



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

Case Reference	: MAN/ooFF/PHI/2023/00128-0130,0132-0135 and 0137-0146
Property	: Various pitches at Mount Pleasant Park, Acaster Malbis, York
Applicant	: FLANNIGAN ESTATES LIMITED
Represented by	: Mr Payne, LSL Solicitors
Respondents	: RESIDENTS AS SET OUT IN THE SCHEDULE
Type of Application	: Determination of new pitch fee: Mobile Homes Act 1983 Schedule 1, chapter 2, paragraph 16
Tribunal	: Judge Caroline Hunter Tribunal Member Jenny Jacobs MRICS
Date of Decision	: 20 December 2023

DECISION

Summary Decision

1. The Tribunal finds that the notices were validly served on all the Respondents.
2. We conclude that it is appropriate to make a reduction in the rise of the pitch fees for the Respondents. The rise to the pitch fees is 12% not the RPI rate of 14.2%. The pitch fee payable by each of the Respondents for the year ending 1 January 2023 is as set out in the schedule to this decision.

The Application

3. On or about 30 November 2022 the Applicant served a Pitch Fee Review Form on the occupiers of the pitches on the Applicant's protected site known as Mount Pleasant Park, Acaster Malbis (the Park). The pitches are all subject to the Mobile Homes Act 1983 (the 1983 Act). The Pitch Fee Review Form advised the occupiers that with effect from 1 January 2023 their pitch fees were to be increased by 14.2%, being the increase in the Retail Prices Index (RPI) over the previous 12 months.
4. The Respondents have objected to the new pitch fees. The Applicants seek a determination as to the correct pitch fee to be paid by each of the Respondents. At the time of the Directions (6 June, 2023) there were 18 Respondents to the matter. However, by the time of the hearing a number of the cases had been settled. In the case of one application, it was settled between the hearing and decision. Accordingly, the Tribunal has only considered the live matters for the Respondents listed in the Schedule below.
5. Although the Tribunal in the Directions considered it was appropriate for the matter to be determined by way of a paper determination and without an inspection, one of the Respondents sought a hearing. In the light of this, both an inspection and a hearing were arranged.
6. The hearing was held on 17 November 2023 at Leeds Employment Tribunal. The following Respondents attended and spoke:
 - a. Mr Wright
 - b. Mr Atherton
 - c. Mr and Mrs Cubberly
 - d. Mr Turner
 - e. Mr and Mrs Ward
 - f. Mr O'Hare and Mrs Smith
 - g. Mr Bennett

Mr Loney, who did not attend, did send further written representations via one of the Respondents who did attend. In the Tribunal's view these did not add to his previous statement and evidence.

7. The Applicants were represented by Mr Payne of LSL Solicitors. The Tribunal also had the benefit of written representations with supporting documents supplied by the parties.
8. The Tribunal notes that some (but not all) of the Respondents also objected to the new pitch fees in 2022. That application was only decided on 24 February 2023 (MAN/ooFF/PHI/2022/0045,0046,0048, 0050,0051,0052,0053, 0054, 0055) ('the 2022 fees decision'). The Tribunal decided that the 6% RPI increase should be applied to all but one joint respondent, Mr and Mrs Anderson. Some of the Respondents sought to appeal the decision but the application to appeal was dismissed on 28 June, 2023.
9. We also note that many of the same issues were decided at that Tribunal hearing. Although that decision is not binding on this Tribunal, we take the view that we should not depart from it without very good reasons, particularly as the application to appeal was dismissed.
10. The pitch fees on the Park were also subject to a decision of the Tribunal in 2015 (MAN/ooFF/PHI/2015/0009 – 16, 19, 21). In that decision the Tribunal found that the state of the roads amounted to a continuing breach of the Applicant's obligations and refused to increase the pitch fees.

The Law

11. Under s.2 of the 1983 Act any agreement to the Act has the implied terms set out in Schedule 1 of the Act. Paragraphs 16 to 20 of the implied terms govern pitch fees.
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. Martin Rodger KC 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".
14. 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)).

15. 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)).
16. The amount of the pitch fee is covered in paras. 18 and 20. So far as relevant they read:
 - 18(1) 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;.....
 - (aa) any deterioration in the condition, and any decrease in the amenity of the site or any adjoining land since [26th May 2013] (insofar as regard has not previously been had to that deterioration or decrease for the purposes of this sub-paragraph);.....
 - 20(A1) Unless this 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 RPI.
17. In *Vyse v Wyldecrest Parks (Management) Ltd* [2017] UKUT 24 (LC) the court was concerned with an appeal regarding the determination of pitch fees and set out the considerations that a tribunal will take into account when determining the fee.
18. Paragraph 48 of the judgment stipulates that the starting point is 'there is a presumption of change in line with RPI "unless this would be unreasonable..."' having particular regard to the factors as set out in paragraph 18(1).
19. HHJ Robinson then continues at paragraph 50 and states that, in relation to a "weighty factor" i.e. not one of the factors to have particular regard to ...the presumption arises and it is necessary to consider whether any 'other factor' displaces it. By definition, *this must be a factor to which considerable*

weight attaches. If it were a consideration of equal weight to RPI, then, applying the presumption, the scales would tip the balance in favour of RPI. Of course, it is not possible to be prescriptive as to precisely how much weight must be attached to an ‘other factor’ before it outweighs the presumption in favour of RPI. 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. [Emphasis added.]

20. The recent large increases to RPI have not led to any Upper Tribunal decisions than we are aware of. However, Mr Payne did direct the Tribunal to a First-Tier decision: *Sines Park (SE) Limited v Dowell and others* 13 October 2023 CAM/22UH/PHI/2023/0022/0020/0025/0024/0023 and CAM/22UH/PHI/2023/0002/0004/0021/53/0001. In that case the Respondents objected to a raise of 12.6% that was the RPI in September 2022.
21. The Tribunal in that case decided that a raise of 10% was appropriate. In reaching that decision the Tribunal stated:
 51. The RPI for September 2022 was unusually high. This high level was to a significant degree due to the large increase in the price of fuel as a consequence of the war in Ukraine. In the past Tribunals have referred to the modest increases in pitch fees due to being tied to the annual increase in RPI. Clearly 12.6% cannot be described as a modest increase.
 52. The Tribunal accepts that the various incidents relating to street lights not working, pitches used for part completed homes for long periods and storage of associated building materials and mud on the road are in themselves transitory. However, taken together they produce a picture of a site regularly in flux. This must have an adverse effect on the general amenity of the park.
 53. Moreover, the impact of the block paving has affected the efficiency of the drains since the paving has increased the area of non permeable land within the park. Whilst it is accepted that this has been going on for a number of years, the extent of hard surfacing eventually results in a tipping point whereby the existing soakaway drainage is no longer sufficient to cope with heavy rainfall which can no longer be soaked away in the drains plus the original small gardens. We accepted Miss Smith’s evidence that her pitch had been flooded. She has lived on the park since 2013: she was able to give evidence that this represents a change in the amenity which is permanent without improvements to the drainage.
 54. There was no evidence that this gradual deterioration in the amenity of the park had been reflected in past pitch fees since the evidence before the tribunal was that this was the first time any of the residents had challenged the increase.

Inspection

22. The Tribunal inspected Mount Pleasant Park on 1 November 2023 in the presence of representative members of the Respondents, and Mr Flannigan's son, Myles. There had been rain during the night prior to the inspection. The state of the Park had not changed in any major way from the inspection undertaken for the 2022 fees decision.

23. We noted the state of the road surfaces and the boundaries to the park. We particularly inspected the fence and hedge at the rear to Mr Turner's pitch. We were taken to the same areas around the Community Centre and the large workshop which still had rubbish and material stored.

24. In the 2022 decision that Tribunal noted (para. 8):

Where pitches have become vacant across the park the Applicant has been upgrading the infrastructure to bring gas and other services underground prior to introducing modern park homes. On Lilac Avenue this improvement programme has involved the removal of an area of common land nearly opposite Mr and Mrs Bennett's park home at 10 Lilac Avenue.

25. What was also notable from the Inspection was the way in which the number of pitches on the Park is slowly being increased. This was not just on Lilac Avenue but also elsewhere on the park.

The issues in dispute

The notices

26. Both Mr Turner and Mr Wright both complained the notices had not arrived before date required in the 1983 Act. In response, Mr Payne stated that the usual service rules applied. The notices had been posted in time and the fact they arrived late was not relevant.

The correct rent

27. Mr Wright, Mr O'Hare & Ms Smith and Mr and Mrs Ward complained that the notices were mistaken as to their current pitch fee. In fact, they had not agreed to earlier rises and therefore the rise should be based on a different fee.

28. Mr Payne had no instructions on this matter, but he was able to take instructions in a break. He acknowledged that these Respondents had not agreed to earlier rises. The rise in the pitch fee must be based on the actual pitch fees currently paid. Our decision reflects this and is based on the lower fees.

Matters in the 2022 Fees Decision

29. The Respondents in their statements and representations at the hearing returned to issues that had been raised in the 2022 fees decision. In each case Mr Payne's

response was to point to that decision and to submit that there has been no change in the amenity or any deterioration of the Park since that decision.

30. Mr Payne pointed to the evidence that the Applicant had provided that the site was well-maintained and on-going expenditure had been spent to improve it.
31. In the 2022 fees decision the Tribunal had decided that for two joint respondents, Mr and Mrs Anderson, there was a 'weighty' matter that displaced the presumption of RPI. This was because of an agreement noted when the Andersons bought their home in 2011, that at some unspecified point in the future the shed next to their pitch would be removed – or perhaps reduced in size – so as to extend their pitch to allow for a 3 metre entrance way that could accommodate a drive. A note to this effect was added to the Andersons' Written Statement and the pitch fee was agreed at £120 per month (see para. 28 of the 2022 fees decision). This, Mr Payne submitted, was very different because it went to the pitch fee itself. Although the current Respondents complained of broken promises (see below) these did not affect the pitch fee.
32. *The road surfaces.* Most of the Respondents complained of the state of the roads. This was a major issue in the 2022 case and had been an on-going issue for many years. Promises had been made as far back as 2010 that some roads would be re-surfaced. Lilac Avenue had been partially re-surfaced in 2021 but not completely. This was because of a utility trench. The Respondents' case was that the Applicant had promised to complete the work as soon as the trench had settled, and it had not been done.
33. *Loss of grassed area in Lilac Drive.* The Respondents from Lilac Drive complained of the loss of amenity from the siting a further pitch on what had been a grassed area. In the 2022 Decision said the Tribunal found (para. 21):

The Tribunal finds that the siting of the new park homes in the area is not yet complete and did not materially prejudice the Bennetts at 10 Lilac Avenue during 2021. Throughout the park the residents' homes are and always have been sited close to each other. The Applicant is entitled to make the best use of the space available, and was under no obligation to maintain the unused area on Lilac Avenue as an open space or communal facility, if in fact it was ever used as such. The addition of these new park homes is not a ground for displacing the presumption that an RPI increase in pitch fee will apply.

As the Inspection showed, the new home had been completed in 2023.
34. *Rubbish and maintenance.* Mr and Mrs Loney complained of rubbish and material kept outside of the maintenance shed and the community centre. In the 2022 fees decision the Tribunal noted in relation to the community centre (para. 14):

Adjacent to the community centre is a garden and storage area, which the Applicant uses to store materials and parts. The Respondents admitted that this area had been used for storage for a number of years. The Tribunal finds that this use - including any temporary storage of vegetation - is not a deterioration capable of affecting the pitch fees payable by the Respondents.

35. In the 2022 fees decision, the Tribunal noted (para 21): 'Mr Bennett also told the Tribunal that the Applicant's old-fashioned streetlamp which is situated in his garden was in poor condition.' However, it was not such as to displace the RPI presumption. In the 2015 decision this lamppost was also noted to be in disrepair (para 29). Yet it appears to be in the same state of disrepair in 2023.

36. *The Fencing.* The proper boundary of the Park and hence the responsibility for the fencing for plots facing the boundary was a major issue in the 2022 fees decision. Mr and Mrs Loney in particular sought to re-open this issue. The Tribunal decided that the residents were responsible for the boundary fences. At para 27 is stated:

The boundary of the Applicant's property is not the same as the boundary of Mount Pleasant Park, which is situated within that property. The Applicant is responsible for its property boundary (depending on arrangements with adjoining owners) but the residents are responsible for the boundaries to their pitches. The Applicant's refusal to maintain the pitch boundaries at The Willows is therefore not a breach of its obligations under the Implied Terms and does not affect the pitch fee payable by the Respondents. Any instructions given by the Applicant to residents regarding the fencing do not alter the situation, and if necessary an explanation and clarification can be sought by the Residents Association.

37. Mr Turner's plot does not face the external boundary of the main road, but he raised a particular issue on his fencing. His submission was that his back boundary was a former beech hedge that he had agreed the Applicant could remove. The fence behind this was not the boundary for his plot but the boundary to the Park. Behind the fence was "Westfield Park" formerly a holiday park but latterly the Applicant has changed it to a residential park. A car park now backs on to Mr Turner's plot. Mr Turner stated that maintenance staff from the Applicants had repaired the fencing but now the Applicant was refusing to undertake any further repair to it and the fences needed replacing.

38. Mr Payne has no particular submissions on this boundary. He did remark that the 'good' side to the fence faced Mr Turner's plot.

39. *Staffing.* The staffing of the office and maintenance were raised in the statements of a number of the Respondents. The Applicant stated that it was not clear what

services had been reduced. In the 2022 fees decision the Tribunal found (para. 24):

As the Tribunal has found that maintenance of the park is currently of a reasonably high standard, the staffing levels do not affect the pitch fees. The Tribunal was told and accepts that the residents have a telephone number to use to report any problems on the site.

Financial Pressure

40. Mr Atherton, in particular, made a submission that the current very high rate of RPI and the substantially higher bills the Respondents are facing should be recognised. The Applicants should have been open to the Respondents' requests for a lower amount.
41. The Applicants' submission was that the increase was needed to deal with the relevant period. Whilst the Respondents had the right to request a lower increase, the decision rests with the site owner.

The Tribunal's findings and reasons

42. The Tribunal finds that the notices were validly served on all the Respondents. There is no evidence that they were not posted by the proper time. As we are satisfied that the Applicant has complied with the necessary procedural requirements, we move to the substantive issues raised by the Respondents as to the pitch fees.
43. We do not consider we have sufficient evidence to make a ruling on the legal position on the back boundary fence for Mr Turner's plot. Nor do we need to make a definitive finding. The state of the fence is not going to make a difference to our overall decision on the pitch fee.
44. Turning to the other complaints, Mr Payne focussed on the fact that there had been no deterioration since the hearing and suggested that dealt with all the issues raised. We are not convinced by his argument. As *Sines Park (SE) Limited v Dowell and others* demonstrates, a gradual deterioration in the amenity of the park which has not been reflected in past pitch fees may become relevant to the Tribunal's decision.
45. Although the Respondents did not put it quite in this way, it is clear the affordability of the pitch cannot on its own be a reason to displace the statutory presumption. Similarly, an annual increase in the RPI, however unusually large, cannot on its own displace it. However, in our view we can take into account that the rise is 14.2% in considering the state of the Park and whether there has been any deterioration and loss of amenity.

46. Mr Payne submitted that any new pitches were not relevant to the question of the pitch fees. We do not agree. At some point as pitches are added to a site there is inevitably an intensification of use of the Park (e.g. more cars, greater use of community areas) and a loss of amenity for the Respondents.

47. Although some works have been done to improve the road surfaces, it has not been completed. Clearly this is a long-standing issue. The same is true for the rubbish and Mr Bennett's lamppost.

48. Taking all these issues together, we conclude that it is appropriate to make a reduction in the rise of pitch fees for the Respondents. In *Sines Park (SE) Limited v Dowell and others* the Tribunal reduced the rise in the fee from 12.6% to 10%. Mr Payne submitted that the state of the site in *Sines Park (SE) Limited* was much worse than in the case before us. Generally, we agree with that. Accordingly, our decision is that the rise is limited to 12.00% rather than the RPI of 14.2%

Costs

49. The Applicant seeks an order that each Respondent reimburse the application fee of £20 it had to pay in their particular case.

50. Not all the Respondents had appeared at the hearing and none had provided written representations on the issue of costs. Accordingly, Mr Payne suggested that the matter should be adjourned for written representations. In the light of our decision we take the view that the Respondents should not have to pay the application fee.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands 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.
3. If the person wishing to appeal does not comply with the 28 day time limit, that 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.

SCHEDULE

Respondent	Address at Mount Pleasant Park, Acaster Malbis	Case number	Monthly or weekly pitch fee in 2022	Monthly or weekly pitch fee from 1 January 2023
Mrs & Mrs A. Betts	8 Cherry Tree Drive	MAN/00FF/PHI/2023/00129	£193.49	£216.71
Mr & Mrs R. Atherton	9 Cherry Tree Drive	MAN/00FF/PHI/2023/00130	£207.61	£232.52
Mr & Mrs J. Bennett	10 Lilac Avenue	MAN/00FF/PHI/2023/00132	£154.23	£172.74
Mr & Mrs M. Cubberley	12 Lilac Avenue	MAN/00FF/PHI/2023/00133	£175.59	£196.66
Mr & Mrs T Ward	5 The Willows	MAN/00FF/PHI/2023/00138	£183.18 (Lower amount)	£205.16
Mr and Mrs G C Loney	31 The Willows	MAN/00FF/PHI/2023/00141	£178.04	£199.40
Mr N Lane	34 The Willows	MAN/00FF/PHI/2023/00142	£191.74	£214.75
Mr O'Hara & Ms Smith	2 The Vines	MAN/00FF/PHI/2023/00144	£155.62 (Lower amount)	£174.29
Mr Turner	9 Lilac Avenue	MAN/00FF/PHI/2023/00145	£192.59	£215.70
Mr B Wright	1 Oak Avenue	MAN/00FF/PHI/2023/00146	£33.76 (Lower amount)	£ 37.81