



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

Case Reference : **MAN/00EQ/PHI/2023/0092 & 0093**

Properties : **Nos. 3 & 11, Croft Park, Newton Hall Lane, Mobberley WA16 7LN**

Applicant : **Flannigan Estates Limited**

Represented by : **LSL Solicitors**

Respondents : **Mr & Mrs A Preston – No.3**
Mr & Mrs R Murns – No. 11

Type of Application : **Review of Pitch Fees: Mobile Homes Act 1983 (as amended)**

Tribunal Members : **Tribunal Judge C Wood
Tribunal Member S Latham**

Date of Decision : **26 February 2024**

DECISION

DECISION

1. The Tribunal orders in respect of each of the Properties that the increase in the pitch fee for each of the Properties is limited to 9.2% and that the pitch fee of £217.05 is payable with effect from 1 January 2023.

BACKGROUND

2. By two applications each dated 24 March 2023, (“the Applications”), the Applicant sought determination of the pitch fee payable in respect of each of the Properties, being Nos. 3 and 11, Croft Park, Newton Hall Lane, Mobberley WA16 7LN. Croft Park is referred to in this Decision as “the Park”.
4. Pitch fee review forms dated 30 November 2022, (“the Forms”), were served on each of the Respondents proposing an increase in the pitch fee to £227 with effect from 1 January 2023.
5. Each proposed increase was stated to be in accordance with the increase in the Retail Price Index, (“RPI”), as at the relevant date which is, in each case, the RPI figure of 14.2% published in October 2022.
6. Directions dated 5 June 2023, (“the Directions”), were issued, pursuant to which written submissions were received from the Applicant and from one of the Respondents, Mr & Mrs Preston, (No.3). No written submissions were received from Mr & Mrs Murns, (No.11).
7. A hearing was scheduled to take place on Monday 22 January 2024 at 13:00, following an inspection at the Park at 10:00 on the same date. Due to unavoidable issues affecting one of the Tribunal members, the inspection took place at 11:30.

INSPECTION

8. The inspection was attended by or on behalf of the parties as follows:

Applicant: Mr Miles Flannigan of Flannigan Estates Limited

Respondents: Mr & Mrs Preston – No. 3

Mr & Mrs Murns – No. 11

Also in attendance were a number of other residents of the Park, as follows:

Mr Brian Sprout – No. 2

Mr Colin Price – No. 4

Mr Sid & Mrs Carol Blair – No. 17

9. The following matters were pointed out to the Tribunal by the Respondents at the inspection:
 - 9.1 there is no regular cleaning of the streetlights;
 - 9.2 the glass “shade” on the streetlight opposite No. 11 has not been replaced/reinstated since it came off on 17 December 2023;
 - 9.3 there is no regular cleaning of the entrance gates;
 - 9.4 there is no regular maintenance of kerbstones;
 - 9.5 there is no maintenance of the public footpath where it crosses the Park;
 - 9.6 since 2021, the gates have only been closed overnight where prior to this they were kept closed 24 hours a day. There is also no CCTV, despite a sign stating otherwise;
 - 9.7 there had been an issue with the road drains which were blocked but this was resolved in September 2023 when they were cleaned out;
 - 9.8 an area which had been used for years as a recreation area by the residents has now been built upon with the installation of 6 new units with works from in or about March 2023;
 - 9.9 the pond has been stagnant for some time and is now fenced in so cannot be accessed by residents;
 - 9.10 it appears that no new road drains have been installed in the area of new development and it is unclear to where water will now drain;
 - 9.11 grit is supplied to the Park but the roads are not gritted by the Applicant even though many of the residents are elderly.

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.
11. Paragraph 20(A1) of Schedule 1, Chapter 2 to the 1983 Act, (“paragraph 20A1”),
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. The Upper Tribunal in *Britanniacrest Ltd v Bamborough* [2016] UKUT 144 made it clear (at paragraph 22) that the RPI presumption in paragraph 20A1 is “a very strong steer” but is “not the beginning and end of the determination” because of paragraph 18 which identifies matters to which the Tribunal is required to take into account or to ignore.
14. Further in *Vyse v Wyldecrest Limited* [2017] UKUT 24 (LC) at paragraph 45, the Upper Tribunal stated that “the factors which may displace the presumption are not limited to those set out in paragraph 18(1) but may include other factors” describing 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”.

15. In Wickland (Holdings) Limited v Esterhuyse [2023] UT (LC) [147] at paragraph 23, the Upper Tribunal stated that the deterioration in subparagraph 18(1)(aa) refers to deterioration since the provision came into force (in 2014) and which has not previously been taken into account in a pitch fee review.
16. 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 Statement of Case

17. In accordance with the Directions, the Applicant submitted its Statement of Case which set out the legal framework and stated as follows:
 - 17.1 there are no circumstances on the Park which could reasonably lead to a determination that the pitch fee should be any lower than the relevant RPI;
 - 17.2 there has been no loss of amenity at the Park; and,
 - 17.3 a programme of maintenance has been carried out.

Respondents' Statement of Case

18. Mr & Mrs Preston submitted a statement of case dated 11 July 2023.
19. No written statement of case was submitted by Mr & Mrs Murns.
20. Mr & Mrs Preston's statement of case referenced the following issues:
 - 20.1 the current cost of living/energy crisis which has impacted the residents like other people;
 - 20.2 there have been no improvements at the Park;
 - 20.3 the failures of maintenance in respect of the following:
 - (1) street lighting: the lights are not regularly cleaned;
 - (2) security gates: there are repeated occurrences of the gates not working; the gates are now only closed overnight where previously they were kept closed; the gates are not regularly cleaned;

- (3) the road drains are not regularly maintained which has led to repeated blockages;
- (4) the roads are not gritted in the winter; and,
- (5) the pond has been stagnant for some time.

20.4 the installation of 6 new units (for which inadequate notice was given) has reduced the amenity at the Park by removing the grassed area which was used as a recreation area by the residents. It also means that Mr & Mrs Preston's unit is now overlooked.

Applicant's Statement in Reply

21. In its Reply, the Applicant makes the following points:

- 21.1 some of the issues raised are long-standing matters which should not be taken into account as they fall outside of the current pitch fee review period;
- 21.2 others relate to matters which residents would like to see happen at the Park; and,
- 21.3 many of the issues raised have since been resolved.
- 21.4 In particular:
 - (1) there has been no change in the lighting provision at the Park;
 - (2) the cleaning of lights and the gates is part of the maintenance programme;
 - (3) the change to the operation of the security gates was effected at the request of and for the convenience of residents and their visitors during the day;
 - (4) there has been no deterioration in the drainage system;
 - (5) grit is provided to the Park but there is no obligation on the Applicant to grit the roads;
 - (6) the issue of communications is not relevant to an increase in the pitch fee;
 - (7) there is no obligation on the Applicant to notify and/or consult with the residents regarding the development at the Park and no evidence was produced of any promises given to residents regarding future development; if there was insufficient recreational space at the Park, it is

reasonable to assume that this would be a matter of concern for the local authority but no issue has been raised by them;

(8) the pond is in an appropriate condition for a natural wildlife feature but the points raised will be evaluated and consideration given as to whether any future work is needed/desirable; and,

(9) the Park is generally well-maintained.

22. In conclusion, the Applicant believes that the issues raised by the Respondents are minor matters and not such as to displace the statutory presumption in paragraph 20(A1) of an RPI increase in the pitch fees of the Properties.

The Hearing

23. The Applicant was represented at the hearing by Mr Payne of LSL Solicitors.

24. Mr & Mrs Preston, (No. 3) and Mrs Murns, (No. 11) attended the hearing.

25. The parties' oral submissions at the hearing are summarised as follows:

Applicant's Initial Oral Submissions

26. The Applicant's oral submissions referenced the following:

26.1 the Applicant's approach to the failure by Mr & Mrs Murns to comply with Directions/submit a Statement of Case;

26.2 that an increase in the pitch fee in accordance with RPI is appropriate in the absence of evidence of matters of sufficient significance to displace the statutory presumption in paragraph 20(A1).

Respondents' Initial Oral Submissions

27. Mr & Mrs Preston and Mrs Murns confirmed that the issues raised are the same for both of them as set out in Mr & Mrs Preston's Statement of Case.

28. The Respondents made the following submissions:

28.1 they challenged the Applicant's assertion that only a very few residents were refusing to pay the increased pitch fees;

28.2 they insisted that they were not refusing to pay any increase but, in the context of the cost-of-living crisis where many of the residents were pensioners living on fixed incomes, it had been hoped that they would be

able to come to an agreement on an acceptable increase with the Applicant;

- 28.3 the loss of the recreation ground was a loss of amenity that was sufficient to override the statutory presumption of an RPI increase;
- 28.4 they acknowledged that a majority of the residents may have agreed to the change in the operation of the gates but Mr & Mrs Preston remained of the view that they should be closed at all times not least because they were charged a higher fee than that paid by the residents of the site, (High Croft), to the front of the Park on the premise that the Park was a more secure site;
- 28.5 the streetlights and the gates have not been cleaned for at least 2 years. Reference was made to the minutes of a 2014 residents' meeting where issues regarding cleaning of street lights and gates were raised demonstrating that this is a long-standing failure to maintain by the Applicant.

29. Mr & Mrs Preston stated as follows:

- 29.1 when they bought their property in 2008, Mr Flannigan promised them orally that the recreation area would not be developed and they had relied on this; they acknowledge that it would have been better to have insisted that this was documented in their agreement or otherwise. They consider that loss of their view over this area will affect the value of their property; and,
- 29.2 the drains were blocked at the date of the Application but remedial works were carried out in September 2023.

30. Mrs Murns stated as follows:

- 30.1 it had taken the Applicant from April – December to fix the light outside No. 3 (which was a significant issue where many of the residents are elderly), and that the broken “shade” opposite her property is still unrepairs although it was broken on 17 December 2023;
- 30.2 the public footpath which runs close to her property is not maintained as promised by Mr Flannigan when they moved in;
- 30.3 a promised fountain in the pond and seating around it had not been provided/maintained and now, as a consequence of the development of the area, it no longer presents as an amenity in the way it had been; it

will still be necessary to maintain it to prevent issues regarding smell/stagnation;

30.4 the lack of road gritting is an issue for many of the older residents but it is acknowledged that this has not been offered as a service to residents.

Applicant's Oral Submissions in Response

31. Mr Payne stated as follows:

31.1 he submitted that there is no need to make submissions regarding the drains as the issue has been resolved or in respect of the pond having regard to the Respondents' submissions in this respect;

31.2 there is no maintenance schedule/tick sheet which can be produced to the Tribunal as maintenance is undertaken by contractors on an "informal basis";

31.3 Mr Preston's claim that the streetlights/gates have not been cleaned for 2 years is challenged but such matters are, in any event, minor and could be remedied, in the case of cleaning, in a matter of hours. They do not constitute matters of sufficient weight to displace the statutory presumption of an RPI increase in paragraph 20(A1);

31.4 he understood that the Tribunal had seen a well-maintained site at their inspection;

31.5 he acknowledged that no site plan had been included in the Applicant's bundle or been made available subsequently at the inspection/hearing; and,

31.6 in response to a question from the Tribunal, he confirmed that the maintenance contractors had cut the grass on the former recreation area and that, as a consequence of the development of this area, less maintenance is now required at the Park.

REASONS

The Forms

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

Has the paragraph 20 (A1) presumption been rebutted?

Improvements – paragraph 18(1)(a)

33. Although the Applicant refers in the Applications to improvements having been made to the Park, no argument was made by the Applicant for an above RPI increase in the pitch fee by reason of any such improvements.

Deterioration in the condition of the Park/reduction in services – paragraphs 18(1)(aa), (ab)and/or other factors

34. In making its determination, the Tribunal has limited its consideration to the issues listed in paragraph 20 of this Decision as they apply to both of the Respondents.

Matters outside the Tribunal's consideration

35. The Tribunal is satisfied that the following matters raised by the Respondents are not relevant to its determination of the pitch fee increase or do not constitute factors of sufficient weight to be taken into account by it in its determination whether the statutory presumption in paragraph 20(A1) has been displaced:
 - 35.1 the personal financial circumstances of residents or the number of residents who are refusing to pay the increased pitch fee;
 - 35.2 the operation of the security gates: the Respondents appeared to acknowledge that there was at least a reasonable likelihood that the changes in the operation of the gates reflected the wishes of a number of residents and/or had been changed to accommodate the needs of visitors (and, in particular, emergency vehicles) to the Park;
 - 35.3 road gritting; there was no evidence before the Tribunal that road gritting had ever been provided as a service to the Park's residents; and,
 - 35.4 complaints regarding the inadequacy of notice of development at the Park.

Failures of maintenance/repairs

36. The Tribunal is satisfied that:
 - 36.1 failures of maintenance/repair are factors which could constitute additional factors to be taken into account by the Tribunal in its

determination of whether the statutory presumption of an increase in accordance with RPI is reasonable;

36.2 in this case, the matters in issue eg cleaning of the lights/gates and the repair to one of the streetlights are of insufficient weight to displace the presumption.

Decrease in the amenity of the Park within paragraph 18(1)(aa):

37. As findings of fact, the Tribunal accepts:

37.1 the Respondents' evidence that the area of open ground which has been recently developed at the Park was previously used for recreational purposes by the residents;

37.2 the removal of the seating around the pond and it being fenced in has rendered it inaccessible for use by the residents; and,

37.3 this has decreased the amenity of the Park or of adjoining land owned or controlled by the Applicant within paragraph 18(1)(aa).

37.4 In reaching its determination in paragraph 37.3 above, the Tribunal notes as follows:

- (1) the Applicant provided no evidence to contradict the Respondents' submissions regarding the use of the land by residents as an amenity area including, without limitation, a site plan;
- (2) the establishment by the Applicant of the pond as a feature within this area of land appears to suggest that they were, at least, accepting of the residents' regard and use of this area as an amenity area for the benefit of residents;
- (3) the absence or otherwise of any legal right on the part of the Respondents to prevent the development of this area of open land, (upon which the Tribunal makes no comment/determination), does not detract from the past usage of the land as an amenity area by residents;
- (4) the Applicant's evidence that the development of this area has resulted in an inevitable reduction in the services to the Park as there is no longer any need to mow this area with a consequential reduction in the cost of the provision of those services.

Decision

38. For the reasons set out in paragraph 37, the Tribunal determines that, by reason of a decrease in the amenity of the Park within paragraph

18(1)(aa), namely, the loss of the use of the open area used by residents for communal recreational activities and of access to the pond feature, it is not reasonable for the pitch fee for each of the Properties to be increased by RPI.

39. The Tribunal recognises the almost inevitably arbitrary element in substituting an alternative rate of increase but considers that a reduction of 5% to 9.2% reflects the permanent loss of amenity at the Park.
40. The Tribunal therefore determines that a pitch fee of £217.05 is payable with effect from 1 January 2023.