



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

Case references : **MAN/00EW/PHI/2023/0197 - 0218**

Properties : **1, 2, 3, 4, 6, 8, 9, 10, 14, 15, 17, 18, 20, 21, 23, 24, 25, 26, 28, 29 & 30 Nursery Park, Delamere Road, Frodsham, Cheshire WA6 6LX**

Applicant : **Northwest Parks Limited**

Respondents : **Various Residents at Nursery Park - See Annex A**

Type of Application : **Mobile Homes Act 1983- Schedule 1 Chapter 2 Paragraph 16 or Chapter 4 paragraph 14**

Tribunal Members : **Mr S Wanderer MRICS
Mr K Kasambara BSc MSc MRICS**

Date of Decision : **18 October 2023**

DECISION

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DECISION

The pitch fee payable by each Respondent for the year commencing 1 January 2023 is £164.15 per calendar month.

REASONS

Background

1. These are linked applications for the determination of new pitch fees for 2023 for twenty-one park homes situated on a site at Nursery Park, Delamere Road, Frodsham, WA6 6LX. The Applicant is the site owner. The Respondents are the respective occupiers of the twenty-one pitches in question.
2. The Applicant served Pitch Fee Review Forms dated 30 November 2022 requiring each Respondent to pay an increased pitch fee with effect from 1 January 2023, by reference to the 14.2% RPI increase since the previous year. In the absence of agreement as to the proposed increase, on 30 March 2023, an application was made to the First-tier Tribunal (Property Chamber) (“the Tribunal”) under Paragraph 16 of Chapter 2 of Part 1 of Schedule 1 of the Mobile Homes Act 1983 (as amended) for the determination of a new level of pitch fee.
3. The issue for the Tribunal to determine is the new level of the pitch fee for each of the Respondents.
4. On 8 June 2023, the Tribunal issued directions and informed the parties that, unless the Tribunal was notified that any party required an oral hearing to be arranged, the application would be determined upon consideration of written submissions and documentary evidence only. No such notification was received and the Tribunal therefore convened on the date of this decision to consider the application in the absence of the parties.
5. In response to directions, both the Applicant and the Respondents (acting collectively through the Nursery Park Residents’ Association) made submissions to the Tribunal. Whilst there appears to have been some confusion on the part of the Respondents as to the order in which the submissions were expected, the Tribunal is satisfied that the parties have now had sufficient opportunity to make any submissions they wish to in support of their case.
6. The Tribunal did not inspect the Properties.

Law

7. Paragraph 20 of the Implied Terms set out in Chapter 2, Part 1 of Schedule 1 to the Mobile Homes Act 1983 states that – unless it would be unreasonable to do so – it is presumed that the pitch fee will be adjusted annually by reference to the percentage increase or decrease in the Retail Prices Index based on the difference between the latest index and that published for the month 12 months prior to the month to which the index relates.
8. The site owner must give the occupier written notice accompanied by a prescribed Pitch Fee Review Form. The Tribunal notes that the prescribed forms have been used and the relevant time limits have been complied with.
9. Paragraph 18 (1) Chapter 2, Part 1 of Schedule 1 to the Mobile Homes Act 1983 requires that
When determining the amount of the new pitch fee particular regard shall be had to—
 - (a) any sums expended by the owner since the last review date on improvements—*
 - (i) which are for the benefit of the occupiers of mobile homes on the protected site;*
 - (ii) which were the subject of consultation in accordance with paragraph 22(e) and (f) below; and*
 - (iii) to which a majority of the occupiers have not disagreed in writing or which, in the case of such disagreement, the 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);*

The parties' cases

10. The Respondents' case is that there should be no increase in the pitch fee. In support of this position, they refer to various 'comparisons' equating to annual increases lower than 14.2%. They also provide evidence that they argue shows an inadequate standard of maintenance and a decline in the condition of the park.

11. The Applicant's position is that the 'comparisons' referred to by the Respondents are not relevant. The Applicant also refutes the Respondents' assertions as to poor maintenance and says that it is in the process of addressing historic problems which it inherited from the previous owner. The Applicant argues, therefore, that there are no grounds to disturb the statutory presumption and the pitch fees should increase in line with RPI.

Discussions and Determination

12. After reviewing the parties' submissions in light of the statutory provisions and relevant case law, the Tribunal's conclusions on the key issues are as follows.
13. The Respondents have not taken any issue with the review date or the notice procedure and the Tribunal finds that this accorded with the required statutory procedure.
14. The statutory presumption in favour of the RPI increase, which the Tribunal found to be correctly calculated using the percentage change between the index figures in October 2021 and October 2022, would stand unless the Tribunal finds there are grounds to depart from that presumption.
15. In *Vyse v Wyldecrest Ltd* [2017] UKUT 24 (LC) HHJ Alice Robinson noted [at 45] that: "*...the factors which may displace the presumption are not limited to those set out in paragraph 18(1) but may include other factors...*" and said [at 50] that: "*...By definition, this must be a factor to which considerable weight attaches ... it is not possible to be prescriptive ... What is required is that the decision maker recognises that the "other factor" must have sufficient weight to outweigh the presumption in the context of the statutory scheme as a whole.*"
16. The 'comparisons' referred to by the Respondents are not found to be of assistance. A number related to other properties, but no background information was provided. Others were simply not relevant to the legal framework for pitch fees.
17. Moving on to consider the issues raised in respect of condition, the Tribunal accepts that the Respondents are dissatisfied with the current state of the site and wish for improvements to be carried out. The issue is, however, whether the condition of the site has deteriorated or is adversely impacted by poor management.
18. On balance, the Tribunal does not find there has been material "deterioration in the condition, [or] decrease in the amenity, of the site" since the previous pitch fee review last year. The Tribunal finds, therefore, that such deterioration or decrease will already have been taken into account in the previous pitch fee review.

19. The Tribunal does, however, find that the standard of management of the park is not high. There is evidence of delays and, in some cases, neglect in undertaking what should be routine repairs and maintenance.
20. The Tribunal in this case attaches weight to the standard of management evidenced and finds that this outweighs the presumption that the pitch fees will increase in line with the RPI. Taking this factor into account, the Tribunal finds it would be unreasonable to apply the full RPI increase to the pitch fees.
21. On this basis, the Tribunal finds that the pitch fees should be increased to **£164.15 per month** with effect from 1 January 2023.

Costs

22. The Applicant has, within its statement of case, requested the Tribunal impose an order for costs.
23. Rule 13 of the Tribunal's procedural rules provides:
 - (1) *The Tribunal may make an order in respect of costs only –*
 - (a) *Under section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;*
 - (b) *If a person has acted unreasonably in bringing, defending or conducting proceedings in*
 - i. ...
 - ii. *A residential property case*
24. The Tribunal does not find either party has acted unreasonably in these proceedings and this is borne out by the Tribunal's decision in respect of the pitch fees at a figure in between that sought by the Applicant and the Respondents.
25. The application for a costs order is, therefore, refused.

Annex A- List of Respondents

Case Reference	Respondent
MAN/ooEW/PHI/2023/0197	Mrs H Kinsey
MAN/ooEW/PHI/2023/0198	Mr & Mrs Barnard
MAN/ooEW/PHI/2023/0199	Mr & Mrs Clarke
MAN/ooEW/PHI/2023/0200	Mr & Mrs Norman
MAN/ooEW/PHI/2023/0201	Mr & Mrs Mayer
MAN/ooEW/PHI/2023/0202	Mr & Mrs Hartley
MAN/ooEW/PHI/2023/0203	Mr D J Pimlott
MAN/ooEW/PHI/2023/0204	Mr W Noon

MAN/ooEW/PHI/2023/0205	Mr & Mrs Forster
MAN/ooEW/PHI/2023/0206	Mr & Mrs Blamire
MAN/ooEW/PHI/2023/0207	Mr C Hughes
MAN/ooEW/PHI/2023/0208	Mrs N Blunt
MAN/ooEW/PHI/2023/0209	Ms J Preston
MAN/ooEW/PHI/2023/0210	Mrs C Richards
MAN/ooEW/PHI/2023/0211	Mr & Mrs Ball
MAN/ooEW/PHI/2023/0212	Mrs H Hughes
MAN/ooEW/PHI/2023/0213	Mr & Mrs Cadwallader
MAN/ooEW/PHI/2023/0214	Mr R Back
MAN/ooEW/PHI/2023/0215	Mr T Slavin
MAN/ooEW/PHI/2023/0216	Mrs J M Smith
MAN/ooEW/PHI/2023/0217	Ms L Harrison
MAN/ooEW/PHI/2023/0218	Ms R Evans

ANNEX B - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.