



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

Case References : BIR/47UC/PHI/2023/0142, 0143, 0145

Site : Three Counties Park, Sledge Green, Malvern,
Worcestershire WR13 6JW

Applicants : Mr J Fury and Mrs E Fury, Silverstone Parks Ltd
(T/A Highgrove Parks Ltd)

Representative : Mr M Mullin of Counsel

Respondents : 60 Three Counties Park – Mr & Mrs Elliott
61 Three Counties Park – Mr & Mrs Bream
65 Three Counties Park – Mr & Mrs Cain

Type of Application : Pitch Fee Review (1 April 2023)

Tribunal Members : Judge C Payne (Chairman)
I. D. Humphries BSc (Est Man) FRICS (Surveyor)

Date of Hearing : 19 April 2024

Date of Decision : 11 September 2024

DECISION

Decision

The Tribunal determines that the monthly pitch fee for the properties that are the subject matter of the respective applications should increase, as follows, from the review date of 1 April 2023:

60 Three Counties Park from £196.29 to £222.59

61 Three Counties Park from £196.29 to £222.59

65 Three Counties Park from £196.29 to £222.59

Reasons for the Decision

Introduction

1. The Applicants are the owners of Three Counties Park, Sledge Green, Malvern, Worcestershire WR13 6JW ('Three Counties Park'). This is a residential mobile home park. It is a protected site within the meaning of the Mobile homes Act 1983 (as amended) ('the 1983 Act'). The Respondents occupy 60, 61 and 65 Three Counties Park respectively under the terms of agreements entered into with the Applicants and to which the 1983 Act applies.
2. In each instance, the annual review date is 1 April and the pitch fee is paid monthly. The pitch fees for the properties was last reviewed on 1 April 2022 when they were determined by application to the Tribunal, with a Decision issued on 16 May 2023.
3. By Pitch Fee Review Notices dated 28 February 2023 ('the Notices'), the Applicants gave notice to each of the Respondents that it proposed to review their pitch fees from the review date of 1 April 2023 and, thereby, to increase such pitch fees in accordance with the percentage increase in the RPI over the twelve-month period preceding this review, namely 13.4%.
4. The Respondents did not agree to the proposed increase, but they did not make consequential applications to the Tribunal to challenge that increase. Accordingly, the Applicants made individual applications to the Tribunal dated 29 June 2023 for the determination of a new level of pitch fee.
5. Directions were issued by the Regional Judge on 1 September 2023. The Directions were concerned, principally, with matters pertaining to the preparation and submission of statements and related documents by the parties to the applications. More particularly, each of the applications and supporting documents were deemed to be the Applicants' respective Statements of Case whilst the Respondents were afforded the opportunity to submit Statements in Response setting out in full their reasons for opposing the proposed new pitch fee and also including all matters of fact and law relied upon and an exhibition of all relevant documents to which, in turn, the Applicants might file Statements in Reply.
6. Each of the Respondents provided a detailed statement to the Tribunal. The Applicant provided a Reply. A 299-page Hearing Bundle was provided, which included the

parties statements and key documents that the parties had submitted to the Tribunal. The Applicant's Counsel also provided a Skeleton Argument. The Tribunal had careful regard to these documents and the parties' submissions when reaching this decision.

Inspection

7. The Tribunal inspected Three Counties Park on 19 April 2024 together with Mr Fury and his representatives, Mr Mullin (Counsel) and Miss Apps of Apps Legal Limited (Solicitors), and some of the Respondents, namely Mr Elliott (60 Three Counties Park), Mr Bream (61 Three Counties Park) and Mr Cain (65 Three Counties Park).
8. The frontage of Three Counties Park runs alongside the A438 and it is situated in relatively close proximity to the market towns of Malvern, Ledbury and Tewkesbury. It occupies an attractive rural location with outstanding views of the surrounding countryside, including the Malvern Hills. Access to and egress from the site is by way of the A438.
9. Three Counties Park is served by a network of roads which traverse the site. The mobile homes are positioned in such a way as to ensure that each home has easy access to one or other of such roads. Parking facilities are available on certain pitches and there is a relatively spacious parking area, primarily for the use of visitors, near to the entrance and in close proximity to the site office. The mobile homes are of diverse ages and types and the pitches vary in size.
10. Three Counties Park is licensed to accommodate 74 park homes. It has an irregular shape due to the manner in which the site has evolved over time, with the newest homes having been added to the western part of the site in 2019.
11. The Tribunal undertook a general inspection, walking around the site roads and taking note, in particular, of any common areas, parking facilities, the 'visitors' parking area and the access to and from the A438. The Tribunal paid particular attention to the Klargester and its location. Whilst in that vicinity experienced the unpleasant smell associated with it.

Hearing

12. The individuals who attended the inspection were also present at the hearing which was held on the same day as the inspection at Worcester Justice Centre. Mr Mullin presented the Applicants' case. Mr Elliott, Mr Bream and Mr Cain presented their individual cases.

Relevant Law

13. The relevant law is contained within Part I Chapter 2 of Schedule 1 to the 1983 Act ("the Schedule") and the 2013 Regulations.
14. 'Pitch fee' is defined in paragraph 29 of the Schedule as follows:

"pitch fee" means 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 and other services, unless the agreement expressly provides that the pitch fee includes such amounts.

15. Paragraph 17(1) of the Schedule provides that the pitch fee shall be reviewed as at the review date and in this regard paragraph 17(2) states that ‘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’. Paragraph 17(2A) specifies that this notice is of no effect unless it is accompanied by a document that complies with paragraph 25A.
16. Paragraph 25A requires this document to be in the form prescribed by the Secretary of State in regulations. Presently, this is the 2013 Regulations. In the 2013 Regulations, it is stated in paragraph 2 that the document ‘shall be in the form prescribed in the Schedule to these Regulations or in a form substantially to like effect.’ Further, paragraph 25A provides that, substantively, the document must specify any percentage increase or decrease in the retail prices index (‘RPI’) calculated in accordance with paragraph 20(A1) (see below, paragraph 19), explain the effect of paragraph 17, specify the matters to which the amount proposed for the new pitch fee is attributable, and refer to various owner’s and occupier’s obligations.
17. Paragraph 20(A1) states that there is a presumption that the pitch fee shall increase or decrease by a percentage which is no more than the percentage change in the RPI since the last review date (‘the statutory presumption’), unless this would be unreasonable having regard to paragraph 18(1).
18. Paragraph 18 sets out factors to which ‘particular regard’ must be had when determining the amount of the new pitch fee and so far as material provides:

18(1) When determining the amount of the new pitch fee particular regard shall be had to

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 - (a) any sums expended by the owner since the last review date on improvements...;
 - (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);...
19. Sub-paragraphs 18(1)(aa) and 18(1)(ab) came into force on 26 May 2013.
20. The Upper Tribunal considered the operation of these provisions and the approach to be adopted by the Tribunal in *Vyse v Wyldcrest Parks (Management) Ltd* [2017] UKUT 24

(LC)(‘*Vyse*’). It is accepted that the following propositions emerge from that decision – 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 render an increase unreasonable and particular regard must be had to the matters at paragraph 18(1) of the Schedule, but other 'weighty matters' may also displace the presumption.

21. However, the Upper Tribunal has not given any guidance as to how paragraphs 18(1)(aa) and 18(1)(ab) might be applied and what may constitute a deterioration in the condition of the site and a decrease in the amenity or a reduction in services supplied and decrease in the quality thereof. In this respect, First-tier Tribunals have provided some pointers. Hence, in relation to paragraph 18(1)(aa), it has been mooted that a deterioration in the condition and amenity of a site encompasses changes that are long lasting or permanent and affect the 'fabric' of the site rather than changes that are temporary in nature. Further for the purposes of the 1983 Act, the Tribunal is not concerned with the actual condition of the site or the actual amenity of that site, and while the Tribunal may accept that the site has not always been maintained to a standard that might reasonably be expected **the question it must determine is whether there has been any deterioration/decrease in the condition and amenity of the site in the relevant period.**
22. With regard to paragraph 18(1)(ab), the Upper Tribunal in *Britaniacrest v Bamborough* [2016] UKUT 0144 (LC) commented:

“[24]...paragraph 18(1)(ab) requires the FTT to have regard to any reduction in services the owner supplies to the site or an individual home. That is consistent with the pitch fee being payment for a package of rights provided by the owner to the occupier, including the right to station a mobile home on the pitch and the right to receive services. Where such services are reduced, or the quality diminishes, the Act requires that reduction or deterioration to be taken into account (presumably as a factor justifying either a reduction in the pitch fee or a smaller increase than would otherwise be allowed).”
23. More generally, it would appear that for the RPI presumption to be displaced under the provisions of paragraph 18, the other considerations must be of considerable weight, because as Her Honour Judge Robinson opined in *Vyse* [50], 'If it were a consideration of equal weight to RPI, then applying the presumption, the scales would tip the balance in favour of RPI'.

Submissions

24. The Applicants seek a determination by the Tribunal of a level of pitch fee that reflects the percentage increase in the RPI over the twelve-month period applicable to this review, namely 13.4%.
25. The Respondents, individually and collectively, accept that, in principle, the Applicants have a right to review the pitch fee annually (with a review date of 1 April), do not challenge the legitimacy of the Notices dated 28 February 2023 or question that the RPI increased by 13.4%. Nevertheless, each of the Respondents have not paid the increase in the pitch fee sought by the Applicants and in explaining their respective reasons for failing to do so they raised issues for the attention of the Tribunal.

26. The Parties agreed that the only matter the Tribunal was being asked to consider on this occasion was the ongoing issues with the sewage management system and, in particular, the Klargesters. The Respondents raised no other issues relating more generally to the site.
27. The Applicant's representative submitted that the Applicant accepts there is an ongoing challenge with the Klargesters, which are being addressed. However, they submitted that there has been no deterioration or measurable decrease within the relevant twelve-month period.
28. The Applicant acknowledged that the Klargesters need to be replaced and that the hole in it, which has been there for a considerable period of time, does allow noxious smells to escape from time to time, particularly when it is being emptied. The Applicant is working on securing a new system but noted that, in order to challenge the pitch fee, the burden is on the Respondents to establish there has been further deterioration in the relevant twelve-month period. The question is not whether there is an issue but whether it has become materially worse.
29. Mr Elliott told the Tribunal that he felt the situation was gradually becoming worse, the longer it went on. He gave the example of flooding on site, which had continued until June 2023 when manholes were sealed, which appears to have not resolved the issue. The flooding was a long term issue that had been occurring for several years.
30. Mr Elliott expressed frustration that the Applicant had promised to replace the Klargesters and noted that planning permission had not been submitted until July 2023 and was not granted until November 2023. The residents have been told a new system is being purchased but have not seen any progress with this being installed on site as yet. The delays in addressing the issue are causing a blight to the resident's homes.
31. Mr Elliott confirmed that the waste system is now being regularly emptied every 6 weeks, which was not previously done. The Tribunal noted this improvement in services.
32. Mr Elliott made reference to some issues that had arisen after 1 April 2023, which are not relevant to this application.
33. Mr Elliott submitted that the discharge from the Klargesters into the brook has got worse. The discharge of soapy water was noted during the inspection. This appeared to be the same issue which had been identified previously and there was no other evidence to demonstrate that it was getting worse.
34. Mr Bream agreed with Mr Elliott's submissions and told the Tribunal that the condition of the Klargesters constitutes a breach of the site licence and is causing an ongoing blight to the properties on the site. He noted that on 16 May 2023 Wychavon District Council issued a Compliance Notice requiring the issues with the Klargesters be addressed in order to comply with the terms of the Site Licence. He also mentioned some other incidents of repairs being required but these occurred after 1 April 2023.

35. Mr Cain agreed with the submissions of the other Respondents. He advised the Tribunal that complaints were being pursued by residents with the Council and the Environment Agency. He confirmed that the issues raised in these proceedings were the same as those raised in the previous proceedings before the Tribunal. The Residents' frustration is that the Klargester issue has still not been resolved by the Applicant. That is why they are objecting to a further pitch fee increase.

Decision

36. The Tribunal considered, carefully, the evidence presented by the parties together with the evidence it gleaned from its inspection of Three Counties Park. The Tribunal is grateful to the parties for the thoroughness and diligence demonstrated in the preparation of their cases.
37. The question the Tribunal is called to answer in this case is not whether there is an ongoing issue with the Klargester. All parties agree there is an ongoing issue, which needs to be addressed. As set out in paragraph 20 above, the Tribunal is required by the 1983 Act to determine the 'unreasonableness' or otherwise of the proposed pitch fee increase with particular regard to paragraph 18(1).
38. The Tribunal must consider whether the evidence shows that there has been any **deterioration** in the condition and **decrease** in the amenity of Three Counties Park (sub-paragraph 18(1)(aa)) and/or any **reduction** in the services provided by the Applicant to Three Counties Park and any **deterioration** in the quality of those services (sub-paragraph 18(1)(ab)) in the relevant period. Case law suggests that the Tribunal may also have regard to other 'weighty factors' in assessing whether the statutory presumption may be displaced on the ground of 'unreasonableness'.
39. In this context, 'amenity' means the quality of being agreeable or pleasant and so the Tribunal must look at any decrease in the pleasantness of Three Counties Park or of those features of Three Counties Park that are agreeable from an occupier's perspective.
40. Without detracting from the serious nature of the ongoing issues with the Klargester, it was clear during the inspection and in the evidence presented to the Tribunal that the issues are ongoing and have not changed over the relevant twelve-month period that is the subject of the pitch fee review. While the frustration of the Respondents is understandable, the issues remain the same. In fact, with the Klargester now being cleaned more regularly, which is an improvement to the previous arrangements.

Conclusion

41. The Tribunal does not find that there has been any measurable deterioration in the condition or decrease in the amenity of Three Counties Park or, similarly, any measurable reduction in the services provided by the Applicant or the quality of those services.
42. The Tribunal accepts the statutory presumption that the pitch fee should change by a percentage that is no more than the percentage change in the RPI during the period under review applies.

43. Consequently, the Tribunal determines that the pitch fee for all of the properties that are the subject of these applications, namely 60, 61, and 65 Three Counties Park should increase from the review date of 1 April 2023 in accordance with the Notices dated 28 February 2023 and the consequent outstanding sums should be paid to the Applicants.
44. The Tribunal is unclear whether the Applicant has issued letters to any of the Respondents regarding arrears of pitch fees arising from the proposed increase. The Tribunal confirms that the Respondents are not in arrears if they have continued to pay the pitch fee due before the service of the Pitch Fee Review Notices. The difference between the current pitch fee and the reviewed pitch fee becomes payable 28 days after this decision is issued (see, paragraph 17(4)(c) of the Schedule).

Costs

45. No party applied for costs and, consequently, the Tribunal makes no such award.

Judge C Payne

Appeal Provisions

46. If any party is dissatisfied with this decision, they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such appeal must be received within 28 days after these written reasons have been sent to the parties (Rule 52 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).
47. If the party wishing to appeal does not comply with the 28-day time limit, the party shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
48. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.