FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**CHI/23UE/PHI/2023/0605**
Properties	**:**	**15 The Bramleys, Orchard Park, Twigworth, Gloucester GL2 9GB**
Applicants	**:**	**Park Home Life Limited ("PHL")**
Representative	**:**	**Mr Nick Bond Powell Director of the Applicant and Tozers LLP Solicitors**
Respondents	**:**	**Mr Paul Grant and Mrs Brenda Grant**
Representatives	**:**	**Mr Paul Grant**
Type of application	**:**	**Pitch Fee Reviews under the Mobile Homes Act 1983**
Tribunal members	**:**	**Mr Charles Norman FRICS, Valuer Chairman** **Mr Paul Smith FRICS** **Mr Mike Jenkinson**
Date of Hearing	**:**	**25 April 2024**
Venue	**:**	**The County and Family Court at Gloucester & Cheltenham**
Date of decision	**:**	**1 June 2024**

DECISION

Decision of the Tribunal

(1) The Tribunal determines that the Pitch Fee review in relation to 15 The Bramleys is £232.00 per month with effect from 1 April 2023.

Reasons

The application

1. The Applicant seeks a determination pursuant to Para 16 of Chapter 2 of the Mobile Homes Act 1983 as to the new level of pitch fees in respect of 15 The Bramleys, Twigworth, Gloucestershire GL2, with effect from 1 April 2023.

Directions

2. Directions were issued on 22 February 2024 setting the matter down for a determination on the papers, unless either party requested a hearing. The respondent requested a hearing and on 14 March 2024, the Tribunal directed that the application together with that for 17 The Bramleys (CHI/23UE/PHI/2023/0605) be heard together at a hearing. It also directed an inspection.

The Inspection

3. The inspection took place at 10 am on 25 April 2024, in the presence of Mr Nick Bond Powell of the applicant and the respondents, together with the respondents for CHI/23UE/PHI/2023/0605. The Tribunal found that The Bramleys, Orchard Park, are part of a larger Park Homes site located in Twigworth, which is a popular area bridging town and country a few miles from the outskirts of Gloucester. The site is split into two areas; the developed area to the north consisting of larger more modern park homes with lower enclosing skirt walls and the older area of the estate to the south dating from the 1960s and 70s; many of which have been removed. The newer site is high density with no recreation areas and road access via a single entrance where the hub and offices are located. There are amenities on the adjacent newly built housing estate, Twigworth Green, although only an office and single former park home as a meeting room (known as "The Hub") for approximately 40 residents plus adjacent marquee space, installed by the residents, on the estate. Visitor car parking exists, and some park homes have their own parking spaces, others rely on the vacant sites. The newer area of the estate is in good order while the older area is fairly run down with a mixture of homes in various states of repair. Overall, the park appears well managed. No 15 is also close to, but not immediately adjacent to, a recently redeveloped area of the park known as the Ribstons.

The Hearing

4. The hearing commenced at the County and Family Court at Gloucester and Cheltenham on 25 April 2024, starting at 11.30 am. The applicants were represented by Mr Neil Darby of Tozers solicitors. However, as Mr Darby was unavoidably delayed until 12:10 pm, Mr Nick Bond Powell a director of the applicant and general manager of Orchard Park, represented the applicant prior to Mr Darby's arrival. All respondents were in attendance. The parties provided a bundle of 247 pages.

5. Prior to the hearing commencing, the Chairman informed the parties that Mr Paul Smith FRICS was a councillor on Tewkesbury Borough Council and a member of the planning committee. Although issues had been raised by the respondent in relation to licencing, that was a separate committee of the council with which Mr Smith had no involvement. Accordingly, the Chairman expressed the view that Mr Smith should not therefore recluse himself from the hearing but invited objections from the parties. No objections were received, and the hearing therefore proceeded with Mr Smith sitting.

The background

6. The Applicant gave notice on 28 February 2023 to the respondents that their respective pitch fees would be reviewed to £238.09 per month with effect from 1 April 2023. The existing pitch fees were each £209.96 per month. The prescribed Pitch Fee Review Forms were used. The revised fee was calculated solely by reference to the RPI index change, during the preceding 12-month period. This was 13.4%. No adjustments were made at sections 4(C) (additional landlord's costs) or 4(D) of the form (deductions).

Written Statements

7. Mr and Mrs Grant signed a Written Statement under the Mobile Homes Act 1983 on 28 January 2020. These incorporated the Implied Terms required under the Act.

The Respondents' Case

8. It is convenient to set this out first. The written statement of case contained complaints about what may be informally termed "mis selling" of the mobile home to the respondents. The Tribunal explained that this was not the correct forum for such issues as the tribunal lacked jurisdiction. There was also a complaint about processes leading to a change in the 1964 site licence which enabled deletion of a 10% requirement for recreational space. Such an allocation had not existed for at least 20 years. The respondent has investigated this by making a

freedom of information request to Tewkesbury Borough Council. The RPI increase appeared opportunistic, but the respondent accepted that this might accord with the legislative framework. In his oral evidence, Mr Grant added to his evidence by explaining that the respondents' mobile home had been affected by vibration due to the nearby works [Ribstons redevelopment].

The Applicant's Case

9. Mr Bond-Powell provided two witness statements and gave evidence. In his first statement he explained the basis of the RPI calculation. The RPI index should apply unless any of the grounds under Para 18 of the Implied Terms applied. The applicant did not see any grounds to disapply the presumption. Furthermore, the Applicants running costs increased in the year preceding the RPI increase.

10. In his second witness statement, he stated that the applicant disputed whether there was a qualifying residents association. PHL had provided a recreational room (the "HUB") for use by residents and outdoor space for a marquee (supplied by residents). The business status of PHL was irrelevant to the matter. Mr Bond-Powell then responded in some detail to the miss-selling allegations, which the Tribunal is not addressing. In relation to the pitch fee review, there had been correspondence and a difficult meeting, so discussions were discontinued. PHL was entitled to seek amendment to the site licence, and PHL was not required to consult a qualifying residents association if it existed. The FOI information did not add anything. The applications agreed with the RPI calculation and had not advanced grounds for displacing the RPI presumption.

The Law

11. The approach the Tribunal should adopt was set out in *Wyldecrest Parks (Management) Ltd and Mr Alan Whiteley* [2024] UKUT 55 (LC) to which the tribunal referred during the hearing. The Upper Tribunal stated:

> 15. The implied terms in Chapter 2 of Schedule 2 to the 1983 Act (both in their original form and as amended by the Mobile Homes Act 2013) provide for pitch fees to be reviewed annually, either by agreement or by the FTT (referred to in the Act as the "appropriate judicial body") on the application of the owner or the occupier. By paragraph 16 of Schedule 2, if the parties cannot agree, the pitch fee may only be changed by the FTT if it "considers it reasonable for the pitch fee to be changed and makes an order determining the amount of the new pitch fee."

16. The procedure for obtaining a new pitch fee is specified in paragraph 17 of Schedule 2. The pitch fee can be reviewed annually at the review date. The owner must give notice of its proposed increase at least 28 days before that date, and if the occupier agrees to the proposal the proposed new pitch fee becomes payable. If the occupier does not agree, the owner may apply to the FTT for an order determining the amount of the new pitch fee.

17. Paragraphs 18, 19 and 20 of Schedule 2 explain what is to be taken into account in determining a new pitch fee. These provide the only guidance to the FTT on what it is to do if, having received an application from an owner or occupier, it considers it is reasonable for the pitch fee to be changed. Unfortunately, they are not as informative as they might have been.

18. Omitting irrelevant parts, paragraph 18 now says this:

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 subparagraph;

(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 subparagraph);

(b) [Wales];

(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; and

(c) [Wales]

(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) [calculating a majority of the occupiers]

(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. Paragraph 18 came into force in its current form on 26 May 2013. In summary, therefore, on a pitch fee review in England, "particular regard" is to be had to three matters: (1) sums expended by the owner on improvements since the last review date; (2) any deterioration in the condition, and any decrease in the amenity, of the site or adjoining land occupied or controlled by the owner since 2013 "in so far as regard has not previously been had to that deterioration or decrease for the purposes of this subparagraph"; (3) any reduction in, or deterioration in the quality of, services supplied by the owner since 26 May 2013 to which regard has not previously been had; and (4) any direct effect of legislation which has come into force since the last review date on the costs payable by the owner on the maintenance or management of the site.

20. Paragraph 19 then identifies certain costs which may not be taken into account in determining a new pitch fee (including costs of expanding the site or obtaining a site licence).

21. Finally, paragraph 20 trumps all the complexity that has gone before by creating a statutory presumption, as follows:

"(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." [...]

23. In *John Sayer's Appeal* [2014] UKUT 0283 (LC), at [21]-[23], which concerned charges for the supply of water and focussed on an earlier version of these paragraphs, I explained that the statutory implied terms do not provide a comprehensive code for the determination of the pitch fee. Their effect is that, unless a change in the pitch fee is agreed between the owner of the site and the occupier, the pitch fee will remain at the same level unless the tribunal considers it reasonable for the fee to be changed. If the tribunal decides that it is reasonable for the fee to change, the amount of the change is in its discretion, provided that it must have "particular regard" to the factors in paragraph 18(1), and that it must not take into account ... the costs referred to in paragraph 19. It must also apply the presumption in paragraph 20(1) that any increase (or decrease) shall be no greater than the percentage change in the RPI unless that would be unreasonable having regard to the factors in paragraph 18(1). In practice that presumption usually means that annual RPI increases are treated as a right of the owner, but the trigger for any change is that it must be reasonable for there to be a change:

"The overarching consideration is whether the [tribunal] considers it reasonable for the pitch fee to be changed; it is that condition, specified in paragraph 16(b), which must be satisfied before any increase may be made (other than one which is agreed)."

56. ....there has also been a change in the time when the relevant deterioration in amenity may have taken place. The point of reference is no longer the last review date but has become "the date on which this paragraph came into force" (25 May 2013 in England and 1 October 2014 in Wales). Any deterioration or decrease since that date must be taken into account, unless the exception in brackets applies. The exception is expressed in convoluted language: "(in so far as regard has not previously been had to that deterioration or decrease for the purposes of this subparagraph)". It means: unless that deterioration or decrease has previously been taken into account when determining a new pitch fee. [...]

> 58. I am satisfied that the exception applies only if there has been a previous pitch fee review since the relevant deterioration or decrease which has involved a determination by a tribunal, and in which the deterioration or decrease has been taken into account. In my judgment the exception does not apply where the owner has obtained an increase since the deterioration or decrease simply by making a proposal under paragraph 17 which the occupier has agreed to or acquiesced in without the involvement of the tribunal."

Findings

12. The Tribunal found Mr Grant to be a credible witness. Although it became clear at the hearing that the respondents had misunderstood the scope of the Tribunal proceedings, it accepts his evidence that there was significant disturbance to 15 The Bramleys (including some physical damage), caused by redevelopment of the Ribstons [within the site] for 6 months from January 2022. The Tribunal has taken into account the video and photographic evidence provided in the case of 17 The Bramleys, with which this case was heard. That showed very substantial earth moving plant in the proximity of 17 The Bramleys, although not immediately adjacent to it.

13. Therefore, the Tribunal finds that there was a significant deterioration in the condition, and decrease in the amenity, of the site as a result of those works, which carried on for around 6 months. At that time, Para 18 in its current form was in force. As no previous pitch fee review had proceeded to determination, the Tribunal is entitled to take this deterioration in condition and amenity into account in the current application as a matter falling within Paragraph 18(aa).

14. The Tribunal accepts the applicant's case that it fully complied with the statutory requirements in serving the pitch fee review notice. It agrees with PHL that it was entitled to seek to change the park licence at any time and there was no obligation to continue to seek a 10% recreational element. It accepts Mr Bond Powell's evidence that there has not been a 10% allocation for recreational land during the past 20 years. It is unnecessary for the Tribunal to decide whether the Orchard Park Residents' Association ("OPRA") was a qualifying association.

15. The Tribunal does not consider that the personal circumstances of the Respondents can be taken into account when arriving at a decision, as this is a property dispute.

16. Overall, it concludes that a reasonable pitch fee requires a substantial downward adjustment to the RPI rate of increase. It assesses the downward adjustment at 25%. Based on the agreed RPI increase of 13.4%, this is 10.05%. Applying this to the passing pitch fee of £209.96

per month gives £232.00 per month. This the Tribunal finds payable with effect from 1 April 2023.

Name: Mr Charles Norman FRICS **Date:** 1 June 2024

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 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).