



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

Case reference : CAM/22UH/PHI/2023/0022/0020/0025/0024
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CAM/22UH/PHI/2023/0002/0004/0021/53/0
001

Property : Woodbine Close Park Waltham Abbey EN9
3RH

Applicant/Respondent : Sines Park (SE) Limited

Representative : Ms Victoria Osler

Respondent/Applicant : Mr D Dowell 15 The Rowans
Miss S Smith 13 The Rowans
Mrs C Downes-Grainger 19 The Rowans
Mrs J Trice 23 The Sycamores

Representative : Mrs Grainger

Type of application : Mobile Homes Act 1983 Determination of pitch
fee

Tribunal members : Mrs E Flint FRICS
Mr J Francis QPM

Date and Venue of hearing : 18 September 2023
Marriott Waltham Abbey Old Shire Lane
Waltham Abbey EN9 3LX

Date of decision : 13 October 2023

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the pitch fees for 2023 should be increased by 10%.

The application

1. The applications were made by Mr Dowell, Miss Smith, Mrs Downes-Grainger and Mrs Trice, four of the occupiers of a mobile home site who occupy their respective mobile homes under written agreements to which the Mobile Homes Act 1983 apply. The owner of the site, Sines Park (SE) Limited (“Sines”) made cross appeals.

The hearing

2. Sines was represented by Victoria Osler of counsel at the hearing who called Ms Michelle Saunders, the site manager and Ms Maria Dupree, a financial controller, to give evidence. The occupiers appeared in person, Mrs Grainger was the lead spokesperson.

The background

3. The tribunal inspected the property on 26 June 2023 in the presence of Mr Dowell, Mrs Downes-Grainger, Ms Michelle Saunders (site manager) and Miss Kirsty Apps (Sines legal adviser). Photographs of the site were provided in the hearing bundle.
4. The mobile home park which is situated on a hilly parcel of land on the outskirts of Waltham Abbey comprises 211 pitches, a manager’s office and a former clubhouse, parking spaces for residents and visitors are available either on the individual pitches or within the confines of the park. There was a one- way system for vehicles within the park. Those areas which were block paved were in good condition however there were areas along the sides of the tarmac roads in poor condition.
5. Adjacent to the park is an area of open land which abuts part of Epping Forest which has been used by Sines for the storage of various building materials for up to 18 months a time. Sines also store building materials on several car parking spaces adjacent to the exit road, near the former clubhouse. The clubhouse itself, which is let by Sines to a third party, is open to the public. The opening hours are: 2pm – 8pm Thursday and Sunday and 2pm-9pm Friday and Saturday.
6. Sines served notices of increase on the occupiers dated 21 October proposing increases in the pitch fee with effect from 1 January 2023 based on the annual increase in the RPI for September 2022. Subsequently on 27 January 2023 Sines served further notices of increase with effect from 1 March 2023 based on the October RPI accompanied by a letter stating that the previous notices had been based on the wrong RPI.
7. The four occupiers challenged the first notices, Mr Dowell and Mrs Downes-Grainger also challenged the second notice. Mr Dowell sought to withdraw his first application which the Tribunal allowed although without notifying Sines of the

application to withdraw in advance. Sines sought to have Mr Dowell's first application re-instated although this was not pursued to any degree at the hearing and the notice remained within the Tribunal's jurisdiction as Sines also had an application regarding the same notice.

The issues

8. At the start of the hearing the parties identified the relevant issues for determination as follows:
9. The validity of the notices
10. The amenity of the park and its effect, if any, on the application of the RPI to the previous pitch fee.
11. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

The validity of the Notices

12. Miss Osler said that both sets of Notices were valid. She confirmed that if the Tribunal found that the first set of notices dated 21 October 2022 were valid the second set dated 27 January 2023 would be of no effect.
13. By paragraph 17, Schedule 1 of the Act the pitch fee shall be reviewed annually as at the review date specified in the written agreement or if no such date is specified, the anniversary of the date the agreement commenced.
14. In support of the validity of the first notices she referred to the RPI used on those notices: the September RPI which was published on 19 October 2022 was, she said the correct index to be used for either a January or December review date. Each of the notices had referred to the review date as being 1 January.
15. Mrs Downes-Grainger and Mrs Trice both occupy under agreements which state that the review date is 1 January. Mr Dowell's agreement specifies 1 December as the review date. However as for a number of years the review has proceeded on 1 January, she asserted that the tribunal should accept that the review date had been varied to 1 January. Furthermore, all the occupiers had accepted revised pitch fees from 1 January for a number of years.
16. Miss Osler invited the Tribunal to find either that the date of the annual review had been varied by agreement or alternatively that the occupiers were estopped from asserting that the review date has not been varied by accepting the review date of 1 January for a number of years.

17. Mrs Grainger on behalf of the occupiers noted that Sines are not entitled to an annual increase but may ask for one. This is the first year that any of the occupiers have challenged the increase.

The tribunal's decision

18. The tribunal determines that the first notices of increase effective from 1 January 2023 were validly served. The Act provides for those circumstances where the notice is served later than the review date in the agreement or anniversary of the commencement of the agreement.

Reasons for the tribunal's decision

19. The tribunal is satisfied that the review date has been varied, where it was not originally 1 January, to 1 January in each year either by agreement or the actions of the residents in accepting this as the correct review date over a number of years.

Amenity of the Park

20. Miss Osler referred to the legal framework regarding the correct approach to calculating the increase in the pitch fee. She referred to the Act and the decision in *Vyse v Wyldecrest Parks (Management) Limited* [2017] UKUT 24 (LC) where it was held that:

(1) The starting point is that there is a presumption that a pitch fee shall not increase or decrease by more than the relevant RPI percentage unless it is unreasonable to do so.

(2) The presumption operates unless it is displaced by other competing matters which renders an increase unreasonable.

(3) Particular regard must be had to matters at para.18(1) of the schedule, but other "weighty matters" may also displace the presumption.

21. The matters referred to in paragraph 18(1) include:

(aa) 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 [26th May 2013] (in so far as regard has not previously been had to that deterioration or decrease for the purposes of this sub-paragraph);

(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 (in so far as regard has not previously been had to that reduction or deterioration for the purposes of this sub-paragraph)

22. Miss Osler also referred to a decision of the First Tier Tribunal in *Sines Parks Holding Limited v Muggeridge & others* CHI/43UB/PHI/2020/0046 where it was held that *In order for there to be a deterioration in the condition or amenity of the site, that would have to mean changes which are long lasting or permanent and affect the fabric of the site, rather than temporary matters...*
23. Miss Osler said that all the matters to which the occupiers have referred are of a transitory nature and therefore do not impact on the amenity of the park. Consequently, there is no reason why the RPI uplift should not be applied. She would rely on the evidence of Ms Saunders regarding the condition and amenity of the site.
24. Ms Saunders referred to the various photographs in the bundle showing the entrance and other parts of the park including areas where materials and rubbish had been stored, albeit temporarily. She worked in the office each morning, Monday to Friday. All residents have both the office and her mobile number should they need to contact her outside of her working hours at the park.
25. There is an onsite maintenance person who looks after the day to day maintenance including cutting the grass, hedges, sweeping the roads and painting the white lines for the car parking spaces. Two other employees assist with larger jobs including replacing fences or assisting with the clearance of existing pitches and construction of new pitches or installation of block paving.
26. She accepted that in 2022 there had been a power outage which affected part of the park for about three days. Apparently, this was following a sudden rush of water underneath the electricity sub-station followed by a loud bang. At the time there had been significant rainfall. Ms Saunders accepted that the downpour had caused the power outage. A specialist electrician was required to carry out the necessary repairs which resulted in a delay between Friday and Monday when the power was reinstated. She worked over the weekend to try and find a suitably qualified person to deal with the problem.
27. Prior to becoming the site manager there had been only one grit bin on the park, there were now four. During December 2022 following heavy snow there was insufficient grit to grit all the roads on the park. It transpired that some residents had taken bags of grit for use on their own pitches. Additional bags of grit were ordered promptly but took several days to arrive.
28. Many of the homes are accessed off cul de sacs. The roads are either block paved or are of tarmac and bitumen. Maintenance of the roads is carried out as required. Ms Saunders did not accept that there were any pot holes, as asserted by the residents. She did accept that there were patches of road where the surface could be better.
29. The sewers are beneath the park infrastructure. Ms Saunders stated that the “drains” referred to by the residents were not in fact drains but areas which had been dug out with a grate over the top which were cleaned out quarterly. The

infrastructure had been in situ for many years, it had not been improved, nor was it worse. She did not accept that there had been flooding issues, refuting Miss Smith's complaint regarding the amount of surface water on her pitch.

30. Ms Saunders explained that there was often rubble and other building materials stored on the park or the land adjacent while pitches were being redeveloped and /or waiting for sufficient waste to fill a skip.
31. She said that the lighting on the park had been improved by the use of LED bulbs.
32. A number of older homes have been removed and new pitches created and landscaped, improving the outlook on the park. Inevitably there is mud on the roads during these works but it is swept away regularly. The storage of building materials is a temporary situation. There had been no complaints that the roads could not be driven on.
33. The team do their best to ensure the park is run smoothly and efficiently.
34. Miss Osler called on Mrs Dupree, a financial controller with Sines, who confirmed that when she took over dealing with the rent reviews she had relied on information from colleagues or on file and understood that the pitch fees for this park were from 1 January based on the previous September RPI. The residents had always paid the increase in the past from 1 January.
35. Following a Tribunal decision, the company had looked at all the documentation. The review dates were not in fact all on 1 January and in some instances, there was incomplete paperwork to confirm the review date. The second notices had been issued because Sines wanted to get the notices right.
36. There had been a lot of confusion regarding the water and sewage charges where the cost for the whole site is divided by the total number of pitches +1 (for the office). However the pitch fees for the actual pitches were higher for the new pitches, Sines is a business and is always looking to maximise its income.
37. Mrs Downes-Grainger represented the residents, the other residents were given an opportunity to add anything they thought had been omitted after Mrs Downes-Grainger's evidence.
38. She referred to Part 4 of the Express Terms of Agreement which requires the owner of the park to maintain the common parts in a good state of repair and condition and at all times provide and maintain the facilities and amenities and services in proper working order.
39. Since making their applications to the Tribunal the residents had noticed that the management were keeping the building materials tidy and that rubble had been removed in a timely manner.
40. She accepted that the site manager attended to the street lights, had some pot holes filled, empty plots taped off and the road swept. However it was not clear that the manager received a sufficiently large budget to ensure that the landlord met in full the owners obligations in relation to the Express Terms. There were some street lights not working.

41. There was a fresh pile of rubble stored across three car parking spaces rather than the waste ground which is helpful if the waste ground is meant to provide a fire break or flood defence area. The majority of rubble has been moved within two months. The waste ground is not such an eyesore as in the previous four years., including the period to which this pitch review relates.
42. Mrs Downes-Grainger said that it felt as if they lived on a building site as the piles of rubble expand and shrink on a regular basis, reducing the amenity of the pleasant park she had moved onto.
43. There had been no improvement to the communal services and amenity to support a RPI increase of 12.6%. An amount higher than the norm.
44. The installation of new homes with dropped kerbs is of no benefit to existing residents. The new larger homes block the views enjoyed since the older homes had been purchased. Pitches are often left partially cleared, new homes part finished with piles of building materials stored on site for a number of months. The increased amount of block paving laid around the new homes and the higher kerbs next to the roads has resulted in more water being channelled onto the roads. This impacts the overall road structure and pitch drainage.
45. The drains may have been in place for many years but these changes in the surface of plots have resulted in the drains becoming inadequate. They require more regular maintenance or enlargement of the soakaways. There is no evidence that these factors have been considered or an increased budget allowing for increased maintenance of the drains.
46. Woodbine Close is a park for the over 50's, the number of people who have accepted the increase is not relevant because the reason why others have not applied to the Tribunal are many. The landlord nor the residents know the reasons. Each case should be decided upon its merits.
47. Mrs Downes-Grainger agreed during cross examination that it was a good idea for the landlord to obtain copies of all the documents relating to the individual pitches. However, she noted that the reviews have always been conducted in an orderly manner. She agreed the number of street lights not working in September was less than at the beginning of the year.
48. Although the potholes are filled in they reappear due to the sloping nature of the site. The pitches originally each had room for a small home plus a parking space for a small car plus a small garden. There are large areas of block paving on the pitches for the new larger homes. The amount of block paving has increased since 2013.
49. Miss Smith told the tribunal that the ongoing situation with the drains had resulted in her pitch being flooded.
49. In closing submissions Miss Osler referred to the Act and case law, reminding the Tribunal that the starting point was a RPI increase unless such an increase would be unreasonable. Transitory matters do not reduce the amenity of the

park. There was evidence that the park had been improved over the years, it had long been the practice to store building materials and rubble at the park. There was no need for the new homes to be of benefit, providing they did not reduce the amenity of the park. The park was well managed and the landlord had not sought to charge for improvement e.g. LED lights.

The tribunal's decision

50. The tribunal determines that the pitch fees should be increased by 10% with effect from 1 January 2023.

Reasons for the tribunal's decision

51. The RPI for September 2022 was unusually high. This high level was to a significant degree due to the large increase in the price of fuel as a consequence of the war in Ukraine. In the past Tribunals have referred to the modest increases in pitch fees due to being tied to the annual increase in RPI. Clearly 12.6% cannot be described as a modest increase.
52. The Tribunal accepts that the various incidents relating to street lights not working, pitches used for part completed homes for long periods and storage of associated building materials and mud on the road are in themselves transitory. However, taken together they produce a picture of a site regularly in flux. This must have an adverse effect on the general amenity of the park.
53. Moreover, the impact of the block paving has affected the efficiency of the drains since the paving has increased the area of non permeable land within the park. Whilst it is accepted that this has been going on for a number of years, the extent of hard surfacing eventually results in a tipping point whereby the existing soakaway drainage is no longer sufficient to cope with heavy rainfall which can no longer be soaked away in the drains plus the original small gardens. We accepted Miss Smith's evidence that her pitch had been flooded. She has lived on the park since 2013: she was able to give evidence that this represents a change in the amenity which is permanent without improvements to the drainage.
54. There was no evidence that this gradual deterioration in the amenity of the park had been reflected in past pitch fees since the evidence before the tribunal was that this was the first time any of the residents had challenged the increase.

Name: E Flint

Date: 13 October 2023

Appendix

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.

16(1) Once reviewed, the pitch fee can only be changed at the relevant date.

(2) For the purposes of sub-paragraph (1) “the relevant date” is—

- (a) where paragraph 17(1) applies the next review date;
- (b) where paragraph 19(2) applies the 28th day after the date on which the owner served the notice under paragraph 19(1); or
- (c) where paragraph 20(3)(b) applies the 28th day after the date of the court order determining the amount of the 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 .. 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 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 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) but 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) 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 ..., 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.

17(1)The pitch fee may be reviewed at the review date if, at least 28 clear days before that review date, the owner has served on the occupier a written notice setting out the owner's proposal in respect of the new pitch fee.

(2)The notice referred to in sub-paragraph (1) must set out the services which the agreement provides that are included in the pitch fee proposed by the owner.

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

(4)If the occupier does not agree to the proposed pitch fee the owner or the occupier may apply to the court for an order determining the amount of the new pitch fee.

(5)An application under sub-paragraph (4) may be made at any time after the end of the period of 28 days beginning with the review date.

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). 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) 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).

(ba) 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; and

F56(c).

(1A)But 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 purposes 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.

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

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

20(1) Where an application is made to the court under paragraphs 17(4), 18(2) or 19(3), the court shall, if the court considers it reasonable for the pitch fee to be changed, make an order determining the amount of the new pitch fee.

(2) 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 court.

(3) If the court makes such an order, the new pitch fee shall be payable—

(a) where the application was made under paragraph 17(4), as from the review date;

(b) where the application was made under paragraphs 18(2) or 19(3), as from the 28th day after the date of the court order determining the amount of the pitch fee.

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 should be made on Form RP PTA available at <https://www.gov.uk/government/publications/form-rp-pta-application-for-permission-to-appeal-a-decision-to-the-upper-tribunal-lands-chamber>

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).