FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**BIR/44UE/PHI/2023/0016-20**
Properties	**:**	**4, 5, 6, 15, 16, 24 Long Cast Park, Barton Road, Welford-on-Avon, Warwickshire CV37 8HF**
Applicant	**:**	**Henry Morrison**
Representative	**:**	**Mr M Mullin (counsel), instructed by Tozers, Solicitors**
Respondents	**:**	**(1) Mr & Ms D Walters** **(2) Mrs M Asquith** **(3) Mr and Mrs G Goudie** **(4) Mr & Mrs D Ady** **(5) Mr & Mrs R Parr** **(6) Mr & Mrs D James**
Representative	**:**	**None**
Type of application	**:**	**Application by site owner for determination of new level of pitch fee**
Tribunal members	**:**	**Judge C Goodall** **Mr D Satchwell FRICS**
Date and place of hearing	**:**	**16 November 2023 at Centre City Tower, Birmingham**
Date of decision	**:**	**22 November 2023**

DECISION

Summary

The Tribunal determines that the new pitch fees for all Respondents except Mrs Asquith are £219.54 per month from 1 January 2023. The new pitch fee for Mrs Asquith is £415.95 per quarter as from 14 February 2023.

Background

1. Mr Morrison ("the Applicant") is the owner of Long Cast Park Home Park in Warwickshire ("the Site"). The Respondents are occupiers of six of the twenty six pitches on the Site. Mr & Ms D Walters occupy pitch 4, Mrs M Asquith pitch 5, Mr and Mrs G Goudie pitch 6, Mr & Mrs D Ady pitch 15, Mr & Mrs R Parr pitch 16, and Mr & Mrs D James pitch 24.

2. On 18 November 2022, the Applicant served notices ("the Notices") on the Respondents (except for Mrs Asquith) increasing their pitch fees from £192.24 per month to £219.54 per month. Mrs Asquith was served with her notice of increase on 6 January 2023. Her notice increased the pitch fee from £365.25 per quarter to £415.95 per quarter.

3. The notices of increase informed the Respondents (except for Mrs Asquith) that the increase came about through the application of an inflation uplift based on the increase in the Retail Prices index published for October 2022, which was 14.2%. For Mrs Asquith, the basis of the increase was the same, but the index applied for her was based on the RPI figure for November 2022, which was 14%. The increases were all to take effect on 1 January 2023, except for Mrs Asquith, whose increase would come into effect from 14 February 2023.

4. None of the Respondents agreed the new pitch fees, and so the Applicant made separate applications to the Tribunal for us to determine the new pitch fee, as he is obliged to do if he wishes to impose the pitch fee increases.

5. In accordance with Directions, all Respondents submitted written statements explaining their objections to the pitch fee increase. They requested a hearing, which took place at Centre City Tower, the hearing venue for the Midland Region of the Property Tribunal, on 16 November 2023, which was preceded by an inspection earlier that day.

6. This is the decision of the Tribunal on the applications to determine the pitch fees for all the Respondents. It is issued as one consolidated decision even though the applications were made individually, as all the cases were considered together at the hearing.

Law

7. The Mobile Homes Act 1983 (as amended) ("the Act") provides in section 2(1) that terms are implied into every agreement for the renting of a pitch

on a protected site, being the terms as set out in Part 1 of Schedule 1 of that Act ("the Implied Terms").

8. Paragraphs 16 to 20 and paragraph 25A of Part 1 of Schedule 1 to the Act provide a regime that governs pitch fee increases. The wording of those paragraphs is set out in the Appendix to this decision.

9. The key components of that regime, as they apply to this case are:

    a. The pitch fee can only be increased once a year;

    b. A site owner initiates a pitch fee increase by serving a notice that must be in a specific form, giving details (amongst other things) of the pitch to which the increase relates, the current pitch fee and the proposed new pitch fee, showing how it has been calculated;

    c. If the pitch occupiers do not agree to the proposed increase, it does not take effect unless the site owner applies to this tribunal to determine the new pitch fee;

    d. The tribunal must agree that it is reasonable for the pitch fee to be changed, and must determine the amount of the new pitch fee;

    e. There is a presumption that, unless it would be unreasonable, the new pitch fee shall increase by the increase in the retail prices index published by the Government. For pitch fee increases proposed after 2 July 2023, the consumer prices index must be used instead.

    f. There are factors to which a tribunal must have particular regard when determining a new pitch fee, which are contained in paragraph 18 of the Implied Terms. Paragraph 19 contains a list of matters which should not be taken into account. The most significant factors mentioned which might be applicable to this case in the light of the Respondents arguments are:

        i. Deterioration in the condition of the site;

        ii. Reduction in the services provided or a reduction in their quality;

10. The Tribunal is not restricted to consideration only of the matters to which it must have "particular regard" under Implied Term paragraph 18. It is possible for another factor to apply which could displace the presumption. But any such 'other factor' has to be one to which considerable weight should attach. A factor that is of equal weight to the presumption would not be adequate. Reasonableness has to be determined in the context of the statutory provisions relating to pitch fee increases. But the starting point for any pitch fee review is the presumption in favour of an annual increase by RPI (or CPI from 2 July 2023). An inflation increase will therefore normally be justified, unless displaced by a paragraph 18 factor, or there is some other weighty factor that affects the reasonableness of the proposed increase (see *Britaniacrest Ltd v Bamborough* [2016] UKUT

0144 (LC), *Vyse v Wyldecrest Parks (Management) Limited* [2017] UKUT 0024 (LC), and *Wyldecrest Parks (Management) Limited v Kenyon* [2017] UKUT 0028 (LC)).

Inspection

11. The Site is accessed off Barton Road to a car parking area at the front. The pitches are then located on either side of a pedestrian path. The path leads to the rear of the site where there is a second car park. There is a driveway to the second car park running along the back of the pitches on the east side of the Site.

12. Although not present at our inspection, we were told that until recently a large calor gas tank had been positioned in the second car park. It was suggested this had been a health and safety hazard.

13. There is some Site lighting located on pedestals of around 1m height. The pedestrian path is not especially wide and less than 1m in some parts. Some Respondents had claimed it was not wide enough for a wheelchair, but we did not measure the precise width. The path is mainly constructed of concrete with stone edging. At some points there was evidence that the concrete had been repaired, and some evidence of the beginnings of deterioration such that a further repair might be necessary sooner rather than later.

14. We were asked to view electricity meter cupboards. We inspected two cupboards, in the gardens of pitches 19 and 26. The meter for pitch 6 is in the cupboard on pitch 19.

15. There is a notice board located in each car park, but we were asked to note that it was not illuminated, nor did it have a site plan, which was said to be a health and safety issue as emergency vehicles attending the Site would not know where the specific pitches were located.

The Applicant's case

16. Mr Mullin submitted that by virtue of paragraph 20(A1) of the Implied Terms (see paragraph 8 above), the Applicant was entitled to the benefit of the presumption in favour of an increase in the pitch fee for inflation, measured by the increase in RPI. The last RPI index published before the day on which that notice was 14.2% for the notices served on 18 November 2022, and was 14% for the notice served on 6 January 2023.

17. In Mr Mullins' submission, none of the factors raised by the Respondents crossed the threshold to rebut, or displace, the presumption that RPI should be used. He pointed out that there had been very few changes on the Site in recent years.

18. No oral evidence was adduced, but in his written submission, the Applicant had provided a Statement signed under a Statement of Truth containing his evidence concerning the electricity meter for pitch 5. He confirmed that he was aware that Mrs Asquith had delivered a report from

her electricity supplier, British Gas, to him on 27 January 2023. He had not kept it because it was not accompanied by any explanation as to what he was meant to do with it. He was then aware that Mrs Asquith had delivered a handwritten note to him on 4 February 2023 alleging that the report had been headed "Notice of Potentially Dangerous Situation", as a result of which Mrs Asquith was unable to have a smart meter fitted.

19. The Applicant had responded to Mrs Asquith by email on 6 February 2023 saying:

"Following a complaint you made around 20 years ago to Mr Maples the former MP for Stratford on Avon, I addressed via him the issue of your electric meter maintenance, my position has not changed."

20. The Applicant also exhibited to his statement an Electrical Condition Inspection Report dated June 2021 confirming that the electrical installation at the Site was satisfactory and advising that a further report would be advised within 5 years. The statement also confirmed that the Applicant had arranged for his electrician to inspect Mrs Asquith's electrical system again in readiness for this case. He had reported that it is indeed the case that the neutral conductor for Mrs Asquith's supply is looped with pitch 1's supply on the supply side of the meter, i.e. on the side that the Distribution Network Operator ("DNO") is responsible for. His contractor said the DNO is National Grid. Despite the looping of the neutral conductor, the electrician had advised that the installation was safe and had been in situ for in excess of 20 years.

21. In a further exchange of emails, the Applicant's electrician stated that he thought the looping had probably been carried out by the DNO around 20 years ago when the mobile home on pitch 1 had been replaced.

The Respondents' cases

22. Most Respondents objected to the increase on the simple basis that it was too high, and certainly higher than their increases in income in 2022/23. They preferred the use of the consumer prices index over the retail prices index. They were upset by the Applicant's failure to negotiate over the increase. If it was legal to increase the pitch fees by RPI, it was certainly not considered by the Respondents to be moral.

23. A number of issues were raised concerning the condition of the Site, which the Tribunal was asked to take into account when considering the reasonableness of the increase, being:

    a. The condition of the pedestrian pathway, which was deteriorating;

    b. The width of the pathway, as it was not wide enough for wheelchairs;

    c. The absence of adequate signage for the Site;

    d. Limited external lighting;

e. Calor Gas tank located in the second car park until recently;

f. Inadequate provision of car parking spaces;

g. Incorrect electrical wiring to the electricity meters, which had shared looped earth connections preventing the pitch owners from having smart meters fitted;

24. It is appropriate to provide greater detail about the issue in paragraph 22e. This issue had been raised by Mrs Asquith. Her complaint was that when endeavouring to arrange to have a smart meter fitted for her electrical installation, British Gas, her electricity supplier had inspected her meter and had advised that it was potentially dangerous. She had informed the Applicant by delivering the report to him, but unfortunately did not have a copy of the report containing this advice.

25. In her oral evidence, she told the Tribunal that she had arranged for the local DNO, who she understood to be Northern Power, to inspect the electrical system in the early summer of 2023. They had advised that it was "a mess", but no-one was permitted to make changes except them. She said they emailed her to confirm that they would tidy it up, but they required the site owners consent. She had informed the Applicant, but she had not heard anything since. Her case was that no pitch fee increase should be allowed because of lack of maintenance of the electrical system.

Discussion

26. Our decision has to be against the background that parliament has determined the contractual terms that apply to mobile home pitch fee increases and we are not free to depart from those terms.

27. The Implied Terms allow a site owner to increase the pitch fee by RPI unless the Tribunal considers that to be unreasonable. When considering unreasonableness, we must work on the presumption that an RPI increase should be allowed unless it is unreasonable having regard to the factors in paragraph 18(1) (though not entirely limited to those factors if there is another weighty factor).

28. We will consider each of the factors brought to our attention by the Respondents:

a. We cannot take into account the proposition that the increase was higher than any increase in income for the Respondents, or that it is not moral to increase the pitch fee so much. The Implied Terms provide no scope for refusing to allow a pitch fee increase on that basis;

b. Deterioration in the pathway could fall within paragraph 18(1) of the Implied Terms. However, in our view, any deterioration in the quality of the surface of the footpath was almost undetectable at this stage, and there was evidence that repairs to the path were undertaken

when they were required. In our view, this factor could not displace the presumption;

c. We are unable to accept that the width of the pathway is a factor that we can take into account. The essence of the paragraph 18(1) factors is that there must be some form of deterioration in the condition of the Site or reduction in the services or the quality of them. If matters have remained as they have been since the coming into force of the Implied Terms (in 2014), paragraph 18(1) will not bite to displace the presumption;

d. The concerns over signage, lighting, and car parking spaces fall into the same category as the width of the pathway. In the absence of evidence that there has been an adverse change since 2014, we cannot take these factors into account;

e. We do not agree that the stationing of a calor gas tank in the rear car park can be a factor that displaces the presumption in favour of an RPI pitch fee increase. We would have required evidence that the placement of the tank was so serious a breach of health and safety regulations that its mere presence exposed the Respondents to substantial risk of danger. We had no evidence that the placement of the tank was a breach of any health and safety regulations. And it has been removed now;

f. Our view is that none of the factors raised by the Respondents in paragraph 23 (a) to (f) above can displace the presumption in favour of an RPI pitch fee increase.

29. We have examined Mrs Asquith's concerns about the electrical system carefully, as if it is or has become dangerous, that may certainly be a deterioration that we should consider when setting the new pitch fees. However, the evidence was simply insufficient to displace the presumption. We are quite willing to accept the evidence that in early 2023 Mrs Asquith was told by her electricity supplier that there some concern about the electrical system, and the word "dangerous" was used in a document provided by her supplier. It is a shame she did not keep a copy of the notice she received, as it may have provided a clue of the nature of that concern.

30. But the Applicant's evidence in response is adequate to prevent the Tribunal from making any finding to the effect that such a danger actually existed (rather than that Mrs Asquith was told there was a danger). The Applicant was able to provide a valid and in date EICR and evidence that the installation was checked by his electrician and found to be satisfactory when he became aware of Mrs Asquith's report. And we have no evidence of exactly what aspect of the electrical system British Gas considered to be dangerous. We cannot therefore make any finding of deterioration in the condition of the electrical system as the evidence on which to base such a

finding is not present. This cannot therefore be a factor when considering the reasonableness of the pitch fee increase.

Decision

31. There is no factor which can displace the presumption in paragraph 20(A1) of the Implied Terms to the effect that the pitch fee increases sought by the Applicant as set out in the Notices should be allowed at the rate of RPI.

32. We therefore determine that the increases are as set out in the Notices, namely an increase for all Respondents except Mrs Asquith to £219.54 per month, and an increase for Mrs Asquith to £415.95 per quarter.

Appeal

33. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Judge C Goodall
First-tier Tribunal (Property Chamber)

APPENDIX

Paragraphs 16 – 20 and paragraph 25A 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) At least 28 clear days before the review date the owner shall serve on the occupier a written notice setting out his proposals in respect of the new pitch fee.

(2A) A notice under sub-paragraph (2) which proposes an increase in the pitch fee is of no effect unless it is accompanied by a document which complies with paragraph 25A.

(3) If the occupier agrees to the proposed new pitch fee, it shall be payable as from the review date.

(4) If the occupier does not agree to the proposed new pitch fee—

(a) the owner or in the case of a protected site in England, the occupier may apply to the appropriate judicial body for an order under paragraph 16(b) determining the amount of the new pitch fee;

(b) the occupier shall continue to pay the current pitch fee to the owner until such time as the new pitch fee is agreed by the occupier or an order determining the amount of the new pitch fee is made by the appropriate judicial body under paragraph 16(b); and

(c) the new pitch fee shall be payable as from the review date but the occupier shall not be treated as being in arrears until the 28th day after the date on which the new pitch fee is agreed or, as the case may be, the 28th day after the date of the appropriate judicial body order determining the amount of the new pitch fee.

(5) An application under sub-paragraph (4)(a) may be made at any time after the end of the period of 28 days beginning with the review date but in the case of a protected site in England no later than three months after the review date.

(6) Sub-paragraphs (7) to (10) apply if the owner—

(a)has not served the notice required by sub-paragraph (2) by the time by which it was required to be served, but

(b)at any time thereafter serves on the occupier a written notice setting out his proposals in respect of a new pitch fee.

(6A) A notice under sub-paragraph (6)(b) which proposes an increase in the pitch fee is of no effect unless it is accompanied by a document which complies with paragraph 25A.

(7) If (at any time) the occupier agrees to the proposed pitch fee, it shall be payable as from the 28th day after the date on which the owner serves the notice under sub-paragraph (6)(b).

(8) If the occupier has not agreed to the proposed pitch fee—

(a) the owner or in the case of a protected site in England the occupier may apply to the appropriate judicial body for an order under paragraph 16(b) determining the amount of the new pitch fee;

(b) the occupier shall continue to pay the current pitch fee to the owner until such time as the new pitch fee is agreed by the occupier or an order determining the amount of the new pitch fee is made by the appropriate judicial body under paragraph 16(b); and

(c) if the appropriate judicial body makes such an order, the new pitch fee shall be payable as from the 28th day after the date on which the owner serves the notice under sub-paragraph (6)(b).

(9) An application under sub-paragraph (8) may be made at any time after the end of the period of 56 days beginning with date on which the owner serves the notice under sub-paragraph (6)(b) **[**F44but F45... no later than four months after the date on which the owner serves that notice**]**.

(9A) A tribunal may permit an application under sub-paragraph (4)(a) or (8)(a) in relation to a protected site in England to be made to it outside the time limit specified in sub-paragraph (5) (in the case of an application under sub-paragraph (4)(a)) or in sub-paragraph (9) (in the case of an application under sub-paragraph (8)(a)) if it is satisfied that, in all the circumstances, there are good reasons for the failure to apply within the applicable time limit and for any delay since then in applying for permission to make the application out of time.

(10) The occupier shall not be treated as being in arrears—

(a)where sub-paragraph (7) applies, until the 28th day after the date on which the new pitch fee is agreed; or

(b)where sub-paragraph (8)(b) applies, until the 28th day after the date on which the new pitch fee is agreed or, as the case may be, the 28th day after the date of the appropriate judicial body order determining the amount of the new pitch fee.

(11) Sub-paragraph (12) applies if a tribunal, on the application of the occupier of a pitch in England, is satisfied that—

(a) a notice under sub-paragraph (2) or (6)(b) was of no effect as a result of sub-paragraph (2A) or (6A), but

(b) the occupier nonetheless paid the owner the pitch fee proposed in the notice.

(12) The tribunal may order the owner to pay the occupier, within the period of 21 days beginning with the date of the order, the difference between—

(a) the amount which the occupier was required to pay the owner for the period in question, and

(b)the amount which the occupier has paid the owner for that period.

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 sub-paragraph);

(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 sub-paragraph);

(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);

(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.

...

25A

(1) The document referred to in paragraph 17(2A) and (6A) must—

(a) be in such form as the Secretary of State may by regulations prescribe,

(b) specify any percentage increase or decrease in the retail prices index* calculated in accordance with paragraph 20(A1),

(c) explain the effect of paragraph 17,

(d) specify the matters to which the amount proposed for the new pitch fee is attributable,

(e) refer to the occupier's obligations in paragraph 21(c) to (e) and the owner's obligations in paragraph 22(c) and (d), and

(f)r efer to the owner's obligations in paragraph 22(e) and (f) (as glossed by paragraphs 24 and 25).

(2) Regulations under this paragraph must be made by statutory instrument.

(3) The first regulations to be made under this paragraph are subject to annulment in pursuance of a resolution of either House of Parliament.

(4) But regulations made under any other provision of this Act which are subject to annulment in pursuance of a resolution of either House of Parliament may also contain regulations made under this paragraph.

* From 2 July 2023, the applicable index is changed to the Consumer Prices Index by virtue of the Mobile Homes (Pitch Fees) Act 2023, for notices served on or after that date