



FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	..	CAM/00MX/PHI/2023/0027,0093,0095 and 0096
Park homes	..	8, 17,12 and 14 Elmtrees Park, Winchbottom Lane, Little Harlow, Bucks SL7 3RL
Applicants	..	The owners of the park homes identified above and in the schedule to this decision
Respondents		Mr and Mrs D Lyne
Represented by		IBB Law — Mr J Clements
Type of application(s)	·	Applications under the Mobile Homes Act 1983 to determine pitch fees
Tribunal member(s)	..	Mary Hardman FRICS IRRV(Hons) . Jacqueline Hawkins
Date	..	8 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 April 2023 are as set out in the last column (headed "Determined") of the relevant table at Schedule 1 to this decision.

Reasons

Procedural history

1. The Applicant park home owners applied to the tribunal 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 their park home with effect from the review date of 1 April 2023.

2. On 12 September 2023, the Tribunal gave case management directions in relation to each pitch. These required the Respondent site owners to send to each relevant occupier, a statement of the Respondents' 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 Respondents 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 Respondents could make a brief reply to the Applicant' submission which they did, and the Applicants submitted a further brief response which the Chair admitted. The Applicants had merged their submissions and had appointed Mr Thornton of 17 Elmtrees Park as their spokesperson.
5. The bundle of 82 pages was agreed between the parties.

Pitch fees - law

6. 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.
7. 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.
8. 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

Inspection

11. The Tribunal inspected the site in the morning of 15 January 2024 and were accompanied by Mr Thornton for the Applicants and the Respondents, Mr and Mrs Lyne and their solicitor, Mr Clements of IBB Law.
12. The park comprises 21 pitches of which 19 are occupied. Of those 17 are occupied by 'owner/occupiers' who own their mobile homes and 2 are rented.
13. The Site appeared to be maintained in good condition and nothing untoward was pointed out to the tribunal by the Applicant during the inspection apart from the tree, which had split, and a number of large limbs/branches had broken off — see later.
14. The Respondents pointed out work that they were doing to one of the site boundaries where they were replacing an existing hedge with a close boarded fence which they felt would be more secure and offer more protection to the site.

Hearing

15. The hearing took place at The Compleat Angler, Marlow following the inspection. It was attended by Applicants Mr Thornton, Mrs Highgate and Mr Plumridge (8 Elmtrees) and Respondents Mr and Mrs Lyne together with Mr Clements. .

Applicants' case

16. In their statement of case the Applicants said that they were not suggesting that the pitch fee review did not comply with the Act nor that the correct procedure had not been followed.
17. It was however their understanding that it was a review and not an automatic right to a maximum increase and that it was a level of increase that they wished to determine.
18. Whether RPI or CPI were used, these were the maximum figures. The Act stated that there was a presumption that the pitch fee shall increase or decrease by a percentage "no more than"
19. They were aware that the CPI maximum figure of 10.1% was used as a 'projection of goodwill' rather than the RPI.
20. The pitch fee was already 20% higher than the 2185 pcm charged for similar services at Westhorpe Park, which was less than a mile away. The proposed increase to around 2250pcm increased the differential to around 33% which they felt was too much. Costs pro rata to maintain the site would be similar and unlikely to be 33% more.

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).

9. 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 precondition; 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."

10. 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.

21. They had requested a breakdown of costs, but this was turned down by the Respondents. They would also like to understand what portion of the pitch fee related to the maintenance of the site.
22. The council tax increase for Buckinghamshire Council had been 5.1% for what they believed to be similar services (grounds, roads, borders, maintenance etc.)
23. The CPI figure of 10.1% included items such as food, beverages, alcohol and tobacco, recreation and culture, health, restaurants and hotels. None of these they believed were relevant to running a mobile home park but represented the larger portion of CPI.
24. They had proposed that the pitch fee be held at the 2022 level. When this was rejected, they had suggested that the Respondents met them half way in line with the council tax increase but this was also declined.
25. They had not initially suggested that there was deterioration on the site but they did wish the tribunal to note that until 2 or 3 years ago there had been a handyman on the site, who was one of the residents, who attended to minor site maintenance and other issues such as spreading salt in winter, keeping roadways free from debris and investigating minor electrical faults.
26. On 10 April 2023 a large branch had fallen from a tree and was left for several days supported only by telegraph^h wires. More recently a power failure to one of the properties (12 Elmtrees) had meant essential breathing equipment could not be used and the presence on site of a handyman would have meant that this would have been resolved more quickly.
27. Finally, they felt that some of these points had highlighted a previously unrecognised issue of communication rather than reduction in services which they hoped they could address with Mr Lyne outside of the Tribunal,

Respondents' case

28. In respect of the proposed increase the Respondents said that , whilst the statutory presumption that the pitch fee shall increase or decrease by a percentage that is no more than any percentage increase or decrease in RPI was amended by the Mobile Homes (Pitch Fees) Act 2023 which changed the basis from RPI to CPI, the legislation was not retrospective and therefore this application was proceeding on the basis of RPI being the appropriate starting point for any pitch fee review.
29. The Applicants had not sought to challenge this, nor the proposed RPI figure of 13-4%, representing the change in RPI since the last review date. They argued that it was for the Applicants to persuade the Tribunal that it should depart from the statutory presumption of RPI.

