FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case references	**:**	**CAM/42UG/PHI/2023/0044**
Park homes	**:**	**75 Lugano Avenue, Falcon Park, Martlesham Heath, Ipswich, Suffolk IP5 3RR**
Applicants	**:**	**Tingdene Parks Limited**
Respondents	**:**	**Mr and Mrs Taylor**
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	**:**	**1 October 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 June 2023 is £2,362.65 in lieu of £2,435.40.

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Reasons

Procedural history

1. The Applicant site owners applied to the tribunal on 25 August 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, 75 Lugano Avenue, with effect from the review date of 1 June 2023.

2. On 28 May 2024, the Tribunal gave case management directions in relation to the pitch. These required the Applicant site owners to send to each relevant occupier, a statement of the Applicant's 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 Applicant 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 Applicant could make a brief reply to the Respondents' submission which they did.

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, site boundary fences and trees which are not the responsibility of any occupier of a mobile home stationed on the protected site.

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…*".

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.*
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> *(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.*
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> *(4) With those mandatory consideration 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.*
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> *(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 26 August 2024 and were accompanied by Mr Taylor for the Respondents. The Applicant did not join the inspection.

11. The park is relatively large but compact and comprises over 120 pitches. Lugano Avenue forms one of the boundary roads to the East of site.

12. The tree about which the Respondents complain is a large oak tree situated in the rear garden of their home at 75 Lugano Avenue. The

tribunal were shown photographs of the tree prior to it being lopped and it was clear that it had been significantly reduced in size with none of the branches now encroaching on the mobile home.

Submissions

13. Neither party requested a hearing, so a determination was made on the basis of the written submissions and the inspection.

Respondents' case

14. Mr and Mrs Taylor in their submission said they had agreed with Tingdene to take the pitch at 75 Lugano Avenue in 2010 after considering several other pitches on what was then a new section of the park. They had clarified with Tingdene that they (Tingdene) were responsible for maintaining the mature oak tree on the pitch – although they did not think that they had anything in writing .

15. Significant lopping had taken place in 2010 to limit the impact on the mobile home that was to be sited there and to limit the overhang to plot 74. They had assumed, based on the assurance from Tingdene, that the situation would continue. The mobile home was sited in January 2011 with the rear corner approximately 5 meters from the base of the tree.

16. Significant growth took place over the years and they said that extensive correspondence took place in late 2022 covering safety, shedding of branches, shedding of acorns into the gutter and downpipe and overwhelming of the pitch. They had indicated to the Applicant in November 2022 that there was a possible impact on their agreement to the pitch fee increase.

17. By the following year the branches were touching and overhanging the corner of the property. The occupier at 74 Lugano Avenue reported safety concerns after a significant branch dropped into her garden.

18. They had taken advice from the Independent Park Homes Advisory Service which pointed to a precedent in a tribunal appeal decision- which was not supplied and the tribunal was unable to identify it from the reference supplied - concerning a relationship between paragraph 21(d) and 22(d) of the written statement which highlights the responsibility of the occupier in relation to trees on the pitch extends only so far as cosmetic work and not to the lopping topping or felling of trees. Maintenance of a mature oak tree was beyond the ability and equipment resources of an occupier and requires the services of an appropriately qualified tree surgeon.

19. Given the anticipated delay with hearing the case the Respondents employed a tree surgeon to reduce the canopy as they did not want to go through another growing season with the tree in its then state. The cost of the work in December 2023 was £1,044 including VAT.

20. In respect of the increase to RPI of 13.8% they had had a subsequent letter from Tingdene of May 2023 indicating that they were prepared to agree to a CPI increase of 10.4% They had acknowledged the offer but not made any response, wanting to await the outcome of the tribunal.

Applicant's case

21. Mr Ryan, Legal Officer for Tingdene Parks said that there was an as yet unresolved dispute between the parties as to who was responsible for the maintenance to the oak tree which stands within the curtilage of the Respondents' pitch but that there was nothing within their statement to the tribunal which related either to their right to station their home on the pitch or they use the common areas of Falcon Park or the maintenance by the applicant of those common areas.

22. None of the provisions of para 18 Schedule 1 Part 1 Chapter 2 of the Act were engaged by the Respondents' statement nor, because the oak tree issue does not relate to the Respondents' right to station their mobile home on the pitch or the use of the common areas of the park or the Applicant's maintenance of the common areas of the park are there any weighty matters to which this tribunal may have regard.

23. Mr Jeremy Pearson, Group Director for Tingdene Parks Limited said that the presumption in this application was that the increase would be in line with RPI, as it pre-dated July 2023. Furthermore, CPI was not a factor which the tribunal may have particular regard to under the provisions of Schedule 1 Part 1 Chapter 2 paragraph 10 of the Act.

24. He said that to determine whether in a specific case, which is a better measure of inflation, RPI or CPI, an analysis of the respective effect of inflationary price rises for both the company and, in this application Mr Webster (sic) would be required. Arguably the parties would have to produce detailed financial reports supported by documentary evidence of their income and outgoings over the base year (in this case the year to the publication by the ONS of the December 22 inflation figures) or such other period as the tribunal directed.

25. He pointed the tribunal to the decision of the Upper Tribunal (Lands Chamber) in *Vyse v Wyldecrest Parks (Management) Ltd* .

26. He said that some of the company's expenses far exceeded both CPI and RPI. For example, utility costs and fuel for plant hire had doubled, steel had increased by 200%, wood by 33%, vehicle and plant hire by 10% and over the past two years staff salaries had increased by 15%.

27. He was not aware of any 'other factor' which would cause the paragraph 20 presumption to be displaced.

Determination

28. The Applicant tells the tribunal that '*that there was an as yet unresolved dispute between the parties as to who was responsible for the maintenance to the oak tree'* whilst the Respondents say that they had clarified with Tingdene that they (Tingdene) were responsible for maintaining the mature oak tree on the pitch and they confirmed responsibility – although they did not think that they had anything in writing.

29. It appears to the tribunal that the most sensible way forward is to recommend that the parties seek to resolve who is responsible for the maintenance of the tree, and, ideally, to agree maintenance criteria and a maintenance schedule for the tree.

30. If this is not possible then either or both parties may make and application to the tribunal under s4 of Mobile Homes Act 1983.

31. In the present case however, given how long the application has been outstanding with the tribunal and not wishing to delay matters further, the tribunal has first asked itself what might be position if the Applicant is responsible for maintenance of the tree.

32. The question the tribunal then asked itself is whether the issues with the mature oak tree constitute ' *a deterioration in the condition, and a 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'* – that date being May 2013.

33. The tribunal having examined the photographs and inspected the site, albeit after the tree had been lopped, understand the concerns of the Respondents. The canopy of the tree was extensive. However, irrespective of whose responsibility the maintenance was going to be, there was always a large oak tree in the small garden of the mobile home. This comes with both advantages and disadvantages, and, on balance, the tribunal is not persuaded that the increase in size of the tree constitutes such a deterioration in condition that it would impact on the pitch fee nor that it is a weighty matter under para 20.

34. The tribunal then considered whether it believed that the position would differ if the Respondents were responsible for maintenance of the tree, and it does not believe that it would.

35. However, the tribunal also notes that the site owner had made an offer to Mr and Mrs Taylor to substitute CPI with RPI in respect of the pitch fee increase. The tribunal has adopted this proposal and increased the pitch fee in line with CPI.

36. The resulting pitch fee for 1 June 2023 is £2,362.65 in lieu of £2,435.40.

Schedule 1

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).