



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

Case Reference : **MAN/16UE/PHI/2023/0038**

Property : **75A Fell View Park Gosforth CA20 1HY**

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

Respondents : **Mr and Mrs T.Greggain**

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 Orders

The Tribunal has determined and orders that the pitch fee for the property shall be increased to £170.72 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 a new pitch fee to be paid by the Respondents (“Mr and Mrs Greggain”) 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 Mr and Mrs Greggain 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 Mr and Mrs Greggain 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 Mr and Mrs Greggain’s predecessors in title on 1 December 2017 and in Clause 8 stated that “the pitch fee will be reviewed on the following date each year – 1st January”.

7. The property was subsequently assigned to Mr and Mrs Greggain on 23 February 2021.

8. 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 Mr and Mrs Greggain proposing a new pitch fee in of £170.72 in place of £149.49 per month with effect from 1 January 2023.

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

Evidence and submissions

10. 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.

11. 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 ..” .

12. Mr and Mrs Greggain submitted various photographs.

The Law

13. 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.

14. 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.”

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 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)).

17. 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)).

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 be valid and to have been served more than 28 days before the review date. The Notice correctly calculated the change in RPI over the specified period 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 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 then 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. Having carefully considered all of the issues, individually and then in the round, the Tribunal concluded both that it is reasonable for the pitch fee to change, and that there are no relevant matters, within the context of the statutory scheme, of sufficient weight (alone or together) to outweigh the presumption that an inflation-based increase is reasonable.

28. As the Upper Tribunal in *Britaniacrest* confirmed, whilst the 12 months RPI adjustment presumption is not the beginning and end of a determination it is “a very strong steer that a change in the RPI in the previous 12 months will make it reasonable for the pitch fee to be changed by that amount”.

29. The Tribunal concluded therefore that the proposal to increase the pitch fees by 14.2% in line with the RPI is reasonable, and that the pitch fee should be increased to £170.72 per calendar month with effect from 1 January 2023.