



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

Case references	:	CAM/12UD/PHI/2023/0075 and 0078
Park homes	:	5 and 12 Grove Park, Magazine Lane, Wisbech, PE13 1LF
Applicants	:	Mr and Mrs Webb
Respondents	:	Mr and Mrs Pryer (5 Grove Park) Mr Outram (12 Grove Park)
Type of application(s)	:	Applications under the Mobile Homes Act 1983 to determine pitch fees
Tribunal member(s)	:	Mary Hardman FRICS IRRV(Hons) Roland Thomas MRICS
Date	:	23 February 2024

DECISION

Decisions of the tribunal

The tribunal considers it reasonable for the relevant pitch fees to be changed and orders that the amounts of the new monthly pitch fees payable by the Respondents from 1 January 2023 are as set out in the last column (headed “**Determined**”) of the relevant table at Schedule 1 to this decision.

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Reasons

Procedural history

1. The Applicant site owners applied to the tribunal on 27 March 2023 under paragraph 16 of the terms implied into the relevant pitch agreements by Chapter 2 of Part I of Schedule 1 to the Mobile Homes Act 1983 (the “**Implied Terms**”) to determine the pitch fees payable for the park homes, 5 Grove Park and 12 Grove Park, with effect from the review date of 1 January 2023.

2. On 8 August 2023, the Tribunal gave case management directions in relation to each pitch. These required the Applicant site owners to send to each relevant occupier, a statement of the Applicants' 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.
3. The park home owners were directed to complete and return a reply form and send to the Applicants 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 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.
4. The Applicants could make a brief reply to the Respondents' submission which they did, and the Chair admitted a further set of submissions by both parties.

Pitch fees - law

5. Under paragraph 22 of the Implied Terms, the owner shall (amongst other things) maintain in a clean and tidy condition those parts of the site, including access ways, which are not the responsibility of any occupier of a mobile home stationed on the site. Similarly, the express terms of the relevant pitch agreements require the owner to maintain such parts of the park in a good state of repair and condition.
6. Under paragraph 29 of the Implied Terms, "*pitch fee*" means (with emphasis added): "*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, but does not include amounts due in respect of gas, electricity, water and sewerage or other services, unless the agreement expressly provides that the pitch fee includes such amounts...*". The relevant agreements did not so provide; water, sewerage and other services are payable in addition. It appears the Applicant recovers any local authority site licence fee by adding an equal proportion to the pitch fee and collecting this from occupiers. Any rental for separate garages is payable in addition to the pitch fee.
7. 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 (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).

8. Paragraphs 18 to 20 of the Implied Terms are reproduced at Schedule 2 to this decision. In Wyldecrest Parks (Management) Ltd v Kenyon & Ors [2017] UKUT 28 (LC), the Deputy President reviewed earlier decisions and observed at [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.”

9. For pitch fee review notices given from 2 July 2023, the relevant provisions were amended by the Mobile Homes (Pitch Fees) Act 2023. This changes the presumption to refer to CPI instead of RPI but does not apply to the review we are considering.

Inspection

10. The Tribunal inspected the site in the morning of 12 February 2024 and were accompanied by Mrs Webb for the Applicants with her site

handyman. The Respondents did not join the Tribunal. At the hearing they explained that they did not understand from the letter they were sent, indicating when the inspection would take place, that they were invited to accompany the Tribunal on its inspection. The Tribunal apologised for this misunderstanding and assured the Respondents that they did not take evidence or submissions at the inspection, the purpose was to view the site, having read all submissions by the parties.

11. The park comprises 39 pitches, all of which are occupied by 'owner/occupiers' who own their mobile home. Homes are all 33' to 43' units with garden areas and a parking space for each home.
12. The park is relatively compact with a single circular roadway serving all pitches. It appeared to be maintained in good condition. The fencing to both sides and the rear of the site was relatively recent. There is a single visitor parking space.

Hearing

13. The hearing took place by video. It was attended by one of the Applicants, Mrs Webb and the Respondents Mrs Pryer and Mr Outram.

Submissions

14. There were a range of submissions and arguments made by both parties, and the tribunal has not attempted to capture all of these – but focus on the main, and relevant, points raised. For the avoidance of doubt, where the Tribunal does not refer to submissions, it should not be assumed that the Tribunal has ignored them or left them out of account. This Decision seeks to focus on the key issues. Not all of the various matters mentioned in the bundle or at the hearing require findings to be made for the purpose of deciding the relevant issues in this application.

Physical state of the park

15. In respect of the alleged deterioration to the park the Respondents, raised a number of issues in their responses to the application:
 - i) Disrepair to fence to the left-hand side of the park adjoining the new development.
 - ii) Failure to maintain the park
 - iii) Hedge to front of park overhanging and in need of maintenance
 - iv) Lack of visitor parking

i) Disrepair to fence to the left-hand side of the park adjoining the new development

Mrs Pryer said that there was a history regarding the fence to the left boundary of the site. The previous owners had failed to maintain it and had been taken to court by the local authority and ordered to replace the fence. When Mr and Mrs Webb took ownership of the site in 2019, they were aware of this. They had replaced the fence on the other two sides of the park but had taken no action in respect of this fence as at the review date. Mrs Pryer had been informed by Mr Webb in 2022 that he intended to take down the existing fence and to use the fence that had been erected by the owners of the adjacent land as the boundary fence. Mrs Pryer was concerned as the ground behind the fence was a foot lower than the ground on the park side of the fence and would create a gap under the fence. Use of this fence as a boundary would also increase the pitch size.

Mr Outram said that he was happy with the fence arrangement as he could now have a garden but was concerned as to the arrangements for maintaining the fence and would like a commitment from the site owner that this would be done.

Mrs Webb (Applicant) said that the boundary fences had been an ongoing maintenance task since they took ownership of the park. Works were delayed due to COVID and they were unable to begin work on the left hand fence due to negotiations with the neighbouring landowner. These had been completed over the summer and she had said in her witness statement of August 2023 that the works would be completed within the following few months. She said parts of the fence were rotten.

However, in her further witness statement in September 2023 she said that on removing the old fence they had discovered the neighbouring boundary fence which was in good condition. She said that the local authority did not wish them to erect another fence alongside this. They had now agreed with the neighbour that their fence could stand as a boundary fence and the local authority had confirmed on 7 February 2024 that the boundary fence arrangements between the site and the neighbouring land owner were satisfactory.

In response to Mr Outram's concerns as to the maintenance arrangements for this fence Mrs Webb said that they had permission to attend to the fence and had agreed a mechanism with the adjoining owner for the fence to be maintained. She was more than happy to write to the park home owners setting out the arrangement.

The tribunal is only concerned as to the state of the park as at the date of the pitch fee review in January 2023 but has included events after that date for context. It is clear there has been an issue with the boundary fence, which has been a source of frustration to the park home owners on that side and that work which should have been done

earlier was not carried out. However, the fence to the adjoining land was erected pre 2023 and there has been a physical boundary to that side as an alternative to the site owners' fence. The tribunal does not find that this issue was of sufficient weight to constitute a deterioration in the condition, or any decrease in the amenity. However it is pleased to note the commitment by Mrs Webb to write to the park home owners regarding the maintenance of the fence going forward and trusts that this will have taken place by the time this decision is issued – or, if not, shortly afterwards.

ii) Failure to maintain the park

16. The Respondents both raised the issue of what they said was a lack of maintenance of the park citing the notice board being out of date with the license not being fully displayed and the fire certificate that was displayed also being out of date.
17. Vegetation had been allowed to accumulate and it was cleared in August/September 2022 following residents' complaints to Fenland Council as it had become so overgrown, and weedkiller had been spread without any notification.
18. Works to correct the signage had only taken place immediately prior to the tribunal hearing.
19. Mrs Webb said that they had not failed to maintain the park. There would always be ongoing issues that required attention. The park was maintained regularly and works to the gardens were carried out every six months and more frequently if required.
20. They were not obligated to provide a full breakdown of the operating costs, but these were continuing to rise. Nor were they obliged to carry out improvements before they could increase the pitch fee.
21. They were not in breach of the site license and provided evidence in letters from Fenland District Council dated 18 August 2023 and 7 February 2024 to this effect.
22. Mrs Webb confirmed that there was a fire certificate for the site and there had always been a fire certificate in force.
23. The tribunal accepts that some of the work to the signage was almost certainly done after the review date. On inspection the notice board and signage were up to date and there was no evidence of overgrown vegetation. Fences to the rear and right-hand side boundaries had been replaced in recent years and were in good order.
24. The Respondents are incorrect in their suggestion that in order for the pitch fee to be increased the site owners have to be able to show evidence of improvements to the site. Rather the presumption (s18 Mobile Homes Act 1983) is that the pitch fee may increase by up to RPI unless this presumption is rebutted by evidence that there is

deterioration in the condition and any decrease in amenity of the site or other weighty factors.

25. The Tribunal found that the site was well maintained and whilst it was winter, and any vegetation is likely to be at a minimum, there did not appear to be a significant issue and certainly none which the Tribunal felt would constitute deterioration in the condition, or any decrease in the amenity of the site.

Hedge to front of park overhanging and in need of maintenance

26. The Respondents said that the hedge to the right-hand side of the entrance road was overgrown and produced photographs to show this. It had not been trimmed back for several years and it required the park home owners to negotiate with the hedge owner to get it cut back .
27. The Applicant said that the hedge did not belong to them but to the neighbouring property. They had asked the owner to trim it back and they had always been co-operative.
28. The Tribunal accepts that hedge is not within the curtilage of the site and is not the responsibility of the site owner. On this basis they do not find that there has been a deterioration in the condition, or any decrease in the amenity, of the site or any adjoining land which is occupied or controlled by the owner in respect of this issue. The Tribunal noted that at the date of the inspection the hedge had been replaced with a fence and the site owner said that they had been asked to pay half the cost of erecting the fence.

Lack of visitor parking

29. The Respondents said that there was only one visitor parking space on the site. Although the site plan indicated additional spaces they were unsuitable and potentially dangerous.
30. The Applicant said that all park home owners had one space and accepted that there was only a single visitor space. They were unable to create the additional visitor spaces requested as they would be a hazard for emergency vehicles. This had been the case for many years and the Respondents were aware of the reasons.
31. Whilst the Tribunal appreciates that a single visitor space for 31 units is likely to create issues at times it is clear that this is not something which has changed in recent years and the tribunal do not find that there has been a deterioration in the condition, or any decrease in the amenity of the site in respect of this issue.

Conclusion – Physical state of the park

32. In summary, the Tribunal does not find that there are any site-specific factors of sufficient weight, either individually or when considered in the

round to constitute a deterioration in the condition, or any decrease in the amenity.

RPI at a time of high inflation

33. In his written submission and at the tribunal Mr Outram (12 Grove Park) said that he believed Mr Webb was misguided in his belief of his inalienable right to impose what was the RPI rate of inflation in September 2022. The relevant act prescribes RPI as the maximum increase that an owner can raise the pitch fee. There was a clear indication in the wording of the Act that there should be fairness, justification and discussion prior to any increase. In this case none of the factors were present. Nothing in the Act gave the owner the right to impose the RPI without a written explanation and justification.
34. Mr Webb also declined to enter into discussion regarding the pitch fee and he was required to do so by statute.
35. He had accepted the RPI increase in previous years even though there had been no improvements to the amenities on the site. However, it was intended to be a cap on increases and not a target figure. The RPI increase was 14.2% which meant that the site would yield an increase of £10,500 per annum bringing the income up to £84,500 per annum.
36. The RPI was a collective snapshot of annual fiscal events, and the inflated figure this year a consequence of a war in Europe having a deleterious effect on energy prices, and chaotic government. If 14.2% was adopted, it would remain as an included sum for ever more.
37. As of December 2022, the government and the media were predicting that RPI would fall to more reasonable levels by the end of the year – which it did.
38. RPI had long been considered as an inappropriate measure of inflation and has been changed in July 2023 to CPI which in July 2023 was 6.3%.
39. He had asked the owner for justification of the pitch fee increase and information on costs, but this request had been denied.
40. He believed that the owner was required to
 - i) set the pitch fee on the basis of additional costs incurred in providing additional facilities and/or maintaining existing services and agreeing those increases with the occupier prior to implementation.
 - ii) provide a written explanation with evidence justifying any increase when requested by the occupier.

41. The site owners had failed to do this and was profiteering by ignoring the law and taking advantage of the weakness of the residents of the park .
42. He had offered to agree a 6% increase, similar to the year before but this had been refused.
43. Mrs Pryer (5 Grove Park) said that whilst she understood that the pitch fee could be increased by a maximum of RPI she understood that the increase should be subject to any monies expended on facilities or improvements and in the pitch fee review form the owner had said there were no such improvements, and she would question the legality of the increase. She also believed that park home owners were entitled to understand the reason for the level of increase beyond a statement that it was the RPI.
44. In their written submission in respect of the proposed increase the Applicants said that they had relied on implied term 20(A1) of Chapter 2 of Part 1 to Schedule of the Mobile Homes Act 1983 as amended which gives rise to the 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(RPI) calculated by reference only to
 - (a) latest index and
 - (b) the index published for the month which was 12 months before that to which the latest index relatesunless this would be unreasonable having regard to paragraph 18(1)
45. The tribunal should not depart from the statutory regime unless the Respondent is able to prove that one of the factors listed in paragraph 18(1) exists or if they bring forward another weighty factor to displace the presumption in implied terms.
46. The 2023 Act which replaced RPI with CPI does not have retrospective effect. Accordingly for reviews that were proposed prior to 2nd July 2023 the strategy presumption in favour of RPI remains and the Applicants aver that they were therefore entitled to refer to RPI not CPI .
47. Further the 2023 review was not made on the cusp of the reforms to the 2023 act but several months prior. Accordingly, the Applicants had no reason to consider using CPI for the 2023 review. They believed it was correct to use RPI for the purposes the 2023 review and it was not unreasonable for them to have done. The Applicant's operating costs also continue to increase with some materials increased very significantly.
48. The law permits the Applicants to refer to RPI, they have complied with the act and submit the 2023 view is a valid review.

Determination – RPI increase

49. The Respondents do not believe that an increase more than 6% is reasonable for the reasons they have stated. They asked for details of the Respondents costs, but these were not provided.
50. We have considered the submissions carefully. What has happened over the relevant period for this review is a time of unusually high inflation. We believe that it is unreasonable to increase pitch fees in line with RPI, which is unreliable and/or (as noted by the ONS in their guidance referred to at the hearing) tends to overstate inflation.
51. In the absence of any evidence from the Applicants we cannot be sure of the level of increase of the Respondents' total costs. Neither of the parties have provided anything persuasive about a given level of pitch fee as the reasonable level. We have therefore decided that we consider that it is reasonable for the pitch fees to be increased in line with the CPI level over the relevant period of 11.1%.
52. It seems to us that this determination is within the "limit" of the presumption in paragraph 20(A1) of a change by "no more than" the change in RPI, as noted above. However, if we are wrong about that, we consider that the exceptional circumstances (not encountered since paragraph 20(A1) was added) of such high inflation, of which RPI is not a reliable measure and/or is likely to have been overstating that very high inflation, are sufficient to rebut (outweigh) the presumption.
53. Accordingly, we determine, in line with the pitch fee notice, that the pitch fees should be increased in line with the CPI increase over the relevant period.
54. The new pitch fees are payable with effect from 1 January 2023, but an occupier shall not be treated as being in arrears until the 28th day after the date of this decision (paragraph 17 of the Implied Terms).
55. The tribunal makes no order for the Respondents to reimburse the Applicants in respect of the fees paid to the tribunal for the application or the hearing.
56. The Tribunal heard much in submissions and at the hearing of the issues of communication between the parties, some of it clearly acrimonious and some of it quite disturbing. It would encourage parties to seek to establish a working relationship that is of benefit to all and to try to actively resolve issues without the need to refer to the tribunal – although of course that route is open to all parties in relevant circumstances.

Schedule 1**Determined**

Respondent(s)	Park home	2022	Proposed	Determined
Mr and Mrs Pryer	5 Grove Park	£158.38	£180.86	£175.96
Mr Outram	12 Grove Park	£158.38	£180.86	£175.96

Schedule 2 – paragraphs 18-20 of the Implied Terms

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 [tribunal], 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); ...

(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 ...

(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.

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) ... 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) 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) When determining the amount of the new pitch fee, no regard may be had to any costs incurred by the owner in connection with—

(a) any action taken by a local authority under sections 9A to 9I of the Caravan Sites and Control of Development Act 1960 (breach of licence condition, emergency action etc.);

(b) the owner being convicted of an offence under section 9B of that Act (failure to comply with compliance notice).

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).

Rights of appeal

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).