



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

Case reference : **CHI/29UK/PHI/2023/0555-0562**

Property : **6,9,10,22,23,26 and 34 East Hill Park
Ashen Grove Road, East Hill, Nr
Kensing, Sevenoaks, Kent, TN15 6YE**

Applicant : **Lee Park Estates Ltd**

Representative : **Fisher Jones Greenwood LLP**

Respondent : **6,9,10,22,23,26 and 34 East Hill Park
Pitch holders**

Representative : **In Person**

Type of application : **Review of Pitch Fee: Mobile Homes Act
1983**

Tribunal members : **Valuer Chair R Waterhouse FRICS,
Mr E Shaylor MCIEH
Miss J Dalal**

Venue : **Sevenoaks – The Courthouse Morewood
Close, London Road, Sevenoaks TN13
2HU**

Date of Hearing : **24 June 2024**

Date of decision : **30 June 2024**

DECISION

Initial Comment

The Tribunal is very grateful to the parties for their careful, explanation of their submissions and guidance during the inspection.

Background

1. This decision relates to seven pitch fee reviews for park homes at East Hill Park, Ashen Grove Road, East Hill, Nr Kensing, Sevenoaks, Kent TN15 6YE. The applicant is the site owner. The respondents are the owners of pitches 6,9,10,22,23,26 and 34 East Hill Park.

2. Pitch fee review forms were served on each of the respondents;

Pitch No.	Date of Form	Bundle ref	Proposed Pitch Fee	Increase	RPI	Effective Date
6	15 Feb 23	C155-C163	£193.93	£22.92	13.4%	1 April 2023
9	15 Feb 23	C164-C172	£193.93	£22.92	13.4%	1 April 2023
10	15 Feb 23	C173-C181	£193.93	£22.92	13.4%	1 April 2023
22	15 Feb 23	C182-C190	£193.93	£22.92	13.4%	1 April 2023
23	15 Feb 23	C191-C199	£193.93	£22.92	13.4%	1 April 2023
26	15 Feb 23	C200-C208	£193.93	£22.92	13.4%	1 April 2023
34	15 Feb 23	C209-C217	£193.93	£22.92	13.4%	1 April 2023

3. By Application dated 22 May 2023, the Applicant sought determinations of the fees for pitches 6,9,10,11,22,23,26 and 34. The Application in respect of 11 was subsequently withdrawn.

On 4 January 2024; the Tribunal wrote to the Applicant with a “Notice that the Tribunal is minded to Strike out an Application Pursuant to Rule 9 of the Tribunal Procedure (First -tier Tribunal) (Property Chamber) Rules 2013. The reason being that, upon initial review of the applications, it was noted that copies of the Pitch Fee Review Notice and Forms were not provided for each Application. Representations by parties were due by 19 January 2024.

On the 10 January 2024 the Tribunal received a Request to the tribunal for consent to withdraw an application, from the Applicant Lee Park Estates Ltd in respect of pitch 11, on the basis that the Respondent Mr Dartnell has accepted the pitch fee. The Tribunal approved the withdrawal on 17 January 2024.

On the 10 January 2024 the Applicant submitted copies of the requested documentation stating that it, “has since been able to locate the Pitch Fee Review Notices together with each covering letter sent to each resident. We are instructed that our client had initially misplaced the copy documentation as a result of archives being relocated.”

Directions were given on 23 January 2024, on the basis the matter could be determined on paper, and made provision for Applicants case, Respondents case, Applicants Reply in relation to the latter to be submitted to the Tribunal by 29 February 2024.

Further Directions were issued on the 13 May 2024. The Tribunal had received Reply Forms from numbers 6, 10, 22, 23, 26 and 34 confirming they object to the increase of the Pitch Fee but stating they are content for the matter to be determined on papers.

The Determination of number 9 will proceed on Papers following confirmation that the Respondent does not want to proceed with the case, unless a withdrawal application is made in which case the Tribunal would consider the withdrawal application.

The Tribunal being mindful of the Representations and the Tribunals overriding objectives, has, decided that a hearing is necessary. Provision was made for the electronic bundle to be provided by the 27 May 2024.

Inspection

4. The Inspection took place on the morning of the hearing. East Hill Park is located on a gently sloping site, it comprises approximately five acres of pitches, together with roads, parking, some paths and landscaped areas.

5. On the morning of the inspection, the weather was dry, and had been for several days.

6. On arrival, the site appeared generally in fair order. The grass had been mown (apparently in the previous week) and was largely weed-free and shrubs had been trimmed and tended. The paths were clear, and no litter was observed.

7. The Tribunal were accompanied for the inspection by the Applicant and the site owner Mr Lee, counsel for the Applicant Mr Tapsell, and the Respondents; Mrs Akehurst of no 6, Ms Nicholl of no 10, Mr and Mrs Hulme of no 22, Mrs Anderson of no 23, Mrs Rawlings of no 26 and Ms Houghton of no 34. The inspection took about 45 minutes. The parties indicated several areas including the following, the list is not exclusive, and the Tribunal noted all the areas shown to them.

8. The replacement of a concrete post damaged by a delivery driver, was being undertaken on the day of the inspection.

9. Speed humps on the access road from the main road to the main area of the site.

10. Newly painted curb areas alongside the access road.

11. A sign on the right of the entrance to the Park, attached to a tree which indicated speed permitted in the Park.

12. A sign on the entrance road that showed the layout of the homes on the site that had been made and installed by the residents.

13. Within the grounds of no 34 the Tribunal were shown areas of uneven paving in the rear garden of the home which it was suggested was caused by the root system of an ash tree which itself was sited on neighbouring land, not part of the park. Additionally, a wooden fence approximately 6 ft in height which was in poor condition, with the posts not being fully upright. The brown wooden fence position was parallel with the neighbouring land and at the end turned at 90 degrees into the plot.

14. Tarmac car parking outside no 15 showed signs of recent moss clearance, but the tarmac was intact. The same position was observed on the lower section of carparking also.

15. Inside the boundary of number 10 the Tribunal was shown a patch of gravel which was discoloured, it was indicated this had been caused by a now mended previous long standing water leak.

16. Adjacent no 7 the Tribunal was shown a galvanised metal streetlight, at the top of which was the remains of a traditional street light unit, cover missing, a little below was installed a newer LED in nature a floodlight.

17. Within the Park's internal road, it was observed that a number of potholes had been filled with tarmac, the exact date of when filled was not identifiable but appear relatively new tarmac hence potentially relatively recently.

18. A number of streetlights were pointed out, some were on the property of certain pitches and wired directly to them, others were, the property of the Park. One area of road was pointed out which had little streetlamp coverage.

19. Paving and curbs were noted in the site, one area between 11 and 27 had recently had the gaps between the paving stones mortared, the nature of the mortar indicated a recent repair, other areas of path had also been mended.

20. Around the site are red boxes containing firefighting equipment, one was opened and two new Chubb fire extinguishers were observed. Respondents pointed out the boxes did not contain a required torch.

21. Each pitch has its own electricity box some are contained in purpose-built brick structures others in standard plastic meter boxes all were observed to have padlocks. The Tribunal's attention was brought to one set of plastic boxes which had recently been cleaned. The wooden doors to the brick structures were of plywood and showed signs of ageing.

22. Other water supply inspection chambers of stop cocks were observed, which had it was said previously leaked and had caused disruption to water supply, they were not opened but visually appeared in sound condition at date of inspection.

Respondents' submissions received through their objection statements

23. Pitch 6 is occupied by Leonie Akehurst under an agreement dated 31 October 2010, copy of agreement in bundle. A Completed Reply Form dated 11-2-24 was received, asserting that they had wanted to negotiate the increase with the Site Owner. Specifically, they noted that issues of maintenance of paths, the site lighting is not up to standard, lack of maintenance of grass and path areas. Further no notice of works to the site are given to residents and works that are carried out are not undertaken in a professional or safe manner.

24. Pitch 9 is occupied by Cindy Walter under an agreement dated 25-5-2021, copy of agreement in bundle B48.

25. Pitch 10 is occupied by Christine Nicoll, under an agreement dated 20 October 2004, copy of agreement in bundle at B84. The Respondent completed a Reply Form dated 8-2-24 with statement which is at E225 in the

Bundle. In summary it asserts that the full increase is not warranted, on the grounds of affordability, maintenance in the part was below standard, in particular paved areas, flooding and fences in disrepair. A specific incidence whether fresh water supply was interrupted leaving residents without water for two days. In relation to the plot itself, that there is a water leak which has despite raising the issue with the site owner some months ago. This is evidenced by certificate of posting dated November 2023 attached to the letter notifying the site owner of the issue. Photographs of leaking area also included in bundle at E231. Additionally, the lighting in the Park is of concern being in places too bright and others lacking. Finally concern over the way works are undertaken in the Park, in terms of safety.

26. Pitch 22 is occupied by Paul and Rose Hulme under agreement dated 19 August 2015. The Respondent completed a Reply Form with statement, dated 14 February 2024, in the bundle at p E235. The statement includes a rejection the site owners claim that the site has been maintained to a good standard and asks for an inspection. Of particular concern is the enforcement of rules against some sites where activities of feeding wildlife have attracted rats. Concern over the padlocking of their electricity meter preventing them taking readings. Other boxes being in poor repair. The Respondent asserts that with the roads on site there are no speed limit signs, the paths require maintenance, the lighting is poor in some areas and too bright in others. The perimeter fencing requires repair, a streetlight outside number 17 is in disrepair, works carried out on the site have been carried out without due care to health and safety. Finally, failure to enforce a no commercial vehicles rule in the residents' visitors carparking bay. Photographs are submitted to support the claims.

27. Pitch 23 is occupied by Elizabeth J Anderson, under an agreement dated 21 May 1999, copy of agreement in bundle at B104. Statement dated 26 February 2023 received by the Tribunal is at E 247 in the Bundle. The Respondent asserts that maintenance of the Park is negligible, weeds not attended to on access roads and parking, crumbling footpaths not repaired, and that the access road was going to be resurfaced 23 years ago. Some residents do not have access to their electricity meters with concerns over accuracy of readings. Additionally concern over a recent water leak that had left residents without water for 2 or 3 days. Concern also expressed over Health and safety of the contractors' operations on site. Photographs in support included.

28. Pitch 26 is occupied by Mr and Mrs R Rawlings, date not provided, a copy of the agreement is in the bundle at p B119. Reply form dated 11 February 2024 completed. The Respondent has lived on the site for 35 years. The Respondent notes concern in five areas. The first whether the copy of the Review Form for pitch 26 submitted by the Applicant is an actual copy of the original form sent to the Respondent for pitch 26. The second centres on whether the RPI or CPI should be employed. The Respondent notes the change from RPI to CPI came into effect from 2 July 2023 and favours the CPI approach and to achieve agreement with the site owner. Third, there is concern over lack of communication to correspondence but also concern over

low level intimidation. Fourth, the lack of maintenance – poor and missing lighting, incorrect or dangerous lighting, grass unmown, pathways broken, roads poorly maintained, poor maintenance to electrics, poor communication and where is work carried out, safety rules but being adhered to.

29. Pitch 34 is occupied by Cheryl Houghton under an agreement dated 19 November 2018, a copy of the agreement is at p B124 in the Bundle. A statement from Cheryl Houghton dated 3 January 2024 rejects the site owners claim that he has maintained the site, asserting that has never seen any maintenance done , that the lighting is inadequate , roads and pavements have holes and are uneven in places , the perimeter fence is in need of repair, there are no speed signs on the roads, leaking of water supply and some water meters not working , the electric meters are not able in all cases to be read,

30. All report behaviour from the site owner that they feel amounts to bullying and intimidation.

The law

31. East Hill Park is a protected site within the meaning of the 1983 Act. The increase in pitch fee is governed by the terms of written agreements and the implied provisions of the 1983 Act.

32. The applicant relies on para 20(A1) of Ch.2 of Pt.I of Sch.1 to the 1983 Act, which raises a presumption that the pitch fee will increase by a percentage which is no more than any percentage increase in the Retail Prices Index. This is calculated by reference to the latest index, and the index published for the month which was 12 months before that to which the latest index relates (“The RPI Adjustment”). The increase is presumed to be reasonable, unless this would be unreasonable having regard to various factors in paragraph 18(1). These include: “(aa)... 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) ... 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)”

33. 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 (Lands Chamber) 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.”

34. A failure to carry out repairs and maintenance is capable of amounting to such an additional factor under s.18(1): see, for example, the very recent decision in *Wickland (Holdings) Ltd v Esterhuysen* [2023] UTLC 147 (LC).

The Hearing

Order of Hearing

35. The seven Respondents had opted to act individually.

Counsel for the applicant made an opening statement and the seven respondents were invited to also. Counsel then went into the main submission and called Mr Lee to speak to the Application. The seven Respondents then had the opportunity to cross examine Mr Lee. The Respondents then gave their submissions based on their objections. Counsel for the Applicant then had the opportunity to cross examine the Respondents which they did. Finally, counsel for the Applicant made a closing statement and the seven Respondents likewise were invited. The Tribunal concluded at 14:30.

Discussion - the Issues

Preliminary Matters

36. The Applicant has produced pitch fee review forms in prescribed form dated 15 February 2023 that were served on the Respondents. The forms proposed new pitch fees effective from 1 April 2023. **15 February 2023** was a date more than 28 days prior to the effective review date: para 17(2) of Sch.1. The Application to the Tribunal to determine the pitch fees were made on **22 May 2023**, which was a date within the period starting 28 days to three months after the review date of **1 April 2023**. The Tribunal therefore finds that in both cases the Applicant has complied with the procedural requirements for a review.

37. The Application was made in respect of 6,9,10,11,22,23,26 and 34 East Hill Park. The Pitch Holder for number 11 has withdrawn and the Tribunal previously approved of the withdrawal. The Pitch Holder for 9 has opted not to be part of this hearing, as at the date of the hearing, the Tribunal has had no indication they have withdrawn, and the Directions, provide for the number 9 to be addressed on paper determination.

Communication

38. The Applicant submitted that works were carried out when he was notified of the need, the site had a warden a resident in one of the homes, who acted as a point to collect concerns raised by the residents. The site warden role had been

undertaken by a resident couple Barry and Pam until a year or so ago, when the health of one had deteriorated and he passed away around a year ago. The Applicant often when questioned by the Respondents suggested they were not aware of the outstanding works mentioned and undertook to carry it out. Several of the Respondents submitted it was very difficult to raise concerns and work often took a long time to be carried out. The Respondents asserted that several long-standing items of work had been undertaken in the immediate period before the Tribunals inspection. There were also of more concern allegations from the Respondents of “low level intimidation”. The Respondents asserting this was general verbal. No evidence of this was presented to the Tribunal. The Tribunal suggested that if pitch holders felt it necessary to avoid mis understanding and to improve communication, records should be kept of communications. The Applicant undertook to produce a specific email contact for the East Hill Park so that communication could be made to a single point.

Path and Roads

39. The inspection showed that the roads and paths were in good order at the time of the inspection. There were a few areas of loose gravel where it had been swept on the road to a pile. Potholes had been filled, and paving stones that made up the paths recently had had their joints filled. The Applicant noted that some of the work had been done recently, and in general work was done when requested. The Respondents disagreed with the Applicant in the timing of works and asserted that the potholes and pavement gaps had been long standing with some more recent deterioration. The Tribunal in making the best it can with the conflicting evidence and the physical evidence decided that there had been some material deterioration between the review dates.

Fire Fighting equipment

40. The firefighting equipment was provided to the Applicant under contract with Chubb. The cabinet the Tribunal inspected had two fire extinguishers within, that looked new and were within certified date on the equipment. The Respondents submitted that a torch should be available in each of the firefighting cabinets, this being a condition of the site licence dated 3 June 2024. The Tribunal did not consider this to be a material worsening over the review period.

Fencing

41. The Respondents and the Applicant agreed that perimeter fencing is the responsibility of the Park Owner Applicant. The parties also agreed that the individual fences that surrounded individual plots were the responsibility of the pitch holders. The issue was that the wooden fence that surrounded the garden, of number 34 that runs parallel with the perimeter of the Park. The fence on inspection had deteriorated since built and its posts and panels were not upright. The Tribunal did not make a finding on the ownership and hence responsibility to repair of the fence but noted that its condition is on balance likely to be long standing and so outside the matters which could have been said

to have materially worsened over the review year. The Applicant to his credit offered during the hearing to repair the fence by installing new posts.

Carparking spaces, tarmac and moss

42. The Applicant maintained that the carparking spaces and tarmac were regularly cleared of moss or other debris. The Respondents noted that the moss had only recently been cleaned from the tarmac and previously the moss had been a hazard in terms of slipping. The Tribunal noted the areas where the moss had been recently cleaned this was evident by a soil residue on the tarmac. The tarmac underneath was in good repair. The Tribunal finds that the moss had only recently been cleared away and that on balance of probabilities there had been a deterioration of the amenity of the road and car parking during the review year.

Water leaks

43. The Tribunal was shown a number of water meter chambers which it understood contained stop cocks one side and a meter the other, In a couple of cases this had caused long term leaking within the garden, in one case the defective meter had resulted in the pitch owners plumber refusing to work on a kitchen supply for hot water because of the inability to isolate the water to the pitch. A further case concerned a leak occurring over the weekend which required a number of pitches to be isolated. The Applicant noted that the leak was repaired first thing on the Monday morning. The Tribunal did not consider this to be a material worsening over the review period.

Enforcement of site rules

44. The Respondents had concerns about a number of occasions they viewed that site rules were not being enforced by the site owner. The first was that visitors to the site would on occasions speed in excess of the 5-mph limit in the site. The Applicant noted that it was difficult to enforce against delivery drivers. The Respondent undertook to install speed restriction signs. The second example concerned the garden surrounding on of the Park Homes, the Tribunal was shown the site from the roadway outside. Gardens are subjective and whilst the garden in question was intensively used with plants that were generally not actively cultivated, it did not appear at the time of the inspection to be unsightly. The Respondent noted the Applicant had cleared the garden recently. The Applicant concurred that work had been undertaken recently in order to smarten up the specific area of the Park, Third, one of the Respondents raised concern that one of the Park residents consistently failed to park their car in their allocated driveway space. The Applicant noted that the particular car has owned by a resident with mobility issues. The Tribunal did not consider this to be a material worsening over the review period.

Behaviour of contractors for the Park owner

45. The Respondents submitted photographs of a dumper truck being driven by an individual with a further individual riding on the wheel arch, a further individual walking alongside. Some Respondents also asserted that the dumper truck had driven around at speed and that some of the contractors appeared to be in possession of privileged information that could only be gained from the site owner. The Applicant apologised for the behaviour of the contractors, agreed that it fell below acceptable standards and that the particular contractors would not be used again on the site. In respect of the issue of privileged information being in the possession of the contractors as asserted by a number of Respondents, the Applicant did not know if that had happened how it could have happened. The Tribunal did not consider this to be a material worsening over the review period.

Lighting

46. There are several lamps around the site. Some are in the ownership of the pitch owners and so whether they are on or off is in the control of the site owner. There are some in the ownership of the Park owner. The Respondents raised concerns over the lighting, that in places there were gaps in the lighting which made the roads and paths hazardous at night and one replacement light was excessively bright, and it caused a loss of amenity to a specific Pitch. The Tribunal did not consider this to be a material worsening over the review period, although the light nuisance from the new floodlight could be said to be a deterioration for those affected by it. It was suggested to the Applicant that he should arrange for the angle of the light to be adjusted to reduce light pollution.

RPI and CPI

47. The Respondent Pitch owners refer to their understanding that the Park owner did not need to request RPI changes to the site fee but could if they wish request a lower increase. The Respondents submitted that if there was a negotiation they would offer around 7 or 8 %.

48. The Respondents all refer to the recent change in relevant inflation measures from RPI to CPI. But the Tribunal considers it has no jurisdiction to substitute an increase based upon another measure of inflation such as CPI in this particular case. At the relevant date, the statutory presumption was based on an increase in line with RPI. Although the Mobile Homes (Pitch Fees) Act changed the inflationary index for annual pitch fee reviews from RPI to CPI, it has no effect where a pitch fee review notice was served before 2 July 2023. Indeed, the presumption of a change in line with RPI is one of “the three basic principles” which shape pitch fee reviews: *Britanniacrest Ltd v Bamborough* [2016] UKUT 0144 (LC). The presumption in Ch.2 of Pt.I of Sch.1 Act quite clearly requires the use of the latest monthly RPI figure. Given that parliament has specified a methodology for the primary method of inflationary increase, the tribunal considers it does not have power to depart from this as an ‘additional’ factor under para 18(1).

49. As to the RPI figure, the applicant explained that it applied the RPI of **13.4%** as published in **January 2023**, being the last index published for the year to **April 2023**. The Tribunal therefore also finds that the new pitch fees that appear in the relevant forms were calculated in accordance with the implied term at para 20(A1) of Ch.2 of Pt.1 of Sch.1 to the 1983 Act.

50. Under Sch.1 to the Act, the Tribunal is generally required to determine whether the proposed increase in pitch fee is reasonable. The Tribunal is not strictly speaking deciding whether the level of the new pitch fee is reasonable. Much that it has sympathy with the difficulties the Respondents and other pitch owners face in meeting costs at a time of high inflation, that is not in itself relevant to the questions the Tribunal has to deal with. The Act, quite deliberately, avoids questions of the overall reasonableness of the level of a pitch fee. Instead, rightly or wrongly, parliament has substituted a review machinery based on published measures for inflation.

Decision

51. In reaching its assessment about whether the site owner has complied with its obligation to keep the site in a “clean and tidy condition”, the Tribunal necessarily places great weight on its inspection and on any correspondence or photographs that may support the contention that there has been a breach of the site owner’s implied obligation.

52. In respect of the roads, paths and car parking areas, the Tribunal finds there is a breach in respect of para 22 (c) of the Ch.2 of Pt I of the Sch.1 to the 1983 Act.

53. In respect of the other items the Tribunal does not find a breach in respect of para 22 (c) of Ch.2 of Pt I of the Sch.1 to the 1983 Act.

54. Given the above circumstances, the Tribunal determines that the proposed increase in the pitch fees be 10.5 %. This reflects the default of 13.4 RPI, does not follow CPI of 10.1 but accommodates a material change in the site condition between the review dates. The previous fee was £171.01 per year and applying 10.5% gives £188.97 per year.

The Tribunal determines a pitch fee of **£188.97 per month** for pitches to take effect from **1 April 2023**.

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 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. 7