|  |  |  |
| --- | --- | --- |
| Crest |  | FIRST-TIER TRIBUNAL**PROPERTY CHAMBER (RESIDENTIAL PROPERTY)** |
| **Case reference** | **:** | **BIR/17UP/PHI/2023/0204 - 09** |
| **Properties** | **:** | **Sunningdale Park, Queen Victoria Road, New Tupton, Chesterfield S42 6GA** |
| **Applicants** | **:** | **Mr M White and Mrs O White** |
| **Representative** | **:** | **David Sutherland** |
| **Respondents** | **:** | **Mrs C Havenhead (1)****Mr & Mrs Would (2)****Mr & Mrs Nisbit (3)****Mrs S Waite (4)****Mr & Mrs Morton (5)****Mrs Henson (6)** |
| **Representative** | **:** | **None** |
| **Type of application** | **:** | **Application by site owner for determination of new level of pitch fee** |
| **Tribunal member** | **:** | **Judge C Goodall****Mr N Wint FRICS**  |
| **Date and place of hearing** | **:** | **Paper determination following an inspection on 21 May 2024** |
| **Date of decision** |  |  |

|  |
| --- |
| **DECISION** |

© CROWN COPYRIGHT 2024

**Background**

1. This case involves six separate applications by Mr & Mrs White (“the Applicants”), who are the owners and operators of Sunningdale Mobile Home Park in Tupton, Chesterfield, Derbyshire (“the Park”), for determination of a new pitch fees for pitches occupied on the Park.
2. The applications concern:
	1. pitch 39 Sunningdale Park, occupied Mrs Havenhead;
	2. 41 Poplar Drive, occupied by Mr & Mrs Would;
	3. 26a Sunningdale Park, occupied by Mr & Mrs Nisbet;
	4. 38 Sunningdale Park, occupied by Mrs Waite;
	5. 34 Sunningdale Park, occupied by Mr & Mrs Morton; and
	6. 4 Willow Square, occupied by Mrs Henson.
3. The Applicant served individual Pitch Fee Review Forms in the form prescribed by the Mobile Homes (Pitch Fees) (Prescribed Form) (England) Regulations 2013 (“the Regulations”), all dated 3 August 2023 under which a new pitch fees were proposed as follows:

|  |  |  |
| --- | --- | --- |
| Pitch | Current fee (£ per month) | Proposed pitch fee (£ per month) |
| 39 Sunningdale Park | 195.43 | 215.17 |
| 41 Poplar Drive | 148.95 | 163.99 |
| 26a Sunningdale Park | 151.63 | 166.94 |
| 38 Sunningdale Park | 160.56 | 176.78 |
| 34 Sunningdale Park | 186.00 | 204.79 |
| 4 Willow Square | 195.43 | 215.17 |

1. The Review Forms stated that the last review date before the proposed new pitch fee date was 2 April 2022. The increases are all inflation based, calculated using the consumer prices index published for January 2023 of 10.1%. It was proposed that the new pitch fees would all take effect from 1 September 2023.
2. Directions were made by the Tribunal for the conduct of the application. The applications were consolidated and ordered to be heard together. Respondents who disagreed with the pitch fee increases were invited to submit a statement setting out their reasons for opposing the new pitch fees.
3. One submission on behalf of all Respondents except for Mrs Waite was submitted. Eight reasons were stated for objecting to the pitch fee increases, being:
	1. Lack of street lighting
	2. Road humps need repairing and are dangerous
	3. Unable to access and read electricity sub-meters
	4. Tree roots at 26 Sunningdale Park might cause damage to the park home bases of pitch 26a, and the tree on pitch 26 requires lopping
	5. Japanese knotweed coming through patio at 34 Sunningdale Park from the adjoining field, owned by the Applicant
	6. Trees on rear boundary of pitch 41 Poplar Drive covered with ivy and leaning
	7. Pot holes and road surfaces getting worse and are dangerous
	8. Piles of rubbish including dumped white goods in field behind 34 Sunningdale Park
4. Mrs Waite submitted her own statement. Her objections duplicated the objections raised in paragraphs 6a 6b, 6c, 6g, and 6h above.
5. Photographs illustrating these objections were provided.
6. The Applicant’s representative responded to the concerns expressed as permitted by the Directions.
7. The application was determined without a hearing, but the Tribunal members inspected the site on 21 May 2024.
8. This is the written decision of the Tribunal on the application, also giving our reasons for the decision we have made set out below.

**Law**

1. The Mobile Homes Act 1983 (as amended) (“the Act”) provides in section 2(1) that terms are implied into every agreement for the renting of a pitch on a protected site, being the terms as set out in Part 1 of Schedule 1 of that Act.
2. Paragraphs 16 to 20 and paragraph 25A of Part 1 of Schedule 1 to the Act provide a regime that governs pitch fee increases. The wording of those paragraphs is set out in the Appendix to this decision.
3. The key components of that regime, as they apply to this case are:
	1. The pitch fee can only be increased once a year;
	2. A site owner initiates a pitch fee increase by serving a notice that must be in a specific form, giving details (amongst other things) of the pitch to which the increase relates, the current pitch fee and the proposed new pitch fee, showing how it has been calculated;
	3. If the pitch occupiers do not agree to the proposed increase, it does not take effect unless the site owner applies to this tribunal to determine the new pitch fee;
	4. The tribunal must agree that it is reasonable for the pitch fee to be changed, and must determine the amount of the new pitch fee;
	5. There is a presumption that, unless it would be unreasonable, the new pitch fee shall increase by the increase in the retail prices index published by the Government. For pitch fee increases proposed after 2 July 2023, the consumer prices index must be used instead.
	6. There are factors to which a tribunal must have particular regard when determining a new pitch fee, which are contained in paragraphs 18 of the implied terms. Paragraph 19 contains a list of matters which should not be taken into account. The most significant factors mentioned which might be applicable to this case in the light of the Respondents arguments are:
		1. Deterioration in the condition of the site;
		2. Reduction in the services provided or a reduction in their quality;
4. The Tribunal is not restricted to consideration only of the matters to which it must have “particular regard” under implied terms paragraph 18. It is possible for another factor to apply which could displace the presumption. But any such ‘other factor’ has to be one to which considerable weight should attach. A factor that is of equal weight to the presumption would not be adequate. Reasonableness has to be determined in the context of the statutory provisions relating to pitch fee increases.
5. But the starting point for any pitch fee review is the presumption, in Implied Term 20, in favour of an annual increase by RPI (or CPI from 2 July 2023). An inflation increase will therefore normally be justified, unless displaced by a paragraph 18 factor, or there is some other important factor that affects the reasonableness of the proposed increase (see *Britaniacrest Ltd v Bamborough* [2016] UKUT 0144 (LC), *Vyse v Wyldecrest Parks (Management) Limited* [2017] UKUT 0024 (LC), and *Wyldecrest Parks (Management) Limited v Kenyon* [2017] UKUT 0028 (LC) and *Wickland (Holdings) Ltd v Esterhuyse* [2023] UKUT 147 (LC)).

**Inspection**

1. Sunningdale Park is a 93 pitch mobile home site with two separate licences for, respectively, 43 and 50 pitches. The reception area is accessed from Queen Victoria Road in Tupton, near Chesterfield. The reception area is known as Willow Square, where Mrs Henson’s home is located. The outer road of the site, with pitches either side, then forms the shape of a square, two sides of which are known as Poplar Drive, and the other two sides as Sunningdale Park.
2. At the time of our visit, the roads were all in good condition, with evidence of patch repairs, particularly to the road humps, having been undertaken.
3. Some of the yellow lines painted on the roads to indicate vehicle restrictions are somewhat faded.
4. The rear boundary of 41 Poplar Drive is a chain-link fence with tall and mature trees, planted inside the boundary, providing considerable shading to the pitch. The trees all appear to incline to the east, possibly as a result of the prevailing wind coming from the west.
5. We inspected pitch 26a Sunningdale Park. The adjoining pitch at 26 Sunningdale Park has a silver birch tree at the front of that pitch. There was no obvious evidence of any damage being caused to the concrete bases of 26a, though we were unable to make a detailed inspection.
6. There is limited street lighting on the site. There is some limited lighting that is outside 26 and 26a Sunningdale Park, including a solar panelled light on the silver birch tree itself.
7. Electricity meters are located around the site in 13 separate meter cupboards spaced across the site. Each cupboard houses a number of meters. The cupboards are locked, but the site warden confirmed that keys are available to pitch owners on demand.
8. Behind 34 Sunningdale Park is a field which we were told belongs to the Applicant. There is some evidence of Japanese Knotweed growth immediately behind the fence to number 34, with some limited encroachment onto the patio of that pitch.
9. Around 20 years distance from the boundary fence there is a pile of rubbish covering perhaps 10 – 20 sq yards. The rubbish is mostly organic material, but there are a few discarded white goods also in the pile.

**Discussion**

1. The starting point of our task is that an inflation based pitch fee increase is permitted, unless it would be unreasonable having regard to the factors set out in paragraphs 14f, 15 and16 above.
2. We are satisfied that the correct inflation index has been applied to the current pitch fees.
3. We therefore must consider whether any of the conditions pointed out by the Respondents in paragraph 6 above are conditions that evidence a deterioration in the condition of the site or a reduction in services, or are factors to which we should apply considerable weight, such that the presumption in favour of an inflation based pitch fee increase should be displaced.
4. Deterioration in the condition of the roads could in theory count as a deterioration. However, the picture evidence provided by the Respondents showed negligible road surface deterioration. Our view is that the condition of the did not affect their use by vehicles or pedestrians. Of course, the roads have been significantly patched now, though we must consider the condition at the time of the pitch fee increase. We do not think that the limited deterioration at that time evidenced from the photographic records is sufficient to displace the presumption in favour of a rent increase.
5. Street lighting appears to have been in the same state for some years, so there is no evidence of deterioration or reduction in services. We are not aware of there being any obligation upon the Applicant to provide additional street lighting in any event.
6. Potential damage from tree roots from the silver birch tree on the front of pitch 26 was not evident. It may at some point require maintenance (it is not obvious that maintenance is required now), but responsibility for doing so is not clear and even if it were clearly established that the Applicant were responsible, that would be a task for the future. It will be obvious that failure to do a task now that might be required in the future cannot fall within the reasons for displacement of the fee increase presumption.
7. We are unable to take into account the suggestion that access to meters is restricted. That allegation is disputed. The Applicant’s case is that on-site managers can access the meters and provide readings for the Respondents as required. We were not given any evidence explaining the problems experienced in accessing meters or what impact this had upon the Respondents. We do not consider this issue falls within the categories of reasons why we may disapply the pitch fee increase presumption.
8. Weeds on a pitch are the responsibility of the pitch owner, not the Applicant. In our view, the small incursion of Japanese Knotweed on 38 Sunningdale Way is the responsibility of that pitch owner to resolve. In any event, it appears the incursion is well under control, whoever has secured that outcome, and so cannot be regarded as a deterioration in condition or a reduction in services.
9. Trees on a pitch may also be the responsibility of the pitch owner, though we have noted the advice from the Independent Park Home Advisory Service that the Respondents copied to us suggesting that once a tree becomes fully mature, it is the Applicant’s responsibility to lop, top, or fell when that becomes necessary. Their authority for that suggestion was not spelt out. Our view is that it does not clearly derive from Implied Term 22(d), as they appear to suggest, and if it becomes relevant in the future, the parties may need to make legal submissions so that a future Tribunal can made a formal ruling. Suffice it to say at this stage, in our view neither the trees at the rear of 41 Poplar Drive, or the tree on 26 Sunningdale Way are in an obvious state of deterioration or appear so dangerous that we consider any failure of the Applicant to deal with them can displace the pitch fee review presumption.
10. Finally, we looked at the pile of rubbish behind 34 and 38 Sunningdale Way on an area of land outside the Park. It is slightly unsightly, but none of the Respondents explained why the Applicant had a responsibility to provide an attractive view over the garden fence. It is to be hoped that the rubbish is cleared or disguised as an act of good neighbourliness in due course, but as there is no obligation to do so that was brought to our attention, we cannot regard the Applicant’s failure to attend to that courtesy as a good reason not to allow a pitch fee increase.
11. We are aware that the Respondents will be disappointed, but there are no grounds, in our view, upon which we could determine that the presumption in favour or an inflation based pitch fee review could be displaced. We therefore determine that the applications are granted. **We determine that the new pitch fees proposed in the notices listed in paragraph 3 above are approved, all to take effect as from 1 September 2023.**

**Appeal**

1. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Judge C Goodall

First-tier Tribunal (Property Chamber)

**APPENDIX**

**Paragraphs 16 – 20 and paragraph 25A of Part 1 of Schedule 1 to the Mobile Homes Act 1983 (as amended)**

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) 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 bodyunder 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 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 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) 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 owneror 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) **[**[**F44**](https://www.legislation.gov.uk/ukpga/1983/34/schedule/1#commentary-key-3b8071c55f9553ee1b6110294c60d348)but [**F45**](https://www.legislation.gov.uk/ukpga/1983/34/schedule/1#commentary-key-293d6369a0147de4eba78d42d8bd531f)... 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 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);

(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;

(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) When calculating what constitutes a majority of the occupiers for the purpose 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 –

1. any action taken by a local authority under sections 9A – 9I of the Caravan Sites and Control of Development Act 1960 (breach of licence condition, emergency action etc);
2. 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 no more than any percentage increase or decrease in the retail prices index\* calculated by reference only to –

1. the latest index, and
2. 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” –

1. 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).

(1) [Wales]

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

(2) Regulations under this paragraph must be made by statutory instrument.

(3) The first regulations to be made under this paragraph are subject to annulment in pursuance of a resolution of either House of Parliament.

(4) But regulations made under any other provision of this Act which are subject to annulment in pursuance of a resolution of either House of Parliament may also contain regulations made under this paragraph.

\* From 2 July 2023, the applicable index is changed to the Consumer Prices Index by virtue of the Mobile Homes (Pitch Fees) Act 2023, for notices served on or after that date