



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

Case Reference : **MAN/16UE/PHI/2023/0039**

Property : **76A Fell View Park Gosforth CA20
1HY**

**Applicant
Ltd** : **The Berkeley Leisure Group**

Respondents : **Ms S.Castle and Mr A.Ward**

Type of Application : **For the determination of a pitch fee
under the Mobile Homes Act 1983 –
Schedule 1 Chapter 2 paragraphs 16-
20**

Tribunal Members : **Judge J.M.Going
C.R. Snowball MRICS**

Date of Decision : **24 October 2023**

Date of these Reasons : **27 October 2023**

REASONS FOR THE DECISION

The Decision and Order

The Tribunal has determined and orders that the pitch fee for the property shall be increased to £162.57 per calendar month with effect from 1 January 2023.

Preliminary

1. By an Application (“the Application”) dated 9 March (2022, but clearly meant to be 2023) the Applicant (“Berkeley”) applied to the First Tier Tribunal Property Chamber-(Residential Property) (“the Tribunal”) for an order to be made under paragraph 16(b) of Schedule 1 of the Mobile Homes Act 1983 (“the 1983 Act”) determining the amount of new pitch fee to be paid by the Respondents (“Ms Castle and Mr Ward”) should the Tribunal consider it reasonable for the pitch fee to be changed.
2. On 17 July 2023 the Tribunal issued Directions in respect of the Application and 2 further applications for pitch fee determinations at Fell View Park (“the Park”), detailing a timetable for documents to be submitted, and confirming that it considered it appropriate for the applications to be determined on the papers, unless any of the parties requested an oral hearing. None have done so.
3. The Tribunal convened on 24 October 2023 to make its decision.

Background

4. The following matters are evident from the papers or are of public record and have not been disputed unless specifically referred to.
5. The Park is a protected site within the meaning of the 1983 Act. Berkeley is its owner and operator, and Ms Castle and Mr Ward are the owners of a park home (“the property”) within the Park stationed on the pitch. In the terms of the 1983 Act and in the context of the pitch Ms Castle and Mr Ward are referred to as the “occupier” and Berkeley as the “owner”.
6. The written statement in respect of the property as required under section 1(2) of the 1983 Act (“the written statement”) was completed between Berkeley and Ms Castle and Mr Ward on 30 September 2022 and in Clause 8 stated that “the pitch fee will be reviewed on the following date each year – 1st January”.
7. On 17 November 2022 Berkeley sent a letter and a duly completed Pitch Fee Review Form as prescribed under the Mobile Homes (Pitch Fees) (Prescribed Form) (England) Regulations SI 2013/1505 (which are together referred to as

“the Notice”) to the Respondent proposing a new pitch fee of £179.29 in place of £157 per month with effect from 1 January 2023.

8. The increase was not agreed, and Berkeley applied to the Tribunal to determine the matter.

Evidence and submissions

9. The papers presented to the Tribunal included copies of the Application, the written statement, the Notice, a statement from Mr Drew, a director of Berkeley, emails and some photographs.

10. Mr Drew in his statement confirmed that “at the time of the Notice that there were 77 occupied pitches on the Park. The Park is licenced for 85 pitches...” He referred to the calculation of the proposed new pitch fee by reference to an annual increase in the Retail Price Index (“RPI”) of 14.2%, relying on “Implied Term 20(A1) of Schedule 1 to the Mobile Homes Act 1983, as now amended, which gives rise to a presumption that the pitch fee should increase or decrease by a percentage which is no more than any percentage increase or decrease in the Retail Price Index ..” .

The Law

11. The provisions relating to the review of a pitch fee are contained in paragraphs 16 to 20 of Chapter 2 of Part 1 of Schedule 1 to the 1983 Act.

12. Paragraph 29 defines the pitch fee as: “the amount which the occupier is required by the agreement to pay to the owner for the right to station the mobile home on the pitch and for the use of the common areas of the protected site and their maintenance, but does not include amounts due in respect of gas, electricity, water and sewerage or other services, unless the agreement expressly provides that the pitch fee includes such amounts.”

13. The pitch fee can only be changed in accordance with paragraph 17, either with the agreement of the occupier, or by the Tribunal, on the application of the site owner or the occupier (Para 16). The pitch fee shall be reviewed annually as at the review date (Para 17(1)). The owner serves on the occupier a written notice setting out the proposed new pitch fee (Para 17(2)). If it is agreed, the new pitch fee is payable from the review date (Para 17(3)). If it is not agreed, the owner (or an occupier on a protected site) may make an application to the Tribunal to determine the new pitch fee (Para 17(4)). Once decided, the new pitch fee is payable from the review date (Para 17(4)(c)). When determining the amount of the new pitch fee, particular regard shall be had to any sums expended by the site owner since the last review date on certain improvements provided after consultation (Para 18(1)(a)) and any reduction in services supplied by the site owner or decrease in the condition or amenity of the site, or any adjoining land occupied or controlled by the site owner, which has not been taken into account in a previous pitch fee review (Para 18(1)(aa) &(ab)). Unless it would be unreasonable having regard to paragraph 18(1), there is 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 prices index in the previous year (Para 20(A1)).

14. The written notice proposing the new pitch fee will be of no effect if it is not in the prescribed form (Paras 17(2A) and 25A). It should be served at least 28 days before the review date (Para 17(2)) or, if late, with 28 days' notice (Para 17(7)). An application to the Tribunal may be made at any time after the end of the period of 28 days beginning with the review date but no later than three months after the review date (Para 17(5)) unless the written notice was late in which case an application may be made after the end of period of 56 days beginning with the date on which the owner serves the notice, but not later than four months after the notice. (Para 17(9)).

15. Martin Roger QC described the pitch fee in *Britaniacrest Ltd v Bamborough* [2016] UKUT 144 (LC) as "being payment for a package of rights provided by the owner to the occupier, including the right to station a mobile home on the pitch and the right to receive services".

16. The Upper Tribunal has also provided helpful advice as to how the statutory provisions should be interpreted in a number of cases including in *Wyldecrest v Kenyon* [2017] UKUT 28(LC) where it as said "Based on this review of the Tribunal's decisions in this area..... the effect of the implied terms for pitch fee review can therefore be summarised in the following propositions:

(1) The direction in paragraph 16(b) that in the absence of agreement the pitch fee may be changed only "if the appropriate judicial body ... considers it reasonable" for there to be a change is more than just a precondition; it imports a standard of reasonableness, to be applied in the context of the other statutory provisions, which should guide the tribunal when it is asked to determine the amount of a new pitch fee.

(2) In every case "particular regard" must be had to the factors in paragraph 18(1), but these are not the only factors which may influence the amount by which it is reasonable for a pitch fee to change.

(3) No weight may be given in any case to the factors identified in paragraphs 18(1A) and 19.

(4) With those mandatory considerations well in mind the starting point is then the presumption in paragraph 20(A1) of an annual increase or reduction by no more than the change in RPI. This is a strong presumption, but it is neither an entitlement nor a maximum.

(5) The effect of the presumption is that an increase (or decrease) "no more than" the change in RPI will be justified, unless one of the factors mentioned in paragraph 18(1) makes that limit unreasonable, in which case the presumption will not apply.

(6) Even if none of the factors in paragraph 18(1) applies, some other important factor may nevertheless rebut the presumption and make it reasonable that a pitch fee should increase by a greater amount than the change in RPI".

17. In *Vyse v Wyldecrest Ltd* [2017] UKUT 24 (LC) HHJ Alice Robinson noted 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

that: "...By definition, this must be a factor to which considerable weight attaches ... it is not possible to be prescriptive ... this must be a matter for the FTT in any particular case. 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."

The Tribunal's Reasons and Determination

18. The Tribunal had first to determine whether the Notice was valid.

19. The Notice was in the prescribed form and found to have been served more than 28 days before the review date. The Notice correctly calculated the change in RPI over the previous 12 months at 14.2%.

20. There was no assertion that the statutory procedures had not been properly followed, and the Tribunal found that the Application was made within the specified time limits.

21. Having been satisfied that Berkeley had complied with the necessary procedural requirements (subject to a point as to the correctness of the Notice which will be referred to in greater detail later) the Tribunal then went on to consider the Application and if it is reasonable for the pitch fee to be changed.

22. The Tribunal reviewed all the evidence and submissions from the parties.

23. In doing so, it had particular regard to the specific factors set out in paragraph 18(1), and also whether there are any other relevant matters which might be considered so weighty (whether alone or together) to displace the presumption that an inflation-based increase is reasonable.

24. The Tribunal looked at all the photographs and also gave careful thought as to the submissions that had been received from one of the other Park home owners as regards the impact of the proposed increase on those with a limited income.

25. The Tribunal did not find evidence of a deterioration in the condition of the Park or its amenity, or a reduction in services, since the last pitch review, which would justify a departure from the general rule that pitch fees increase annually in line with changes to the retail price index.

26. The Tribunal next considered the question of affordability. It, of course, appreciates how important everyone's own personal and financial circumstances are, but notes that the legislation has referred to a need to particularly focus the determination of new pitch fees on physical matters relating to the site, its amenity and the services and a presumption of a link to the RPI. There is no specific reference in the statutory provisions as to affordability, whether for the site owner or homeowners. The Tribunal is also minded that increases in the general costs of living, rapid or otherwise, apply to all, businesses as well as individuals. The Tribunal concluded that affordability was not a relevant consideration within the statutory context.

27. The Tribunal next carefully considered the question of whether it is reasonable to change the pitch fee, from that set but 3-months before the review date, by reference to the full change in the RPI over a 12-months period stretching back some 9-months before the inception of the written statement.

28. Paragraph 17(1) states that “the pitch fee shall be reviewed annually as at the review date”, which the Tribunal understands to mean “once a year, every year”.

29. After the first review date, 12-months must elapse between review dates. Nevertheless, the Tribunal finds that the wording of paragraph 17(1) does not preclude a review taking place less than 12-months from the start date of a written statement, provided that is on the date specified in it. The Tribunal found therefore that Berkeley was entitled to ask for the pitch fee to be changed with effect from 1 January 2023.

30. Having concluded that some change was both allowable and was reasonable, particularly in inflationary times, the Tribunal had to then consider the question of the amount of the proposed change.

31. In so doing it had careful regard to the evidence that had been adduced, noting particularly: -

- the written statement was made direct between the parties, rather than one inherited after assignments from predecessors in title,
- it started on 30 September 2022 with the parties then having agreed the monthly pitch fee of £157,
- for reasons which were not explained, Berkeley stated that it did not have a complete copy,
- Berkeley’s references in the Notice and the Application to the date of the *last* review being on 1 January 2022 are at odds with the written statement, and are not correct, and
- Ms Castle and Mr Ward have not agreed the increase proposed in the Notice.

32. The Tribunal also noted that paragraph 20(A1) refers to a presumption that the pitch fee should increase or decrease by percentage which is *no more* than the annual change in the RPI. It is implicit therefore that the Tribunal has a discretion to determine a figure less than the full amount of the annual change. The Tribunal also noted that *Wyldecrest v Kenyon* confirmed that the presumption should not be construed as an entitlement.

33. Having carefully considered all of the issues, individually and then in the round, the Tribunal concluded, in the particular circumstances of this case, that whilst it is reasonable for the pitch fee to change with effect from 1 January 2023, the increase from the figure agreed 3-months beforehand should be limited to one quarter of the annual increase in the RPI (i.e. 3.55%).

34. The Tribunal has determined therefore that the pitch fee be changed and increased to £162.57 calendar month with effect from 1 January 2023.

