



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

**Case Reference** : **MAN/00EQ/PHI/2023/0323,0324,  
0326 & 0327**

**Properties** : **39, 41, 44 & 50, Kinderton Park,  
Cledford Lane, Middlewich,  
Cheshire CW10 0JS**

**Applicants** : **Mr Tom & Mrs Anne Marie Herring**

**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 J Elliott**

**Date of Decision** : **4 January 2024**

**DECISION**

## **DECISION**

1. The Tribunal orders in respect of each of the Properties that the pitch fee is increased by 13.4% with effect from 1 April 2023.
2. In accordance with s231A(2) of the Housing Act 2004, the Tribunal issues the following directions in respect of the following Properties:
  - 2.1 No. 44: the Applicants at their own cost and as soon as reasonably practicable and, in any event, within 3 months of the date of this Decision, to re-position the gas meter to the Property to a suitable position within the pitch to ensure that it is not subject to waterlogging;
  - 2.2 No. 50: the Applicants at their own cost and as soon as reasonably practicable and, in any event, within 1 month of this Decision, to improve the signage to the appropriate car parking facility to try to better ensure that visitors do not use the drive at No. 50 as a turning point.

## **BACKGROUND**

3. By an application dated 16 June 2023, (“the Application”), the Applicants sought determination of the pitch fees payable in respect of the Properties, being various properties at Kinderton Park, Cledford Lane, Middlewich, Cheshire CW10 0JS, (“the Site”).
4. Pitch fee review forms dated 20 January 2023 were served on each of the Respondents proposing an increased pitch fee as follows:
  - 4.1 Pitch 39: £178.34 per month
  - 4.2 Pitch 41: £179.58 per month
  - 4.3 Pitch 44: £184.25 per month
  - 4.4 Pitch 50: £177.26 per month
5. Each of the proposed increases were stated to be in accordance with the increase in the Retail Price Index as at the relevant date which was, in each case, the RPI figure published in January 2023.
6. Directions dated 11 August 2023 were issued, pursuant to which written submissions were received from or on behalf of both parties.
7. The Directions provided that the matter should be determined by way of a paper determination unless any of the parties requested a hearing.
8. None of the parties requested a hearing and the matter was scheduled for determination on 19 October 2023 following an inspection which was held on the same date.

## INSPECTION

9. The Site is located on the Cheshire Plain, a relatively flat expanse of lowland in the North West of England.
10. On the inspection day, the weather was dry but it had been raining the day before/overnight and there was evidence of standing water on the roads in and around the Site and on the Site roads.
11. Mrs Morris, (No. 39), Mr & Mrs Insley, (No. 41), and Mr & Mrs Griffin, (No. 50), attended the inspection. Mr & Mrs Byrne, (No.44), had given permission to Mr & Mrs Insley to attend the inspection on their behalf.
12. The Applicants did not attend/were not represented at the inspection.
13. The Tribunal was subsequently made aware of a request by the Applicants dated 18 October 2023 for an alternative date for the inspection; this request was not received by the Tribunal until 24 October 2023.
14. In response to the issues raised by the Applicants' solicitors in their letter dated 23 October 2023, the Tribunal informed the parties as follows:
  - 14.1 the Applicants' consent to an inspection is not required;
  - 14.2 the Tribunal had inspected the two features highlighted by the Applicants, namely, the drains and the undeveloped land;
  - 14.3 no permission had been sought by the Applicants to adduce expert evidence and the request to do so is refused;
  - 14.4 the Applicants were invited to submit photographic evidence relating to the two features referred to in paragraph 14.2 above.
15. By an email dated 6 November 2023, the Applicants' solicitors submitted to the Tribunal photographs of various drains at the site stated to have been taken on 3 October 2023.
16. The following matters were pointed out to the Tribunal at the inspection:
  - 16.1 No. 39: Mr & Mrs Morris
    - (1) for the last 6/9 months, Mr & Mrs Morris have noticed running water in the road outside their Property coming from the vicinity of Nos. 37/38. They have been unable to identify its source;
    - (2) it is causing damage to the block paving on the driveway;
    - (3) because of constant standing water, Mr & Mrs Morris have removed the grass from the side and rear of their Property and replaced it with gravel;
    - (4) surface water on the paving slabs down the side of the Property to the shed at the rear was pointed out;

- (5) standing water as a result of the high water table affecting the Site/inadequate drainage system has been an issue since they moved in in 2017.

16.2 No. 41: Mr & Mrs Insley

- (1) water is regularly “pooling/ponding” on the block paving on the driveway to the side of the Property;
- (2) the grassed area was waterlogged at the date of inspection. Some years ago, Mr & Mrs Insley paid for the installation of a soakaway which they stated has improved the situation by about 50%;
- (3) issues with drainage/water pooling have been constant since 2016 when they moved in;
- (4) Mr & Mrs Insley stated that there had been an extended period when the lighting on the Phase 2 green space had not been working but this has since been repaired and was working as at the date of inspection;
- (5) the location of the defibrillator was pointed out but it was not possible to see the lighting during daytime hours.
- (6) there are no speed bumps on the Site road in front of their Property.

16.3 No. 44: Mr & Mrs Byrne

- (1) at the time of inspection, there was some pooling of water on the driveway;
- (2) there was water in the box housing the gas meter;
- (3) a failure to replace boarding at the rear of the Property and/or to restore the garden to its previous condition following the works to install new pipework under the Property was not evident on inspection.

16.4 No. 50: Mr & Mrs Griffin

- (1) Mr & Mrs Griffin’s Property adjoins the land which has been the subject of planning applications by the Applicants for further development of the Site. At the date of inspection, they stated that it was in a better state than it had been, for example, during the summer where it had become very overgrown, and that further the storage of building and other materials on the land has stopped;
- (2) the car parking signage intended to deter visitors and, in particular, delivery drivers from turning on their driveway by directing them to the car parking area was pointed out to the Tribunal. The Tribunal saw no evidence of any damage to the block paving on their driveway.

17. The Tribunal notes that, although there was a claim in the Respondents' submissions that there were sewerage overflows from the drains, no such overflows were pointed out to them at the inspection nor did they notice any other evidence eg any smell at the inspection.
18. Although mention was made in the Respondents' submissions of a deterioration in the perimeter fencing and overhanging trees at the Site, these were not pointed out to, or noted by, the Tribunal at the inspection.

### **THE PITCH FEE AGREEMENTS**

19. Copies of the agreements for each of the Properties Nos. 41, 44 and 50 were included in the documentation submitted to the Tribunal. There is no copy of an agreement for No. 39.

### **THE LAW**

20. 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.
21. Paragraph 20(A1) 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.
22. 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):
  - 22.1 "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);
  - 22.2 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)".
23. Paragraph 18(1)(aa) refers to deterioration since the provision came into force in 2014 and which has not been taken into account in a pitch fee review.
24. It is clear that "the factors which may displace the presumption are not limited to those set out in paragraph 18(1) but may include other factors": *Vyse v Wyldecrest Limited* [2017] UKUT 24 (LC) at [45]. In *Vyse*, the Upper Tribunal described 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”.

25. 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 Esterhuysen [2023] UT (LC) [147].

## **EVIDENCE**

### **Respondents’ Submissions**

26. The issues raised in the Respondents’ submissions are summarised as follows:

26.1 No. 39:

- (1) a deterioration in the condition of the Site, as evidenced by:
  - (a) undeveloped/derelict land in Phase 4 “where there should be a landscaped communal area for the residents to enjoy”;
  - (b) water-pooling inside the main gates, outside on the grass verges and generally around the Site;
  - (c) non-functioning of streetlighting in the Phase 2 amenity area;
  - (d) long-standing issues with the drainage/sewerage system due to its inadequacy for the Site;
  - (e) running water causing damage to the block-paving on their driveway;
  - (f) lack of adequate lighting to the defibrillator;
  - (g) failure to grit the Site roads.
- (2) inappropriateness of the increase in the pitch fee being by reference to RPI rather than to CPI.

26.2 No.41:

- (1) inadequacy of the drainage system;
- (2) non-functioning of lighting/emergency lighting in Phase 2 amenity area;
- (3) failure to grit the Site roads;
- (4) failure to provide “refresher” defibrillator training;
- (5) failure to install speed bumps other than in Phase 3.

26.3 No .44:

- (1) problems with drains causing water to “back-up” in sinks/basins
- (2) boarding not replaced and garden not returned to former condition after installation of new pipework under the Property;
- (3) water damage to driveway causing it to have “sunk”;
- (4) waterlogging of gas meter.

26.4 No. 50:

- (1) failure to properly maintain the undeveloped land adjoining their pitch which can present a fire hazard in the summer and generally impacts the value of their Property;
- (2) concerns about the extent of development on this area of land and the adequacy of the existing drainage system to cope with such further development;
- (3) the signage erected by the Applicants has failed to deter drivers from turning on their driveway. The driveway has been damaged in the past (and repaired by the Applicants).

Applicants' Submissions

27. The Application refers to improvements at the Site.

28. The Applicants' submissions are set out in four witness statements each dated 27 September 2023 of Mr Thomas Herring which address each of the individual issues raised by the Respondents.

29. These are summarised as follows:

29.1 as a general comment, there is regular maintenance undertaken at the Site and there has been no deterioration in its condition and/or decrease in its amenity, as claimed;

29.2 drainage issues:

- (1) regular maintenance is undertaken by Mr Herring on the drains and it is common to have to remove items which cause blockages eg wet wipes, and also deposits of fat. Efforts to prevent recurrence have included written notification to all residents to explain the need to be careful not to put inappropriate items into the drainage system. It is disputed that the drainage system is inadequate for the Site;
- (2) with regard to No. 44, work was undertaken a number of years ago to install new pipework under the Property which, as far as Mr Herring is aware, has resolved any issues. In particular, he denies any knowledge of specific issues with blocked drains/toilet affecting the unit. Mr Herring disputes that the

pitch was not restored to its previous condition following the work to install the new pipework;

- (3) Mr Herring disputes that there is any particular issue with standing water generally around the Site, although it is acknowledged that there will always be some standing water after periods of very heavy rain. He notes that the Site roads have been re-laid in recent years;
- (4) Mr Herring states that he is not aware of any sewerage overflows at the Park.

- 29.3 undeveloped area: it is the Applicants' intention to continue to seek planning permission to develop this area. The Applicants deny that it has ever been suggested to the Respondents that it would not be developed or that it was to be regarded as a recreation/amenity area for the residents as a whole. Whilst acknowledging that there have been periods, particularly during the Covid pandemic, when it was difficult to ensure regular maintenance of that area, mowing is now undertaken 3 to 4 times a year which is sufficient to keep the undergrowth at a reasonable height. Such mowing is sometimes undertaken at short notice but efforts are made to inform residents in advance wherever possible;
- 29.4 signage: Mr Herring refers to the signage to the car parking area which has been erected and also to signage provided to the owners of No. 50 which they decided not to erect, both measures designed to deter drivers from turning on their driveway. He is unsure what further measures could be introduced;
- 29.5 lighting in Phase 2: there was an issue with the streetlighting in this area for a number of days but it was repaired quickly and is now working;
- 29.6 gritting: the Applicants do not grit the Site roads as the grit can damage the tarmac;
- 29.7 defibrillator lighting and training:
- (1) the lighting around the defibrillator is adequate as shown in photographs accompanying the Applicants' submissions;
  - (2) training was provided on installation of the defibrillator and instructions for use are on the casing. There is no need or obligation on the Applicants to provide further training;
- 29.8 speed bumps: Mr Herring said that the installation of speed bumps in other areas of the Site had been suspended because of concerns raised by residents in Phase 3 regarding vehicular noise following installation. The speed limit around the Site is 5 mph as regulated by appropriate signage.



## REASONS

### The Pitch Fee Review Forms dated 20 February 2023, (“the Forms”)

30. The Tribunal is satisfied that the Applicants have 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)

31. Although the Applicants refer in the Application to improvements having been made to the Site, there is no evidence before the Tribunal of such improvements to which it should have regard in making its determination.

#### Deterioration in the condition of the Site – paragraph 18(1)(aa)/other factors

32. In making its determination, the Tribunal has to decide whether any of the issues identified by the Respondents are factors to be taken into account within paragraph 18(1)(aa) or otherwise “...of sufficient weight to outweigh the presumption in the context of the statutory scheme as a whole”.

33. The Tribunal notes as follows:

- 33.1 the limited evidence of the condition of the Site prior to the respective dates of acquisition of their Properties by the Respondents suggests that issues regarding the drainage system may pre-date their ownership;

- 33.2 there is no evidence before the Tribunal that all or any of the matters raised by the Respondents have been taken into account on any previous review date of the pitch fees.

#### Drainage system

34. The Tribunal concludes that there is no evidence before it that the issues raised by the Respondents regarding the drainage system at the Park is evidence of “any deterioration in the condition” of the Site within paragraph 18(1)(aa) which might displace the presumption of reasonableness in paragraph 20(A1).

35. Specifically, the Tribunal notes as follows:

- 35.1 each of the owners of Nos. 39, 41 and 50, who were present at the inspection, stated that there had been issues with the drainage system since they moved onto the Site on various dates between 2016 and 2018;

- 35.2 in their written statement, the owners of No. 44 confirm that the issues raised by them have been matters of long-standing concern;

- 35.3 in some cases, the Respondents have stated that there has, in fact, been some improvement in the situation eg in the case of No. 41, by the installation of a soakaway, and in the case of No. 50, by the installation of new pipework, although it is noted that, in both instances, these measures have not resolved all of their issues.
36. In considering whether there are other factors to be taken into account by the Tribunal in this respect, the Tribunal notes that the evidence of maintenance by the Applicants of the drainage system has not been challenged by any of the Respondents (although they dispute the reasons advanced by the Applicants for the cause of blockages).
37. For the avoidance of doubt, the Tribunal's determination in this respect should not be read as a determination of the adequacy/efficacy of the drainage/sewerage system at the Site but that there is no evidence before it of any deterioration in its condition such as to rebut the presumption in paragraph 20(A1).

#### Gas meter at No. 44

38. The Tribunal is satisfied that the siting of the gas meter for No. 44 in a location where it is susceptible to waterlogging (as seen by the Tribunal at its inspection) presents an unacceptable risk and requires remediation by the Applicants at their cost at the earliest possible date. The Tribunal is therefore satisfied that it is appropriate to issue the direction in this respect as set out in paragraph 2.1 of this Decision.

#### Undeveloped land

39. The Tribunal concludes that there is no evidence before it that the issues raised by the Respondents regarding the undeveloped land at the Site is evidence of "any deterioration in the condition" of the Site within paragraph 18(1)(aa) ) which might displace the presumption of reasonableness in paragraph 20(A1).
40. Specifically, the Tribunal notes as follows:
- 40.1 the evidence before the Tribunal is that the undeveloped land has been substantially in its present condition since each of the Respondents acquired their Properties and it is reasonable to assume prior to these dates;
- 40.2 certain of the Respondents, particularly Mr & Mrs Griffin, noted that there had been an improvement in its condition (although concerns remained);
- 40.3 there was no evidence before the Tribunal that the Applicants had made any representations to any of the Respondents regarding the use of the land as a recreation/amenity area for the benefit of all residents at the Site.

41. In considering whether there are other factors to be taken into account by the Tribunal in this respect, the Applicants' evidence of its maintenance of the undeveloped land was not challenged by any of the Respondents (although concerns about its timing/lack of notice were expressed).

Lighting in Phase II, gritting, speed bumps, defibrillator lighting and refresher training

42. The Tribunal is satisfied that none of the following constitute evidence of "any deterioration in the condition" of the Site within paragraph 18(1)(aa) which might rebut the presumption in paragraph 20(A1):
- 42.1 lighting in Phase II: the issues with the lighting appear to have been a temporary fault which has been rectified by the Applicants and which has not recurred, as acknowledged by the Respondents. In particular, at the date of inspection, as confirmed by the Respondents present, the lighting is in working order;
- 42.2 gritting: the Tribunal considers that the Applicants' decision not to grit the Site roads is an operational management decision which has no impact upon the condition of the Site generally. The Applicants did not produce any evidence to support their claim that gritting could damage the roads (which might in itself cause a deterioration in the condition of the Site) but, as it is not carried out, it is not a matter for consideration by the Tribunal;
- 42.3 installation of speed bumps: the Tribunal is satisfied that the absence of speed bumps on the Phase 2 roads cannot be regarded as evidence of a deterioration in the condition of the Site. Further, the Tribunal accepts the Applicants' reasons for delaying their installation and also notes that there is adequate signage at the Site of the 5 mph speed limit;
- 42.4 defibrillator lighting and refresher training: the Tribunal is satisfied that the evidence showed adequate lighting of the area around the defibrillator. The provision, or otherwise, of refresher training in the use of the defibrillator was not a matter which could impact the condition of the Site.

Signage

43. The Tribunal is satisfied that the Applicants' failure to prevent all visitors from turning on the driveway of No. 50 does not constitute evidence of "any deterioration in the condition" of the Site within paragraph 18(1)(aa) which might rebut the presumption in paragraph 20(A)1. However, the Tribunal accepts the evidence of Mr & Mrs Griffin, the owners of Unit 50, and its own observations at the inspection that the signage was poorly-sited and did not achieve its objective of deterring visitors from driving down the road and then using the driveway of No. 50 to turn around. The Tribunal is therefore satisfied that it is appropriate to issue the direction set out in paragraph 2.2 of this Decision to ensure that the signage is re-sited in in order to improve the possibility of achieving its objective of deterrence.

### CPI rather than RPI

44. The Tribunal determines that, as at the date of the Forms, it was appropriate for the Applicants to propose an increase in the pitch fee by reference to RPI and not CPI.

### Decision

45. 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 13.4% with effect from 1 April 2023.

**Annex A- List of Respondents**

<b>Case Reference</b>	<b>Respondent</b>
MAN/00EQ/PHI/2023/0323	Mr & Mrs Morris
MAN/00EQ/PHI/2023/0324	Mr & Mrs Insley
MAN/00EQ/PHI/2023/0326	Mr & Mrs Byrne
MAN/00EQ/PHI/2023/0327	Mr & Mrs Griffin