



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

Case reference	:	CAM/38UE/PHI/2023/0098
Park homes	:	14,17,18,19,27 Tudor Court Park, Nobles Lane, Eynesham Road, Botley Oxford OX2 9NG
Applicant	:	R S Hill and Sons Limited
Represented by	:	IBB Law
Respondents	:	The park home owners named in the Schedule to this decision
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	:	2 February 2024 and 13 March 2024

AMENDED 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.

The tribunal is sending copies of this decision to the Respondents, but to avoid any possible delay the Applicant shall send copies to the Respondents as soon as possible using any contact details available to them.

This decision was amended to correct the typographic error on 19 Tudor Park which should read £197.50 and not £179.50 per month .

Reasons

Procedural history

1. The Applicant 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 specified park homes on the site with effect from the review date of 1 January 2023. However due to late service of the notices, which were not sent out until 15 February 2023 the Applicant has proposed that the review takes effect from 1 April 2023 as a late review.
2. On 13 September 2023, the procedural Chair gave case management directions in relation to each site. These required the Applicant to send the relevant application documents to each relevant occupier, with a statement of case including any submissions and evidence relied upon in contending that the Retail Prices Index (“**RPI**”) was a better measure of relevant inflation than the Consumer Prices Index (“**CPI**”) over the relevant period or that there were other considerations in favour of the increase sought, and any witness statement and other documents relied upon. Occupiers who wished to actively oppose the proposed increase were directed to complete and return a reply form and send to the Applicant case documents they wished to rely upon.
3. On 12 December 2023 a procedural Judge issued further directions. All Respondents had confirmed that they did not wish to attend a hearing. The inspection by the tribunal would go ahead unless the Applicant requested a hearing by 18 December 2023.
4. The applicant did not request a hearing and the tribunal inspected the site on 9 January 2023. The tribunal were accompanied by the representative from R S Hill and Sons Limited, the Applicant and Mr Soffe of 27 Tudor Court Park for the Respondents.

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. 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. Tudor Court Park is a compact site of 27 homes. All homes are 'owner occupied and have gardens and dedicated parking. There is also visitor parking provision.
11. The park appeared to be well maintained. Entrance is via a narrow lane which leads directly into the park although does not form part of the curtilage to the park.
12. The homes varied in appearance but again, most were well maintained and overall, the park had a pleasant and tranquil ambience.

Background

13. In November 2022, the Applicant wrote to the Respondents, with the prescribed form, proposing to increase their monthly pitch fees with effect from 1 January 2023. In each case, they said the last review had been with effect from 1 January 2022.
14. They then wrote again on 15 February 2023, acknowledging that the respondents did not accept the increase, and informing them that whilst preparing the papers for the Tribunal they had noticed that there was an error in the pitch fee review form that they had sent to the respondents in November 2022, in that the form contained the wrong date. The figures including the amount of the pitch fee were correct.
15. They served a further pitch fee review form which showed the correct dates. Given the earlier error the revised pitch fee would take effect as a late review and take effect from 1 April 2023. They would be applying to the Tribunal after 1 April 2023 for a determination if the respondents did not agree the pitch fee increase.

Physical state of the park

16. In respect of the alleged deterioration to the park Mr and Mrs Soffe, (Respondents) 27 Tudor Court Park, raised a number of issues in their response to the application:
 - i) Speed humps and lack of lighting
 - ii) Fence needing repair or replacement.
 - iii) SSE Power outage on 10 and 11th July 2021
 - iv) General site maintenance
 - v) Different fees between park home pitches
 - vi) Smart Meters

i) Speed humps and lack of lighting

Mr and Mrs Soffe said that they had raised the issue that the speed humps on the entrance road (Nobles Lane) to the park home site were dangerous in that they were not properly identified or visible due to lack of marking or any street lighting.

R S Hill and Sons, the site owner and Applicant, had responded to say that Nobles Lane was not within the park and neither the road marking nor the lighting were their responsibility. Those within the park had not changed since installation and there was no evidence produced that the speed bumps or lighting had deteriorated during the review period and this issue had not been raised in previous reviews.

The Respondents said that whilst they accepted that Nobles Lane was not the responsibility of the site owner, they felt it was reasonable to expect safe access to the site and that the site owner should have a duty of care to all users/visitors to the site and the park home owners who were in the main elderly. They felt this was a health and safety risk.

The Tribunal accepts that Nobles Lane 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 Applicants did not raise issues with the speed bumps or lighting within the park. The Tribunal were however pleased to note that at the date of the inspection the site owner had marked out the speed humps.

The Tribunal would also point out, in respect of this point and similar defences to other such points proffered by the Applicants that the failure by the Respondents to raise issues in previous review periods does not automatically invalidate them as an issue in the current review period. In *Wickland (Holdings) Limited v Amelia Esterhuyse [2023] UKUT 147 (LC)* , Judge Cooke noted *'that there is no requirement in the statute that the deterioration referred to in paragraph 18 should have taken place since the previous review. (As can be seen from paragraph 5 above,) sub-paragraph (1)(aa) refers to deterioration since the provision came into force (in 2014), and which has not previously been taken into account in a pitch fee review. So, the appellant's point about date is a non-starter.'*

ii) Fence needing repair or replacement.

The Respondents had raised an issue with a fence that bordered the park home site near to numbers 19 and 27 that needed serious repair or replacement.

The Applicant said that they held no record of any reports in relation to the fence and were unsure as to the ownership until recently and were in the process of getting this established. They further confirmed the fence would be

repaired in the week commencing 6 November 2023. They considered that the respondents had failed to demonstrate that this issue was of sufficient weight to justify the Tribunal departing from the statutory presumption.

The Respondents felt that, as a limited company, it was not unreasonable to expect the site owner to have the available resources to obtain the necessary information from Land Registry or comparable organisations regarding the ownership of the fence in order to resolve the situation.

Again, the Tribunal accepts that the fence did not form part of the site and does not find that, on this basis, 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. Again, it was pleased to note during inspection that the Applicant had taken action to secure the fence.

iii) SSE Power outage on 10 and 11th July 2021

The Respondents raised an issue with a substantial power failure to the site over 10 and 11th July 2021. They had spoken to the power company SSE, and they had said that compensation would be payable to residents affected.

The Applicant said that it was not a relevant issue for the pitch review as the Applicant had no control over SSE. Compensation of £30 had been awarded which was £1.11 per home. They also said that as the outage was in 2021 and the Respondent had not raised this issue in previous reviews, and this was not relevant to the relevant period for this pitch for review. They considered that the respondents had failed to demonstrate that this issue was of sufficient weight to justify the Tribunal departing from the statutory presumption.

The Tribunal does not consider that this seemingly ‘one-off’ issue was of sufficient weight to constitute a deterioration in the condition, or any decrease in the amenity.

iv) General site maintenance

The Respondents said that the pitch was maintained although there was some vegetation on the perimeter of the site which would be addressed by the site warden. They also said that there remained an issue of some resurfacing required in the area from 17 to 19 and 27 on the park which was due to be carried out when the service road around the rest of the site was re-surfaced some years ago but was not done.

The Applicant stated in their submission that the Respondents had failed to produce any satisfactory evidence to suggest that the park had a particular problem with the weeding of the roadside curbs. The applicant also referred to a letter received from the occupier of 14 Tudor Court stating that there was no issue relating to the maintenance of the site. They accepted that due to COVID-19 regular schedules of maintenance were interrupted and there was a backlog of work to be completed and any essential maintenance would have to be prioritised tree cutting was carried out a fence panels replaced that were not the property of the applicant at their own cost. No complaints had been

received from the Respondents in relation to the maintenance of the roadside edge curbs and the need for weeding or the general maintenance of the site. The Respondents had failed to produce any evidence that this issue demonstrated any deterioration in condition or amenities.

The Tribunal inspected the site. It 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 not one which the Tribunal felt would constitute deterioration in the condition, or any decrease in the amenity of the site.

v) Different fees between park home pitches

The Respondent said that they had raised the issue of why pitch fees differed between pitches and that this appeared to have no bearing on the size or specification of the pitch.

The Applicant responded in a letter to the Respondents that was produced in the bundle that the pitch fees were set and accepted at the time of a home being purchased/sited this was not a situation that would affect the current RPI rate increase.

The Tribunal finds that this is not a matter which is relevant to the determination of this application.

vi) Smart Meters

The Respondents had raised the possibility of the installation of smart meters to which the Respondents replied that the park was a private metered site which was not suitable for smart metering.

The Tribunal finds that this is not a matter which is relevant to the determination of this application.

Conclusion – Physical state of the park

17. In summary, the Tribunal does not find that there are any site-specific factors of sufficient weight to constitute a deterioration in the condition, or any decrease in the amenity.

RPI/CPI at a time of high inflation

18. The Applicant said the RPI increase that they had applied was the September 2022 RPI of 12.6%.
19. The tribunal's directions had flagged up the change to CPI for pitch fee review notices from 2 July 2023 and asked for both parties to address any arguments about the appropriate measure in their statement of case, together with any other evidence in support of the amount claimed.
20. The Applicant argued that it was well established that they were entitled to an increase in line with inflation and that the burden of proof to

persuade the Tribunal that any departure from the statutory presumption should be made fell on the Respondents.

21. They also argued that section 2 of the Mobile Homes (Pitch Fees) Act 2023 specifically stated that this CPI would apply only to post commencement reviews which are defined in that act as a pitch fee review *'where the associated written notice is served on or after the date on which this Act comes into force.*
22. As a result, the present application was a pre commencement pitch free review as defined in the Act and consequently the tribunal was required to apply the law and the statutory presumption as enacted for pre-commencement reviews and to adopt the position that RPI and not CPI was the proper starting point for this application.
23. For the same reason they stated that considerations of the type referred to in paragraph 5(d) and (e) of the directions order (*whether costs of the site operator have increased by as much over the relevant period and whether there are any other relevant considerations in favour of or against increase sought*) are not relevant considerations for the purposes of establishing the Applicant's entitlement to receive an RPI linked pitch increase. It was well established that where an applicant was seeking an increase in pitch fees in line with the corresponding change in RPI it was not required to supply any additional evidence to justify such proposed increase other than evidence to show the correct figure had been applied.
24. Mr Miller and Mrs Brown (14 Tudor Court Park) (Respondents) in their submission objected to the 12.6% increase on the basis that RPI was laid down as the maximum increase and should not be regarded as the automatic rise every year. They said that this year's inflation was exceptional, and everyone sought an increase to match it. No one had had an increase to match or even come closer to 12.6% including pensioners .They felt the pitch fee increase should be reduced to more reasonable level to reflect the increases achieved by the rest of society
25. Mr and Mrs Soffe (27 Tudor Court Park) (Respondents) generally focussed their argument on the physical state of the park and associated matters (see below) but had written to R S Hill in January 2023 to say that they were disappointed that they had decided to increase the pitch fee by the full RPI amount allowable under the current legislation and had hoped that under the current cost of living crisis that they might have been somewhat sympathetic to the issues of the residents and only made a nominal increase.

Determination – RPI/CPI increase

26. We consider that it is reasonable for the pitch fees to be increased, but only in line with CPI over the relevant period. This figure is 10.1%. It was not said, and we are not satisfied that the Applicant's total relevant costs increased by more than CPI or that there are any other reasons why the relevant pitch fees should be increased above CPI inflation.

27. Accordingly, for a period of unusually high inflation, we consider it unreasonable to increase these pitch fees in line with RPI, which is unreliable and/or (as noted by the ONS in their guidance) tends to overstate inflation.
28. 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.
29. Accordingly, we determine that the pitch fees should be increased, but only in line with the CPI increase over the relevant period.
30. The new pitch fees are payable with effect from 1 April 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).

Mary Hardman FRICS IRRV(Hons)

2 February 2024

Schedule 1

Determined

Respondent(s)	Park home	2022	Proposed	Determined
Mr G Miller and Ms A Brown	14 Tudor Court Park	£184.42	£207.66	£203.04
Mr and Mrs Blayney	17 Tudor Court Park	£135.26	£152.30	£148.92
Mrs J Grace	18 Tudor Court Park	£167.55	£188.67	£184.47
Ms A Staniford	19 Tudor Court Park	£179.38	£201.99	£197.50
Mr and Mrs S Soffe	27 Tudor Court Park	£184.73	£208.00	£203.39

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).