



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

Case reference	Property
CHI/29UB/PHI/2023/0616	2 Yew Tree Park
CHI/29UB/PHI/2023/0617	7 Yew Tree Park
CHI/29UB/PHI/2023/0619	13 Yew Tree Park
CHI/29UB/PHI/2023/0621	21 Yew Tree Park
CHI/29UB/PHI/2023/0622	26 Yew Tree Park
CHI/29UB/PHI/2023/0623	27 Yew Tree Park
CHI/29UB/PHI/2023/0624	43 Yew Tree Park

Property : Various at Yew Tree Park, Maidstone Road,
Charring, Kent TN27 0DD

Applicant : M & O White

Representative : David Sunderland

Respondent : The occupiers of the properties listed above

Type of Application : Review of Pitch Fee: Mobile Homes Act
1983 (as amended)

Tribunal Members : Regional Judge Whitney
Mr C Davies FRICS
Mr E Shaylor MCIEH

Date of Hearing : 16 May 2024

Date of Decision : 22 July 2024

DECISION

BACKGROUND

1. On 1 August 2023 the Applicant site owner sought a determination of the pitch fee payable by the Respondent.
2. A Pitch Fee Review Notice dated 31 March 2023 was served on the occupiers proposing to increase the pitch fee by an amount which the site owner says represents only an adjustment in line with the Retail Prices Index.
3. Directions were issued on 4 March 2024 setting out the dates for compliance by the parties preparatory to a determination on the papers.
4. The Tribunal received objections in relation to plots 2, 7, 13, 21, 26, 27 and 43. As a result a hearing was listed.
5. A bundle consisting of 267 pdf pages was produced. References in [] are to pdf pages within that bundle.

Inspection

6. The Tribunal inspected the site immediately prior to the hearing. Mr Michael White attended on behalf of the Applicant with his representative Mr Sunderland. Mr Parry (Number 27) was in attendance as well as Mr and Mrs Shaw (Number 43) also attended. Other residents attended for part of the Inspection.
7. The site is off a main road, the A20. The entranceway to the site is tatty and in need of repair. Tiles are coming away from the entrance pillars and the tarmac in the entrance way is potholed and damaged. Just inside the entranceway is a cone over a damaged manhole cover.
8. As you enter the site to the far right hand side is an area of the park which is being redeveloped. We walked around the whole of the site observing the homes which were the subject of the application. Generally the tarmac around the site in places needed repair.
9. All parties agreed that you could now access what was referred to as the “nature reserve” being an area of amenity land on the side of the redeveloped land furthest from the homes which were the subject of this application. We walked up through the new development and saw the

access that Mr Fisher (Number 13) has to his home from this area which was previously an undeveloped field. Currently it is accessed by a hardcore roadway which appears to have been prepared to be tarmacked.

Hearing

10. The hearing took place immediately after the inspection at Ashford Tribunal Centre. The hearing was recorded and below is a precis only of the hearing.
11. Mr Sunderland acted as representative for the Applicant and Mr M White was in attendance. Mr Parry (no. 27) appeared for himself and also as representative for Ms Rothwell (No. 2) and Ms Keast (No. 26). Also in attendance were Mr Fisher (No.13) assisted by Mrs Coombs, Mrs Gilbert (No. 21) and Mr and Mrs Shaw (no. 43).
12. Initially an issue arose in that it appeared Mr Parry and Mrs Gilbert had only sent their objections by post to the Tribunal. These had not been copied to the Applicant. The Tribunal provided copies to Mr Sunderland and adjourned to allow Mr Sunderland to consider the same with his client.
13. Upon resumption Mr Sunderland objected to the replies being allowed in evidence. He submitted that these had not been sent to him in accordance with the directions and he understood both of these pitches had made no objection.
14. The Tribunal considered the same but exercised its case management powers to admit the objection from each but not the bundle of photographs produced by Mr Parry. The Tribunal was satisfied the Applicant was not prejudiced by the late admission. The objections were not lengthy documents and were similar to those raised by the other parties. Both Mr Parry and Ms Gilbert were present enabling the Applicant to question them upon their case. The Tribunal was satisfied it was in the interests of justice and proportionate to proceed with the hearing following the short adjournment to allow the Applicant to consider the two objections.
15. Mr Sunderland submitted that in effect all of the complaints raised were customer service issues and not weighty factors which should rebut the statutory presumption of a pitch fee review by RPI. He explained in 2019 there had been no Tribunal proceedings given the cost to the Applicant of pursuing the same. He was here today providing free representation for the Applicant making it cost effective to pursue the Review.

16. Mr Sunderland suggested the pitch fee review date had been 2nd May in each year for the past 20 years. He accepted the pitch fee notices (see page [116] for example) referred to the pitch fee review date being 1st May. He submitted that the Upper Tribunal decision in Wyldecrest Parks (Management) Ltd v. Truzzi-Franconi [2023] UKUT 42 (LC) supported his submission that an incorrect date did not invalidate the notice. In his submission it was reasonable to allow the review.
17. Mr Sunderland called Mr White. He relied upon his witness statement [241]. He confirmed his address. The Tribunal agreed it would allow Mr Sunderland to ask some supplemental questions.
18. Mr White confirmed the site belongs to himself and his wife. He stated he believed the notices were served by the warden placing them through the door of each home.
19. He explained in the past the various wardens on the site dealt with the agreements. He thinks the wardens put an incorrect date in some agreements. A pitch fee review took place in the past in April and again this was an error. He contended his is a small family concern with himself, his son and a secretary only.
20. Mr White was then cross examined by each of the Respondents present.
21. Mr White stated that a letter was sent in 2019 advising that works would be started in respect of the redevelopment of the site and that there would be large bulldozers and lorries and so access would not be allowed across this area into the “nature reserve”.
22. Mr White stated he would not be putting in a driveway or parking for Mr Fisher. Mr Fisher had purchased without a driveway and had no increase in his pitch fee for 9 years.
23. Mr White explained when the previous warden Maureen Finnegan passed away he got some information about the site including the pitch fee agreement for number 18. He accepted the wardens should have kept a copy of the agreements but stated he did not have any of the agreements for the Respondents’ pitches.
24. Mr White was adamant the correct review date was 2nd May in each year. He did not know why the pitch fee review notices gave a different date, his secretary had typed all of these up.
25. He was taken by Mr Shaw to [191]. This was a photocopy of the Notice Ms Keast received. It was slightly different than the copy relied upon by the Applicant in that it had certain items hand written in. Mr White stated his secretary typed up the notices for the proceedings.

26. At this point the Tribunal adjourned for lunch. Mr White was reminded he must not discuss his evidence with anyone including Mr Sunderland.
27. Mr White stated he didn't think the closure of access caused a problem to any individual. He wrote to all residents asking them not to use the "nature reserve" whilst the diggers etc were on site.
28. On questioning by the Tribunal Mr White confirmed that access had been allowed now for about a year to the "nature reserve".
29. He stated that all of the tarmacked areas were to be repaired when he tarmacked the roadway to the newly developed area. He understood this was communicated to residents via the warden. In the meantime he had carried out a temporary repair on access roads using road planings, but the Tribunal understood these to be rough surface only. He stated there was not a full time warden on site or a site office. Generally they collect the rent once a month. He was adamant he had done what can be done on the site to maintain the same.
30. Each of the Respondents presented their case. Mr Sunderland was given opportunity to cross examine each.
31. Mr Parry relied upon his written objection.
32. Mr Fisher relied upon his statement. He particularly referred to the fact that his right of way via the field which now has the new development upon had been blocked whilst work was undertaken. Further he stated he had always been allowed to park his car in that area but was now not allowed.
33. He was cross examined by Mr Sunderland. He stated he had lost a right of parking in the developed areas. He did accept he only had his pitch and he could move his shed to make space for his car if he wished.
34. On questioning by the Tribunal he agreed the parking area he referred to previously having use of was outside the boundary of his pitch.
35. Mrs Gilbert relied upon her statement and pointed out the bus for disabled people could not enter the site due to the poor state of the roads.
36. Mr and Mrs Shaw said they received a letter saying they should not enter the "nature reserve", and had not received any revocation of that letter. They believe the warden has the agreements. The pitch fee review date is 2nd May and so the review has not been properly exercised. Mr Shaw stated he was simply exercising his rights. He is not required to provide a solution or outcome.

37. Mr Sunderland cross examined. In so doing he accepted the pitch fee review forms provided as part of this application are replicas and not copies of those actually served.
38. Mr Sunderland suggested if we felt there was a loss of amenity from access to the “nature reserve” (which he did not accept) then we had to consider this on a pitch by pitch basis.
39. He referred again to the case of Truzzi-Franconi. He did not have a copy with him and could not refer to specific parts but in his submission administrative errors in the notice do not invalidate the same.
40. In respect of Mr Shaw he suggests that this is a late review [170-177] given the review date for his agreement is February of each year.
41. Mr Sunderland accepted the Tribunal could take the point about the date of the notices but he says that the date included in the notice is the correct last review date. He suggests the Respondents are not prejudiced and so the notices should stand.
42. He suggests it was a very pleasant park. He suggests there is no reduction in the amenity. There used to be 3.5 acres of woodland and there are still 3 acres, despite the new development. He suggests none of the Respondents showed what they had lost. At best it was a temporary period when they could not access the “nature reserve”.
43. Ms Neil of Number 7 suggests a problem with her pitch base but she has not attended and he suggests no evidence of the same a repair having been carried out. Mr Fisher has put a shed where he could have space for a car.
44. Mr Sunderland on instructions from Mr White withdrew his application for reimbursement of the fees paid to the Tribunal.

Decision

45. The Tribunal has considered carefully all matters within the bundle and the submissions and evidence given. We have also read carefully the decision in the Truzzi-Franconi case to which Mr Sunderland referred.
46. The pitch fee notices are found at [115-177]. All state that the last review date was 1st May 2022 save for that relating to Mr Parry (no. 27) [161] which gives a date of 2nd May despite the application form submitted [45] and other documents submitted by the Applicant referring to 1st May. We deal with this below.

47. We note that Mr Shaw produces copies of what he says are the Agreement he signed in 2021 when he purchased his home [202-204]. This gives a review date of 15th February in each year.
48. It is unfortunate that the Applicant did not set out clearly that the pitch fee notices attached to the application are not actual copies but replicas. This was conceded. We find as a matter of fact that the copy of the notice for Mr Parry's home contains a typographical error and should provide the date of the last review as being the 1st May and the date of the review being 1st May 2023. We so find taking account of all the evidence supplied, principally that on behalf of the Applicant including their statement of case and reply which suggested the date was 1st May 2023.
49. Certain parts of Mr White's evidence were unsatisfactory notably his explanation as to why he did not have copies of agreements. It is notable he found the agreement for home 18 where we are told he is taking action against the owner. We were not satisfied that thorough checks were made to locate the written agreements. However we accept his evidence both in his statement [241] and confirmed orally that the review date should be 2nd May in each year.
50. Mr White conceded in the past that his wardens had conducted reviews and that a review may have taken place in April. A copy of such notice is produced [190] giving a review date of 2nd April 2022. It seems clear from the evidence that the administration of the review process and the paperwork for the site is not carried out in a wholly professional manner.
51. Further Mr White was unable to clearly state how and when notices were delivered. We were satisfied on balance of probabilities that the notices were hand delivered although the evidence was not completely clear.
52. Mr Sunderland refers to the decision in Truzzi-Franconi in broad terms without referring to specific paragraphs within the same. We note he appeared in that appeal as a director of the Appellant.
53. We find that decision can be distinguished. In this case it was the evidence of Mr White in his statement given for these proceedings that the review date was 2nd May in each year. On questioning he accepted that on at least one occasion his servants and agents may have conducted a review in April. This was the evidence of the Applicant.
54. Taking account of this evidence we find that the notices served save in respect of Number 43 are invalid. We so find as the review date given was for a date prior to the review date contended for by the Applicant in his own evidence.

55. The position relating to Number 43, the home of Mr Shaw, is different. We accept in respect of this home that given the agreement produced refers to 15th February as the review date not withstanding the notice gives a different previous review date we are bound by Truzzi-Franconi and find that this is a late review as at 1st May 2023.
56. If we are wrong as to the validity of the notices and given we need to determine the pitch fee for Number 43 we determine the same.
57. We are satisfied that the correct RPI figure has been applied of 13.8% [242].
58. We must consider whether or not there is a weighty factor which rebuts the statutory presumption.
59. We find from our own inspection that the site is generally in a poor state of repair. The roadways have damaged tarmac throughout notably at the entranceway where substantial potholes exist and the tiling to the entrance pillars has fallen off. We found that the site felt “tatty” and in need of attention. We accept it may be that Mr White is awaiting completion of his new development. This may make financial sense to him but in the period we are dealing with we are satisfied that the lack of maintenance and repair has led to a loss of amenity at the site for this period.
60. Further we find that for a period of time (including the whole of the period covered by this review) the residents were told they could not enter the area being developed in the field to the right hand side looking from the roadway. Whilst this of itself may have relatively little significance to most residents it did afford access to what all parties agreed was an areas of amenity land referred to as the “nature reserve” and which we were told (and both sides accepted) consisted of pathways and benches.
61. Again whilst we understand the Applicant’s reasons for barring access for the safety of the residents we find this did reduce the amenity of the site as this was a significant feature of which the home owners had the use restricted. We are satisfied that this is a weighty factor which we must consider.
62. We must look at each Respondent in turn and consider how they are affected. In doing so we consider each of their individual objections.

Ms Rothwell Number 2

63. Ms Rothwell relies upon the reduction of amenity in site relating to lack of repair and maintenance. She also refers to the lack of access to the field.

64. We are satisfied that these are significant reductions in the amenity of the site. We accept the loss of access to the field may be temporary but for the review period in question it has a significant effect on the home owner. We use our judgment and expertise and find that if a pitch fee should apply the amount claimed should be reduced by 50%.

Ms Neil Number 7

65. Ms Neil did not attend the hearing but had filed an objection [179]. She stated that there was an issue with the base of her home. The Applicant in their reply [216-218] denies responsibility but states that in any event works were undertaken. He states no evidence has been supplied.

66. Ms Neil raises no other grounds.

67. We find that we do not have evidence to rebut the principle that the statutory presumption should apply. If therefore we are wrong as to the validity of the notice we would have found the pitch fee sought was due and payable.

Mr Fisher Number 13

68. It was clear there was a large amount of animosity between Mr White and Mr Fisher. Mr Fisher relied upon a determination of this Tribunal in 2013 [245-250] which determined that Mr Fisher was entitled to a right of vehicle and pedestrian access to his pitch over the field now being developed.

69. Mr Fisher set out his arguments within his statement of case [181]. In particular he relied upon the fact he had not had access over the field during the period covered by the review. He also raised the question of maintenance generally to the site.

70. Mr Fisher also referred to having lost the ability to park on the field now being developed. We find that nothing in the 2013 decision provided him with such right. Further he accepted within his evidence that the area he used for parking was not within the curtilage of his pitch. We find that this is not a matter we can take account of.

71. However we are satisfied that the other two matters are weighty factors account of which we may take. Further we accept that Mr Fisher was more significantly affected by the lack of access to the field whilst works were undertaken. This was in our judgment plainly a weighty reduction in amenity.

72. Again we apply our skill and judgment and taking account of all matters if the notice was valid we would reduce the proposed increase by 2/3rds.

Ms Gilbert Number 21

73. Ms Gilbert challenged the lack of maintenance in her reply dated 23rd March 2024. She also raises issues in respect of a neighbour.
74. On the later point it appeared to be accepted that Mr White was now taking action against this resident. On the evidence presented to us we were not satisfied that this was a weighty factor.
75. We are satisfied the lack of maintenance is a weighty factor. Ms Gilbert does not raise issues over access to the nature reserve. We find that if we are wrong and the pitch fee notice relating to her home is valid that the pitch fee proposed should be reduced by 25% to take account of the lack of maintenance.

Ms Keast Number 26

76. Ms Keast provided a statement of objection [182-196] with embedded photographs. Although she did not attend Mr Parry was nominate as her representative.
77. Ms Keast explained she moved in in May 2021. She was led to believe that reviews took place in April of each year. She advises a review took place on 2 April 2022.
78. Ms Keast specifically challenged the various dates referred to within the notices. We have dealt with those points above.
79. She also challenged the lack of maintenance to the site and the fact she was not able to access the nature reserve. We are satisfied that these are weighty factors and if we are wrong and the pitch fee notice is valid we would have determined that the amount of any review should be reduced by 50%.

Mr Parry Number 27

80. Mr Parry's objection is dated 20th March 2024.
81. Mr Parry refers to having lived on the site for 20 years. He challenged the lack of maintenance and the access to the nature reserve. He refers to matters relating to earlier pitch fee notices although we accept Mr White did not apply to the Tribunal in respect of the same. However what is clear in our judgment is that the question of maintenance has been ongoing and continues from the findings we made upon our inspection. We are also satisfied such matters have not been considered or previously determined by a Tribunal.

82. Mr Parry whilst he refers to the development does not suggest within his objection that lack of access has caused him any loss of amenity.

83. We determine that if we are wrong as to the invalidity of the notice relating to his pitch we would reduce the pitch fee payable by 25%.

Mr Shaw Number 43

84. Mr Shaw's objections are at [198-199] plus various supporting documents.

85. Mr Shaw took issue with the terms of the review notice. We have dealt with these points above.

86. Mr Shaw also questions the fact a copy of the site licence is not displayed on the site. Whilst we did not observe the same during our inspection we are not satisfied that this failure is a weighty matter sufficient to displace the statutory presumption.

87. Mr Shaw does however raise the lack of access and lack of maintenance. As set out above we are satisfied that both are weighty matters which displace the statutory presumption. We apply our own knowledge and judgment and determine that we reduce the increase sought by 50%.

Conclusion

88. We find that the pitch fee notices in respect of numbers 2, 7, 13, 21, 26 & 27 are invalid and we dismiss the applications made in respect of each of these homes.

89. We find the pitch fee in respect of number 43 is a late pitch fee and the notice served is valid. We are satisfied however that there are matters which rebut the statutory increase and we find that the reviewed pitch fee is £216.79 from 1st May 2023 (current pitch fee £202.80 + 13.8%/2).

90. If we are wrong as to the invalidity of the other notices we determine the pitch fee for each would have been:

2	£176.21 (164.84 + 13.8%/2)
7	£223.62 (196.51 + 13.8%)
13	£132.90 (127.06 + 13.8%/3)
21	£172.47 (156.30 + 13.8% x 3/4)
26	£189.95 (177.69 + 13.8%/2)
27	£170.42 (154.44 + 13.8% x 3/4)

91. The Applicant withdrew their application for reimbursement of the Tribunal fees.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person 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.