



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

Case Reference : **MAN/00EQ/PHI/2023/0122**

Property : **10, Newlands, Eccups Lane, Morley
Green, Wilmslow SK9 5PA**

Applicant : **Flannigan Estates Limited**

Representative : **LSL Solicitors**

Respondent : **Mr & Mrs M Wrigglesworth**

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

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

Date of Decision : **8 January 2024**

DECISION

DECISION

1. The Tribunal orders as follows:
 - 1.1 that it is reasonable for the pitch fee to be increased in accordance with the Retail Price Index as at the relevant date;
 - 1.2 the amount of the new pitch fee is £137.94 with effect from 1 January 2023.
2. In accordance with section 231A(4) of the Housing Act 2004, the Tribunal directs that, within 28 days of the date of issue of this Order, the Applicant shall install, at its own cost, the additional pipe intended to improve the efficacy and/or adequacy of the existing drainage system.

BACKGROUND

3. By an application dated 24 March 2023, (“the Application”), the Applicant sought determination of the pitch fees payable in respect of the Property.
4. A pitch fee review form dated 30 November 2022, (“the Pitch Fee Review Form”), was served on the Respondent proposing a pitch fee of £137.94 with effect from 1 January 2023.
5. The proposed increase was in accordance with the increase in the Retail Price Index, (“RPI”), as at October 2022, of 14.2%.
6. Directions dated 14 June 2023 were issued, pursuant to which written submissions were received from both parties.
7. The Directions stated that the Tribunal considered that the matter was appropriate for determination as a paper determination in the absence of a request from either of the parties for a hearing. No request was received from either of the parties and the matter was scheduled for determination on 31 October 2023.
8. The Tribunal did not consider it necessary to make an inspection of the Property.

9. The Tribunal noted the details of the inspection of the Site carried out by a differently constituted tribunal on 31 January 2023, as set out in the decision dated 31 January 2023 (MAN/00EQ/PHI/2022/0059 – 0060, 0064 – 0065, 0067 – 0069, 0071 – 0078 & 0080 – 0083).

THE PITCH FEE AGREEMENT

10. A copy of the pitch fee agreement in respect of the Property was submitted to the Tribunal.

THE LAW

11. 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, (“Chapter 2”), to the 1983 Act. References to paragraphs in this Decision are to paragraphs of Chapter 2.
12. 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.
13. 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):
 - 13.1 “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);
 - 13.2 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)”.

14. 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”.

15. 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

16. The Applicant’s submissions, as set out in its undated Statement of Case, are summarised as follows:
 - 16.1 the Applicant is the owner of a number of residential park home sites and has over 20 years’ experience in the park home industry;
 - 16.2 any pitch fee has 2 distinct elements, namely, (i) an amount for the right to occupy the pitch; and (ii) an amount in respect of the right to use and maintenance of the common areas;
 - 16.3 a pitch fee must expressly state any services to be included within it. Sewerage is not expressly included in the Respondent’s pitch fee;
 - 16.4 the relevant statutory provisions and case law relating to increases in pitch fees are summarised;
 - 16.5 the Applicant has not suggested that the pitch fee increase is related to improvements at the Site and the Respondent’s claim that they have

failed to improve the Park cannot be regarded as a relevant consideration;

- 16.6 the Respondent has failed to articulate their reasons for objecting to the increase in the pitch fee which makes it difficult for the Applicant to respond;
- 16.7 the Applicant states that there are “...no circumstances which could reasonably lead to a determination that the pitch fee should be any lower than the RPI...” and, in support of this claim, the Applicant states that (i) there has been no loss of amenity at the Park; and (ii) a programme of maintenance has been carried out”.

Respondent’s Submissions

17. The Respondent’s submissions, as set out in two emails dated 23 June 2023 and 11 September 2023, are summarised as follows:
- 17.1 there have been no improvements to the Site in the last 12 months;
- 17.2 in particular, the Applicant has failed to install an additional pipe which the Respondent claims was promised by the Applicant in September 2022 and again in January 2023;
- 17.3 the Respondent understands that the purpose of this pipe is “...to empty the system more quickly and help alleviate the problem when heavy rain gets into the system...”

REASONS

The Pitch Fee Review Form

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

Has the paragraph 20 (A1) presumption been rebutted?

19. The Tribunal notes as follows:
- 19.1 in the section of the Application entitled “Changes since last review”, the Applicant confirms as follows:

- (i) that, since the last review date, money has been spent on improvements which are for the benefit of the occupiers on the site;
 - (ii) such improvements were not the subject of consultation and nor were they disagreed to by a majority of the occupiers;
 - (iii) there has been no deterioration in the condition of the site or any reduction in the services provided to the site.
- 19.2 The Applicant provides no evidence of any improvements undertaken and in its Statement of Case denies that the increase in the pitch fee is related to any improvements at the Site (despite the contents of the Application).
- 19.3 The Respondent refers to a failure by the Applicant to install a new pipe intended to improve the efficacy and/or adequacy of the drainage system at the Site.
20. The Tribunal further notes that the Respondent has failed to identify whether the Applicant's failure to install an additional pipe constitutes evidence of the factors set out in paragraph 18(1)(aa) and/or (ab) or as an "other factor" to be taken into account in accordance with the Vyse decision.
21. Having regard to the above, the Tribunal is satisfied as follows:
- 21.1 there is no evidence of any improvements at the Site to which the Tribunal should have regard in relation to its determination of the amount of the new pitch fee in accordance with paragraph 18(1)(a);
 - 21.2 there is no evidence of any circumstances to be taken into account within paragraphs 18(1)(aa) and/or (ab) or of an "other factor" to be taken into account in its determination of the amount of the new pitch fee; and,
 - 21.3 the statutory presumption that it is reasonable to increase the pitch fee by RPI has not been rebutted. In this case, the relevant RPI is 14.2%.
22. The Tribunal therefore determines that the amount of the pitch fee for the Property with effect from 1 January 2023 is £137.94.

Installation of additional pipe

23. The Tribunal is persuaded by the Respondent's submissions that the Applicant had promised to install an additional pipe at the Site in an effort to improve the efficacy and/or adequacy of the drainage system to cope with overflows/blockages during periods of heavy rain, and that the Applicant has failed to do so.
24. The Tribunal therefore considers that it is appropriate in the circumstances to exercise its jurisdiction under s231A(4)(c) of the Housing Act 2004 to direct the Applicant to install the additional pipe, at its own cost, within 28 days of the date of issue of this Decision.