



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

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| <b>Case Reference</b>                     | : CHI/18UE/PHI/2024/38 – 42 and 44 - 50   |
| <b>Property</b>                           | : Berrynarbor Park, Sterridge Valley,<br>Ilfracombe. EX34 9TA   |
| <b>Applicants<br/>Representative</b>      | : Wyldecrest Parks (Management) Ltd.<br>: David Sunderland (Estates Director.)  |
| <b>Respondent<br/>Representative</b>      | : The occupiers of the properties listed above.<br>: Richard Gordon-Wilson.   |
| <b>Type of Application</b>                | : Review of Pitch Fee Mobile Homes Act 1883<br>(as amended) (the Act).  |
| <b>Tribunal Members</b>                   | : Judge C A Rai (Chairman).<br>Mr M.C. Woodrow MRICS Chartered<br>Surveyor.   |
| <b>Date type and venue<br/>of Hearing</b> | : 16 January 2025<br>Fully remote (CVP) with Panel sitting at the<br>Law Courts, North Walk, Barnstaple. EX31<br>1DX. |
| <b>Date of Decision</b>                   | : 24 January 2025.  |

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**DECISION**

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1. The Tribunal determines that the pitch fee for the year beginning 1 January 2024 for each of the relevant pitches should be changed.
2. The Tribunal determines that the pitch fees for the relevant pitches, the subject of this application, payable on 1 January 2024 are:

|                          |         |
|--------------------------|---------|
| Pitch 3                  | £132.19 |
| Pitches 5 and 6          | £132.18 |
| Pitches 9, 13, 36 and 37 | £150.41 |
| Pitch 21                 | £209.53 |
| Pitches 22, 30 and 32    | £165.89 |
| Pitch 31                 | £160.29 |
3. The reasons for the Tribunal's decision are set out below.

## **Background**

4. The Applicant served Pitch Fee Review Notices, dated 20 November 2023, on the Respondent proposing an increase in the pitch fees on 1 January 2024.
5. The pitch fees payable on and after 1 January 2023 were determined by the FTT in a decision dated 25 September 2023, the “2023 FTT Decision”. The Applicant appealed against that Decision which had reduced the respondents’ pitch fees to the level of the pitch fees agreed on 1 January 2021.
6. Since the Applicant’s appeal remained undecided the Applicant served two pitch fee review notices on each Respondent in November 2023.
7. The first notice sought an increase based on the determined 2023 pitch fee, plus the CPI increase applied to that figure plus an additional amount. The second notice sought an increase based on the pitch fee sought by the Applicant in January 2023 (the original pitch fee) plus the CPI increase which the Applicant hoped and anticipated the Upper Tribunal would determine as the 2023 pitch fee, if its appeal was successful.
8. The additional amount referred to in the first notice (and paragraph 7 above) is an amount equal to the reduction in the pitch fee made by the Tribunal in the 2023 FTT Decision.
9. The Respondent refused to pay the additional amount, so the Applicant applied to the Tribunal.
10. The Applicant accepted that the second of the two notices “fell away” when it lost its appeal against the 2023 FTT Decision.
11. The hearing was conducted remotely using CVP. The Tribunal inspected the Park on the date of the hearing and conducted the hearing sitting at Barnstaple Combined Court. Mr Sunderland represented the Applicant. Mr Gordon-Jackson represented the Respondent.
12. Prior to the hearing the Tribunal received an agreed hearing bundle (603 pages), two Upper Tribunal Decisions dated 10 July 2024 (UT Appeal Decision) and 6 December 2024, two case management applications dated 25 September 2024 and 27 November 2024 and a copy of the 2023 FTT Decision.
13. References in this decision to numbers in square brackets are to pages in the hearing bundle. The Respondent sent three annotated “google map” plans of the Park to the Tribunal on the day before it inspected the Park, copies of which were not sent to the Applicant. These have not been taken into account by the Tribunal when making its decision.

14. Following the hearing, the Tribunal obtained a copy of another case management application dated 1 November 2024 requesting the withdrawal of the application for 15 Berrynarbor Park, for which consent was given.
15. Although the Tribunal has been provided with, and examined, all evidence and statements in the parties submissions, including what was said during the hearing, it has not referred specifically to every statement or piece of evidence considered, nor has it elaborated, at length, on its conclusion or reasoning. This decision is intended to provide the parties with reasons for the decision which are proportionate both to the resources of the Tribunal, the significance and complexity of the issues before it and which explain how the Tribunal reached its conclusions.

### **The Law**

16. All agreements to which the Act applies incorporate standard terms implied by the Act. Those that apply to protected sites in England are contained in Chapter 2 of the Part 1 of Schedule 1 to the Act. The principles governing changes in pitch fees are in paragraphs 16 to 20. A review of the pitch fee can be undertaken annually on the review date. (Paragraph 17(1)). The owner must serve on the occupier a written notice setting out the proposals in respect of the new pitch fee.
17. Paragraph 16 of Chapter 2 of Schedule 1 to the Act provides that the pitch fee can only be changed in two ways:-
  - a. with the agreement of the occupier of the pitch, or
  - b. 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.
18. If the pitch fee is agreed by the occupier, it will be payable from the review date. If the occupier does not agree the change in the pitch fee the owner can apply to the tribunal for an order determining the amount of the new pitch fee which will be determined in accordance with paragraph 16(b). The occupier will continue to pay the current pitch fee until such time as the new pitch fee is agreed by the occupier or an order is made.
19. The new pitch fee will be payable from the review date but an occupier will not be treated as being in arrears until 28 days after either the date on which the new pitch fee is agreed, or the tribunal makes an order determining it.
20. There is a time limit within which an application must be submitted but the Respondent has not disputed the procedural validity of the pitch fee notices and so it is unnecessary for this Tribunal to say more about that.
21. The written notice will be of “no effect unless it is accompanied by a document which complies with paragraph 25A”.
22. Paragraph 25A provides that the notice must:

- a. be in the form now prescribed by The Mobile Homes (Pitch Fees) (Prescribed Form)(England) Regulations SI2023/620
  - b. specify the percentage change in the CPI which must be used to calculate the review,
  - c. explain the effect of paragraph 17,
  - d. specify the matters to which the new pitch fee is attributable,
  - e. refer to the occupiers obligations in paragraphs 21(c) to (e) and the owners obligations in paragraphs 22(c) and (d),
  - f. refer to the owners obligations in paragraphs 22(e) and (f) as glossed by paragraphs 24 and 25 (this relates to consultation about improvements with owners and any qualifying residents association).
23. In summary, paragraph 18 provides that on a pitch fee review “particular regard” is to be had to:-
- a. sums expended by the owner on improvements since the last review date;
  - b. any deterioration in the condition and any decrease in the amenity of the site or adjoining land owned or controlled by the owner since 26 May 2013 “insofar as regard has not previously been had to that deterioration or decrease for the purposes of this subparagraph” ;
  - c. any reduction in, or deterioration in the quality of services supplied by the owner since 26 May 2013 to which regard has not previously been had; and
  - d. any direct effect of legislation which has come into force since the last review date on the costs payable by the owner on the maintenance or management of the site.
24. Paragraph 19 sets out the costs which cannot be taken into account which are:-
- a. costs incurred by the owner in expanding the site;
  - b. costs relating to the conduct of proceedings under the Act or an agreement; and
  - c. fees relating to the alteration of site licence conditions or consent to the transfer of the site licence.
25. Paragraph 20 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 CPI during the last 12 months (Tribunal’s emphasis).

## Submissions

### The Respondent

26. The Respondent submitted a brief written statement in response to the Application made by its representative Richard Gordon-Wilson.

27. It confirmed that the FTT had refused to stay the determination made by its 2023 decision pending the outcome of the Applicant's appeal to the Upper Tribunal.
28. When it received the two pitch fee review notices proposing different increases in the pitch fees, neither of which were acceptable, it refused to pay either of the increased amounts but voluntarily applied a 4.6% uplift to the 2023 pitch fee which it paid to the Applicant and has continued to pay since January 2024.
29. The Respondent claimed that the pitch fee review notices showed that the Applicant has refused to acknowledge either the FTT decision or the Upper Tribunal Decision. It also said that the Applicant has "harassed the respondents for greater pitch fee payments over and above those determined by the tribunals."
30. When asked to explain, Mr Gordon-Wilson said that the Respondent was unwilling to pay pitch fees by direct debit because the Applicant's accounts department debit the wrong amounts. Instead, payments are made monthly by debit card payments but each month the Respondent is told by the Applicant's accounts department that the pitch fee due is higher than the amount it is prepared to pay.
31. In its statement the Respondent said that "Wyldecrest have done precious little to address the numerous deteriorations and loss of amenities that were detailed in the FTT's decision published on 6 September 2024, corrected 25<sup>th</sup> September 2023 and deserve no further increase in the respondent's pitch fees other than the annual CPI increase, which was voluntarily added by the respondents in 2024 from 1<sup>st</sup> January" [603-604].
32. At the hearing Mr Gordon-Wilson repeated his assertion that Wyldecrest had not restored the condition of the Park since the FTT Decision was upheld on appeal by the Upper Tribunal. He said no works had been done which could be interpreted as a restoration of the lost amenity. He said that nothing has been improved. The Park remains in the condition described by Judge Dobson in the FTT 2023 Decision in which he made a clear statement that the Park had been left to decay to such an extent that he said the condition was almost irretrievable. There is no difference between the condition of the Park in January 2024 and the condition in which it was, when the FTT inspected it in July 2023.
33. Mr Gordon-Wilson said that one part time elderly gardener (aged 60+) has responsibility for maintaining the Park. The gardener primarily concentrates on maintaining the grassed areas and strimming paths. It is impossible for him to maintain the steep banks. It has become increasingly hard for him to maintain the Park because it has been neglected over a long period. Some occupiers, including Mr Gordon-Wilson, are forced to cut back shrubs within the Park to prevent encroachment onto their pitches, whilst recognising and accepting that this should not be their responsibility.

34. Mr Gordon-Wilson described the area within the Park developed by the Applicant as pitches for new park homes as having little vegetation and “akin to a moonscape”. The remainder of the Park is full of brambles and dying and dead trees, one of which fell on top of a lodge during the winter storms.
35. Mr Gordon-Wilson said David Sunderland is listed on the North Devon Council Website as a Fit and Proper Person, which he suggested implied that he should have actual knowledge about the condition of the Park. He denied that it was the responsibility of the Respondent to have contacted the Applicant to inform him about the condition of the Park. There is no park manager. There is no identifiable person to contact who might address the lack of maintenance. He said that when the Upper Tribunal heard the Applicant’s appeal last June, it found the Applicant’s statement that its staff had taken account of the impact of any deterioration in the condition of the Park, when the 2022 pitch fee was agreed, misleading.

### **The Applicant**

36. David Sunderland, the Applicant’s representative, has submitted a written statement in reply to the Respondent’s statement. He said in his written statement, which he repeated at the hearing, that the Respondent had not provided the Applicant with any supporting statements, documents or evidence.
37. Mr Sunderland stated that the statutory presumption was that the pitch fee would increase in line with the CPI unless it would be unreasonable and referred to paragraph 18 of schedule 1 of the Act, which he said deals with improvements or reductions in the amenity of the site.
38. Mr Sunderland said, “where there has been a temporary reduction in amenity of the site, as was found by the Tribunal in the 2023 Review, this can be added back to the pitch fee when that temporary reduction has been reinstated without following the consultation procedure laid down in Implied Term 18(1) as found by the Upper Tribunal in the 2023 Review Appeal” [606]. He said that this is what has happened in this case – an increase in the CPI has been applied and the reinstatement of the temporary loss of amenity applied.
39. Mr Sunderland also confirmed that the Applicant fully acknowledged both Tribunal decisions claiming that it has acted accordingly [606].
40. At the hearing Mr Sunderland stated that the Tribunal Directions stated that the Tribunal would only consider oral evidence at the hearing if the parties had provided a written statement in accordance with the Directions.

41. He said the Respondent had not provided a written statement explaining why it has not accepted the increase proposed nor had the Tribunal made any directions asking him to explain his reasons for the increase. He said it was not for him to suggest reasons for the Respondent's disagreement or answer questions about reasons to which it has not referred. He said that Mr Gordon-Wilson could have negotiated a lower increase with him.
42. The Tribunal asked him about the annotations made to the Pitch Fee Review Notice and why the Applicant had inserted an amount for recoverable costs in section 4(C) which it defined as "Reinstatement of site fee found to have been temporarily reduced by the Tribunal".
43. Mr Sunderland said that the Applicant is obliged to use the prescribed form and there was nowhere on the form where he could insert or describe the amount which he wanted to add to the pitch fee. He told the Tribunal that the Applicant believed that the amount by which the pitch fee was previously reduced is recoverable in the 2024 pitch fee. He disagreed with the Tribunal suggestion that the Applicant's description "site fee" was misleading. He could not or would not explain why it was referred to as a site fee and suggested that a site and pitch were the same ignoring the multiple references on that form to pitch fees. He eventually accepted that the 2023 FTT decision does not refer to a "temporary" loss of amenity.
44. Mr Sunderland defined "temporary" more than once during the hearing. He said if something was lost, could be restored, and was restored, the loss would "become temporary". He said the principle had been established in other Wyldecrest cases referring to a Scatterdells Park decision about a reduction in amenity. He said that the FTT has said that a loss of amenity ought to be capable of remedy. He said that his authority for adding back the temporary reduction is the UT Appeal Decision in which it had found that it was possible to do this without such restoration being treated as an improvement. This was at odds with what Judge Dobson said in the 2023 FTT Decision in which he suggested that the decrease in pitch fees to take account of a reduction in amenity could only be restored if improvements were made, the pitch occupiers were consulted and an appropriate application was made to include the additional increase in the pitch fees based on those specific improvements.
45. Mr Sunderland said, in response to Mr Gordon-Wilson's submissions about the condition of the Park, that the Respondent had omitted to provide any evidence in support of those submissions during the hearing. He said he had passed a copy of the 2023 FTT decision to his maintenance team and was subsequently told that "the work was completed".

**Tribunal's findings and reasons.**

46. Notwithstanding that occupiers may feel, and often express to the Tribunal, that an annual statutory increase in the pitch fee to reflect the change in CPI since the date of the previous review is an owner's entitlement, the presumption is rebuttable.
47. CPI has increased by 4.6% during the relevant 12 month period prior to the 2024 pitch fee review date.
48. The Tribunal can take particular regard of the matters referred to in paragraph 18(1) of Chapter 2 of Schedule 1 to the Act and decide if it whether to apply the presumption.
49. In these proceedings the Applicant has served a notice proposing an increase to the pitch fee. The Respondent has not agreed to pay the whole proposed increase, so the Applicant Park owner applied to the Tribunal for an order determining the amount of the new pitch fee.
50. The increase proposed by the Applicant was 4.6% plus an increase referred to in section 4 of the notice as "recoverable costs". The amount of that increase is exactly the amount of the reduction the FTT made to the pitch fee demanded in January 2023. The FTT reduced the pitch fee from the amount demanded by the owner in 2023 to the amount agreed by the owner and the occupiers in January 2021.
51. Effectively, although he did not explicitly state this, the Applicant in 2024 was seeking to recover as "an additional amount" the amount he had lost between January and December 2023 as a consequence of the 2023 FTT Decision. This additional amount is described in subsection C of section 4 of the notice under the heading, Description of Item relating to costs, as "Reinstatement of site fee amount found to have been temporarily reduced by the Tribunal".
52. Mr Sunderland explained to the Tribunal that he could not easily insert or describe the increase he wanted on the prescribed form save in section 4. The Tribunal does not accept his explanation.
53. Paragraph 17(2) of the First Schedule to the Act states that the owner shall serve on the occupier a written notice setting out his proposals in respect of the new pitch fee. Subsection 25A states that the notice proposing the increase is of no effect **unless accompanied by a document which complies with paragraph 25A** (the Tribunal's emphasis).
54. The Applicant could have served a separate notice to review the pitch fee which explained why it sought to recover an additional amount and set out what it had done to reinstate the site **accompanied by a document**, such as the document it actually served.



55. Section 18 of the Act sets out those matters to which particular regard shall be had when the Tribunal determines the amount of the new pitch fee. The Applicant has not claimed it has carried out improvement to the Park. The Applicant has not suggested that the costs it has paid for the maintenance and management of the site have been affected by a change in the law.
56. Judge Alice Robinson in **Toni Vyse v Wyldecrest Parks (Management) Limited [2017] UKUT 0024 LC** considered the factors which might displace the statutory presumption that the pitch fee could only be changed in line with changes to the relevant index (now CPI). She suggested that, in circumstances where an owner had improved the Park but failed to consult with the occupiers, he might still seek an increase which exceeded the change in RPI (the relevant index which applied then), which a tribunal might find reasonable.
57. The Tribunal has concluded that it should consider three issues;
- a. has the Applicant explained how he has calculated the amount he sought to add to the pitch fee to the Respondents in the Pitch Fee Review Notice; and
  - b. if not, does that prevent his claim from succeeding; and
  - c. is the Applicant is entitled to an increase in the pitch fee which would displace the statutory presumption?
58. Judge Robinson referred to weighty matters, not referred to in paragraph 18(1), and described in another case as, matters not connected to improvements as matters which could still justify a greater than RPI increase, if without such an increase the pitch fee would not be reasonable.
59. The Applicant has not sought to rely upon paragraph 18(1). The Applicant has not supplied any evidence either to the Respondent or the Tribunal that it has carried out additional maintenance works over and above the regular works, the cost of which is included in the monthly pitch fee.
60. Instead, the Applicant has suggested that by addressing its absence of maintenance in the preceding years (which would have inevitably saved it expenditure) it now has a justifiable reason to increase the pitch fee in 2024 by more than the CPI increase.
61. Mr Sunderland submitted that the principle that a restoration of amenity impacting on an increase in the pitch fee was previously agreed in a decision relating to Scatterdells Park. He has not provided the Tribunal with a copy or the reference for this decision or explained what he meant.

62. Instead, Mr Sunderland sought to rely on the UT Appeal Decision and in particular those paragraphs preceded by the sub heading **Issue 3 Can the reduction be restored on a future review?** (Para 31 and onwards). As the Tribunal endeavoured to explain to him at the hearing, the Deputy President preceded the comments he made, and on which Mr Sunderland relied, with a statement “This issue does not arise out of the FTT’s decision but.....it may assist the parties and the FTT in the future if I express the views I have provisionally formed”. The paragraphs of the decision which follow that statement are “obiter dicta”. They were provided by the Deputy President to assist the parties and the tribunal. Those paragraphs expressed the Deputy President’s provisional views. That part of the UT Decision cannot be interpreted or applied as authority for the submissions made by the Applicant or to justify its attempt to “claw-back” that part of the pitch fee which it lost.
63. The Upper Tribunal disagreed with what the FTT Decision said about the way in which any physical restoration to the condition of the Park might lead to the recovery of the reduction to the pitch fees.
64. Martin Rodger KC suggested that the only way for the owner to recover the reduction was by treating any restoration as an improvement. He said, “In principle a temporary reduction in amenity or deterioration of condition ought to be capable of being remedied, and when it is any previous curtailment of the pitch fee should no longer have effect”.
65. Martin Rodger suggested that the mechanism would be for the FTT to adjust the pitch fee to take account of the change by awarding an above RPI increase but that the amount of any adjustment would be a matter for the FTT to consider by asking itself what would be reasonable. “I do not think that simply catching up on work which had previously been neglected would amount to an improvement requiring consultation (or would justify an increase related to expenditure in its own right). But, in this case, even if Wyldecrest is right and the former pristine condition was more than the owners were entitled to under their agreements, it is likely that the full amount by which the pitch fees was reduced in January 2023 could only be retrieved by a permanent restoration of the Park to its previously very high standard”.
66. Although Mr Sunderland said that he had provided his maintenance team with a copy of the 2023 FTT decision and was subsequently informed that the necessary works to restore the lost amenity had been completed this has not been substantiated with any evidence. Mr Sunderland admitted that he had not inspected the Park before sending the 2024 Pitch Fee Review notices. He has not disclosed when works were carried out. He did not identify who undertook the works. He did not suggest to the Tribunal that the works had permanently restored the Park to its previously high standard, instead stating that the Respondent could have sought to negotiate the amount of the increase with him.

67. The Respondent told the Tribunal there is neither a permanent maintenance team with responsibility for conducting regular maintenance nor a park manager responsible for identifying maintenance issues. The Tribunal saw little evidence of the Park having been regularly maintained on the date of its visit. The Tribunal found that the appearance of the Park closely matched the description in the 2023 FTT Decision.
68. Mr Sunderland said, in his written statement, that “the 2<sup>nd</sup> Notice anticipated that the appeal would succeed, and the 2023 proposed figure increased by CPI only” [606]. That is significant because the notice to which he referred was dated 20 November 2023.
69. Taking account of what it heard from both parties during the Hearing, the Tribunal has concluded it is unlikely that the Applicant would have carried out any reinstatement of the Park whilst still anticipating that its appeal would succeed. The appeal was heard on 26 June 2024 and the UT Appeal Decision issued on 10 July 2024. If Mr Sunderland had instructed his maintenance team to carry out works, those instructions are likely to have postdated the 2024 pitch fee review date.
70. The starting point for any change to the pitch fee is the presumption in paragraph 20 of the first schedule to the Act which is that the pitch fee will change in line with the increase (or decrease) in CPI.
71. The Respondent has already agreed to the pitch fee being increased in line with the increase in CPI.
72. The Tribunal finds that the Applicant has neither explained its calculation of the additional increase to the pitch fee nor documented it properly in the Pitch Fee Review Notice. The Tribunal has not found it necessary to consider whether this was a fatal omission.
73. Nevertheless, the Tribunal has considered if the Applicant’s description of the additional increase is a “weighty matter”, notwithstanding it is not a matter specifically referred to in paragraph 18 or 19 of Schedule 1 the Act.
74. The Applicant has provided no evidence of the works he claimed his maintenance team had undertaken to address the deterioration in the Park identified by the FTT in the 2023 FTT Decision.
75. The Respondent stated that the condition of the Park has not been improved since it was inspected by the FTT prior to making the 2023 FTT Decision.
76. This Tribunal has not identified any difference in the condition of the Park on the date of its inspection to the condition described by a different tribunal in the 2023 FTT Decision. Furthermore, it has concluded it unlikely the Applicant would have authorised any reinstatement works on the Park until after the issue of the UT Appeal Decision which post-dated the 2024 Pitch Fee Review Date and this application.

77. The Tribunal accepts that that the UT Appeal Decision referred to the **possibility** (Tribunal emphasis) of an owner seeking a determination from the Tribunal in respect of a proposed increase of CPI plus an additional figure. The Tribunal determines that the paragraphs in the UT Appeal Decision relied upon by the Applicant are not binding on this Tribunal but accepts that the opinion expressed should be given respect and weight. In any event, that does not assist the Applicant here where the evidence both from the inspection and generally is very firmly that the condition of the Park has not improved from the condition determined in the 2023 FTT Decision.
78. For all of these reasons the Tribunal determines that the Applicant is entitled to increase the pitch fee by 4.6 % (which the Respondent has already agreed to pay). It finds that this increase is reasonable in all the circumstances.
79. The new pitch fees payable by each Respondent for 2024 are set out in paragraph 2 above.

### **Judge C A Rai**

#### **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.
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. 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.
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.