



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

**Case Reference** : CHI/45UB/PHI/2023/0166

**Property** : 36 Cauldron Barn Farm, Cauldron Barn  
Farm Park, Cauldron Barn Road, Swanage  
BH19 1QQ

**Applicant** : The Berkeley Leisure Group Limited

**Representative** :

**Respondents** : Mr M Hampton & Mrs D M Hampton

**Representative** :

**Type of Application** : Review of Pitch Fee: Mobile Homes Act  
1983 (as amended)

**Tribunal Members** : Judge D Whitney  
Paul Smith FRICS  
Ms J Dalal

**Date of Hearing** : 21<sup>st</sup> September 2023

**Date of Decision** : 21<sup>st</sup> November 2023

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**DECISION**

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## **Summary of Decision**

- 1. The Tribunal determines that the reasonable pitch fee for 36 Cauldron Barn Farm, Cauldron Barn Farm Park, Cauldron Barn Road, Swanage BH19 1QQ is £244.22 with effect from 1<sup>st</sup> January 2023.**

## **Background and procedural history**

2. On 9<sup>th</sup> March 2023, the Applicant site owner applied for a determination of a revised pitch fee payable by the Respondents with effect from 1 January 2023 in respect of 36 Cauldron Barn Farm, Cauldron Barn Farm Park, Cauldron Barn Road, Swanage, BH19 1QQ (“the Pitch”).
3. Cauldron Barn Farm Park (“the Park”) is a protected site within the meaning of the Mobile Homes Act 1983 (“the 1983 Act”). The definition of a protected site in Part 1 of the Caravan Sites Act 1968 includes a site where a licence would be required under the Caravan Sites and Control of Development Act 1960 if the exemption of local authority sites were omitted. The licence is dated 24<sup>th</sup> March 2017 [12-29].
4. The Respondents are entitled to station their park home on the Pitch by virtue of an agreement under the 1983 Act entered into on 18<sup>th</sup> April 2018 [151-184] [19-45], which includes the statutory implied terms referred to below.
5. A Pitch Fee Review Notice with the prescribed form proposing the new pitch fee was served on the occupiers dated 17<sup>th</sup> November 2022 [117-125], proposing to increase the pitch fee by an amount which the Applicant says represents an adjustment in line with the Retail Prices Index (“RPI”).
6. The Respondents did not agree to the increase.
7. On 3<sup>rd</sup> July 2023, the Tribunal issued Directions. The Respondents objected. The Respondents provided a detailed response and requested that the matter be determined at a hearing. By way of further directions dated 31<sup>st</sup> August 2023 the matter was listed for hearing remotely by video.
8. A bundle was prepared incorporating this case and various other applications made by the Applicant. Page numbers in [ ] are to pages within that master bundle.
9. Whilst the Tribunal makes it clear that it has read the bundle, the Tribunal does not refer to all of the documents in detail in this Decision, it being impractical and unnecessary to do so. The Tribunal has however taken account of all information submitted by the parties.

## **The relevant Law and the Tribunal's jurisdiction**

10. One of the important objectives of the 1983 Act was to standardise and regulate the terms on which mobile homes are occupied on protected sites.
11. All agreements to which the 1983 Act applies incorporate standard terms which are implied by the Statute, the main way of achieving that standardisation and regulation. In the case of protected sites in England the statutory implied terms are those in Chapter 2 of Part 1 of Schedule 1 to the 1983 Act.
12. The principles governing a pitch fee increase are provided for in paragraphs 16 to 20 inclusive. The procedure is provided for in paragraph 17, which also makes reference to paragraph 25A.
13. A review is annual on the review date. In respect of the procedure, paragraph 17(2) requires the Owner to serve a written notice ("the Pitch Review Notice") setting out their proposals in respect of the new pitch fee at least 28 days before the review date. Paragraph 17(2A) of the 1983 Act states that a notice under sub-paragraph (2) is of no effect unless accompanied by a document which complies with paragraph 25A. Paragraph 25A enabled regulations setting out what the document accompanying the notice must provide. The Mobile Homes (Pitch Fees) (Prescribed Forms) (England) Regulations 2013 ("The Regulations") did so, more specifically in regulation 2.
14. The Mobile Homes Act 2013 ("the 2013 Act") which came into force on 26 May 2013 strengthened the regime. Section 11 introduced a requirement for a site owner to provide a Pitch Review Form in a prescribed form to the occupiers of mobile homes with the Pitch Review Notice. The provisions were introduced following the Government's response to the consultation on "A Better Deal for Mobile Homes" undertaken by Department of Communities and Local Government in October 2012. The 2013 Act made a number of other changes to the 1983 Act.
15. In terms of a change to the pitch fee, paragraph 16 of Chapter 2 provides that the pitch fee can only be changed (a) with the agreement of the occupier of the pitch 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.”
16. Consequently, if the increase in the pitch fee is agreed to by the occupier of the pitch, that is the end of the matter. There is nothing for the Tribunal to determine and hence the Tribunal has no jurisdiction. If the occupier does not agree, the pitch fee can only be changed (increased or decreased) if and to the extent that the Tribunal so determines.

17. The owner may then apply to the Tribunal for an order determining the amount of the new pitch fee (paragraph 17. (4)).
18. The Tribunal is required to then determine whether any increase in pitch fee is reasonable and to determine what pitch fee, including the proposed change in pitch fees or other appropriate change, is appropriate. The original pitch fee agreed for the pitch was solely a matter between the contracting parties and that any change to the fee being considered by the Tribunal is a change from that or a subsequent level. The Tribunal does not consider the reasonableness of that agreed pitch fee or of the subsequent fee currently payable at the time of determining the level of a new fee.
19. The Tribunal is required to have regard to paragraphs 18, 19 and 20 of Part 1 of Schedule 1 of the 1983 Act when determining a new pitch fee. The implementation of those provisions was the first time that matters which could or could not be taken into account were specified.
20. Paragraph 18 provides that:

“18(1) When determining the amount of the pitch fee particular regard shall be had to-

- (a) any sums expended by the owner since the last review date on improvements .....
- (aa) and deterioration in the condition, and any decrease in the amenity, of the site .....
- (ab) any reduction in the services that the owner supplies to the site, pitch or mobile home and any deterioration in the quality of those services since the date on which this paragraph came into force (insofar as regard has not previously been had to that reduction or deterioration for the purposes of this sub- paragraph.

.....”

21. Necessarily, any such matters need to be demonstrated specifically. As amended by the 2013 Act, the paragraph and paragraph 19 set out other matters to which no regard shall be had or otherwise which will not be taken account of.
22. Paragraph 20A(1) introduced a presumption that the pitch fee shall not change by a percentage which is more than any percentage increase or decrease in the RPI since the last review date, at least unless that would be unreasonable having regard to matters set out in paragraph 18(1) (so improvements and deteriorations/ reductions). The provision says the following:

“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 not more than any percentage increase or decrease in the retail price index calculated by reference only to-

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

23. The strong presumption of an increase or decrease in line with RPI is an important consideration. However, the Tribunal shall take account of such other factors as it considers appropriate and give such weight to those factors as it considers appropriate, it being a matter of the Tribunal's judgment and expertise, in the context of the statutory scheme, to determine the appropriate weight to be given. There is no limit to the factors to which the Tribunal may have regard.
24. The pitch fee, will be the amount that the Tribunal determines taking account of any relevant matters, including any appropriate change determined from the current pitch fee at the time. That may still be the amount sought to be charged by the site owner or may be a different amount.

### **The Hearing**

25. The application was heard on 21<sup>st</sup> September 2023 at Havant Justice Centre. The Tribunal and the Respondents attended in person: the Applicant's representative and witness appeared remotely.
26. The Applicant was represented by Mr Drew, director. The Respondents were represented by Mr Hampton.
27. The Tribunal received oral submissions and evidence from Mr Hampton first and subsequently Mr Drew. Each was questioned by the Tribunal and the other party.
28. The Tribunal did not inspect the Pitch or the Park more generally. Both parties included numerous photographs of the site which were contained within the bundle and the Tribunal was satisfied an inspection was not required.
29. At the conclusion both parties confirmed they had made all representations they wished to rely upon

### **Consideration and Determination**

30. The Tribunal thanks both parties for their careful and considered submissions.
31. As we explained at the hearing we are only determining matters in relation to the Pitch Fee Increase. Matters relating to water charges and the like were outside our jurisdiction in respect of this application.
32. We will deal with each area of challenge raised by Mr Hampton in turn.

Validity of the notice

33. Mr Hampton suggested the notice was invalid. He suggested the address given on the notice was not the correct postal address. He suggested that the address is not “Cauldron Barn Farm” but “Cauldron Barn Park Farm”.
34. We find that Mr Hampton accepts the notice was received. Further he seems to have always understood this related to the Pitch his home occupied. We have taken account of the Licence [12] which refers to the address of the site as “Cauldron Barn Farm”. We find the address used is accurate and that even if any error this does not invalidate the notice.
35. Mr Hampton also challenged the calculation. In his submission the calculation of deductions and recoverable costs was not correct (see [117 and 118]). Mr Hampton suggests it was only upon receipt of a letter from the Applicant dated 7<sup>th</sup> December 2022 [128-130] that it was clear what was being proposed.
36. It appears that in previous years the costs of licensing had been included. The Applicant proposed to deduct these sums and then add back in the actual cost of the licence fee after the calculation of the RPI increase. The Applicant said this was done as the number of homes on the site was changing and so this may in the future benefit the Respondent as their share of the licence fee would be less.
37. We were satisfied that the notice explained the method of calculation. We do not however accept the calculation was correct. We accept the Applicant may seek to recover the licence fee but we are not satisfied that their methodology is correct. Having added in the licence fee in our judgment unless they are suggesting there is a significant change then no deduction or addition for this can be made. The Applicant did not seek to include any additional deduction or addition.
38. We find that the notice was not invalid for this reason as we are satisfied that the Notice set out the calculation adopted. Simply because we do not agree the calculation does not in our judgment invalidate the notice.
39. Mr Hampton suggested that the proposed percentage increase adopted was incorrect. He suggested that the percentage to be applied was the difference between the percentage applied last year and the percentage now.
40. We do not accept this argument. RPI is a numerical figure and for which the Office of National Statistics provides a table of the percentage by which this has changed since the proceeding year. A copy of the table adopted is at [129]. This shows that the last published percentage change of the Index for October 2022 was 14.2%. We find that this is the correct RPI increase figure to be used as the rebuttable presumption for a pitch fee increase.

Amenity of site

41. Mr Hampton suggested that there was a reduction in the amenity of the site. He raised various grounds of challenge and we will address each in turn.
42. The Respondent suggested that the land to the West of the developed site referred to as “the meadow” had become a dumping ground and was not properly maintained. Various photographs were within the bundle such as those at [101-103].
43. Mr Drew accepted that spoil had been placed on this area. He explained the Applicant had wished to develop but could not do so. This area he suggested was not within the site licence area. He explained the area had been left as a haven for wildlife and the area was surrounded by fields. He did not accept there was a reduction in amenity.
44. We accept that the Respondent preferred the land to be actively managed and maintained including mowing of the same. However we accept that many people today would consider leaving such land as a wild meadow to be an appropriate use of such land which was not subject to development. Overall we were not persuaded that there was a loss of amenity.
45. Mr Hampton referred to what he said was a reduction in amenity for the site due to a reduction in the standards of maintenance within the developed areas. He gave various examples including the use of leaf blowers to simply blow grass cuttings and cut vegetation around the site without collecting the same, insufficient weeding of block paved parking areas and ruts to roadways caused by excavation works to the roadways. Various photographs were within the bundle for example [104-107].
46. Mr Drew denied any reduction in amenity and suggested various works had been undertaken including resurfacing of the entranceway to the park. He explained the whole site was not resurfaced as it was not considered necessary.
47. We considered carefully all of the evidence. Certainly we agree with Mr Hampton that operatives should not simply blow grass cuttings around but should collect these and dispose of the same. Having considered all of the evidence and the photographs within the bundle we were satisfied that this was a well maintained site. Generally the photographs produced showed that works of maintenance clearly were being taken place and we were not satisfied that there was any significant reduction in the amenity so as to amount to a weighty factor account of which we should take to reduce an increase.
48. Mr Hampton also raised concerns that other residents on the site were failing to comply with the site rules in respect of the keeping of dogs. Mr Hampton suggested that persons were walking dogs on leads longer than those allowed within the site rules and dogs were being allowed to foul the park. Photographs of dogs fouling were included. He accepted that the Applicant had erected signs reminding people that they should not allow

their dogs to foul the communal areas and letters had been written to all residents. In his view more action should be taken.

49. Mr Drew explained the Applicant had tried to deal with the dog fouling when brought to their attention. Signs had been erected and general letters reminding residents had been sent.
50. We have sympathy with the Respondent as was expressed at the hearing. He explained how some residents use the grassed areas immediately outside his home to toilet their dogs. Such behaviour is not acceptable. We were satisfied that the Applicants response to such incidents being brought to their attention was proportionate and appropriate. They had erected signage and reminded all residents of the site rules. Evidence of this was within the bundle (see for example letter 11<sup>th</sup> May 2022 [138]).
51. We find on balance of probabilities that there is no reduction in the amenity of the site on this basis.
52. Overall we were not satisfied that any of the matters raised by the Respondents rebutted the presumption that the Applicant could seek an increase of the pitch fee by the increase in RPI. We do however find that the deductions and additions proposed by the Applicant are not appropriate. We determine the pitch fee should be:

Previous pitch fee	X	RPI Increase
£213.85		14.2

= £30.37 increase

New pitch fee payable from 1<sup>st</sup> January 2023: £244.22



## **Right to Appeal**

1. A person wishing to appeal this decision to the Upper Chamber must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision. Where possible you should send your further application for permission to appeal by email to [rpsouthern@justice.gov.uk](mailto:rpsouthern@justice.gov.uk) as this will enable the First-tier Tribunal to deal with it more efficiently.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.