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| A black and white logo  Description automatically generated with low confidence |  | **FIRST-TIER TRIBUNAL****PROPERTY CHAMBER** **(RESIDENTIAL PROPERTY)** |
| **Case References****Property****Applicant****Representative****Applicant’s Solicitor****Respondents****Type of Application****Tribunal****Date of Hearing****Venue:**  | **:****:****:****:****:****:****:****:****:****:** | CHI/19UJ/PHI/2024/0067 CHI/19UJ/PHI/2024/0068White Horse Park, Osmington, Weymouth, Dorset, DT3 6EDWhite Horse Park LtdVictoria Ostler, CounselApps LegalSusan Davies – case 0067Stephanie Roskelly – case 0068Review of Pitch Fee: Mobile Homes Act 1983Judge David Clarke Johann Reichel BSc MRICSMichael Jenkinson11 November 2024Weymouth Magistrates Court and Tribunal Centre |

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**DETERMINATION AND STATEMENT OF REASONS**

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**DETERMINATION**

**The Tribunal determines that in the case CHI/19UJ/PHI/2024/0067 the weekly pitch fee in relation to 13 White Horse Park will increase from 1 January 2024 by 4.60% which represents the percentage increase in the Consumer Prices Index for October 2023. The pitch fee, previously £64.90, will increase to £67.89, an increase of £2.99 per week.**

**The Tribunal determines that in the case CHI/19UJ/PHI/2024/0068 the weekly pitch fee in relation to 14 White Horse Park will increase from 1 January 2024 by 4.60% which represents the percentage increase in the Consumer Prices Index for October 2023. The pitch fee, previously £64.90, will increase to £67.89, an increase of £2.99 per week.**

**STATEMENT OF REASONS**

**The Applications**

1. Two applications were made on 25 March 2024 by the Applicant, White Horse Park Ltd, for the determination of a new level of pitch fee in relation to two pitches on the site at Osmington Hill, Osmington, Weymouth, Dorset DT3 6ED. The Applicant had, in each case, served a pitch fee review notice dated 17 November 2023 on the Respondent Ms Susan Davies at 13 White Horse Park and on the Respondent Ms Stephanie Roskelly at 14 White Horse Park. In each case, the increase proposed was an amount that the Applicant contended was the adjustment represented by the movement in the Consumer Prices Index (“CPI”) over the relevant 12-month period preceding the pitch fee notice.

2. In each case, the Applications proposed an increase of 4.6% in the weekly pitch fee. This was to take effect on 1 January 2024 being a calendar year from the previous review date of 1 January 2023. The pitch fee at the time of the notice was £64.90 per week. The increase of 4.6% amounted to £2.99 and therefore the proposed pitch fee in each notice was £67.89 per week.

3. The Respondents were each invited to agree to the pitch fee increase in the notice sent to them by returning an amended standing order mandate. Neither Respondent agreed to the increase. In the absence of such agreement, these applications were made. Initial Directions were issued in April 2024 recording a then current delay in dealing with applications. Directions were then issued on 12 September 2024 and the matter was heard on 11 November 2024.

**The Site**

4. The Tribunal inspected White Horse Park prior to the hearing on 11 November 2024. It is a site of only 17 pitches on a hillside with views on one side towards Weymouth and the sea to the south and to the Osmington White Horse and hills on the other. It was substantially redeveloped between 2018 and 2020 from (the Tribunal was told) a holiday caravan site into a residential mobile home park. The site is compact and the homes are either side of a single fairly steep estate access road which is accessed from Osmington Hill on the main A353 road. There is a well-made surface to the estate road, low level street lighting, a communal sewage treatment plant, three visitors car parking spaces, a defibrillator and fire safety boxes. There are no communal facilities or green, open or shared spaces on the site.

5. The site is undoubtedly attractive in its location and still retains after five or so years the feel of a well-presented site. It was apparently described by the owner, in an advert for sale of the site, as a ‘high pitch fee low maintenance’ site and certainly at the moment little maintenance is required. Quite substantial investment must have been made from 2018 onwards by the then owner to prepare the pitches for occupation. Because of the slope of the hill, the levelling of each pitch required the construction of some retaining walls. Each pitch has the benefit of extensive paving and landscaping with some necessary railings and fences. However, while the site is low maintenance from the perspective of the site owner, the maintenance of each pitch, its walls, paving and internal fences, falls to the owner of each pitch and cost may not be insignificant in future years.

6. Ms Davies’ pitch, number 13, adjoins the park site boundary at the top end with open land beyond. She pointed out to the Tribunal that weeds and growth were growing over the low-level site boundary fence onto her pitch.

**The Mobile Homes Act 1983**

7. Under the provisions of the Mobile Homes Act 1983, as subsequently amended, (“the 1983 Act”) the implied terms of all pitch agreements, set out in Schedule 1, part 1, chapter 2 of the Act, provide for an annual review of pitch fees (paragraph 17) which can only be changed by either agreement or a determination by this Tribunal (paragraph 16). By virtue of paragraph 20, there is a presumption that the pitch fee shall increase or decrease by a percentage that is no more than any percentage increase or decrease in the retail prices index calculated by reference to the latest index and the index published for a month that was 12 months before that to which the latest index relates.

8. Until 2024, the relevant index was the Retail Prices Index (“RPI”) but from 2024 onwards it is the CPI.

9. When determining the amount of the new pitch fee, the Tribunal must have regard to the matters set out in paragraph 18 of the Schedule which primarily relate to improvements to the site or deterioration in the site or reduction in the services that the owner supplies to the site.

10. The Tribunal makes further reference to paragraphs 18 and 20 of that Schedule below in the context of the submissions of the parties.

**The Applicant’s case**

11. In presenting her client’s case, Ms Ostler began by making reference to three recent decisions of the Upper Tribunal relating to pitch fees.

1. When a pitch fee is initially agreed between a site owner and a mobile homeowner, there is no restriction on the amount originally agreed citing *Wildcrest Parks Management Ltd v Whiteley* [2024] UKUT 55, at paragraph 14.
2. When an application is made to the Tribunal for determination of a new pitch fee, the application is only able to consider the statutory factors set out in the implied terms in paragraph 18; the application does not extend to general consideration of the reasonableness of the proposed fee. In *Teignbridge District Council v Clark,* [2024] UKUT 279, at paragraph 12, Judge Cooke said that a Tribunal cannot impose what it regards as a reasonable fee. It must follow the reasoning process set out in the 1983 Act.
3. The Tribunal can therefore only take into account relevant statutory considerations such as deterioration in the amenity of the site or a reduction in the services provided - *Wildcrest Parks Management Ltd v Finch* [2024] UKUT 197.

12. These decisions – and others made by the Upper Tribunal - are binding upon us as a First-tier Tribunal. We have no jurisdiction or discretion except that which is given to us by the 1983 Act and the guidance on the meaning of the 1983 Act subsequently given by the courts and Upper Tribunal.

13. The Applicant’s Statement of Case records the giving of the pitch fee notices, evidences the relevant increases in the CPI and the Respondents’ decisions not to agree the increases proposed. The Applicant also noted, as is accepted by both Respondents, that there is no challenge to the correctness of the procedural steps taken to propose the pitch fee increases. Similarly, the Respondents do not challenge the figure of 4.6% as the amount of increase in inflation over the relevant 12-month period as shown by the CPI.

14. In the light of the above, Ms Ostler submitted that the various points made in the Respondents’ cases, outlined below, were not allowed as factors that the Tribunal could take into account in setting the amount of the pitch fee. There had been some minor improvements by the site owner, namely, painting white lines for the visitor’s cars and some railing around the sewage treatment plant while some road resurfacing had also been undertaken (the Tribunal notes that site owner was not seeking any increase to the pitch fee as a result of these works and they would not qualify in any event under paragraph 18 (1)(a)(i) of the 1983 Act). The Applicant therefore contended that the statutory presumption contained in paragraph 20 (A1) of the 1983 Act applied. The Respondents, it was submitted, had not made out any case that there was either a deterioration in the condition, or decrease in the amenity, of the site within paragraph 18(1)(aa) nor had there been any reduction in the services that the owner applies to the site or deterioration in the quality of those services within paragraph 18(1)(ab) of the Act.

**The Respondents’ cases**

15. Each Respondent submitted quite detailed documentation setting out the reasons that they opposed the pitch increases. Their submissions, both in writing and orally at the hearing, were independent and by no means identical. But they raised many of the same points. By the end of the hearing, after listening to the Applicant’s argument and having the benefit of explanation by the Tribunal of the limits of the jurisdiction, both Respondents reluctantly accepted that many of their grounds set out for opposing a pitch fee increase, however strongly felt or even in some cases perhaps reasonable, were not allowed by the 1983 Act to be used to oppose pitch increases.

16. In brief, the issues raised by the Respondents that the Tribunal is not allowed to consider in making its decision include the following:

1. The level of pitch fees, or the nature of communal facilities, compared to other sites.
2. The fact that the nature of the site has required little expenditure since the redevelopment.
3. The compact nature of the park with no communal facilities or green space.
4. The fact that the previous owner was more amenable and responsive to site residents or the fact that there has been unpleasantness with the current site owner.
5. The fact that some residents are vulnerable or, as with both Respondents, have a degree of disability.
6. The problem that arose with boilers fitted when the homes were sold.
7. The decision of the site owner to opt for the full rate of increase of 4.6%; the site owner does not have to give reasons or justification for that decision.
8. Any discussion of the financial resources of the site owner.
9. The difficulty of selling park homes on the site, especially as the site owner is entitled to 10%, when pitch fees are high compared to other sites.
10. The fact that pitch number 10 is in dispute with the site owner and the home has been empty for some time.
11. The nature of the pitches, with walls and paving that require maintenance by the homeowner.

17. Both Respondents raised the fact that inflation over the past three years has been high and the pitch fees have increased significantly. Though they said that these increases had been to the maximum figure each year, in fact the previous owner chose to moderate the increases on 1 January 2022 and 2023 (possibly to reflect the increases in those years as measured by the CPI rather than RPI). On 1 January 2022 the pitch fee was increased by 5%, when the RPI increase would have been to 6%. On 1 January 2023, the pitch fee was increased by 11% when the relevant percentage change in RPI was 14.2%. Therefore, although there have been increases over three years which the Respondents find to be a financial challenge for them, the amount could have been higher still.

18. A few issues raised by the Respondents did give rise to careful consideration by the Tribunal. The most significant was a claim that the level of maintenance has been reduced. While both Respondents accepted that the site was in a good condition overall, under the previous owner, a person was engaged as gardener and site maintenance. He removed weeds and got the roots out and kept the roadway clean and also attended to the site boundary at the top of the site keeping ivy, bracken and weeds at bay. The fact that there is some growth now, through the site fence and especially onto Susan Davies’ pitch 13, was pointed out to the Tribunal on inspection. The Applicant owner, who owns a number of sites, sends a person more infrequently from an employed ground team who sprays any weeds rather than removing them and does not do any work on the site boundary.

19. A second issue was the claim that the request of the residents for a gritting box to assist in winter icy conditions was dismissed by the site owner and it was considered that such a provision is required for health and safety of the residents.

20. Both Respondents were dismissive of the claim that there had been some improvements by road surfacing, white lining and railings around the sewage treatment plant as these were in place when they purchased. Moreover, while they had the benefit of the sewage treatment plant, water charges were not included in the pitch fees.

**Decision**

21. The only issue that the Tribunal has to decide prior to setting the pitch fee is whether there is any reduction in the services that the owner applies to the site or deterioration in the quality of those services within paragraph 18(1)(ab) of the 1983 Act which might lead to a reduction in the proposed pitch fee increase. The only basis for such a finding would be that previously the then owner employed a gardener or handyman, referred to at the hearing as Danny, who provided a much better service that is now given by the owner’s grounds team. It was said that the weeds were dealt with more efficiently and in particular the top site boundary was maintained and cleared by Danny going into the field and cutting back a strip of vegetation along the boundary to stop weeds, ivy and bracken. The Tribunal could see on inspection that such work was no longer done and growth was coming through.

22. The Applicants response was to suggest that Danny offered such a service personally and was not authorised by the then site owner but neither party could offer a definitive answer on that point – though it was clear from the Respondent’s evidence that Danny was helpful in assisting residents.

23. On behalf of the Applicant, Ms Ostler submitted that the fence between pitch 13 and the adjoining field was the responsibility of Ms Davies as homeowner on the pitch, referring the Tribunal to paragraph 21 of the terms implied into all agreements that the occupier should pay to maintain the pitch ‘including all fences’. On the other hand, paragraph 22 of the Implied Terms requires the owner to maintain ‘ site boundary fences and trees’. She suggested that as the pitch abutted the boundary fence, Ms Davies was responsible for maintenance of the fence. The Tribunal considers the implied terms are clear and the site owner is responsible for maintenance of the site boundary fence, clearly marked as such on the plan attached to the Written Statement for pitch 13.

24. The Tribunal concludes that it is not possible to determine that there is any reduction in the services that the owner applies to the site or deterioration in the quality of those services. The Tribunal is clear in determining that the fence dividing pitch 13 from the adjoining field is a boundary fence and repairable and maintainable by the site owner, not Ms Davies. However, it would be wrong to conclude that the site owner had a responsibility to go over the fence to clear a strip of vegetation when there is no evidence that the owner of the field has given licence or permission for such work. While the Respondents consider that the owner’s ground staff do a poorer job now of cleaning and weeding that Danny did for the previous owner, there is insufficient evidence before the Tribunal to justify a conclusion that the current service amounts to a deterioration.

**Determination**

25. There is therefore nothing in this case or factors arising under paragraph 18 to justify the Tribunal having regard to any issues. The presumption in paragraph 20 that the pitch fee may increase the amount of increase in inflation over the relevant 12-month period as shown by the CPI therefore applies.

26. The Tribunal determines that in the case CHI/19UJ/PHI/2024/0067 the weekly pitch fee in relation to 13 White Horse Park will increase from 1 January 2024 by 4.60% which represents the percentage increase in the Consumer Prices Index for October 2023. The pitch fee, previously £64.90, will increase to £67.89, an increase of £2.99 per week.

27. The Tribunal determines that in the case CHI/19UJ/PHI/2024/0068 the weekly pitch fee in relation to 14 White Horse Park will increase from 1 January 2024 by 4.60% which represents the percentage increase in the Consumer Prices Index for October 2023. The pitch fee, previously £64.90, will increase to £67.89, an increase of £2.99 per week.

**Closing remarks**

28. The site owner will need to repair and maintain the site boundary fence at the top end of the site. Where the fence is where the field meets pitch 13, it will be necessary for the site owner to exercise power to enter pitch 13 to do so (unless the field owner consents to entry into the field). But the responsibility of weeding between the pavers on the pitch is the responsibility of Ms Davies.

29. The refusal of the site owner to provide a gritting tub is not a decision that this Tribunal has jurisdiction to decide. However, it is right to comment that provision of gritting for application to the road in icy conditions would be a sensible move for the site owner given the requirement imposed to maintain the access ways on the site under paragraph 22 of the implied terms. There are undoubtedly health and safety concerns given the steep nature of the access road and in wintry conditions it may be necessary to add gritting to maintain access.

**Right of Appeal**

30. 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 which has been dealing with the case (RPSouthern@justice.gov.uk ). 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.

31. 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.

32. 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 that the party who is making the application for permission to appeal is seeking.

November 2024