



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

<b>Case Reference</b>	: CHI/00HG/PHI/2023/0579
<b>Property</b>	: 6 Julian Walk, Glenholt Park, Glenfield Road, Plymouth, PL6 7LU
<b>Applicant</b>	: The Berkeley Leisure Group Ltd
<b>Representative</b>	:
<b>Respondent</b>	: Mr D Richards & Mrs J Richards
<b>Representative</b>	:
<b>Type of Application</b>	: Review of Pitch Fee: Mobile Homes Act 1983 (as amended)
<b>Tribunal members</b>	: D Banfield FRICS, Regional Surveyor J Reichel BSc MRICS L Packer
<b>Date and place of Hearing</b>	: 28 February 2024 at Havant Justice Centre and by remote attendance
<b>Date of Decision</b>	: 4 March 2024

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**DECISION**

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The Tribunal determines that the Respondent is required to pay a pitch fee of £ £162.71 per month, exclusive of water charges with effect from 1 April 2023 until further review.

## **BACKGROUND**

1. On 15 June 2023, the Applicant occupier sought a determination of the pitch fee of £162.71 per month payable by the Respondent as from 1 April 2023.
2. A Pitch Fee Review Notice dated 20 February 2023 was served on the occupiers proposing to increase the pitch fee by an amount that the site owner says represents only an adjustment in line with the Retail Price Index.
3. The Tribunal issued a Notice on 12 January 2024 that it was minded to strike out the application as a complete written statement had not been provided and it was therefore unable to be satisfied that the correct Review Date had been specified in the Notice or that the Respondents were made aware of or knowingly agreed to the Review Date of 1 April 2023.
4. The Applicant responded by email on 18 January 2024, attaching representations and supporting documents explaining that the two pages of the written statement that were provided were the only pages held by the Applicant, a complete copy was not received when the Applicant acquired the park in 2020. The Applicant also confirmed that the Respondent had agreed to earlier reviews in 2020, 2021 and 2022 all being from the 1 April as the Review Date which the Respondent accepted and paid.
5. The Respondent emailed the Tribunal on 14 and 17 January 2024 providing representations on the pitch fee increase for this application but did not appear to make comment on the Review Date.
6. The Tribunal noted that it was satisfied at that stage that the Respondent was aware of the Review Date of 1 April and issued further Directions for the application to proceed.
7. The Tribunal then received a further email from the Respondent dated 24 January 2024 with his response to the Applicants submissions regarding the written agreement.
8. The Respondent also returned the reply form confirming that he objects to the application, the Tribunal considered that a hearing was necessary and issued further Directions on 24 January 2024. The Directions invited any further comments from the Respondent in addition to previous emails which were to be received by 2 February 2024 and to which the Applicant was invited to reply by 16 February 2024.
9. The hearing was arranged to take place remotely on Thursday 29 February 2024.

10. Although the Tribunal remained of the view that an inspection is not required it invited either party, if they contended that an external inspection of the property was necessary, to make an application. None was received.
11. The Applicant prepared a hearing bundle comprising 118 pages including an index. Reference to page numbers within the bundle are indicated as [ ].

## **The Law**

12. The relevant law is set out in the Mobile Homes Act 1983 (“the Act”), as annexed to this decision.
13. Under the Act, terms are implied into all agreements to which the Act applies. Those implied terms are set out in Chapter 2 of Part 1 of Schedule 1 of the Act.
14. The relevant terms for the purposes of a pitch fee review are set out at paragraphs 16-20 of that part of the Schedule. A review of a pitch fee is governed by three statutory principles:
  - i. The pitch fee can only be changed either with the agreement of the occupier or by determination by the Tribunal;
  - ii. The pitch fee shall be reviewed annually as at the review date;
  - iii. A presumption that the fee will increase or decrease in line with the variation in the Retail Price Index (“RPI”).
15. Paragraph 18 requires the Tribunal, in determining the new pitch fee, to have regard to particular factors:
  - i. Any sums expended by the site owner since the last review date on improvements;
  - ii. Any deterioration in the condition and any decrease in the amenity of the site;
  - iii. Any reduction in the services provided by the site owner and any deterioration in the quality of those services;
  - iv. Any legislative changes affecting costs.
16. Paragraph 29 states that the pitch fee excludes electricity, water etc unless provided for in the agreement.

## **The Applicant’s case**

17. In a witness statement dated 9 February 2024 [97] Mr Drew states that;
  - They acquired the park in January 2020

- Pitch fees are generally reviewed on 1 April each year
- There are two elements to the charge;
  1. Pitch fee – derived from the original fee subject to indexation
  2. Water -the cost of water with the addition of an administration charge
- In submissions dated 17 January 2024 [34] it was indicated that They did not receive a full copy of the written statement when they purchased in January 2020 and since then the parties have accepted 1 April as the review date and
- By accepting the proposed increase each year with effect from 1 April the Respondent has accepted the position
- Copies of the notices for 2020 increasing the pitch fee from £127.81 to £131.26 and subsequent reviews in 2021 and 2022 are shown [37-65]
- The schedule provided by the previous owner [99] showed Rent as £124.69, Water rate £42.96 and a Total of £167.65. This was confirmed by the sellers 2019 details prior to sale.
- A pro forma review letter dated 27 November 2019 explained that the pitch fee was increased by RPI and the water charge divided between the number of homes in the park (less a discount)
- The Schedule 4 Assignment Form referred to by the Respondent was not prepared by the Applicant and cannot be vouched for.
- The schedule [102] indicates that pitch fees have increased by RPI and are separate from water. From 2018 the combined amount was £167.65 as referred to in the assignment document.
- Since 2020 the water charges have been significantly reduced whereas if subject to indexation they would have increased.

## **The Respondent's Case**

### **The date of review**

18. In a statement of case [91] the Respondent says that;
- The Applicant has revealed that it doesn't hold a legally binding pitch agreement, withheld the information from 2020 to 2024 and made no attempt to forge a new pitch agreement.
  - In default the review date specified by the mobile homes act is the date we purchased the home i.e. 31/5/2017.
  - Previous pitch fee reviews were not issued on the correct date and are not valid.
  - The Schedule 4 Assignment Form has had the review date struck out[93 ]

### **Water**

19. Regarding the separate charge for water the Respondent says that;
- The change cannot be made retrospectively.

- When the park changed from a Holiday letting park to residential water and electricity was part of the pitch fee.
- When purchased the sales documents indicated that water was included in the pitch fee [93].

### **New level of Pitch fee**

20. The Respondent states that;

- The Applicant holds no documentation that water and sewage was not included in the pitch fee or showing any binding changes to the 1994 pitch fee agreement.
- Each new owner generates a new pitch fee agreement and the only documentation held is with Mr & Mrs Groome.
- “The review date is the first of September each year not the first April as shown on the form. Another mistake requiring the form to be thrown out and this proceeding ended.”
- Whether the park owner separates the pitch fee and water in their accounts makes no difference to my agreement, that single amount increasing by inflation each year.
- Receipts have been given separating the pitch and water fees thereby breaking the agreement following which he refused to pay until corrected.

### **The Hearing**

21. The hearing took place on 29 February 2024 at Havant Justice Centre. Panel members Reichel and Packer attended remotely as did the parties.
22. In attendance were Mr Steve Drew (Finance Director), Mr Shaun Newman (Glenholt Park Manager) and Ms Nel Chapman of the Applicant together with Mr David Richards, one of the Respondents.
23. The parties confirmed that they were giving evidence from within the UK.

### **The Applicant**

24. Mr Drew said that a Pitch Fee Notice had been sent to the Respondent on 20 February 2023 for a review on 1 April 2023. The RPI for the January to January period was 13.4% and in accordance with previous practice there was also a note stating the amount of the Respondent's liability for water charges. All was in accordance with the 1983 Act.
25. Mr Drew acknowledged that the Applicant only had a section of the pitch agreement but he had complied with the undisputed practice followed since 2020.

26. The contents of the sales agreement was between the seller and Mr Richards without any involvement from the then site owner.
27. In answer to the Tribunal's question he said that they had full copies of agreements for some of the pitches but there were a number where they had not. The majority of review dates were 1 April although there were some exceptions.
28. For 2019 the review was carried out late (January 2020) but the effective date remained 1 April 2019.
29. Mr Drew said that he would be happy to agree a fresh pitch fee agreement with Mr Richards in order to avoid future uncertainty.

#### The Respondent

30. Mr Richards said that the Applicant must have known that some agreements were missing prior to their purchase of the site and that he had agreed changes to his agreement with Barton Homes in respect of the siting of outbuildings etc. Copies of which he had been provided with.
31. Mr Richards only found out about the missing agreement 18 months ago and, due to a member of the Applicant's staff referring to his need to have a copy for when he sold, he started to investigate.
32. He referred to the sales particulars and signed agreement between him and the vendor when he purchased his home both of which referred to the pitch fee being inclusive of water and there being no date given for any review.
33. In his view, in the absence of an agreement the review date as specified in the Act should be the anniversary of his purchase.
34. He questioned the validity of a "late review" which he considered meant that there had been two reviews within the same 12 month period.
35. The Tribunal said that it was too late to challenge the 2020 review however the circumstances would be considered when making its determination.
36. In answer to the Tribunal's question Mr Richards said that he had provided all paperwork relevant to the dispute.

#### **The Tribunal's determination**

37. Both parties agreed at the hearing that there had been no improvements to the site, nor any deterioration or decrease in amenity. The two issues for the Tribunal to determine therefore are the correct date of review and whether water is included in the Pitch fee.

38. Contrary to the assertions of the Respondent each change of owner does not generate a fresh pitch agreement the outgoing owner simply assigning the agreement to the purchaser. The terms of the 1994 agreement [21] are therefore binding on the parties subject to any variations that may have been implemented.
39. The absence of the complete written statement gives the parties some difficulty and the Tribunal must look to what other evidence is available.
40. There are two dates which may have some relevance; Part 1 of the written statement states that the agreement commenced on 1 September 1994 [21] however the “Plot Information Form” [22] refers to the “Date Home First Sited/Occupied” as 31.3.88.
41. Whilst neither date is conclusive the Tribunal is further guided by the until recently unchallenged review dates of 1 April 2020, 2021 and 2023 and the pro forma letter prepared by the former site owner [100] also giving a 1 April review date and explaining that water was charged separately.
42. In the absence of any evidence contrary to the above the Tribunal determines that the appropriate date for the annual review is 1 April.
43. With regard to the inclusion of water paragraph 29 of Chapter 2 Schedule 1 of the 1983 Act defines pitch fee as not including gas, electricity, water, sewerage or other services unless expressly provided by the agreement.
44. Each of the review letters indicate that water is charged for separately. The Schedule [102] indicates such a separation and it is noted that there was a significant reduction in water charges from 2021 meaning that the total monthly charge in 2022 was some £20 lower than in 2018.
45. In looking at the charges set out in the schedule the Tribunal has calculated that if the 2018 pitch fee had included water and was therefore £167.65 per month the application of an MRI annual increase would mean that the 2023 pitch fee would be £218.76.
46. The Respondent relies on the sales particulars when he purchased which refers to a “Maintenance Charge” of £163 per month and the Schedule 4 form which refers to £163.59 as the current pitch fee “inc water”.
47. Whilst the term “maintenance charge” is not recognised the sum referred to and indeed the amount in the Schedule 4 document are fair indications of the monthly payment to be made to the site owner and which is a combination of the pitch fee and water charge. They do not however provide evidence that the water charge is included in the pitch fee.

48. The Tribunal is satisfied therefore that, in the absence of evidence to the contrary that the pitch fee does not include the cost of water.
49. There has been no challenge to the amount of the percentage increase and the Tribunal is satisfied that the Applicant was entitled to serve the Respondent with a notice of increase, that valid documentation has been served within the correct timescale and that the RPI increase, calculated as at January 2023, was 13.4%.
50. The Tribunal therefore determines that the proposed increase in pitch fee is calculated in accordance with the Act.
51. The Tribunal determines that the Respondent is required to pay a pitch fee of £ £162.71 per month, exclusive of water charges with effect from 1 April 2023 until further review.
52. At the end of the hearing, Mr Drew repeated his offer to discuss with Mr and Mrs Richards the possibility of putting in place a proper written agreement. The Tribunal welcomes and commends this as something desirable to achieve for the future.

## **RIGHTS OF APPEAL**

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to [rpsouthern@justice.gov.uk](mailto:rpsouthern@justice.gov.uk) 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.
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



## **Annex: The Law**

### **Chapter 2 of Part 1 of Schedule 1 to the Mobile Homes Act 1983**

#### *The pitch fee*

#### **16**

The pitch fee can only be changed in accordance with paragraph 17, either—

- (a) with the agreement of the occupier, or
- (b) if the appropriate judicial body, on the application of the owner or the occupier, considers it reasonable for the pitch fee to be changed and makes an order determining the amount of the new pitch fee.

#### **17**

(1) The pitch fee shall be reviewed annually as at the review date.

(2) At least 28 clear days before the review date the owner shall serve on the occupier a written notice setting out his proposals in respect of the new pitch fee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(9) An application under sub-paragraph (8) may be made at any time after the end of the period of 56 days beginning with date on which the owner serves the notice under sub-paragraph (6)(b) but, in the case of an application in relation to a protected site in England, no later than four months after the date on which the owner serves that notice.

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

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

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

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

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

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

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

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

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

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

## **18**

(1) When determining the amount of the new pitch fee particular regard shall be had to—

(a) any sums expended by the owner since the last review date on improvements—

(i) which are for the benefit of the occupiers of mobile homes on the protected site;

(ii) which were the subject of consultation in accordance with paragraph 22(e) and

(f) below; and

(iii) to which a majority of the occupiers have not disagreed in writing or which, in the case of such disagreement, the appropriate judicial body on the application of the owner, has ordered should be taken into account when determining the amount of the new pitch fee;

(aa) in the case of a protected site in England, any deterioration in the condition, and any decrease in the amenity, of the site or any adjoining land which is occupied or controlled by the owner since the date on which this paragraph came into force (in so far as regard has not previously been had to that deterioration or decrease for the purposes of this sub-paragraph);

(ab) in the case of a protected site in England, any reduction in the services that the owner supplies to the site, pitch or mobile home, and any deterioration in the quality of those services, since the date on which this

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

(ba) in the case of a protected site in England, any direct effect on the costs payable by the owner in relation to the maintenance or management of the site of an enactment which has come into force since the last review date;

(1A) But, in the case of a pitch in England, no regard shall be had, when determining the amount of the new pitch fee, to any costs incurred by the owner since the last review date for the purpose of compliance with the amendments made to this Act by the Mobile Homes Act 2013.

(2) When calculating what constitutes a majority of the occupiers for the 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.

## **19**

(1) When determining the amount of the new pitch fee, any costs incurred by the owner in connection with expanding the protected site shall not be taken into account.

(2) In the case of a protected site in England, when determining the amount of the new pitch fee, no regard may be had to any costs incurred by the owner in relation to the conduct of proceedings under this Act or the agreement.

(3) In the case of a protected site in England, when determining the amount of the new pitch fee, no regard may be had to any fee required to be paid by the owner by virtue of—

(a) section 8(1B) of the Caravan Sites and Control of Development Act 1960 (fee for application for site licence conditions to be altered);

(b) section 10(1A) of that Act (fee for application for consent to transfer site licence).

(4) In the case of a protected site in England, when determining the amount of the new pitch fee, no regard may be had to any costs incurred by the owner in connection with—

(a) any action taken by a local authority under sections 9A to 9I of the Caravan Sites and Control of Development Act 1960 (breach of licence condition, emergency

(b) the owner being convicted of an offence under section 9B of that Act (failure to comply with compliance notice).

## **20**

(A1) In the case of a protected site in England, unless this would be unreasonable having regard to paragraph 18(1), there is a presumption that the pitch fee shall increase or decrease by 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).

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

## **25A**

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

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

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

(c) explain the effect of paragraph 17,

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

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

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

## **29**

“pitch fee” means the amount which the occupier is required by the agreement to pay to the owner for the right to station the mobile home on the pitch and for use of the common areas of the protected site and their maintenance, but does not include amounts due in respect of gas, electricity, water and sewerage or other services, unless the agreement expressly provides that the pitch fee includes such amounts;

## **The Mobile Homes (Pitch Fees) (Prescribed Form) (England) Regulations 2013**

### **Application, citation and commencement**

**1.** These Regulations, which apply in relation to England only, may be cited as the Mobile Homes (Pitch Fees) (Prescribed Form) (England) Regulations 2013 and come into force on 26th July 2013.

### **Pitch fees: Prescribed form**

**2.** The document referred to in paragraph 17(2A) and (6A) of Chapter 2 of Part 1 of Schedule 1 to the Mobile Homes Act 1983 shall be in the form prescribed in the Schedule to these Regulations or in a form substantially to the like effect.