. Mr Ball confirmed that the owner had passed away and it was expected the home would be sold once probate had been obtained, when the fencing would be replaced by the new owner.
9. Generally speaking and with the exception of the items mentioned in paragraph 7 and 8 above, the site is in reasonable condition, although it was apparent that minimal maintenance had been carried out in the recent past. That was confirmed by Mr Ball in his evidence when he stated that he had purchased the site 25 years ago when he carried out a number of improvements, followed by an upgrade to the drive and paths about 11 or 12 years ago.

### **The applicant's case**

10. On 1 November 2022 the applicant had sent letters to the residents confirming the amount of the increase sought, as set out in the Pitch Fee Review Form, prescribed by the 1983 Act. In each case the applicant sought an increase by 12.6% based on the RPI for September 2022, published in October 2022.
11. The tribunal's directions had flagged up the change to CPI for pitch fee review notices from 2 July 2023 and asked for both parties to address any arguments about the appropriate measure in their statement of case, together with any other evidence in support of the amount claimed. The applicant declined to deal with either point in their statement of case, arguing that it was well established that they were entitled to an increase in line with inflation.
12. In addition to the RPI increase, the applicant added a proportion of the site licence fee to each pitch fee. This had led to a challenge by the respondents to the notices as the amount appeared to differ from the previous pitch fee actually paid. When the calculation was explained at the hearing, that challenge fell away.
13. That left the main challenge on the basis of loss of condition/amenity/services as set out in paragraph 18 of the pitch fee provisions, the respondents stating that no increase was reasonable in all

the circumstances. Each challenge is dealt with below, with the applicant's response.

14. In summary, Mr Clements pointed out that the applicant had also been affected by the increase in the cost of living. Although his primary submission was that the increase should be 12.6%, if the tribunal felt there should be any reduction he submitted that the CPI of 10.1% would be fair given that was also the increase to the state pension, the vast majority of the residents being retired.

### **The respondents' case**

15. The respondents' statement of case was brief, explaining that the applicant's increase was refused as it was not deemed fair and reasonable due to the minimal maintenance of the park, in particular the delay to repairing water leaks, footpaths and lighting when reported to the site manager. Their main concern was the surface of the car park and the risk of injury in wet or wintry weather. As indicated above, each item was considered at the hearing and they are set out below, with the applicant's response.
16. The first complaint was the delay in attending to water leaks. Mrs Linwood explained that each resident paid a share of the total charge as there was a single meter serving the site. In the last year the charges had increased dramatically, which they felt was due to the leaks. A rebate had eventually been applied to each resident's bill but the complaint about the lack of an effective response by the applicant remained. The respondents' bundle included photographs of what they considered to be substandard repairs, often carried out at night and with ineffective safety precautions to avoid accidents.
17. The applicant admitted that water leaks were not uncommon, given the age of the supply which dated back to when the site was established but denied that repairs were too slow or ineffective. He had previously claimed that the increased water bills were due to the warm summer weather (in 2022) and a high demand from the residents.
18. Mrs Linwood was particularly exercised by a faulty security light outside her door that flashed continually for 10 days until it was inspected and eventually repaired. The applicant stated that this complaint was neither deterioration in the condition of the site or a reduction in services so as to trigger paragraph 18.
19. Two of the respondents considered that they were paying for communal lighting on their own meters but this was denied by the applicant who provided an email from his electrician stating that the lights were on their own designated feed.
20. The respondents' bundle also contained photographs of broken paving slabs on one of the footpaths, which Mrs Linwood stated had been in disrepair for 5 months having started to break up in early winter 2022.

The applicant stated that the damage occurred at the end of the review period and was therefore of minimal effect in terms of any claim of loss of amenity up to 1 December 2022. There was also a factual dispute as to how the damage occurred, the applicant stating that he suspected it was caused by delivery vans reversing onto the path as opposed to frost damage, although no one appeared to have seen that happen.

21. The respondents also raised subsidence to the site, particularly in the garden of number 4 as the land fell away to the wooded area below. Their bundle contained letters requesting the applicant to appoint a surveyor to inspect the issue as they were concerned that any subsidence could affect up to 4 neighbouring homes. The applicant submitted that any effect was in relation to that home alone and that the current owner had purchased her home in 2022 having obtained a survey beforehand.
22. The main issue for the respondents was the state of the car park and in particular the deterioration to the aged concrete surface and the broken tarmac in the bays. The bundle contained a statement that the car park had become much worse since the rise of home deliveries during and after the pandemic. Photographs were provided of pools of water, which were particularly bad when the drains failed to clear. The majority of the residents were in their 60s or older and were worried about accidents. They stated that the car park was due to be resurfaced in 2011 but the works were shelved when the residents refused to pay the additional charge Mr Ball claimed would be payable.
23. To summarise, Mrs Linwood stated that the average pitch fee was already £2,000 a year, before the current increase sought. That increase was just too high in the context of the increased cost of living. The residents felt that given the lack of maintenance to the site they were not getting a good bargain for their money and they relied on the tribunal's discretion as to what would be a reasonable increase in all the circumstances.

### **The tribunal's decision**

24. It was common ground that there had been no improvements to the site since the last review period, with no major works having been carried out by the applicant since 2011/12. It was also common ground that this was the first contested pitch fee review since at least 2013. Paragraph 18(aa) of the pitch fee provisions states that when determining the amount of the new pitch fee, particular regard shall be had to any deterioration in the condition of the site and any decrease in the amenity of the site since the date the paragraph came into force, provided it has not previously been taken into account. That principle was confirmed by the Upper Tribunal in *Wickland (Holdings) Limited v Amelia Esterhuyse* [2023] UKUT 147.
25. With this in mind, the tribunal considers that the car park is not currently in a good state of repair and condition and has clearly deteriorated since 27 May 2013 (the date the paragraph came into force). This affects all the respondents. The mossy footpath at the rear of several of the pitches has also deteriorated and requires treatment to put it into a good state of

repair and condition, although that affects fewer of the respondents. The alleged subsidence to the pitch at number 4 is a cause for concern but did not appear on our limited inspection to amount to a deterioration of the condition of the site. There was also no obvious evidence of damage to number 4. The other complaints about the delay in attending to repairs do not in our opinion amount to a reduction in the services but are indicative of a slightly laissez-faire attitude on the part of the applicant and the minimal maintenance carried out on the site.

26. Turning to the six principles set out by the Deputy President: firstly, we do not consider that the deterioration in/loss of amenity due to the condition of the car park and one of the footpaths is so serious as to make it unreasonable to increase the pitch fees at all. However, that deterioration/loss of amenity is clearly relevant to the amount of the new pitch fee and what would be reasonable in the context of the other statutory provisions.
27. The fourth principle restates the starting point or statutory presumption of an annual increase or reduction by no more than the change in RPI. The Deputy President stated that it is neither an entitlement nor a maximum. He had previously observed in *Re Sayer* [2014] UKUT 283 (LC) that “*In practice that presumption usually means that annual RPI increases are treated as the right of the owner*”. That in turn has led to the restating of the statutory presumption of an increase “in line with” RPI, as claimed by the applicant in this case. We consider that the fourth principle as set out by the Deputy President in *Kenyon* is the correct interpretation of paragraph 20, given the clear words used. In particular, if Parliament meant any change to be “in line” with RPI, paragraph 20 would have said the increase should be “by” as opposed to “by no more than” the change in RPI.
28. With that in mind, it seems to us that the statutory provisions provide a range for a reasonable increase to be determined by the tribunal, absent special factors. We have already indicated that we consider there has been a deterioration of the car park and one of the footpaths, which needs to be reflected in the new pitch fee. We also consider that it is reasonable to take into account the fact that RPI was inflated due to external factors and has now been replaced by CPI.
29. In all the circumstances we consider that it is reasonable for the pitch fees for the respondents to increase by 50% of the change in RPI or 6.3%. This provides some increase for the applicant who will undoubtedly be facing higher prices for the communal lighting and any employment costs, with an allowance for the residents to reflect their justified complaint about the state of the car park and one of the footpaths. It also takes account of any distortion to the rate of inflation by the external factors which have led to record rates in 2022.
30. In coming to this conclusion, we consider that we have applied the statutory presumption correctly, as set out by the Deputy President in *Kenyon*. If we are wrong and the presumption is in fact that the increase

will be “in line with” RPI, we consider that the considerations set out in paragraph 28 above are sufficient to rebut that presumption and justify an increase of 50% of that figure or 6.3%.

**Judge Wayte**

**21 November 2023**

### **Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).



## **Annex**

### **Chapter 2 of Part 1 of Schedule 1 to the Mobile Homes Act 1983 (as amended)**

#### **The pitch fee**

16 The pitch fee can only be changed in accordance with paragraph 17, either –

- (a) with the agreement of the occupier, or
- (b) if the appropriate judicial body, on the application of the owner or the occupier, considers it reasonable for the pitch fee to be changed and makes an order determining the amount of the new pitch fee.

17 (1) The pitch fee shall be reviewed annually as at the review date.  
(2)-(12) [provisions concerning the proposals and applications for determination of pitch fee increases and other procedural matters]

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;
  - (ii) which were the subject of consultation in accordance with paragraph 22(e) and (f) below; and
  - (iii) to which a majority of the occupiers have not disagreed in writing or which, in the case of such disagreement, the appropriate judicial body, on the application of the owner, has ordered should be taken into account when determining the amount of the new pitch fee;

(aa) 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 (in so far as regard has not previously been had to that deterioration or decrease for the purposes of this subparagraph);

(ab) in the case of a protected site in England, 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 (in so far as regard has not previously been had to that reduction or deterioration for the purposes of this subparagraph);

18 (b) [Wales].

(ba) in the case of a protected site in England, 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;

(c) [Wales]

(1A) But, in the case of a pitch in England, no regard shall be had, when determining the amount of the new pitch fee, to any costs incurred by the owner since the last review date for the purpose of compliance with the amendments made to this Act by the Mobile Homes Act 2013.

(2) When calculating what constitutes a majority of the occupiers for the purpose of sub-paragraph (1)(b)(iii) each mobile home is to be taken to have only one occupier and, in the event of there being more than one occupier of a mobile home, its occupier is to be taken to be the occupier whose name first appears on the agreement.

(3) In a case where the pitch fee has not been previously reviewed, references in this paragraph to the last review date are to be read as references to the date when the agreement commenced.

19 (1) When determining the amount of the new pitch fee, any costs incurred by the owner in connection with expanding the protected site shall not be taken into account.

(2) In the case of a protected site in England, when determining the amount of the new pitch fee, no regard may be had to any costs incurred by the owner in relation to the conduct of proceedings under this Act or the agreement.

(3) In the case of a protected site in England, when determining the amount of the new pitch fee, no regard may be had to any fee required to be paid by the owner by virtue of –

(a) section 8(1B) of the Caravan Sites and Control of Development Act 1960 (fee for application for site licence conditions to be altered);

(b) section 10(1A) of that Act (fee for application for consent to transfer site licence).

(4) In the case of a protected site in England, when determining the amount of the new pitch fee, no regard may be had to any costs incurred by the owner in connection with –

(a) any action taken by a local authority under sections 9A – 9I of the Caravan Sites and Control of Development Act 1960 (breach of licence condition, emergency action etc); 19

(b) the owner being convicted of an offence under section 9B of that Act (failure to comply with compliance notice).

20(A1) In the case of a protected site in England, unless this would be unreasonable having regard to paragraph 18(1), there is a presumption that the pitch fee shall increase or decrease by no more than any percentage increase or decrease in the retail prices index calculated by reference only to –

- (a) the latest index, and
- (b) the index published for the month which was 12 months before that to which the latest index relates.

(A2) In sub-paragraph (A1), “the latest index” –

- (a) in a case where the owner serves a notice under paragraph 17(2), means the last index published before the day on which that notice is served;
- (b) in a case where the owner serves a notice under paragraph 17(6), means the last index published before the day by which the owner was required to serve a notice under paragraph 17(2).”

(1) [Wales]

(2) Paragraph 18(3) above applies for the purposes of this paragraph as it applies for the purposes of paragraph 18.