



FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL
PROPERTY)

Case reference : CAM/00KC/PHI/2023/0028

Site : McFarland Park Hones, Brickhill Park,
Half Moon Lane, Pepperstock LU1 4LW

Park home address : 4 The Laurels, Brickhill Park, Half
Moon Lane, Pepperstock LU1 4LW

Applicant : McFarland Homes

Representatives : Mrs G. McFarland and Mrs S. Crosby

Respondents : Mr P. and Mrs M. Motson

Type of application : Application to determine a pitch fee

Tribunal members : Judge K. Seward
Ms Marina Krisko BSc FRICS

Date of decision : 2 February 2024

DECISION AND REASONS

Decision of the Tribunal

The Tribunal considers that it is reasonable for the pitch fee to be changed and determines that the monthly pitch fee payable by the Respondents for the year commencing 1 January 2023 is £249.00 (including the cost of services).

REASONS

The application

1. The Applicant is the park site owner and operator of Brickhill Park, being a protected mobile homes site within the meaning of the Mobile Homes Act 1983 ('the 1983 Act'). The Respondents occupy No. 4 The Laurels pursuant to a written agreement (titled 'written statement') that began on 7 September 2012. They have not agreed to an increase in pitch fees for 2023. The site owner must therefore apply to this Tribunal if it is to obtain an increase.
2. The Applicant site owner seeks a determination of the pitch fee payable by the Respondents as from 1 January 2023. The application is dated 9 February 2023. The application form does not specify the amount. The pitch fee review form dated 29 November 2022 proposes a new pitch fee totalling £257.93 per month. The previous year's monthly fee is given as £229.44. The date of the previous review was 1 January 2022.
3. The adjustment sought is made with reference to the change in the Retail Price Index ('RPI'). The figure for the month of October 2022 was 14.2% resulting in an increased fee of £248.66 per month, plus £15.07 in recoverable costs for water and sewerage charges. The Applicant had decided to cap the amount at £249.00 per month, including the cost of services. This lower figure is given in the pitch fee review notice. The application arises from the Respondents' not agreeing the increased monthly pitch fee of £249.00.

Directions

4. In furtherance of Directions issued by the Tribunal on 12 July 2023, the documents before the Tribunal comprise the following. An unpaginated bundle of some 52 pages including the application form, written agreement, park rules, pitch fee review notice and form, and statement from Gillian Wilson (McFarland). An additional indexed and paginated bundle from the Applicant with a witness statement and appended photographs from Sharon Crosby, Operations Manager. From the Respondents, an indexed bundle of 16 pages including an 8-page witness statement with appended aerial images, photographs, and copy emails.
5. The Tribunal has considered all the written material (including supplemental written submissions referenced below) as well as the oral representations made at the Hearing in reaching its decision. In arriving at our decision, account has been taken of relevant caselaw to which we refer in order to help explain our approach and considerations.

The inspection

6. A site inspection was conducted by the Tribunal members before the Hearing opened. This was undertaken on an unaccompanied basis as representatives of the Applicant were not present at the appointed time.
7. The site is located along Half Moon Lane, with park homes sited on each side of the road. Those sited directly alongside the road behind a low brick wall abutting the highway are of a noticeably more modern design and construction than the park homes within the longer established part of the site. No 4 The Laurels, is positioned at the end of a cul-de-sac and has ample space for two cars to be parked within the pitch.
8. During the inspection the Tribunal noted the various features mentioned in the bundles. They included the condition of the access road, visitor parking areas, areas formerly used for recreation, developed areas with new pitches and the garden area beside the Respondents' pitch.
9. The Tribunal observed that the site appeared to be well-maintained.

The Hearing

10. The Applicant site owner was represented by Gillian McFarland (Managing Director) and Sharon Crosby (Operations Manager). The Respondents, Mr and Mrs Motson, both attended with Mr Motson taking the lead in presenting their case.
11. Neither party was legally represented. The Tribunal heard the case for both sides with each afforded opportunity to question the other. Both parties answered the Tribunal's questions.

Procedural matter

12. During the Hearing it was clarified that the amount of the 'current pitch fee' inserted in the pitch fee review form included an increase in line with RPI, but the Applicant had discounted the pitch fee for 5 months of 2022. This had been with the agreement of all occupiers. The issue arising was whether the RPI uplift for 2023 had been applied to the correct monthly fee for 2022. If not, what implications arose if there was an error in the pitch fee review form.
13. This point was taken by the Respondents in their written submission in very general terms. Out of fairness to both parties, opportunity was

given after the Hearing for written submissions to be made solely on this point within a specified period of 7 days. Both parties' responses are incorporated below insofar as relevant to the sole point posed.

14. It is emphasised that the application concerns the pitch fee for 2023 only. This was explained at the hearing and reiterated when the Respondents contacted the Tribunal office subsequently wishing to submit material concerning pitch fees in earlier years and 2024. Yet, the Respondents have still included in their response a request that the Tribunal set aside the pitch fee review notices for 2022, 2023 and 2024. This application is not for 2022 or 2024. Indeed, the pitch fees for previous years have been paid and it is too late for them to be considered by the Tribunal.

The Applicant's case

15. It is the Applicant's case that the suggested increase is made pursuant to mandatory statutory provisions implied into the Agreement. The Respondents are protected from unreasonable increases by the implied terms within the 1983 Act and the jurisdiction of the Tribunal. The Consumer Rights Act 2015 does not apply. The 1983 Act applies to the agreement which takes effect as a statutory licence to occupy the land. The agreement relates to the stationing of mobile home. It is not a contract for the supply of goods, digital content, or services.
16. The Applicant decided to seek less than the rate of RPI because inflation was running high, and Mrs McFarland wished to be fair and reasonable. An increase of 10% was applied to the previous year's (2022) fee taking the amount to £233.93 per month. With the same 'recoverable costs' of £15.07 added, the total monthly pitch fee originally sought was £249.00.
17. At the Hearing, the Applicant's representatives clarified that it now seeks the new pitch fee of £257.93 for the year commencing 1 January 2023 as identified in the pitch fee review form. This is because the Respondents had not confirmed agreement to the 10% discounted figure within the timeframe afforded. They maintain that the failure to accept the offer entitles the Applicant to revert to the RPI indexed amount.
18. For 2022 the Applicant had also given a discount in the pitch fee over 5 months of the year to help residents coming out of the Covid-19 global pandemic. This meant that park homeowners had paid less than the 'current fee pitch' for 2022 than is specified in the pitch fee review form. The sum of £229.44 (made up of £212.66 pitch fee and £15.07 recoverable costs) was the pitch fee payable without the discount.

19. Further clarification is provided in the Applicant's subsequent written submission. They supply a copy of the Christmas newsletter sent to residents on 22 December 2021 which explained the offer to postpone increasing direct debits until 1 June 2022 for the increased pitch fee '*legally effective from 1 January*'. The offer was for those who accepted the increased fee by returning a pitch fee increase slip. The Respondents did not return the acceptance slip but emailed on 15 February 2022 confirming acceptance of the concessionary rate of £217.40 from January to May and the full rate of £229.44 from June to December 2022. It is submitted that the Respondents agreed a 2022 pitch fee of £229.44 per month which was correctly specified as the current pitch fee in the notice and prescribed form for 2023.
20. Mrs McFarland said that, on legal advice, the pitch fee review form specified the pitch fee with RPI adjustment in order to preserve the site owner's position in future so that the amount could keep pace with inflation.
21. It is submitted that the Respondents have not said why they do not accept the proposed new pitch fees. All others on the park have paid without complaint. The Applicant is unaware of any reason why the pitch fee should not be increased as proposed. There has been no deterioration in the condition or amenity of the park, and no reduction in any services or their quality.
22. In answer to the Respondents' case, Mrs McFarland contends that the Respondents knew that the park was under development upon their purchase in 2012. Changes to the park have been made for the better. The Respondents have two parking spaces themselves which is unusual for a park home site. Parking was not available in front of the garages that were demolished during re-development as the garages were in use and belonged to residents. More parking has been made available than before with a substantial car park 'around the corner' with visitor spaces.
23. According to Mrs McFarland, there has never been an open area for residents along 'Honeysuckle Way'. There was a path leading to two park homes and the grassed area belonged to a resident. Under the park rules, other residents should not have been using it. A tree along this stretch belonged to a pitch occupier who was entitled to remove it. Permanent recreational space remains available at Downlands, a short walk away. Brickhill Park is essentially a retirement community and there is no site licence condition requiring amenity space.
24. A handyman continues to be employed at the site. Around £14,000 had been spent on resurfacing works. Mrs Crosby said that the Council has inspected and raised no issue with the roads.

25. As part of the planning process, the Applicant had consulted extensively on plans for redevelopment, including with the Residents Association.

The Respondents' case

26. The Respondents consider the request to increase the pitch fee contravenes the Unfair Contract Terms Act 1977 and the Consumer Rights Act 2015. Any increase or decrease is a proposal of the park owner. It is not a right that the occupiers are obligated to accept and pay. The increase can be anything up to RPI at the whim of the park owner. This is unfair pursuant to the Consumer Rights Act or Unfair Terms in Consumer Contract Regulations 1999.
27. At the hearing, Mr Motson challenged the calculation of the pitch fee. He believes that the current pitch fee for 2022 means the discounted amount actually paid in 2022 rather than the RPI rate before discount. By applying the RPI to the previous RPI figure, it compounds the rate of increase.
28. Mr Motson elaborated upon his argument in his written submission. He questions the legality of the Applicant requiring the park homeowners to sign a letter to pay less than the official RPI increase otherwise the full increase becomes payable. He submits that the RPI increase should be calculated on the lower sum actually paid. The difference equates to an increase of 16.96% compared to the RPI inflation rate of 14.2%. Charging above inflation is illegal. Mr Motson specifies the pitch fee for 2022 to have been an average of £207.64 with £200.62 paid for 5 months followed by £212.66.
29. Brickhill Park has suffered a number of decreases of amenity, particularly from the park owner's efforts to cram in as many homes as possible since the Respondents moved in on 7 September 2012. Residents have also suffered a lack of maintenance. There is an unmaintained area with weeds and shrubs next to their pitch.
30. The road between the site entrance and The Laurels is a patchwork of uneven dips and needs resurfacing. The speed ramp and surface are breaking up. Salt and grit are not being sprinkled on the park roads during snow and ice as they had in previous years (prior to December 2022). The salt bins are along Half Moon Lane, not in the park and residents are too old and infirm to spread salt. The handyman left a couple of years ago.
31. The site owner has failed to consult with the Qualifying Residents Association during the several years that Mr Motson has been Chairman between 2012 to 2019 (except for 2 years in the middle). Mr Motson had got a defibrillator added to the park, but it has

been placed at the site office and too far away from their homes. It would be too late by the time the defibrillator was reached.

32. Recreational areas have been destroyed and built on in the past 2 years. Five new homes have been built on the car park and former grassed leisure area during the current year. A further three new homes placed on an area called 'Honeysuckle Walk' where there was grass and fruit trees and a bench where residents could sit and chat. Another three new homes are located in the place of visitor parking and garages. It left only two visitor spaces habitually used by residents with second cars. One visitor space is so short, almost any car overhangs the road.

Consideration

33. The law applicable to a change in pitch fee is set out within the 1983 Act. It is the specific legislature provisions within Chapter 2 of Part 1 of Schedule 1 to the 1983 Act which set out the implied terms that govern the process and means of calculation. Consumer protection legislation is an entirely separate regime and does not apply.

34. Paragraph 17 of Chapter 2 stipulates that the pitch fee "*shall be reviewed annually as at the review date.*" At least 28 clear days before the review date, written notice must be served on the occupier setting out the proposals in respect of the new pitch fee. The notice must be accompanied by a pitch fee review form, in prescribed form, otherwise the notice proposing an increase in the pitch fee is of no effect (paragraph 17(2A)). The notice would also be invalid if it failed to identify the correct current pitch fee (*Small & others v Talbot & others* [2014] UKUT 0015 (LC)).

35. Under paragraph 25A, the pitch fee review form must specify any percentage increase or decrease in the RPI calculated in accordance with paragraph 20(A1). This provides that, unless it 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 RPI calculated by reference only to- (a) the latest index, and (b) the index published for the month which was 12 months before that to which the latest index relates. The latest index means the last index published before the day on which the notice is served.

36. Changes have since been introduced by The Mobile Homes (Pitch Fees) Act 2023 replacing RPI with CPI for all new pitch fee reviews from 2 July 2023. At the time of the review the RPI still applied, and the amendments were not in force at the time this dispute arose. No arguments are made to suggest that the CPI would be a better measure of inflation.

37. Written notice of the proposed new pitch fee was served on the occupiers on 29 November 2022, more than 28 days prior to the effective review date. At that date, the last index published was the RPI for October 2022. The prescribed pitch fee review form accompanied the notice and the relevant time limits were complied with.
38. As required by paragraph 25A, the form specifies the percentage increase in the RPI and calculates the proposed fee with reference to that rate, applying the methodology in paragraph 20(A1). It is important to bear in mind that the amount of the pitch fee for 2022 (and previous years) was agreed between the Applicant and Respondents. Mr Motson had accepted the 2022 increase when he emailed Mrs Crosby on 15 February 2022 to confirm that he had re-set his bank instructions for the new amount. The 2022 pitch fee was paid at the agreed rate. Once a pitch fee is agreed, the new pitch fee becomes payable (paragraph 17(3)).
39. The discount given to occupiers for 5 months during 2022 has caused some confusion in understanding the figures inserted in the 2023 pitch fee review form. Mr Motson said at the hearing that he had been unable to understand them.
40. Following the Applicant's written submission on the accuracy of the 'current pitch fee' it became apparent that the Respondents had offered a reduced pitch fee of £217.40 from January to May 2022. However, the full monthly pitch fee of £229.44 was agreed and paid between June and December 2022. This sum represents £212.66 pitch fee plus recoverable costs of £15.07. These are the figures inserted in the pitch fee review form. Therefore, at the time of the 2023 review the current monthly pitch fee was correctly shown and RPI correctly applied to £212.66 to reach the new pitch fee figure of £257.93.
41. The Respondents are incorrect to calculate the average monthly sum paid. They agreed to pay a concessionary rate for the first 5 months of 2022 only. The agreed rate then increased for the remaining 7 months and that was the sum being paid.
42. It is not in issue that the notice can propose a sum lower than the RPI adjusted rate given in the form. After receiving the further written clarification and supporting evidence, the Tribunal is satisfied that the procedural requirements were met for calculation of the 2023 pitch fee.
43. The Tribunal must now determine two things. Firstly, whether it considers it reasonable for the pitch fee to be changed and, if so, it has to secondly determine the amount of the new pitch fee. It is not deciding whether the level of pitch fee is reasonable.

44. In the Court of Appeal judgment in *Walker v Badcock* [1997] EWCA Civ 1949 it was noted with reference to calculating a pitch fee that "*There are no precise rules laid down. It is left to the arbitrator or judge to decide.*"

45. The Tribunal is required to have regard to paragraphs 18, 19 and 20 of Chapter 2 when determining a new pitch fee. The definition of "pitch fee" at paragraph 29 is "the amount which the occupier is required by the agreement to pay to the owner for the right to station the mobile home on the pitch and for use of the common areas of the protected site and their maintenance....."

46. Paragraph 20(A1) sets out a presumption that the pitch fee shall increase or decrease by a percentage which is no more than any percentage change in the RPI since the last review date, unless this would be unreasonable having regard to paragraph 18(1). The RPI is calculated by reference to the latest index, being the last index published before the day on which notice is served.

47. In *Wyldecrest Parks (Management) Ltd v Kenyon and others* [2017] UKUT 0026 (LC) the position was summarised as follows:

(1) The direction in paragraph 16(b) that in the absence of agreement the pitch fee may be changed only "if the appropriate judicial body ... considers it reasonable" for there to be a change is more than just a pre-condition; it imports a standard of reasonableness to be applied in the context of the other statutory provisions, which should guide the tribunal when it is asked to determine the amount of a new pitch fee.

(2) In every case "particular regard" must be had to the factors in paragraph 18(1) but these are not the only factors which may influence the amount by which it is reasonable for a pitch fee to change.

(3) No weight may be given in any case to the factors identified in paragraphs 18(1A) and 19.

(4) With those mandatory considerations well in mind the starting point is then the presumption in paragraph 20(A1) of an annual increase or reduction by no more than the change in RPI. This is a strong presumption but it is neither an entitlement nor a maximum.

(5) The effect of the presumption is that an increase (or decrease) "no more than" the change in RPI will be justified, unless one of the factors mentioned in paragraph 18(1) makes that limit unreasonable, in which case the presumption will not apply.

(6) Even if none of the factors in paragraph 18(1) applies, some other important factor may nevertheless rebut the presumption and make it reasonable that a pitch fee should increase by a greater amount than the change in RPI.

48. Paragraph 18(1) sets out factors to which 'particular regard' must be had when determining the amount of the new pitch fee. These include improvements carried out since the date of the last review (paragraph 18(1)(a)) and also under paragraph 18(1)(aa) of '... 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 for the purposes of this sub-paragraph)'.
49. Paragraph 18(1)(ab) then refers to '... 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 for the purposes of this sub-paragraph)'. Paragraphs 18(1)(aa) and (ab) came into force on 26 May 2013.
50. By having 'particular regard' to the factors set out in paragraph 18(1), it does not exclude the consideration of other factors, but they would need to be weighty factors.
51. The Applicant was not including costs of any improvements within the proposed increase since the date of the last review for paragraph 18(1)(a) to apply. There is no suggestion that the pitch fee includes costs and fees incurred by the site owner which are to be disregarded by paragraph 19. It is paragraphs 18(1)(aa) and (ab) upon which the Respondents' case rests with regard to the condition of the site, the amenities and services.
52. The site has developed over time with the benefit of planning permission. Objection could have been raised through the planning process. Expansion of the wider site does not in itself constitute a loss of amenity. The Respondents' generic complaints about lack of consultation are from several years ago. Any relevant complaints will have been taken into account in previous reviews.
53. There is no evidence before the Tribunal that the Respondents had any legal right to use the undeveloped areas for recreational purposes. Moreover, it appears more likely than not that the path and grassed areas they utilised along 'Honeysuckle Walk' were not communal areas.

54. The flower bed beside No 4, looked well maintained at the time of the Tribunal's site inspection. That may not always have been so, but it is such a small area that any past lack of maintenance cannot have been significant in terms of the condition of the site. There are some limited signs of deterioration in the surface dressing of the access road of a relatively minor nature.
55. There can be no reasonable expectation that all roads and paths will be cleared of snow and ice throughout adverse weather. Salt bins have been provided albeit not close to the Respondents' home. This is not a deterioration in the condition of the site but the provision of a facility for the whole site. Similarly, the provision of a defibrillator is not a deterioration or loss of amenity and its positioning at the site office appears the most logical place for the benefit of all residents. The Tribunal heard that a handyman remains employed at the site.
56. The Respondents have spacious parking for two vehicles. A vehicle was overhanging the road in one oddly configured visitor parking space, but it was not obstructing the free passage of traffic. There is plenty of other visitor parking available. Before the garages were removed, it appears that residents were parking in front of garage doors where there was no right to park. It is not a loss of amenity when a right did not exist before.

Conclusions

57. There is a dispute over whether there has been compliance with the statutory formalities imposed by the Act in undertaking a pitch fee review. The Tribunal accepts that the Applicant had complied with the procedural requirements of paragraph 17 of Part 1 of Schedule 1 of the Act to support an application for an increase in pitch fee for 2023 in respect of the pitch occupied by the Respondents.
58. In considering whether a change in the pitch fee is reasonable, the Tribunal has paid particular regard to the factors in paragraph 18(1). We recognise that the Respondents feel aggrieved about a variety of matters. However, the issue is whether the condition of the site has deteriorated or there has been a loss of amenity or services for which the Applicant owner is responsible. Having considered all issues raised, the Tribunal is not satisfied that either individually or collectively they suffice to displace the presumption that the pitch fee should be increased.
59. Paragraph 20(1) introduces a presumption that the pitch fee shall increase by a percentage which is no more than any percentage increase or decrease in the RPI since the last review date. It does not say that the pitch fee will be automatically adjusted in accordance with the RPI. The Tribunal is mindful that is the usual starting point. However, the notice served by the Applicant under paragraph 17

restricted the increase in pitch fee for 2023 to less than the percentage increase in the RPI.

60. Occupiers of the site were invited to confirm agreement to the new pitch fee by signing an acceptance form by 12 December 2022. When the Respondents had not returned the completed form, the Applicant extended the deadline to 7 February 2023. The letter warned that a failure to confirm acceptance of the increased fee would result in a referral to the Tribunal to resolve the matter. It made no mention of the amount reverting to the higher sum in the pitch fee review form if not accepted within the specified time.

61. It is a matter of considerable weight that the written notice specified the increased monthly pitch fee as £249.00. It was unconditional and the Applicant should not renege on the amount it set. The Tribunal concludes that it is reasonable for the pitch fee to be changed and the pitch fee increase for 2023 should be £249.00 per month, including the cost of services.

Name: Judge K. Seward

Date: 2 February 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).