



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

Case Reference : **MAN/ooEW/PHI/2023/0176 - 0187**
The Site : **Fiveways Park, Chester High Road,
The Wirral CH64 7TR**
Applicant : **Wyldecrest Parks
(Management) Limited**
Respondents : **Various Pitch Owners as listed on
Annex A**
Representative : **Fiveways Park QRA**
Type of Application : **Review of Pitch Fees: Mobile Homes
Act 1983 (as amended)**
Tribunal Members : **Tribunal Judge C Wood
Tribunal Member H Thomas**
Date of Decision : **16 December 2023**

DECISION

DECISION

1. The Tribunal orders that, as a result of the failure by the Applicant to undertake routine maintenance of the sewerage system at the Site, the increase in the pitch fee should be limited to 12%. The increase is effective from 1 March 2023.
2. The Applicant's application to be reimbursed the application fee by the Respondents pursuant to Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 is refused.

BACKGROUND

3. By an application dated 29 March 2023, ("the Application"), the Applicant sought determinations of the pitch fees payable in respect of the following pitches at the Site, numbers 1, 2, 4, 6-14 (inclusive).
3. Pitch fee review forms dated 18 January 2023 were served on each of the Respondents proposing an increase in the pitch fees of 13.4%, by reference to the retail price index in December 2022.
4. Directions dated 6 June 2023, ("the Directions"), were issued, pursuant to which written submissions were received from or on behalf of both parties.
5. The Directions provided that:
 - 5.1 in the absence of a request from any of the parties for a hearing, the Application should be determined on the papers; and,
 - 5.2 an inspection was not needed.
6. No request for a hearing was received from any of the parties and a determination of the Application on the papers took place on Tuesday 17 October 2023.

THE PITCH FEE AGREEMENTS

7. The Applicant stated that they did not hold on file an agreement for the first-named Respondent (Mr G & Mrs P Gates) and , in the absence of any evidence/submissions from any of the parties to the contrary, the Tribunal assumes that this is the position for all of the Respondents.
8. The Tribunal has only seen one of the pitch fee review forms, (being the form sent to Mr & Mrs Gates, (“the Form”). The Tribunal assumes that the forms sent to each of the other Respondents are in substantially the same form and content.
9. The Tribunal notes that the Application refers to a last review date of 1 January 2022 where the Form states that the last review date is 1 March 2022 with the new pitch fee to take effect from 1 March 2023. For the purpose of this Decision, the Tribunal accepts that the correct review date is as set out in the Form and that any increase determined will take effect from 1 March 2023.

THE LAW

10. The relevant law is set out in the Mobile Homes Act 1983, as amended, (“the 1983 Act”), and, in particular, Chapter 2 of Part I of Schedule I to the 1983 Act, (“Chapter 2”). Paragraphs are references to paragraphs in Chapter 2, unless the context requires otherwise.
11. Paragraph 20(A1) raises 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 price index, (“RPI”), by reference to the latest index and the index published for the month which was published 12 months before that to which the latest index relates.
12. This increase or decrease is presumed to be reasonable unless it would be unreasonable having regard to the various factors set out in paragraph 18(1). These include, without limitation, the following factors set out in sub-paragraphs (aa) and (ab):
 - 12.1 “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 had not previously been had to that deterioration or decrease for the purposes of this paragraph);

12.2 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 sub-paragraph)”.

13. It is clear that “the factors which may displace the presumption are not limited to those set out in paragraph 18(1) but may include other factors”: Vyse v Wyldecrest Limited [2017] UKUT 24 (LC) at [45]. In Vyse, the Upper Tribunal described a relevant additional factor as follows:

“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”.

14. A failure to carry out repairs and maintenance is capable of amounting to such an additional factor under s18(1): see, for example, the decision in Wickland (Holdings) Limited v Esterhuyse [2023] UT (LC) [147].

EVIDENCE

Applicant’s Submissions

15. The Applicant’s submissions (as set out in a series of statements) is summarised as follows:

15.1 the Applicant relies upon the presumption in paragraph 20(A1) to increase the pitch fees in accordance with RPI as at December 2022;

15.2 the Applicant rejects the Respondents’ arguments (detailed below) that there are relevant factors to be taken into account which would rebut the paragraph 20(A1) presumption;

15.3 in particular, the Applicant notes that:

- (1) since the sewerage system is not included in the pitch fee, it cannot be regarded as a deterioration in an amenity, (sub-paragraph (aa)), and/or a reduction or deterioration in the service and/or quality of the service, (sub-paragraph (ab)), by reason of a failure to renew insurance of the system and/or lack of maintenance;
- (2) in any event, the Applicant states that the system is serviced twice yearly, as recommended, and that there are invoices which show the maintenance and repairs undertaken;
- (3) with regard to the access road, this is not within the occupation and/or control of the Applicant and is therefore not an amenity which can be brought into account by the Tribunal in a determination of the pitch fee.

15.4 The Applicant seeks reimbursement of the application fee from the Respondents because of their failure to comply with the Directions with the result that the Applicant had to submit two statements in reply.

Respondents' Submissions

16. The Respondents' written submissions are summarised as follows:

16.1 there are three reasons for the Respondents' objection to the increase in the pitch fee, as follows:

- (1) the Site has deteriorated since the Applicant acquired it in November 2019. The Site comprises a small site of 13 homes with the age range of the residents between 65 and 102. The reduction in maintenance by the Applicant has put greater onus on the residents to monitor services eg the sewerage system, and the poor condition of the access road has meant that, on occasions, some residents have been unable to leave the Site;
- (2) the Applicant has failed to maintain, and to maintain insurance in respect of the sewerage system, as was the case with the previous owner with the result that there has been an increase in problems, and the Respondents have had to pay for the repairs/call-outs;
- (3) there has been a reduction in the maintenance of the access road which is the only access to the Property. There are flooding issues, particularly

in the winter months because of a blocked storm drain; the road is unadopted and the previous owner undertook its tarmacking, but it is now in poor condition with, for example, potholes.

REASONS

The Pitch Fee Review Form dated 18 January 2023, (“the Form”)

17. The Tribunal is satisfied that the Applicant has complied with the statutory requirements set out in the 1983 Act relating to the Form and the time limits for making the Application.

Has the paragraph 20 (A1) presumption been rebutted?

18. The Respondents claim that the deterioration in the Site has occurred since the Applicant’s acquisition in November 2019.
19. There is no evidence before the Tribunal that all or any of these matters have been taken into account in determining the pitch fees since 2019.
20. In making its determination, the Tribunal has to decide whether any of the issues identified by the Respondents are factors to be taken into account within paragraph 18(1) or otherwise “...of sufficient weight to outweigh the presumption in the context of the statutory scheme as a whole”.

The Access Road

21. The Tribunal is satisfied that, as the access road is not “...adjoining land which is occupied or controlled by the owner...”, any deterioration in its condition (which may or may not be the case), cannot be a relevant factor to be taken into account pursuant to paragraph 18(1)(aa).

The Sewerage System

22. The Tribunal is satisfied that:
 - 22.1 a failure to adequately maintain the sewerage system could constitute a “...deterioration in the condition....of the site...” within paragraph 18(1)(aa) and also a “...reduction in the services that the owner supplies to the site...” within paragraph 18(1)(ab);

22.2 a failure to perform maintenance can constitute an additional factor under paragraph 18(1): see *Wickland (Holdings) Limited v Esterhuyse* [2023] UT (LC) [147]; and,

20.3 the insurance of the sewerage system is not part of the “...services that the owner supplies to the site...” and is not a factor to be taken into account within paragraph 18(1)(ab).

20.4 The Tribunal notes that the invoices from eg Drain Doctor appear to relate primarily to emergency works/repairs rather than to routine maintenance. In particular, there is no evidence of biannual routine maintenance visits undertaken at the request of the Applicant.

Determination

21. The Tribunal determines as follows:

21.1 the Applicant’s failure to undertake routine maintenance of the sewerage system is a relevant factor to be taken into account in rebutting the presumption in paragraph 20 (A1) that the pitch fee should increase by RPI which, in this case, is 13.4%;

21.2 the pitch fee of each Respondent should increase by 12%, such increase to take effect from 1 March 2023 .

Application for reimbursement of the application fee

22. The Tribunal notes as follows:

22.1 the Respondents request for an extension of the time limit to submit their statement of case was granted;

22.2 the degree of inconvenience to the Applicant by having to submit a further reply was limited.

23. Having regard to the above and to the Tribunal’s decision in paragraph 21 above, of the Application, the Tribunal does not consider that it is appropriate to exercise its discretion under Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 to order the Respondents to make reimbursement of the application fee paid by the Applicant.