FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**CHI/23UE/PHI/2023/0602**
Properties	**:**	**17 The Bramleys, Orchard Park, Twigworth, Gloucester GL2 9GB**
Applicants	**:**	**Park Home Life Limited ("PHL")**
Representatives	**:**	**Mr Nick Bond Powell Director of the Applicant** **Tozers LLP Solicitors (Mr Neil Darby)**
Respondents	**:**	**Mr Glyn Davies and Mrs Louise Davies**
Representatives	**:**	**Mr Glyn Davies**
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	**:**	**31 May 2024**

DECISION

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Decision of the Tribunal

(1) The Tribunal determines that the Pitch Fee review in relation to 17 The Bramleys Orchard Park, Twigworth, Gloucester GL2 9GB is £224.03 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 17 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 15 The Bramleys (CHI/23UE/PHI/2023/0602) be heard 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 both respondents. The respondents to CHI/23UE/PHI/2023/0602 were also present. 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. Immediately adjacent to No 17 is a recently constructed area 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. Both 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 pitch fees would be reviewed to £238.09 per month with effect from 1 April 2023. The existing pitch fees were £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 Davies signed a Written Statement under the Mobile Homes Act 1983 on 14 August 2020. This incorporated the Implied Terms required under the Act.

The Applicant's Case

8. 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.

9. In his second witness statement, he stated that the applicant's position was that there were no relevant deductions and that the respondent would need to establish a deterioration in the condition and amenity of the site, or a reduction in services to the site, pitch or mobile home and any deterioration in the quality of those services in accordance with Para 18(1) of Chapter 2 of Part 1 Schedule 1 to the Mobile Homes Act 1983. In response to the claim for loss of quiet enjoyment [owing to nearby redevelopment] redevelopment has been ongoing since the Park began in 2007. This requires the use of machinery. All customers have always been advised that the whole park is undergoing a phased redevelopment. This is phased to lessen the impact on residents. During cross examination Mr Bond-Powell added that this was also done so that sales could fund further development. Disruption is kept to a minimum and works carried out on weekdays only and during business hours.

10. Loss of quiet enjoyment meant without interference with possession and not undisturbed by noise. Any breach of quiet enjoyment would not affect the pitch fee review unless this also fell within one of the statutory grounds for rebutting the RPI presumption. The Applicant always engages with and tries to assist residents. The Applicant sympathizes with the respondents' medical conditions, but there was no significant reduction in amenity justifying a reduction in pitch fee. There is no breach of implied term 11 [quiet enjoyment] as the matters complained of were in the main transient and/or low-level inconveniences. Further the Tribunal does not have jurisdiction to set off damages for breach of quiet enjoyment against the pitch fee.

11. The pitch fee review was carried out properly in accordance with relevant legislation, using the correct RPI. The applicant has no obligation to give disclosure about running costs. Loss of employees resulted from changing business needs.

12. The park has not had a recreational area for 20 years. The Respondents assumption that 10% of the park would be for recreation is not based on representations from PHL. The respondents Mr and Mrs Davies never raised this during the purchase process. The 10% referred to on the historic site licence [1964] was no longer relevant. The new site licence was agreed with the Borough Council and reflected access to nearby local amenities. There is no obligation on PHL to consult residents in relation to licencing, nor any qualifying residents' association. Whether the Orchard Park Residents' Association [("OPRA")] is a qualifying association is disputed. In addition, PHL had provided the HUB at its own cost. Further, OPRA wrote on 26 June 2023 accepting that the 10% requirement in the old licence was unviable. Mr Davies was a signatory to that letter. Subsequently, PHL had also provided further space for a residents' marquee which the residents had supplied.

13. In terms of maintaining privacy, the nature of the Park means that windows will inevitably overlook other homes. There was discussion regarding reimbursement for a [privacy] window film, but this was not concluded.

14. In closing Mr Darby submitted that there was no application for damages for breach of quiet enjoyment. This could not be reflected in a pitch fee review. The site licence change did not require consultation.

The Respondent's Case

15. Mr and Mrs Davies produced a witness statement and Mr Davies gave evidence. This evidence may be summarised as follows. They bought the park home from PHL for £227,000 in August 2020. The calculation of the pitch fee RPI figure is agreed. However, they consider that there should be a deduction under "relevant deductions" in the formula for four reasons.

16. Firstly, they alleged that there had been loss of quiet enjoyment. The adjacent redevelopment area [the Ribstons] which commended in January 2022 and had taken 6 months. The redevelopment occurred on two sides of the respondents' pitch. This involved the use of diggers, hardcore/rubble reduction machines, compacting vibrating pads, pneumatic concrete and demolition hammers and general building machinery. This was intolerable as it caused high noise and significant vibration. There was also damage to the mobile home and PHL carried out repairs. The respondents also cited *Timothy Taylor Ltd v Mayfair House Corporation and another* [2016] EWHC 1075 (Ch).

17. This was a breach of the covenant for quiet enjoyment and also a matter falling within Para 18(aa) of the implied terms amounting to a 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. Further Ms Davies suffers from a long-term health condition requiring bed rest and Mr Davies needed to work from home. Videos of the works and photographs were supplied.

18. Secondly, there had been a lack of transparency on the basis of the pitch fee increase. The RPI when calculated was at a peak and was subsequently replaced by CPI in July 2023. The respondents asked for cost information which was not provided except as part of the tribunal process.

19. Thirdly, the original licence which formed part of the contract with PHL stated that there should be 10% recreational space, as against the 2% provided. They had assumed that the 10% would be reinstated. This amounts to a deterioration in condition within Para 18(aa).

20. Fourthly, there has been loss of privacy following the siting of a new mobile home adjacent to their pitch. The bedrooms of both homes face each other. The respondents had had to purchase privacy film.

The Law

21. 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."
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> 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.
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> 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.
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> 18. Omitting irrelevant parts, paragraph 18 now says this:
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> 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

22. The Tribunal found Mr Davies to be a careful and credible witness. It accepts his evidence as supported by videos and photographs of extensive redevelopment work immediately adjacent to 17 The Bramleys, which continued for around 6 months.

23. Mr Bond-Powell was also careful, but the Tribunal is unable to accept his evidence that the nature of the redevelopment adjacent to 17 The Bramleys was a merely transient or a low-level inconvenience.

24. The Tribunal finds that there was a substantial 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, commencing in January 2022. 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.

25. The Tribunal finds that it does not have jurisdiction to consider breaches of quiet enjoyment in the context of a pitch fee review. That is

a separate cause of action which is a matter for the County Court. It therefore prefers to express no view on *Timothy Taylor Ltd*. However, if it is wrong about that, it would make no difference to the present outcome, as the Tribunal will reflect loss of condition and amenity in its decision, being matters within Para 18(aa) of the implied terms.

26. The Tribunal accepts the applicant's case that it fully complied with the statutory requirements in serving the pitch fee review notice. It also accepts that no further disclosure relating to PHL finances was required by PHL. 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 finds that there was no obligation on PHL to consult with the respondents or any qualifying residents' association in relation to changes in the site licence. It is therefore unnecessary for the Tribunal to decide whether OPRA was a qualifying association. It also accepts PHL's case that some degree of overlooking is inevitable in a park home of this nature.

27. 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.

28. Overall, the Tribunal finds, based on Para 18(aa) that a reasonable pitch fee requires a substantial downward adjustment to the RPI rate of increase. It assesses the downward adjustment at 50%. Based on the agreed RPI increase of 13.4%, this is 6.7%. Applying this to the passing pitch fee of £209.96 per month gives £224.03 per month. This the Tribunal finds payable with effect from 1 April 2023.

Name: Mr Charles Norman FRICS **Date:** 31 May 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).