

FIRST - TIER TRIBUNAL

**PROPERTY CHAMBER (RESIDENTIAL PROPERTY)**

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| **Case Reference** | **:** | CHI/15UE/PHI/2023/0575 |
| **Property**  | **:** | 14 Valley View Park, Dunmere, Bodmin Cornwall. PL31 2RA. |
| **Applicant** | **:** | Wyldecrest Parks (West) Ltd |
| **Representative** | **:** | David Sunderland |
| **Respondent** | **:** | W. R. J. Dudley and M. A. Fletcher |
| **Representative** | **:** | W. R. J. Dudley |
| **Type of Application**  | **:** | Review of Pitch Fee. Mobile Home Act 1983 (as amended) (the Act) |
| **Tribunal Members** | **:** | Judge C A Rai J. Reichel MRICS Chartered SurveyorM. R. Jenkinson  |
| **Date type and venue of Hearing** | **:** | 9 October 2024Hybrid with Tribunal and Respondent in person at Bodmin Law Courts and Tribunal Centre Launceston Road, Bodmin PL21 2ALApplicant’s Representative appearing remotely by CVP |
| **Date of Decision** | **:** |  15 October 2024 |

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| DECISION |

1. The Tribunal orders that the pitch fee for the property shall be increased from the current amount of £184.94 to £209.32 from 2 May 2023, payable in accordance with the current occupation agreement.
2. The Tribunal orders the Respondent to reimburse the Applicant the Application fee of £20 payable within 28 days of the date of this decision.
3. The reasons for the Tribunal’s decision are set out below.

**Background**

1. The Applicant applied to the Tribunal for it to determine a new level of pitch fee for the Property on 13 June 2023.
2. On 3 January 2024 the Tribunal stayed this application pending the determination of an appeal against another First Tier Tribunal decision relating to pitch fees at Beechfield Park, Hook Lane, Aldingbourne PO20 3XX, lodged on 21 November 2023 [109]. That appeal was decided by the Upper Tribunal on 13 June 2024 by Judge Elizabeth Cooke **(The Beaches Management Limited [2024] UKUT 180 (LC)).**
3. The Tribunal issued directions dated 3 July 2023 which provided that the application would be determined without a hearing, in reliance on the Application and supporting documents as the Applicant’s case. The Respondent was required to complete a Tribunal form and submit objections to the pitch fee with any statements and document he wished to rely upon.
4. Mr Dudley sent a letter to the Tribunal dated 12 July 2024 with the signed form (dated 19 July 2024) and a separate statement of truth explaining why he had “withheld” the pitch fee increase [58-69] signed by himself and Mrs Fletcher.
5. The Applicant supplied a statement in response from Mr Sunderland, who confirmed that on 22 July 2024 he had received an envelope from the Respondent which he said contained, “about 30 bundles of documents some loose leaf and some stapled some single sided and some double sided in various sizes with a total of 124 pages including 15 photographs and a 12-page statement of case” [70].
6. The Tribunal reviewed the parties statements, decided that the application was unsuitable for determination without a hearing and issued further directions on 9 August 2024 [11]. After consultation with the parties, the Tribunal set down the hearing for 9 October 2024 in Bodmin. Subsequently, the Applicant applied to appear “remotely,” and the Respondent asked for a site inspection. The Tribunal consented to the Applicant appearing at the hearing remotely and informed the Respondent that it would decide whether or not a site inspection was necessary after hearing his reasons for the request during the hearing.
7. The Tribunal received two hearing bundles on or about the 23 September 2024. Bundle 1 contains 100 pages and bundle 2 78 pages, with the numbering continuing so that pages 101 – 178 are in bundle 2. The original bundle had been split in two to facilitate it being emailed. References in this decision to numbers in square brackets are to the numbered pages of documents in the bundles.

**The Hearing**

1. The Respondent was accompanied by Rodger Nicholas (occupier of another pitch on Valley View Park) and Councillor Andy Coppin from Cornwall Council. It was established that the Respondent had informed the Tribunal, but not the Applicant, about their attendance.
2. Mr Sunderland who represented the Applicant stated that he had no objection to either Mr Coppin or Mr Nicholas assisting the Respondent.
3. The Tribunal reminded the parties of the statutory presumption in the Act which enables the site owner to increase the pitch fee on the Pitch Fee Review Date in line with the increase in the relevant index during the 12 months before that date. The relevant index in 2023 was the retail prices index which increased by 13.8% during the applicable 12 month period.
4. One of the Respondent’s objections to the increase was that the notice served by the Applicant was not compliant because the Applicant had added words to the standard form.
5. In **Beaches Management Ltd v. Furbear and others [2024] UKUT 180 (LC)** the Upper Tribunal decided that a notice, in the same form as the combined Pitch Fee Review Notice and Pitch Fee Review form served by the Applicant on the Respondent in this case, was valid.
6. Judge Elizabeth Cook stated (paragraph 38) that the use of a combined pitch fee review notice and form was not wrong because the material required to be included in the pitch fee review form was included in the combined document. She said, “to find otherwise would be to require duplication.”
7. The Tribunal explained to the Respondent that it is bound to follow the Upper Tribunal decision and therefore would find the form used by the Applicant to notify the Respondent of the increase in the pitch fee is valid.
8. The Respondent told the Tribunal that he had not received the Hearing Bundle before the Hearing. He admitted he had not mentioned this to the case officer before the hearing although he had recently spoken with her by telephone. He had copies of all the documents which he had sent to the Applicant for inclusion in the bundle and those comprise 136 pages of the 178 page bundle.
9. Mr Sunderland told the Tribunal that he had sent the hearing bundle to both the Applicant and the Tribunal at the same time. He forwarded a further copy of that email to the Tribunal.
10. Following a short adjournment the Tribunal told the parties that having made enquiries it was satisfied that the Hearing bundle had been emailed to the Respondent.
11. The only documents which the Applicant put into the bundle were the Application, two previous First Tier Tribunal decisions concerning pitch fee increases on Valley View Park, extracts from the Act, the Tribunal directions and the Applicant’s reply to the Respondent’s statement (42 pages). The only document which the Respondent might not have seen before the hearing was the Applicant’s reply. However, both parties were sent the Tribunal Directions dated 8 August 2024, which referred to that document, so the Tribunal concluded that it was likely that it was sent to the Respondent before that date.The Respondent was party to both of the previous Tribunal decisions so would have been sent copies by the Tribunal.
12. The Respondent was provided with a copy of the Application form and the Applicant’s Reply (14 pages) and the hearing was adjourned for 30 minutes to enable him to read and consider the 4 page Reply.
13. The Tribunal was satisfied that the Respondent was not prejudiced even if he had not received the hearing bundle electronically and that he had copies of all documents to which he might need to refer to fully participate in the hearing. The Application was made in June 2023 so, having regard to its overriding objective, it was appropriate for the Tribunal to proceed with the hearing.
14. The Tribunal reminded the Applicant of the content of paragraph 18 of Chapter 2 of the Schedule to the Act which sets out the matters to which the Tribunal should have particular regard, which it described broadly as, improvements, deterioration in the condition or any decrease in the amenity of the site pitch or mobile home or deterioration in the quality of the services (since the date on which the paragraph came into effect) but to which regard has not previously been had.
15. The Respondent was invited to explain why he disagreed with the proposed increase in the pitch fee and the Tribunal suggested that it would be helpful if the Applicant respond to each objection in turn.
16. The following facts were established at the hearing.
17. The Respondent was unwavering in his assertion that the Applicant does not maintain the park. He told the tribunal that trees overhang some of the individual pitches, including his own. He said that little maintenance is ever carried out and referred in particular to the condition of the concrete steps which he claimed are unsafe. He believed that the Tribunal should have inspected the Park but was unable to explain why an inspection would provide the Tribunal with relevant information which would support his submissions about the condition of the Park and any differences in the condition since the previous (2022) pitch fee review.
18. Mr Nicholas stated said that trees on the Park overhang his pitch but accepted that he was not party to the proceedings and the condition of his pitch could not be relevant to the Respondent’s case.
19. Councillor Coppin said that he understood the two material issues which particularly concerned the Respondent are the deterioration caused by the overgrown trees and the current poor condition of the roads. He acknowledged that a site visit to the Park on the date of the Hearing could only provide the Tribunal with a snapshot of the condition on the day of the hearing and would not provide it with evidence of any deterioration, particularly given the passage of time since the application was made.
20. Mr Sunderland stated that the Respondent is not responsible for anything which affects the individual’s pitches. He said that Cornwall Council had inspected the Park during the last twelve months and accepted that the trees have been satisfactorily maintained. Occupiers are responsible for cutting back trees which overhang their pitches. He told the Tribunal that the steps referred to by the Respondent are unchanged save and except that he believed that a broken handrail might have been removed.
21. Mr Sunderland said that that installation of lighting on the Park (paid for by the Applicant) necessitated digging trenches in the roads, but that these have been filled in and the infill will be resurfaced with tarmac.
22. In response to a complaint raised by Mr Dudley about the removal of communal fire extinguishers on the Park Mr Sunderland explained that the removal of fire extinguishers was compliant with current fire safety legislation. There are no communal areas on the Park and therefore there is no requirement for the Applicant to supply communal extinguishers. The purpose of an extinguisher is to aid an individual’s exit from his home, which is not the Applicant’s responsibility. It is for individual occupiers to ensure that their homes are suitably equipped with extinguishers. Mr Sunderland said it would be dangerous if occupiers were tempted to return to their homes equipped with a fire extinguisher.
23. Mr Dudley had complained about the maintenance of the septic tank on site. Mr Sunderland said that the septic tank is emptied as and when necessary and that the Applicant has access to a maintenance team. The Respondent disagreed. Mr Sunderland also said that all the matters referred to in the Respondent’s statement have previously been referred each time the Tribunal has determined an application relating to the increase in the Respondent’s pitch fee.
24. The parties both made submissions about changes to the gas supply on the Park. Originally the gas was stored in tanks located on the Park, but when it became impossible to repair those tanks the supply changed to bottled gas. The Respondent suggested that the occupiers were forced to incur unnecessary expense by installing new regulators to enable the changeover but supplied no evidence about these charges The changeover occurred in November 2021.
25. The Respondent stated that he was concerned by the recent changes in the amount of his quarterly water bills. Mr Sunderland explained that the water consumed on the Park is metered and the cost of water is recharged to the occupiers of the Park in compliance with the regulations relating to water resale. The amount billed to individual occupiers is directly related to the amount of the bill the Applicant receives from its water supplier. The total of each bill is equally divided between the pitch occupiers as their individual supplies are not metered.

**The Law**

1. All agreements to which the Act applies incorporate standard terms which are implied by the Act. Those that apply to protected sites in England are contained in Chapter 2 of the Part 1 of the Schedule to the Act.
2. The principles governing an increase in pitch fees are in paragraphs 16 to 20. A review of the pitch fee can be undertaken every year on the review date.
3. Paragraph 16 of Chapter 2 of Schedule 1 to the Act provides that the pitch fee can only be changed with the agreement of the occupier of the pitch, or if the Tribunal, on the application of the owner or occupier, considers it reasonable for the pitch fee to be changed and makes an order determining the amount of the new pitch fee.
4. In these proceedings the Respondent has not agreed to the proposed increase, so the Applicant Park owner has applied to the Tribunal for an order determining the amount of the new pitch fee.
5. Paragraph 20 of Chapter 2 of the Act is the starting point for the Tribunal’s jurisdiction when considering what order, it should make. That paragraph provides that unless this would be unreasonable, there is a presumption that a pitch fee will increase, or decrease, in line with the change in RPI during the last 12 months.
6. RPI has increased by 13.8% during the relevant 12 month period.
7. The Tribunal can refer to paragraph 18(1) of Chapter 2 of Schedule 1 to the Act and decide if it would be unreasonable to apply the presumption.
8. Paragraph 18(1) refers to matters in relation to which the Tribunal can have particular regard. These include both improvements to the site by the owner since the last review date and deterioration in the condition, and any decrease in the amenity of the site or any adjoining land occupied or controlled by the owner since the date the paragraph came into force. If the pitch fee has not been previously reviewed, references to the last review date are to be read as references to the date when the agreement commenced.
9. Therefore, the presumption of the increase in the pitch fee can be displaced if anything in paragraph 18 is relevant, or if there are other factors of “sufficient weight”.
10. The case law suggests that the starting point is that the Tribunal must decide if it is reasonable for the amount of the pitch fee to change (paragraph 16(1)) but it is within its discretion to determine the increase proposed.
11. The Upper Tribunal has given guidance to this Tribunal in a number of cases. In **Britaniacrest Limited v Bamborough [2016] UKUT 144** **(LC)** it identified three basic principles which it said shaped the statutory approach to pitch fee review in paragraph 19 of its decision.
12. **Firstly**  the pitch fee can only be changed either (a) with the agreement of the occupier, or (b) if the appropriate judicial body, following an application by either party, considers it reasonable for the pitch fee to be changed and makes an order determining the amount of the new pitch fee; **secondly** if Para 17(1) is followed so the machinery for the proposed increase has been correctly undertaken on the correct dates using the prescribed form of notice; and **thirdly** when the statutory presumption has been taken into account (Para 20), and the proposed increase is in line with the change in RPI (up or down) and calculated by reference to the latest published index for the month which was 12 months before that to which the latest index relates.
13. The decision stated that “The FTT is given a very strong steer that a change in RPI the previous 12 months will make it reasonable for the pitch fee to be changed by that amount but is provided with only limited guidance on what other factors it ought to take into account” (paragraph 22). The Upper Tribunal went on to decide that the increase or decrease in RPI only gives rise to a presumption, not an entitlement or a maximum, and that in some cases, it would only be a starting point to the determination.
14. In other words, if the presumption that the change limited by RPI produced an unreasonable result, the Tribunal could rebut it. “It is clear, however, that other matters are relevant and that annual RPI increases are not the beginning and end of the determination because paragraphs 18 and 19 specifically identify matters which the FTT is required to take into account or to ignore when undertaking a review”.
15. That starting point is, subject to the proviso that, it must take particular regard to the factors in paragraph 18(1) and must not take into account other costs referred to in paragraph 19 (but those are not relevant in these proceedings). The Tribunal must also apply the presumption (paragraph 20) that any increase (or decrease) must be no greater than the percentage change in the retail prices index since the last review date **unless that would be unreasonable** (tribunal’s emphasis) having particular regard to the paragraph 18(1) factors.
16. This was considered and confirmed by Judge Robinson in **Toni Vyse v.** **Wyldecrest Parks (Management) Limited [2017] UKUT 24 (LC)**. She referred to four key provisions as the basis for the FTT determining a pitch fee.
17. **Firstly** paragraph 16 which provides that a pitch fee can only be changed by the FTT if it “considers it reasonable for the pitch fee to be changed and makes an order determining the amount of the new pitch fee”.
18. **Secondly** there is the presumption in paragraph 20 (A1) that the pitch fee shall increase or decrease by a percentage which is no more than the percentage change in the relevant index. Paragraph 18(1) specifies those matters to which the “particular regard shall be had” when determining the amount of the new pitch fee. Judge Robinson said it is not a question of the presumption applying but being displaced.
19. **Thirdly** Judge Robinson, in explaining why there is justification for limiting the nature or type of “other factor” to which regard may be had, stated that the paragraphs relating to the amount of the pitch fee expressly set out matters which may, or may not, be taken into account and she referred to paragraph 18(1).
20. **Fourth** she referred to the caveat preceding the presumption in paragraph 20(A1) “unless this would be unreasonable having regard to paragraph 18(1)”.
21. Judge Robinson said that for the statutory presumption (of the entitlement to an increase or decrease in line with RPI) to be displaced, it is necessary to consider whether any ‘other factors’ displace it. “By definition this must be a factor to which considerable weight attaches”. She explained this by saying that a consideration of equal weight to RPI would tip the balance in favour or RPI. She said “it is not possible to be prescriptive as to precisely how much weight must be attached to an ‘other factor’ before it outweighs the presumption in favour of RPI. **This must be a matter for the FTT in any particular case.”** (Tribunal’s emphasis). “What is required is that the decision made recognises that the ‘other factor’ must have sufficient weight to outweigh the presumption in the context of the statutory scheme as a whole”.
22. The decision in **Wyldecrest Parks Management Ltd v. Mr and Mrs Kenyon and others [2017] UKUT (LC)** was issued just after the decision in **Toni Vyse.** The Deputy President of the Upper Tribunal, Martin Rodger KC,was afforded the opportunity to consider Judge Robinson’s draft decision and stated that it “includes a further detailed and illuminating consideration of the statutory scheme, emphasising a number of important considerations”. It is worth mentioning that he drew attention to two, both mentioned above in paragraph 59, namely that the issue of reasonableness is not at large and that “Reasonableness has to be determined in the context of the other statutory provisions”. He also referred to Judge Robinson’s discussion about any factor which would or might displace the statutory presumption having sufficient weight.
23. Although in this case the Respondent suggested that the use of a combined Pitch Fee Review Form and Notice was invalid the decision of the Upper Tribunal in **The Beaches** case (referred to in paragraph 15 above) is binding on this Tribunal. Therefore, the notice of the increase used by the Applicant is valid.

**Reasons for the Decision**

1. Taking into account both his written statement and his submissions during the Hearing the Tribunal was satisfied that the Respondent has been unable to provide evidence about matters to which the Tribunal can have particular regard. In the absence of evidence of weighty matters which would displace the presumption of the index linked increase, the Tribunal finds it reasonable to confirm the proposed increase in the pitch fee.
2. The Tribunal orders that the current pitch fee of £184.94 be increased by 13.8% from 2 March 2023 to £209.32 from 2 May 2023.
3. In his written submissions the Applicant requested the return of £20 application fee. The Respondent has not made any submissions in response to that application. The Tribunal has a discretion under rule 13(2) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (the Rules) to order the repayment of that sum. It makes an order that the Respondent shall repay the sum of £20 to the Applicant within 28 days of the date of this decision.

**Judge C A Rai**

**Chairman**

**Appeals**

1. A person wishing to appeal this decision to the Upper Chamber must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

1. 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. Where possible you should send your further application for permission to appeal by email to **rpsouthern@justice.gov.uk** as this will enable the First-tier Tribunal to deal with it more efficiently.

1. 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.

1. 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.