



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

Case Reference : **MAN/00BS/PHI/2023/0147-0174**

Properties : **1-3, 6, 8, 14, 20, 22, 22a, 23, 26-28, 30-32, 33a, 34a, 34b, 36a, 37-38, 40, 44 & 47-50, Chester's Croft Residential Park, Spath Lane, Cheadle Hulme SK8 7NN**

Applicant : **Chester's Croft Residential Park Limited**

Respondents : **The Owners of the Properties as detailed on the Annex**

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

Tribunal Members : **Tribunal Judge C Wood
Tribunal Member S Latham**

Date of Decision : **5 February 2024**

DECISION

DECISION

1. The Tribunal orders in respect of each of the Properties that the pitch fee is increased by 14.2% with effect from 1 January 2023.

BACKGROUND

3. By an application dated 27 March 2023, (“the Application”), the Applicant sought determination of the pitch fees payable in respect of the Properties, being various properties at Chester’s Croft Residential Park, Spath Lane, Cheadle Hulme (“the Park”).
4. Pitch fee review forms dated 25 November 2022, (“the Forms”), were served on each of the Respondents proposing increased pitch fees of varying amounts.
5. Each proposed increase was stated to be in accordance with the increase in the Retail Price Index, (“RPI”), as at the relevant date which is, in each case, the RPI figure published in October 2022.
6. Directions dated 22 May 2023, (“the Directions”), were issued, pursuant to which written submissions were received from or on behalf of both parties.
7. A hearing was scheduled to take place on Monday 13 November 2022 at 13:00, following an inspection at the Park at 10:30 on the same date.

INSPECTION

8. The inspection was attended by or on behalf of the parties as follows:

Applicant: Mr John Daly)
Mr Simon Daly) Chester’s Croft Residential Park
Ltd

Mr Simon Daly Jnr)
Mr Mullins, Counsel
Ms Kirsty Apps, Apps Legal Ltd

Respondents: Mr Geoff Ingham – No. 48
Ms Ann Nerney – No. 20
Ms Lesley Harman – No. 27

9. The following matters were pointed out to the Tribunal by the Respondents at the inspection:
 - 9.1 a “big dip” in the road outside No. 31 and the condition of the tarmac outside No. 10a;
 - 9.2 condition of the common area outside Nos. 12 and 14,, including accumulations of moss and weeds;
 - 9.3 the barbed wire and post fencing to the rear of No. 20;
 - 9.4 the condition of the common area outside of No. 17; it has been used for storage of building materials, now removed; the “status” of the electricity cable and gas meter/supply is unknown;
 - 9.5 the public footpath to the rear of No. 17. The owner of No. 17 has erected their own fencing to the rear of their Property to prevent people accessing their property/the Park from the public footpath;
 - 9.6 the entrance gates are continuously open during the day although the notice on the entrance to the Park states “Gates Open Automatically 7am – 7pm. Approach Gates Slowly”; and,
 - 9.7 the condition of the entrance area.

THE LAW

10. The relevant law is set out in the Mobile Homes Act 1983, as amended, (“the 1983 Act”), and, in particular, Chapter 2 of Part I of Schedule I to the 1983 Act.
11. Paragraph 20(A1) of Schedule 1, Chapter 2 to the 1983 Act, (“paragraph 20A1”),
raises 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 price index, (“RPI”), by reference to the latest index and the index published for the month which was published 12 months before that to which the latest index relates.
12. This increase or decrease is presumed to be reasonable unless it would be unreasonable having regard to the various factors set out in paragraph 18(1). These include, without limitation, the following factors set out in sub-paragraphs (aa) and (ab):

- 12.1 “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 had not previously been had to that deterioration or decrease for the purposes of this paragraph);
- 12.2 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)”.
 13. The Upper Tribunal in *Britanniacrest Ltd v Bamborough* [2016] UKUT 144 made it clear (at paragraph 22) that the RPI presumption in paragraph 20A1 is “a very strong steer” but is “not the beginning and end of the determination” because of paragraph 18 which identifies matters to which the Tribunal is required to take into account or to ignore.
 14. Further in *Vyse v Wyldecrest Limited* [2017] UKUT 24 (LC) at paragraph 45, the Upper Tribunal stated that “the factors which may displace the presumption are not limited to those set out in paragraph 18(1) but may include other factors” describing a relevant additional factor as follows:

“By definition, this must be a factor to which considerable weight attaches...it is not possible to be prescriptive...What is required is that the decision maker recognises that the “other factor” must have sufficient weight to outweigh the presumption in the context of the statutory scheme as a whole”.
 15. In *Wickland (Holdings) Limited v Esterhuyse* [2023] UT (LC) [147] at paragraph 23, the Upper Tribunal stated that the deterioration in sub-paragraph 18(1)(aa) refers to deterioration since the provision came into force (in 2014) and which has not previously been taken into account in a pitch fee review.
 16. A failure to carry out repairs and maintenance is capable of amounting to such an additional factor under s18(1): see, for example, the decision in *Wickland (Holdings) Limited v Esterhuyse* [2023] UT (LC) [147].

EVIDENCE

Applicant's Initial Written Submissions

17. In accordance with the Directions, the Applicant submitted its Statement of Case together with witness statements from Mr Simon Daly, a director of the Applicant, and from Mr Gary Burns, owner of the Park between 2016 and 2021.
18. The Statement of Case sets out the chronology relating to the issue of the Forms and of the Application and is supported by witness statements from Mr Daly and Mr Burns..
19. The witness statements are summarised as follows:
 - 19.1 Mr Simon Daly: background information relating to the licensing of the Park, and in respect of the location, extent and services available at the Park, the chronology of the issue of the Forms and related correspondence with the Respondents, contact between the Applicant and the Respondents and Stockport Metropolitan Borough Council, ("the Council"), , information regarding the redevelopment works at the Park between October 2022 – May 2023 and maintenance issues. A number of photographs are attached to the witness statement.
 - 19.2 Mr Gary Burns: information regarding improvements made to the Park during his period of ownership 2016 – 2021.
20. The hearing bundle (not agreed) prepared by the Applicant includes copies of the Forms and Written Statements for each of the following Properties: Nos. 2, 3, 20, 27, 30, 33a, 34b and 48, together with a copy of the site licence and a site plan.

Respondents' Written Submissions

21. The Respondents' submissions are comprised in a series of statements from some of the Respondents which raise a multiplicity of issues as follows:
 - 21.1 maintenance, and, in particular, grass cutting of the "open" land to the rear of the Park;

- 21.2 the entrance gates, including the hours of opening and the non-functioning of the gates;
- 21.3 maintenance of the lane to the Park;
- 21.4 non-functioning of lights;
- 21.5 blocked drains at No.22A;
- 21.6 unkempt/neglected area between Nos. 16 and 18;
- 21.7 disruption to residents and/or obstruction of roads within the Park caused by unnotified delivery of new units/ construction traffic;
- 21.8 poor condition of the road outside Nos. 30 and 31 caused, at least in part, by gas supply installation works;
- 21.9 failure to ensure grit bins are filled;
- 21.10 lack of maintenance of fire extinguishers;
- 21.11 flooding issues;
- 21.12 poor condition of boundary and perimeter fencing;
- 21.13 failures of communication between the Applicant and the residents regarding issues such as changes in ownership, changes to payment details, new development at the Park and including, without limitation, problems with the noticeboard;
- 21.14 claims of harassment/intimidation against various members of Mr Daly's family involved in the management of the Park;
- 21.15 discussions with the Council;
- 21.16 claims of illegal use of residents' property, removal of fencing, trespass; and
- 21.17 issues with the siting of the defibrillator.

Applicant's Written Submissions in Response

- 22. In its Response, the Applicant makes the following points:
 - 22.1 the Respondents have raised no issues regarding the Forms;
 - 22.2 the Respondents have not challenged the carrying out of maintenance and repairs since the last review date;
 - 22.3 the Respondents have not challenged the evidence of Mr Gary Burns as set out in his witness statement;
 - 22.4 the issues raised by the Respondents fall into the following categories:
 - (1) allegations of harassment;
 - (2) allegations of deterioration in condition – road surface, flooding;

- (3) maintenance issues – lighting, drain blockage at No. 22 A, grass cutting, boundary fences;
 - (4) the impact of the works associated with the new development; and,
 - (5) communication.
23. In the Response and in Mr Simon Daly’s second witness statement:
- 23.1 the allegations of harassment are denied;
 - 23.2 any deterioration in the condition of the Park is denied;
 - 23.3 there is evidence in Mr Burns’ statement of improvement during his company’s period of ownership, which evidence has not been challenged;
 - 23.4 the roads are in generally good with some normal wear and tear; there are no potholes in the roads;
 - 23.5 no flooding has been caused as a result of the new development at the Park and flooding issues have been improved/resolved by the installation of new drainage;
 - 23.6 there are no outstanding issues in respect of the lighting, drains at No. 22A or grass cutting;
 - 23.7 the boundary fencing is not in disrepair;
 - 23.8 there has been some temporary disruption/inconvenience to the residents as a result of the works on the new units at the Park;
 - 23.9 the communication issues have been resolved.
24. In conclusion, the Applicant believes that the issues raised by the Respondents are of a temporary nature and not such as to displace the statutory presumption in paragraph 20A1 of an RPI increase in the pitch fees of the Properties.

The Hearing

The parties’ oral submissions at the hearing are summarised as follows:

Applicant’s Initial Oral Submissions

25. The Applicant’s oral submissions are summarised as follows:
- 25.1 no point has been taken on the legitimacy of any of the Forms;
 - 25.2 the statutory presumption in s20A1 can only be displaced by evidence of a deterioration in the condition of the Park, reduction of amenity/services and/or “other factors”;

- 25.3 the Upper Tribunal decisions indicate that such other factors need to be of significance/weighty. Reference is made to the First-tier Tribunal decision in Sines Parks Holdings Ltd v Muggeridge & Others CHI/43UB/PHI/2020/0046 - 0049 (acknowledged to be of persuasive weight only) which appears to follow the line of reasoning in the UT decisions that such factors should be “long lasting or permanent and affect the “fabric” of the site, rather than temporary matters”, (paragraph 118);
- 25.4 many of the Respondents’ issues appear to be grievances which are not within the Tribunal’s jurisdiction in determining a pitch fee increase although may be of relevance to an application under section 4 of the 1983 Act;
- 25.5 as was apparent from the inspection, the Park is well-maintained and is said to be well-run;
- 25.6 the Applicant is a relatively new owner and is continuing the improvement of the Park started when in Mr. Gary Burns’ ownership;
- 25.7 when considering whether the overall condition of the Park has deteriorated, the relevant date is 2014 (the coming into force of the new provisions in the 1983 Act);
- 25.8 in this case, the evidence supports the Applicant’s claim that there has been an improvement in the condition of the Park since 2014.
26. In view of all of the above, the Respondents have not established that there are factors to be taken into account by the Tribunal under paragraph 18 or otherwise which would displace the statutory presumption in s20A1 and the pitch fee increase in accordance with RPI is reasonable accordingly.

Respondents’ Initial Oral Submissions

27. Mr Geoff Ingham on behalf of the Respondents confirmed that the relevant issues are as follows:
- 27.1 road condition;
- 27.2 common areas outside Nos. 12, 14 and 17;
- 27.3 the entrance gates;
- 27.4 the condition of the area by the entrance;
- 27.5 fencing to the rear of No. 17; and,

- 27.6 fencing to the rear of No. 20.
28. Mr Ingham also confirmed that the following issues are no longer in issue:
- 28.1 flooding;
 - 28.2 the notice board;
 - 28.3 triangular area of land in plot No.1, it having been confirmed at the hearing that this is the responsibility of the occupier of No. 1.
29. Mr Ingham submitted is that there has been a deterioration in the condition of, and/or a reduction in the services to the Park as evidenced by the following:
- 29.1 failures in communication by the Applicant in relation to the change of ownership of the Park, the undertaking of new works at the Park and of the delivery of new units which caused disruption/inconvenience to residents;
 - 29.2 the delay of 9 months to repair lighting units;
 - 29.3 the delay in cutting the grass on the adjoining field which presented a fire hazard to the residents of the Park;
 - 29.4 the condition of the roads, although he acknowledged that some of the holes in the road have been repaired;
 - 29.5 the advertisement of the Park as a “gated community” whilst the gates are left open during the day allowing third parties uncontrolled access to the Park, exacerbated by the public footpath running along part of the Park’s boundary;
 - 29.6 the failure to grit the roads during the winter months, as was previously the case.
30. Mr Ingham also raised an issue regarding a “gap” in the insurance of the Park. Mr Mullin objected to the raising of this issue as it had not been previously raised by the Respondents. It was also stated that it was a non-issue as no insurable event had occurred during this period which had resulted in any deterioration in the condition of, and/or reduction of services to the Park.

Oral evidence of Mr Simon Daly and Mr Gary Burns

31. Mr Daly responded to the issues raised by the Respondents as follows:

- 31.1 road condition: the road outside No. 31 had to be dug up to connect the gas supply to the new units but it has been repaired. As a general comment, the condition of the roads is fine but will be subject to regular maintenance over time and repairs made as required;
- 31.2 entrance gates: the entrance gates are open from 7am – 7pm which facilitates access for eg carers who visit a number of residents. Residents have a fob/ intercom/code access when the gates are shut. There is no obligation on the Applicant regulating the operation of the gates;
- 31.3 entrance area: it is acknowledged that there is an accumulation of leaves at the moment but generally the area is clean and tidy;
- 31.4 common area outside Nos. 12 and 14: Mr Daly does not believe that this has been raised previously but it is an area where owners keeps their bins;
- 31.5 common area outside No. 17: the gas and electricity supplies have both been disconnected, the grass is cut regularly and the intention is to leave the area in its present state. The materials which had been left there belonged to the owner of No. 17;
- 31.6 fencing behind No. 17: it was the owner's choice to replace the existing fencing but, in any event, there is no obligation on the Applicant to provide/maintain fencing;
- 31.7 fencing behind No. 20: as above;
- 31.8 communication: Mr Daly rejects the claim that there have been failures in communication and refers to letters to residents and/or notices on the notice board relating to the installation and/or delivery of new units at the Park;
- 31.9 lights: Mr Daly challenged the claim that the lights were not working for 9 months but acknowledged that there had been a delay in their repair caused by supply issues with the necessary parts;
- 31.10 grass cutting: Mr Daly acknowledged that there had been a delay in getting the grass cut but that it is now regularly cut;
- 31.11 gritting: there is no obligation on the Applicant to grit the roads. The grit bins are now full;
- 31.12 insurance: although not previously raised, Mr Daly is unaware of any gaps in the insurance cover.

32. Mr Burns responded to the following issues:

32.1 gritting: Mr Burns stated that, as far as he was aware, when he was the owner of the Park they did not grit the roads and there was no obligation to do so; grit bins were filled;

32.2 entrance gates: when he bought the Park in 2016, there were wooden entrance gates which he replaced with metal gates; initially the gates were kept closed throughout the day but the frequency of opening caused unacceptable wear and tear to the motor which then resulted in repairs being required. In addition, there were practical difficulties in keeping the gates closed including the number of regular visitors to the Park eg carers/deliveries which resulted in calls from some of the residents to keep them open during the day, and also health & safety (“H&S”), issues in connection with vehicles having to reverse down the narrow access lane to the Park.

In response to a question from the Tribunal Judge Mr Burns confirmed that, with regard to the H&S issue raised, he has no H&S qualifications and no H&S assessment has been undertaken in this respect.

Respondents’ Oral Submissions in Response

33. The following comments were made in response:

33.1 gritting: Ms Nerney and Mr Ingham claimed that in the past a vehicle would come onto the Park to clear snow and that the gardeners’ undertook the gritting;

33.2 entrance gates: Mr Ingham claimed that he had been told by contractors that the failure of the gates was not due to wear and tear but an inadequate mechanism; further Ms Harman claimed that the gates had been open since 2019 and not 2016 as claimed by Mr Burns; Mr Ingham repeated the claim that it was inaccurate to call the Park a gated community and that the sign at the entrance is misleading which Mr Daly acknowledged and agreed to consider changing.

Closing Submissions

34. The parties made the following closing submissions:

Respondents

34.1 The Respondents have withheld the increased fees because they are not receiving the services previously received, and, in particular, general maintenance services, gritting, grass cutting and the operation of the gates.

Applicant

34.2 The presumption in section 20A1 is “very strong” and can only be displaced by establishment of factors within paragraph 18 or “other factors” which, having regard to the decision in the Britannia case, must be “weighty matters”.

34.3 In applying these principles to the issues raised by the Respondents, the conclusion is that none of these constitute sufficiently “weighty matters” to displace the statutory presumption of an RPI increase in the pitch fees, as follows:

- (1) entrance gates: the operation of the gates is a matter of discretion for the Park owner and there is nothing inherently unreasonable about the decision to keep the gates open during the day and closed overnight;
- (2) roads/fencing: there is no evidence of any general deterioration in the roads or fencing to the Park since 2014; rather the evidence of Mr Burns is that there has been an improvement in the condition of the Park since 2016;
- (3) No.17: the owner of No. 17 is not a party to the Application. As a general point, there is no obligation on the Applicant to erect a 2 metre high fence around the perimeter of the Park but they will maintain/repair fencing as required without preventing any resident from undertaking repairs/replacements as they choose;
- (4) alleged failures of communication: there is no duty of notification regarding the issues in question although it might be regarded as a matter of good park management;
- (5) grass cutting: likewise grass cutting.

34.4 Reference is made to the UT decision in Wyldecrest Park (Management) Ltd v Turner (No.2) [2022] regarding the extent of the Tribunal’s jurisdiction under section 4 of the 1983 Act to intervene in disputes between residents and owners of park homes owners.

REASONS

The Forms

35. The Tribunal is satisfied that the Applicant has complied with the statutory requirements set out in the 1983 Act relating to the Forms and the time limits for making the Application.

Has the paragraph 20 (A1) presumption been rebutted?

Improvements – paragraph 18(1)(a)

36. Although the Applicant refers in the Application to improvements having been made to the Park, no argument was made by the Applicant for an above RPI increase in the pitch fees by reason of any such improvements.

Deterioration in the condition of the Park/reduction in services – paragraphs 18(1)(aa), (ab)and/or other factors

37. In making its determination, the Tribunal has limited its consideration to the issues listed in paragraphs 27.1-27.6 of this Decision.
38. The Tribunal is not satisfied that any of the issues raised by the Respondents are “...of sufficient weight to outweigh...” the statutory presumption in paragraph 20A1 that an increase in the pitch fees in accordance with the relevant RPI is reasonable.
39. In particular, the Tribunal is satisfied, having regard to the evidence before it, including its inspection of the Park, as follows:
- 39.1 roads: the condition of the roads is not indicative of any deterioration; the matters pointed out to it are consistent with reasonable “wear and tear”;
- 39.2 fencing: having regard to the terms of the site licence and to the Written Statements (which the Tribunal notes are not in uniform form), the Tribunal notes:
- (1) there is some ambiguity as to the ownership and/or responsibility of the owner and the occupiers for the fencing at their property as they are variously required to maintain fences “belonging to or enjoyed with”

their home or which are “their responsibility” without any express statement as to ownership;

- (2) the site licence requires a hedge, fence or wall of not less than 2 metres in height to be “properly maintained” around the boundary of the Park;
- (3) the Tribunal was not shown any fence, hedge or wall which is not “properly maintained”;

39.3 area near to the entrance: other than the accumulation of leaves, which the Tribunal regards as a temporary issue, they considered the area is in reasonable condition;

39.4 grass cutting and non-functioning of the lights: the evidence presented by the Respondents is of temporary inconveniences/interruptions to the amenity/services which have been since resolved by the Applicant;

39.5 gritting: there is no evidence of any obligation on the Applicant to provide a gritting service and the evidence of any previous regular service is limited;

39.6 operation of the entrance gates: there is no evidence of an obligation upon the Applicant to operate the gates in any particular manner or that the Applicant’s decision to keep the gates open during the day is to be regarded as inherently unreasonable having regard to the need to balance ease of access for visitors to the Park, including without limitation, carers, against the security concerns of some of the Respondents.

Decision

40. For the reasons set out above, the Tribunal therefore determines that it is reasonable for the pitch fees for each of the Properties to be increased by 14.2% with effect from 1 January 2023.

Tribunal Judge C Wood

5 February 2024

K & K Burton
Ms J Carroll
Ms A Hamilton
Ms Batty
Mr & Mrs Bradley
Mr & Mrs Harman
A Gardiner & N Kilcour
Mr Dobson
Ms B Dawson
Ms P Davies
Mr & Mrs Higgins
Mrs J Holden
Mrs Johnson
Mr & Mrs Ingham
Ms A Nerney
Ms E Norris
Mr D Newbury
Mr Keegan
Ms J Ryan
Mr R Sargeant
Ms S Smith
Mr M Starling & Ms M Tomlinson
E Spencer
Mr M Walker
Ms D Yates
Ms P Thornber