



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

Case reference : **CAM/22UH/PHI/2023/0140**

Property : **Royal Dunton Court, Brentwood, Essex
CM13 3SX**

Applicant : **A R (Dunton Park) Limited**

Representative : **IBB Law LLP**

Respondent : **The owners of the park homes identified
on the schedule attached to the
application**

Representative : **Mr Sean Peckham and Mr James Hailes**

Type of application : **Mobile Homes Act 1983 Determination
of pitch fee**

Tribunal members : **Mrs E Flint FRICS
Mr G F Smith MRICS FAAV**

**Date and Venue of
hearing** : **24 June 2024
Chelmsford Justice Centre Priory Place
New London Road Chelmsford CM2 0PP**

Date of decision : **5 July 2024**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the monthly pitch fees for those pitch numbers listed on the schedule attached to the application should be increased by 9.4% per month with effect from 1 April 2023.

The application

1. The applications were made by Dunton Park Caravan Sites Limited. The park home owners were represented by Mr Peckham, Chair of the Residents Association, and Mr Hailes on behalf of the Residents Association, all bar five park home owners are members of the association.

Background

2. Royal Dunton Court, Dunton, Essex is a protected site within the meaning of the Mobile Homes Act 1983 ('the 1983 Act'). The owner and operator of the site when the Notices of Increase were served was Dunton Park Caravan Sites Limited, however the company went into Administration in August 2023 and was acquired by A R (Dunton Park) Limited, part of the Regency Living group of companies, in January 2024. The parties agreed at the commencement of the hearing that the name of the Applicant should be amended to that of A R (Dunton Park) Limited.
3. The park home owners' right to station their mobile homes on their pitches at the site is governed by the terms of a Written Statement (i.e., an agreement) with the site owner, and the implied terms of the 1983 Act. It is agreed that the pitch fee review date is 1 April of each year. For the purposes of this decision, focus is primarily upon the implied terms.
4. Where agreement has not been reached to an increase in pitch fees, the site owner must apply to this Tribunal if it is to obtain an increase. Hence, the site owner applied to the Tribunal for a determination in respect of pitch fee payable for 2023 by the occupants of the pitches listed on the schedule.
5. Written notice of the proposals was served by the previous site owner on the park home owners by letter dated 24 February 2023. The notice proposed a 13.4% increase on the previous monthly fee which was effective from the last review on 1 April 2022. The adjustment sought is made with reference to the change in the Retail Price Index ('RPI') taking the published percentage for the month of January 2023. The proposals are accompanied by a completed pitch fee review form in the prescribed format. There is no suggestion of any procedural flaw. The Tribunal is satisfied that the procedural requirements and time limits have been met.

6. Directions were issued by the Tribunal on 30 November 2023 for all the pitches where agreement had not been reached.
7. The Directions required the site owner to send to the park homeowners a statement of case, including the RPI/CPI data used in the calculations of the proposed new pitch fees and, if the proposed increase was based on RPI, any submissions and evidence of costs relied upon in contending that RPI was a better measure of relevant inflation than CPI over the relevant period or that there were other considerations in favour of the increase sought.
8. The park home owners were directed to complete and return a reply form and to send to the site owner a full statement of why they opposed the pitch fee increase; if they wished to rely on any of the matters set out in paragraph 18(1) of Chapter 2 of Part 1 of Schedule 1 to the 1983 Act (or any other weighty factors) to say it would be unreasonable to increase the pitch fee, full details and evidence of such matters together any witness statements of fact and any photographs and other documents relied on by the park home owner.
9. The parties agreed that Mr Peckham and Mr Hailes case should be used as a test case and that the result would be binding on all other parties to listed on the application.

The law

10. The law applicable to a change in pitch fee is contained within the 1983 Act. Provisions within Chapter 2 of Part 1 of Schedule 1 to the 1983 Act set out the implied terms that govern the process and means of calculation.
11. 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....."
12. When determining the amount of a new pitch fee, particular regard shall be had to the matters set out in paragraph 18(1) of the implied terms

These include sums spent on particular types of improvement (a), any relevant deterioration in the condition, and any relevant decrease in the amenity, of the site or any adjoining land occupied or controlled by the owner (aa), any relevant reduction in the services that the owner supplies to the site, pitch or mobile home, and any relevant deterioration in the quality of those services (ab).

13. When considering “amenity”, Kitchen J explained in *Charles Simpson Organisation Limited v Martin Redshaw* and another [2010] 2514 (Ch): In my judgment, the word “amenity” in the phrase “amenity of the protected site” in paragraph 18(1)(b) simply means the quality of being agreeable or pleasant. The Court must therefore have particular regard to any decrease in the pleasantness of the site or those features of the site which are agreeable from the perspective of the particular occupier in issue.”

14. Paragraphs 18 to 20 of the implied terms are reproduced in the Schedule to this Decision. 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.

15. In *Wyldecrest Parks (Management) Ltd v Kenyon & Ors* [2017] UKUT 28 (LC), the Deputy President reviewed earlier decisions and observed [at paragraph 47] that the effect of the implied terms for pitch fee review can be “summarised in the following propositions”:
 - “(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.”

16. More recently in *Wyldecrest Parks (Management) Ltd v Whiteley and Others* [2024] UKUT 55 (LC), the Deputy President stated:

“An amenity can be enjoyed without any right to its preservation, and the decrease of such an amenity would be capable of making a park a less attractive place to live. It is therefore perfectly understandable that the implied terms specify such a decrease as a factor to which consideration should be given, whether or not the decrease is an infringement of a legal right or a contravention of a site licence or planning control. [37]

Where there is no reason to depart from the statutory presumption of an RPI /CPI increase, the increase in percentage terms for all pitches with the same review date will be the same. In that case there may be no need to distinguish between different pitches in any way, and it may be sufficient for the tribunal to state what the percentage increase is to be. But in cases where it is said that the presumption does not apply, because of a factor falling within paragraph 18(1), or where it is said it has been displaced by some other weighty factor, the tribunal will need to consider whether the factor which justifies a higher or lower increase than RPI/CPI affects all pitches equally. If it does not, then it is likely to be necessary for the tribunal to determine what is the reasonable pitch fee for each pitch, or each group of pitches affected to the same extent, rather than to adopt a blanket approach. [42]

In general, for cases where the presumption of an RPI/CPI increase has been displaced, tribunals should try to adopt a relatively simple approach, because the sums involved are modest and the material available is likely to be quite limited. Unless different pitches are affected to a materially different degree by a loss of amenity such that there is a good reason for differentiating between them in determining new pitch fees, tribunals should not feel obliged to do so. [71]”

17. For pitch fee review notices given from 2 July 2023, the relevant provisions were amended by the Mobile Homes (Pitch Fees) Act 2023.

The amendments changed the presumption to refer to the Consumer Prices Index ('CPI') instead of RPI, but it does not apply to the review under consideration here.

The Inspection

18. The tribunal inspected the park on 24 June 2024 in the presence of Mr Clements, Ms Reach, Mr Peckham and Mr Hailes. Photographs of the site were provided in the hearing bundle.
19. The mobile home park is situated on the outskirts of Dunton village and within a few miles of Basildon town centre, Langdon Nature Discovery Park is nearby. The site comprises approximately 185 pitches, a site office, a clubhouse with bar and hall facilities, a former shop which had been let out previously as offices but was now vacant and a fenced pond. A one way system was in force on the roads except for the main drive into the developed area, car parking was available in a number of areas within the site.
20. Adjacent to the park is an area of open land which abuts part of the site and has been used as a dumping ground for building and other materials. The section of land adjacent to Orchard View was originally used for touring caravans and the remains of the concrete roads were still visible through the Herras fencing. A further area of scrubland at the end of Main Drive had recently been obscured by close boarded fencing and a gate, again the area had been used as a dumping ground, a boarded up house on this area was situated close to the new fence.
21. The road surfaces throughout the park had areas of patching, the road to Chestnut View had not been completed, leaving raised manhole covers. The speed humps, with one exception, were not clearly marked, generally the road markings were faded and difficult to see; the road signs were not clear or of a standard size. There was evidence that the drains were not well maintained with weeds growing in the roadside gulleys. The pond on the right hand side of Main Drive, towards the rear of the site was fenced off with a No Entry sign. The banks of the pond were overgrown.

The hearing

22. A R (Dunton Park) Limited was represented by Mr John Clement of IBB Law LLP who was accompanied by Ms Sharon Reach of Regency Living. The occupiers were represented by Mr Peckham and Mr Hailes as it had been agreed that their case should be used as a test case for the development.

The issues

23. At the start of the hearing the parties identified the relevant issues for determination as follows:
24. Site Security; condition of the roads; fire safety, staffing levels, the supply of Calor gas and the site licence. The amenity of the park and its effect, if any, on the application of the RPI to the previous pitch fee.
25. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Relevant date

26. Paragraphs 18(1)(aa) and (ab) came into force on 26 May 2013. That is the date from which consideration is to be given to whether there has been any deterioration in the condition, and any decrease in amenity, of the site or adjoining land under paragraph 18(1)(aa), or any reduction or deterioration of services under paragraph 18(1)(ab). The exception is where the deterioration etc, has previously been taken into account when determining a new pitch fee. It was agreed that there had been no previous Tribunal determinations in respect of Dunton Park.

Site Security

27. The case for the Respondents was essentially that the site was advertised as being a gated development with 24 hour security. Although there had never been any gates provided there had been security on site 24 hours per day: there had been four security guards in total every day. The number of hours worked by the guards had decreased by October 2022 resulting in no overnight cover and by August 2023 there was no security guards at all at the site. The Administrator had confirmed that he had been advised that there was no manned security provided at Dunton Park.
28. Mr Clement accepted that there had been no security guards at the site since August 2023. Ms Reach confirmed that there had been originally four guards employed: two daytime and two nighttime guards.
29. The facts were not in dispute, there had been a deterioration in the service provided.

Roads

30. The Respondents stated that there had been little maintenance since May 2021 resulting in a deterioration in the road surfaces, the speed bumps had not been painted, there were very few pavements which meant users

had to walk on the road . The speed bumps were not clearly marked which was a trip hazard after dusk since the street lights often had blown lightbulbs which were not replaced for months at a time. The drains were not cleaned regularly resulting in ponding outside the clubhouse after heavy rain. The signposts were not of a standard size, some were confusing and others faded.

31. Mr Clement asserted that there was no obligation to maintain the roads in perfect condition; there was no evidence of deterioration since the photographs in the bundle showed the roads to be in a similar condition to that seen on the inspection. The patching seen on the inspection was evidence of maintenance having been undertaken.

Fire Safety

32. The Respondents referred to a fire risk assessment dated 2 December 2022 which they said was inaccurate because it referred to a site of only 100 pitches, whereas there are 187 pitches, it stated that there were no disabled residents therefore no personal emergency evacuation plans were necessary. However, it was said that there are residents with wheelchairs, blue badge holders and others in receipt of Personal Independence Payments living on the site.
33. The report noted that there were no records of fire alarm servicing in the review period and no PAT tests had been carried out on electrical equipment. Moreover in March 2023 it was noted by residents that some of the site's fire extinguishers did not have up to date service records. Photos of two such extinguishers in the clubhouse and a third on Orchard View were produced in the bundle.
34. Mr Clement pointed out that the full report had not been included in the bundle. Essex County fire service had made a limited inspection of the clubhouse in January 2023, no mention had been made of the labels on the fire extinguishers therein.
35. The Tribunal has noted the caveats within the fire service report together with the photographic evidence within the bundle.

Staffing Levels

36. The respondents were of the opinion that the reduction in staffing levels was a major factor in the deterioration in both ground maintenance and security within the site. Historically ground staff had carried out patch repairs.
37. Mr Clement said that the respondents were using this factor to support their other complaints.

Site Licence issues

38. The park licence dated 15 January 1981 has not been renewed and remained in force throughout the review period. Section 27 of the licence states that around one tenth of the total site area of the site should be allocated for recreational purposes. In practice the only area provided as an area for recreation is the clubhouse.
39. During the review period the clubhouse was often closed due to staff shortages. The site was marketed as having regular entertainment and events in the clubhouse which were previously organised by the office staff, including weekly bingo and monthly music events and quizzes. In *Deer's Leap Limited v Deers Court Residents* it was held that residents should be able to have a reasonable expectation that what was actually promised as part of the package (and was provided from the outset) can be outside of the direct terms of the written agreement.
40. A number of emails were produced to evidence the reduction in service provided. The hall was not open unless the bar was open. This situation has been rectified since July 2023.
41. Mr Clement did not accept there had been any reduction as there had been no reduction in the area given over for recreation. There was a suggestion that the pond could be considered part of the recreation area.
42. The Tribunal determined that there had been a significant reduction in the availability of the recreation area due to the lack of staff, the clubhouse being the only area within the park which provided an area for recreation. The pond could not be considered as part of the recreation area as it was fenced off, had a No Entry sign and the only area available to sit and look at the pond was on Main Drive itself.

Calor Gas

43. Although this service was removed after the review period, the respondents said that the reasons for the removal of the service indicated poor management of the site. They referred to a letter from Calor in which it was noted that "*Whilst the position of the tanks has not changed since installation, over a period of time trees, plants, sheds, vehicles etc have been placed or parked in close proximity to the tanks and this now presents a material hazard..... it can no longer supply the site in either a safe or an operationally viable manner.*" Consequently, the homes which previously had bulk tanks had to be converted to gas bottles.
44. Mr Clement asserted that the new arrangements took place outside of the review period and therefore were not relevant to our consideration.

Rate of Inflation

45. The respondents considered that there had been a major deterioration in the site, a decline in the amenity of the park and a reduction in services which have had an adverse effect on the general amenity of the park.
46. They agreed that in law the correct starting point was RPI. In view of the poor management resulting in the issues raised above, the members of the Resident's Association were of the opinion that the pitch fee from 1 April 2023 should remain the same as in the previous year.
47. In support they referred to a number of Tribunal decisions which although not binding indicate that other tribunals have accepted that RPI can be adjusted downwards to take into account the relatively large increase in inflation and the factors similar to those raised in this case.
48. In closing submissions Mr Clement noted that there was no Upper Tribunal decision regarding the large increase in inflation.
49. The Act provides a simple method of calculating the annual increase and the parties must take the rough with the smooth, we must not fall into the trap of looking at individual costs, in some years the residents would do well and in others less well. The Tribunal must deal with the application and legislation as it stands at the relevant date.

The tribunal's decision

50. The tribunal determines that the pitch fees should be increased by 9.4% with effect from 1 April 2023.

Reasons for the tribunal's decision

51. The Tribunal accepts that the starting point is that there is a presumption that a pitch fee shall not increase or decrease by more than the relevant RPI percentage unless it is unreasonable to do so. The presumption operates unless it is displaced by other competing matters which renders an increase unreasonable. Particular regard must be had to matters at para.18(1) of the schedule, but other "weighty matters" may also displace the presumption.
52. The matters referred to in paragraph 18(1) 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 [26th May 2013] (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)

53. In order for there to be a deterioration in the condition or amenity of the site, there must be changes which are long lasting or permanent and affect the fabric of the site, rather than temporary matters. The owner of the park is required to maintain the common parts in a good state of repair and condition and at all times provide and maintain the facilities and amenities and services in proper working order.
54. The RPI for January 2023 was unusually high. This high level was to a large degree due to the large increase in the price of fuel as a consequence of the war in Ukraine. In the past Tribunals have referred to the modest increases in pitch fees due to being tied to the annual increase in RPI. Clearly 13.4% cannot be described as a modest increase.
55. The Tribunal determines that the amenity of the park had deteriorated since the relevant date. It was not disputed that there had been no prior determination of the Tribunal which could have taken the following matters into account when reaching their decision.
56. The gutters and drains require attention, the pooling of water on the road has been an ongoing problem because the drains are not cleaned regularly. There were numerous cracks and patched areas of road surface plus an area of unfinished road surface with raised manhole covers which were in situ prior to the review period and remained proud at the date of the inspection. A number of the speed humps were worn and not clearly visible except in broad daylight. There was an adequate number of lamp standards however if the lightbulbs are not kept in working order items such as the speed humps become trip hazards, a matter of concern to the residents many of whom are said to be elderly. The Tribunal accepts the evidence of the respondents; the applicant was not able to provide any evidence to the contrary.
57. The site was advertised as being a gated development with security. Although the gates have not materialised there was 24 hour security on site prior to the review period. The hours of security were reduced, by October 2022 there was no overnight coverage and the day time coverage finally ceased in August 2023. This is a significant reduction in the amenity of the site.
58. The clubhouse provided the only recreational area within the park, the lack of regular entertainment was exacerbated by the very limited opening hours of the bar and hence the hall as the bar staff opened the hall. This had a detrimental effect on the amenity of the site particularly

as this was the only area where groups of residents could socialise within the park. Moreover, there was evidence of poor management regarding the testing and maintenance of the fire extinguishers which from the records had been ongoing since 2019.

59. The Tribunal determined that the pond off Main Drive could not be considered to be part of the recreation area of the site as residents had no access to the pond which could only be viewed from the roadway.

60. The adjacent land running along two sides of the park is unsightly and has a negative effect on the general amenity of the park. The Tribunal determined that the change in the gas supply took place outside of the review period although the factors for the termination of the contract were in part due to the poor management and /or enforcement of the park rules.

Name: E Flint

Date: 5 July 2024

Appendix

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.

.....

(

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). 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);

(b).....

(ba) 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

F56(c).....

(1A)But 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 purposes 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.

20 (A1) 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.

(A2) In sub-paragraph (A1), “the latest index”—

(a) 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)

(2) Paragraph 18(3) above applies for the purposes of this paragraph as it applies for the purposes of paragraph 18

20(1) Where an application is made to the court under paragraphs 17(4), 18(2) or 19(3), the court shall, if the court considers it reasonable for the pitch fee to be changed, make an order determining the amount of the new pitch fee.

(2) 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 court.

(3) If the court makes such an order, the new pitch fee shall be payable—

(a) where the application was made under paragraph 17(4), as from the review date;

(b) where the application was made under paragraphs 18(2) or 19(3), as from the 28th day after the date of the court order determining the amount of the pitch fee.

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 should be made on Form RP PTA available at <https://www.gov.uk/government/publications/form-rp-pta-application-for-permission-to-appeal-a-decision-to-the-upper-tribunal-lands-chamber>

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).