



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

Case reference	:	CHI/43UF/PHI/2024/0001
Property	:	23 Bramblehall Lane, Upper Farm Park Home Estate, Boxhill Road, Box Hill, Tadworth, Surrey, KT20 7JY
Applicant	:	Thawscroft Limited
Representative	:	N/A
Respondents	:	Mr S Morgan Mrs K Morgan
Representative	:	N/A
Type of Application	:	Review of Pitch Fee: Mobile Homes Act 1983 (as amended)
Tribunal Members	:	Judge R Cooper
Date of Decision	:	12 September 2024

DECISION

The Pitch Fee for 23 Bramblehall Lane, Upper Farm Park Home Estate, Boxhill Road, Box Hill, Tadworth, Surrey, KT20 7JY is determined to be £3,010.43 per annum with effect from 1/11/2023.

(References in this decision to the PDF page numbers in the appeal bundle appear as '[]')

Background to the application

1. On 7/06/2023 the Tribunal under reference SCI/43UE/PHI/2022/80 determined the pitch fee for 23 Bramblehall Lane, Upper Farm Park Home Estate, Boxhill Road, Box Hill, Tadworth, Surrey, KT20 7JY ('23 Bramblehall Lane') to be £2,821.40 with effect from 1/11/2022.
2. On 21/12/2023 the Tribunal received an application from Thawscroft Limited ('the Applicant') for a determination of a new pitch fee for 23 Bramblehall Lane, the park home occupied by Mr S and Mrs K Morgan ('the Respondents').
3. The Applicant seeks an increase of the pitch fee for the Property from £2,821.40 per annum (the pitch determined by the Tribunal on 7/06/2023) to £3,010.43.
4. Directions were issued to the parties on 15/07/2024 [43], including (a) a direction for the Applicant to send evidence regarding the RPI increase (sic) to the Respondents and the Tribunal (if not already sent), (b) the Respondents were to send notice of any objection to the application by 6/08/2024 and (c) that if either party considered an inspection was required or an oral hearing was required, they should make an application. No objection to the application has been received from the Respondents. Nor has either party requested an inspection or oral hearing.
5. The Tribunal is satisfied that it is able to make a fair decision without an inspection or a hearing of the appeal, and it is in the interests of justice to do so.

The Documents

6. The Tribunal considered the documents in a PDF bundle comprising 63 pages.

The law

7. The relevant legal provisions governing the review of pitch fees are contained in paragraphs 16 to 20 and 25A of Chapter 2 to Schedule 1 to the Mobile Homes Act 1983 ('the 1983 Act') and the Mobile Homes (Pitch Review) (Prescribed Form) (England) Regulations 2023. In this decision all references to 'paragraphs' are the relevant paragraphs of Chapter 2 to Schedule 1 of the 1983 Act. Copies of the relevant provisions are set out in the Appendix to this decision.

Discussion and conclusions

The Applicant's pitch fee review process

8. Upper Farm Park Home Estate is a protected site within the meaning of the Mobile Homes Act 1983 (as amended) (the 1983 Act).
9. The Respondents' right to station their mobile home on pitch 23 Bramblehall Lane is governed by the terms of a Written Agreement under the provisions of the 1983 Act dated 08/03/2000 [18]. The pitch was assigned to them by sale on 30/11/2015 [39].
10. A copy of the original agreement was provided by the Applicant. The review date provided for in the written agreement is given as 1st November each year [32].
11. The Applicant has produced a copy of a 'Pitch Fee Review Notice' and a 'Pitch Fee Review Form' both dated 26/09/2023 ([17] and [11] respectively). Christine Oatley, Park Manager at Upper Farm Park Home Estate, in her witness statement, confirms they were hand delivered to 23 Bramble Lane (and all the other 75 residents on the site) on 29/09/2023 [52]. The date of service has not been disputed by the Respondent.
12. The Pitch Fee Review Notice provides for an increase from the existing pitch fee of £2,821.43 per annum to a proposed fee of £3,010.43. The Tribunal is satisfied that the accompanying form is a Pitch Fee Review Form which the Tribunal is satisfied is in the form prescribed by paragraph 25A and complies with Schedule 1 of the Mobile Homes (Pitch Review) (Prescribed Form) (England) Regulations 2023 which came into force on 2/07/2023. The Review Form explains that the increase to £3,010.43 is based on an increase in line with the Consumer Prices Index (CPI) published in August 2023 of 6.7% and would take effect on 1/11/2023 [11].
13. The Tribunal is satisfied the Pitch Fee Review Notice and Form were served more than 28 days before the proposed increase would take effect. It is also satisfied the proposed increase was to be on the Review Date as provided for in the written agreement.
14. The Tribunal is satisfied the Applicant's application for determination of the pitch fee by the Tribunal was made on 21/12/2023, and was, therefore, made within 3 months of the review date of 1/11/2023 and meets the requirements of paragraph 17(5).
15. Having regard to the findings set out in paragraphs 8 to 14 above, the Tribunal is satisfied that the Applicant complied with the procedural requirements of paragraph 17 to support their application for an increase in pitch fee from 1/11/2023 for the pitch occupied by the Respondents.

Issues in dispute between the parties

16. The Respondents notified the Applicant by email on 1/12/2023 that they intended to dispute the increase in pitch fee because *'no consultation has taken place between the parties, no agreement has been reached...and therefore no signed contract agreement is in place for this new sum and is therefore illegal and cannot under any circumstances be enforced'* [51].
17. Mr and Mrs Morgan are partially right, in that agreement between the parties is one of the two ways in which a pitch fee can be changed legally in accordance with the Mobile Homes Act 1983 (paragraph 16(a)). However, the other mechanism is by an application to the Tribunal provided the Tribunal finds the increase reasonable (paragraph 16(b)). There is no requirement for there to be a consultation on any proposed pitch fee increase.

Is it reasonable for the pitch fee to be changed?

18. Because the Respondents had not agreed to the increase, the first consideration for the Tribunal is whether it is reasonable for the pitch fees for Upper Farm Park Home Estate to be changed (paragraph 16(b)). It is said in the application that money had been spent on improvements of the site (without consultation) [5]. No details have been given and the Tribunal, therefore, gives this no weight. However, the Tribunal accepts in general terms that costs for the Applicant will have increased in the intervening year. On this basis, the Tribunal was satisfied that it was reasonable for the pitch fees to be changed.

What should the new pitch fee be?

19. Having reached the conclusion that it is reasonable for the pitch fee to be changed, the Tribunal, therefore, is required to reach a determination of the new pitch fee from the effective date (i.e. 1/11/2023), and in doing so it
 - (a) must have particular regard to the factors set out in paragraphs 18(1),
 - (b) must not take into account any costs incurred by the owner listed in paragraph 18(1A) and paragraph 19, and
 - (c) must apply the presumption in paragraph 20(A1) that there should be an increase or decrease no greater than the increase in RPI since the last review date unless to do so would be unreasonable having regard to the matters in paragraph 18(1) and any other weighty factor.
20. In relation to paragraph 18(1) the Tribunal finds there are no matters to be taken into consideration which might affect the increase. As set out above, although the Applicant says there have been improvements no details are given. The Respondents failed to file any response to the application and there is nothing in their objection to the increase at [51] to indicate either that there has been a deterioration in the condition of the site, any decrease

in amenity or reduction in services supplied by the owner to the site and/or the pitch at 23 Bramblehall Lane. The Applicant also confirms there have been no direct costs that have had to be paid by them in relation to the maintenance or management of the site due to an enactment that has come into force since the last review [5].

21. The Tribunal has not taken into account any costs which are set out in paragraphs 18(1A) or 19.
22. The Tribunal finds that in relation to these Respondents, the baseline pitch fee from November 2022 was £2,821.43 per annum. This is the pitch fee determined by the Tribunal comprising Mr D Banfield FRICS on 7/06/2023 (under reference CHI/43UE/2022/80) [57].
23. There is a presumption in paragraph 20(A1) (as it was amended on 2/07/2023). This provides that unless it would be unreasonable having regard to paragraph 18(1), there is a presumption that the pitch fee will increase (or decrease) by a percentage which is no more than any increase (or decrease) in the CPI calculated by reference to the '*latest index*' and the index that was published for the month which was 12 months before the month of the latest index. '*Latest Index*' is defined in paragraph 20(A2). In relation to late applications for review paragraph 20(A2)(b) provides that '*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*'.
24. As the notice was served by hand on 29/09/2023 the Tribunal is satisfied that the CPI figure should be the last index published before 29/09/2023. The Applicant used the CPI figure from August 2023 but has produced no evidence demonstrating that was the last index published before 29/09/2023 (despite the directions of 15/07/2024). However, the Tribunal finds from publicly available information on the ONS website that the August 2023 figure (6.7%) was released on 20/09/2023, and the Applicant was, therefore, correct to have used that figure.
25. A presumption is not the same as an entitlement. However, Upper Tribunal Deputy President Martin Rodger KC in Wyldecrest Parks Management Limited v Kenyon and others [2017] UKUT 28 (LC) having carried out a review of decisions regarding terms implied by the 1983 Act, summarised the principles as follows (at paragraph 47)

'(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.”

26. The Tribunal accepts that the presumption that the CPI should be used is a strong one. Having considered the totality of the evidence, the Tribunal finds no factors or reasons to depart from that presumption. The Respondents have not engaged with the application to the Tribunal or provided any reasons why the CPI increase should not be used. Since July 2023 there has been a change in the law providing for the CPI to be used in place of the Retail Prices Index, which, as the applicant says was higher (9.1%).

Decision

27. Accordingly, and for the reasons set out above, **the Tribunal determines that it is reasonable for the Respondents’ pitch fee to increase by 6.7% from £2,821.40 per annum to £3,010.43 per annum with effect from 1/11/2023.**
28. No application was made by the Applicant for the application fee to be paid by the Respondents.

Judge R Cooper
Date 12/09/2024

Note: Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands

Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office that has been dealing with the case.

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. The application must be sent by email to rpsouthern@justice.gov.uk and should include the case number and address of the property to which it relates.

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.

4. 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.

APPENDIX

The following are relevant excerpts from the legislation referred to in this decision

16.

The pitch fee can only be changed in accordance with paragraph 17, either—

- (a) with the agreement of the occupier, or
- (b) if the appropriate judicial body, on the application of the owner or the occupier, considers it reasonable for the pitch fee to be changed and makes an order determining the amount of the new pitch fee.

17.

(1) The pitch fee shall be reviewed annually as at the review date.

(2) 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.

(2A) In the case of a protected site in England, a notice under subparagraph (2) which proposes an increase in the pitch fee is of no effect unless it is accompanied by a document which complies with paragraph 25A.

(3) If the occupier agrees to the proposed new pitch fee, it shall be payable as from the review date.

(4) If the occupier does not agree to the proposed new pitch fee—

- (a) the owner or (in the case of a protected site in England) the occupier may apply to the appropriate judicial body for an order under paragraph 16(b)

- determining the amount of the new pitch fee;
- (b) the occupier shall continue to pay the current pitch fee to the owner until such time as the new pitch fee is agreed by the occupier or an order determining the amount of the new pitch fee is made by the appropriate judicial body under paragraph 16(b); and
- (c) the new pitch fee shall be payable as from the review date but the occupier shall not be treated as being in arrears until the 28th day after the date on which the new pitch fee is agreed or, as the case may be, the 28th day after the date of the [appropriate judicial body]³ order determining the amount of the new pitch fee.
- (5) An application under sub-paragraph (4)(a) may be made at any time after the end of the period of 28 days beginning with the review date but, in the case of an application in relation to a protected site in England, no later than three months after the review date.
- (6) Sub-paragraphs (7) to (10) apply if the owner—
- (a) has not served the notice required by sub-paragraph (2) by the time by which it was required to be served, but
- (b) at any time thereafter serves on the occupier a written notice setting out his proposals in respect of a new pitch fee.
- (6A) In the case of a protected site in England, a notice under subparagraph (6)(b) which proposes an increase in the pitch fee is of no effect unless it is accompanied by a document which complies with paragraph 25A.
- (7) If (at any time) the occupier agrees to the proposed pitch fee, it shall be payable as from the 28th day after the date on which the owner serves the notice under subparagraph (6)(b).
- (8) If the occupier has not agreed to the proposed pitch fee—
- (a) the owner or (in the case of a protected site in England) the occupier may apply to the appropriate judicial body for an order under paragraph 16(b) determining the amount of the new pitch fee;
- (b) the occupier shall continue to pay the current pitch fee to the owner until such time as the new pitch fee is agreed by the occupier or an order determining the amount of the new pitch fee is made by the appropriate judicial body under paragraph 16(b); and
- (c) if the appropriate judicial body makes such an order, the new pitch fee shall be payable as from the 28th day after the date on which the owner serves the notice under sub-paragraph (6)(b).
- (9) An application under sub-paragraph (8) may be made at any time after the end of the period of 56 days beginning with date on which the owner serves the notice under subparagraph (6)(b) but, in the case of an application in relation to a protected site in England, no later than four months after the date on which the owner serves that notice.
- (9A) A tribunal may permit an application under sub-paragraph (4)(a) or (8)(a) in relation to a protected site in England to be made to it outside the time limit specified in

sub-paragraph (5) (in the case of an application under sub-paragraph (4)(a)) or in sub-paragraph (9) (in the case of an application under sub-paragraph (8)(a)) if it is satisfied that, in all the circumstances, there are good reasons for the failure to apply within the applicable time limit and for any delay since then in applying for permission to make the application out of time.

(10) The occupier shall not be treated as being in arrears—

(a) where sub-paragraph (7) applies, until the 28th day after the date on which the new pitch fee is agreed; or

(b) where sub-paragraph (8)(b) applies, until the 28th day after the date on which the new pitch fee is agreed or, as the case may be, the 28th day after the date of the appropriate judicial body order determining the amount of the new pitch fee.

(11) Sub-paragraph (12) applies if a tribunal, on the application of the occupier of a pitch in England, is satisfied that—

(a) a notice under sub-paragraph (2) or (6)(b) was of no effect as a result of sub-paragraph (2A) or (6A), but

(b) the occupier nonetheless paid the owner the pitch fee proposed in the notice.

(12) The tribunal may order the owner to pay the occupier, within the period of 21 days beginning with the date of the order, the difference between—

(a) the amount which the occupier was required to pay the owner for the period in question, and

(b) the amount which the occupier has paid the owner for that period.

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;

(iii) 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 appropriate judicial body, on the application of the owner, has ordered should be taken into account when determining the amount of the new pitch fee;

(aa) in the case of a protected site in England, 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 subparagraph);

(ab) in the case of a protected site in England, 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 subparagraph);

(b)

(ba) in the case of a protected site in England, 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

(c)...

(1A) But, in the case of a pitch in England, 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 subparagraph (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) In the case of a protected site in England, 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) In the case of a protected site in England, 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) In the case of a protected site in England, 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) In the case of a protected site in England, 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).