

FIRST TIER PROPERTY CHAMBER DECISION



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

Case Reference : **CHI/15UC/PHI/2023/0566**

Property : **25 Truro Heights, Kenwyn Hill, Truro, Cornwall TR1 3FD**

Applicant : **Turners Regency Parks Limited**

Respondent : **Mr Ian Hurley & Ms Penny Hope**

Type of Application : **Application for determination of Pitch Fee: Paragraph 16 of Chapter 2 Part 1 Schedule 1 of the Mobile Homes Act 1983 (as amended)**

Tribunal: : **Judge T. Hingston**

Date of Decision : **6th May 2024**

DECISION

The Tribunal determines that a Pitch fee increase is reasonable, and that the figure of £176.05 per calendar month as proposed by the Applicants is payable with effect from 1st April 2023.

BRIEF BACKGROUND.

- 1.** Truro Heights is a Park Homes site near Truro in Cornwall, which is run by the Applicants Turner Regency Parks Limited.
- 2.** The Respondents Mr. Hurley and Ms. Pope are the occupants of Pitch number 25, and their Written Statement confirms that their 'Agreement' commenced on 23rd of May 2017.
- 3.** The annual Review date for pitch fee increases is the 1st of April.
- 4.** On the 16th February 2023 the Applicants served a Notice of Pitch Fee increase on the Respondents, together with the Pitch Fee Review Form and all requisite documentation including a reply form.
- 5.** The proposed increase was due to take effect from the Review date of 1st April 2023, but it was not exactly in line with the RPI increase of 13.4% for the relevant period (i.e. the 12 months to January 2023). Instead, the Applicants proposed an increase of only 75% of that 13.4% figure.
- 6.** On the 26th April 2023 the Applicants wrote to the Residents giving a full explanation of their reasoning in respect of pitch fee increases and setting out how they had calculated the latest figures.
- 7.** On 31 May 2023 the Tribunal received an application for the determination of pitch fee increase. No hearing or inspection was requested.
- 8.** Directions were duly made and the matter was listed for paper determination.
- 9.** No correspondence or objection has been received from the Respondents.

RELEVANT LAW.

10. Much of the relevant law is contained in the Mobile Homes Act 1983 (as amended), which aimed to standardise and regulate the terms on which mobile homes were occupied. All agreements to which the 1983 Act applies incorporate standard terms as implied by the Statute.

11. Section 1(1) of the Act provides:

'This Act applies to any agreement under which a person ("the occupier") is entitled
a) To station a mobile home on land forming part of a protected site, and
b) To occupy the mobile home as his only or main residence.

9. Paragraph 29 of the Schedule 1 Part 1 Chapter 2 defines the 'pitch fee' as follows: -

"...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”.

12. Paragraph 16 of the 1983 Act states that the pitch fee can only be changed by the First Tier Tribunal if it “*considers it reasonable for the pitch fee to be changed and makes an order determining the amount of the new pitch fee*”.

13. Paragraph 17 provides for annual review of the pitch fee.

14. Paragraph 18(1)(a) states that :-

*“When determining the amount of the new pitch fee particular regard shall be had to... in the case of a protected site in England, any **deterioration in the condition**, and any **decrease in 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 deteriorate or decrease for the purposes of this subparagraph)”.* (Our emphasis)

15. Paragraph 18(1)(ab) states that in the case of a protected site in England, the Tribunal must consider whether there has been 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 (i.e. 26 May 2013), in so far as regard has not previously been had to that reduction or deterioration for the purposes of that subparagraph. (Our emphasis.)

16. Paragraph 20(A1) of the statutory implied terms (as amended) states: -
“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 (RPI) 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”. This presumption is referred to below as the ‘statutory presumption.’

(**Note:** This paragraph was amended on 2 July 2023 by the Mobile Homes (Pitch Fees) Act 2023 to change the basis of pitch fee increases in England from RPI (Retail Price Index) to CPI (Consumer Price Index), but the legislation is not retrospective.)

17. In *Vyse -v- Wyldecrest Parks (Management) Ltd* 2017[UKUT]24, Tribunal held that if none of the matters raised in paragraph 18(1) of the statutory implied terms applies and would justify departing from the statutory presumption, then the statutory presumption arises and the Tribunal must consider whether any “other factor” should displace it. The Upper Tribunal held that :-
“...by definition, this must be a factor to which considerable weight attaches...”

18. Therefore, once the Tribunal is satisfied that an Applicant has properly complied with the requirements for a pitch fee review, it has to determine whether it is reasonable to change the pitch fee at all. If a decision is made that there should be some change, the burden of proof then falls onto the Respondent and the task for the Tribunal is to determine whether either the Section 18 factors or any other issues raised by the Respondent are of sufficient weight to dislodge the statutory presumption.

CONSIDERATIONS.

19. No hearing or inspection of the site was requested by any party in this matter.

20. The Tribunal considered copies of the following documents which were submitted by the Applicants: -

- a) Application for determination dated 30th May 2023
- b) Notice of Pitch Fee Review dated 16th February 2023
- c) Pitch Fee Review Form
- d) Letter from Turners to Residents dated 26th April 2023

REASONING AND DETERMINATION.

21. The Tribunal found that the Applicants had acted reasonably and responsibly in recent years by seeking pitch fee increases of less than the RPI percentage, and that they had endeavoured to keep the residents informed of their decisions and given full explanation for them.

22. At the relevant time, in April 2023, the Applicants proposed a new pitch fee which represented an increase of only 10.5%, rather than the 13.4% which was in line with the applicable RPI.

21. The Tribunal found that it was reasonable for the pitch fee to be increased in April 2023.

22. In the absence of any objection from the Respondents the statutory presumption (as set out above) applies, and an increase of up to a maximum of 13.4% (in line with RPI) could have been proposed.

23. In fact the Applicants seek an increase of only 75% of that figure, which is reasonable in all the circumstances of the case.

24. The new pitch fee of **£176.05** per calendar month is determined accordingly, with effect from the Review date of 1st April 2023.

May 2024.

Right to Appeal

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