



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

Case references	: MAN/00EQ/PHI/2023/0103-0114, 0116-0120
Properties	: 2-4, 6-11, 13-15, 18-20, 22 and 26 Park View Mobile Home Park (also known as Park Garages), Lymm Road, Agden Brow, WA13 0UA
Applicant	: Cheshire Parks Limited
Representative	: LSL Solicitors
Respondents	: Various Residents at Park View / Park Garages Mobile Home Park - See Annex A
Type of Application	: Mobile Homes Act 1983 – Schedule 1 Chapter 2 Paragraph 16 or Chapter 4 paragraph 14
Tribunal Members	: Tribunal Judge L. F. McLean Tribunal Member Mr S. Wanderer MRICS
Date of Determination	: 29th January 2024 on the papers without a hearing in accordance with rule 31 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013
Date of Decision	: 29th February 2024

DECISION

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DECISION

The pitch fee payable by each Respondent for the year commencing 1st January 2023 or 5th January 2023 (as applicable) is as set out in the attached Annex B.

REASONS

Background

1. These are linked applications for the determination of new pitch fees for 2023 for various park homes situated on a site at Park View Mobile Home Park (formerly known as Park Garages), Agden, Lymm, Cheshire WA13 0UA (“the Site”). The Applicant is the site owner. The Respondents are the respective occupiers of the pitches in question.
2. The Applicant served Pitch Fee Review Forms dated 30th November 2022 requiring each Respondent to pay an increased pitch fee with effect from 1st January 2023, by reference to the 14.2% RPI increase since the previous year. In the absence of agreement as to the proposed increase, on 24th March 2023, applications were made to the Tribunal under Paragraph 16 of Chapter 2 of Part 1 of Schedule 1 of the Mobile Homes Act 1983 (as amended) for the determination of a new level of pitch fee in each case.
3. The issue for the Tribunal to determine is the new level of the pitch fee for each of the Respondents.
4. On 24th May 2023, the Tribunal issued directions and informed the parties that, unless the Tribunal was notified that any party required an oral hearing to be arranged, the application would be determined upon consideration of written submissions and documentary evidence only. No such notification was received.
5. In response to directions, the Applicant and the Second Respondent made submissions to the Tribunal.
6. Upon the Members of the Tribunal reviewing the correspondence and submissions from the parties, an inspection of the Site was arranged of the Tribunal’s own motion and notice of the inspection was given to all parties. The inspection took place on 29th January 2024. After the inspection had concluded, the Tribunal convened to consider the application in the absence of the parties.

Law

7. Paragraph 20 of the Implied Terms set out in Chapter 2, Part 1 of Schedule 1 to the Mobile Homes Act 1983 states that – unless it would

be unreasonable to do so – it is presumed that the pitch fee will be adjusted annually by reference to the percentage increase or decrease in the Retail Prices Index based on the difference between the latest index and that published for the month 12 months prior to the month to which the index relates.

8. The site owner must give the occupier written notice accompanied by a prescribed Pitch Fee Review Form. The Tribunal notes that the prescribed forms have been used and that in most cases the relevant time limits have been complied with. In relation to some of the applications, the date of service of the relevant forms was disputed. This is discussed later in this Decision.
9. Paragraph 18(1) Chapter 2, Part 1 of Schedule 1 to the Mobile Homes Act 1983 requires that:-

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;

(ii) which were the subject of consultation in accordance with paragraph 22(e) and (f) below; and

(iii) to which a majority of the occupiers have not disagreed in writing or which, in the case of such disagreement, the appropriate judicial body, on the application of the owner, has ordered should be taken into account when determining the amount of the new pitch fee;

(aa) in the case of a protected site in England, 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 has not previously been had to that deterioration or decrease for the purposes of this subparagraph);

(ab) in the case of a protected site in England, 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 subparagraph);

Inspection

10. The members of the Tribunal attended at the Site on 29th January 2024. The residents of numbers 2, 6, 9, 13 and 19 attended. There was no attendance or representation for the Applicant. The inspection commenced a short while after 11am.

11. The members of the Tribunal walked around all of the parts of the Site which were readily accessible from the main access road running through it, starting at the main entrance next to the Kids Planet offices. The members of the Tribunal noted the following pertinent issues which related to the matters raised by the parties:-

- (a) The road which runs through the Site had evidently been repaired with large patches of new tarmac or asphalt, which was uneven in parts. Repairs to one section had led to long trickles of tar/bitumen sealant running across the road.
- (b) Some moss was visible in the recesses of the “crazy paving”.
- (c) There was an old wasps’ nest inside the electricity cupboard. Residents drew the Tribunal’s attention to the positioning of the meters, which are said to be too closely packed for “smart meters” to be installed in most cases. Residents also pointed to an old external electricity box which had been left on the ground.
- (d) The foliage of the evergreen hedge between the entrance to the Site and the neighbouring car mechanics’ workshop was overhanging the road slightly. It was also very tall and was said to obscure the light from the security lamp on the neighbouring workshop, which was also said to be the main source of exterior lighting for that side of the Site.
- (e) A large patch of the communal grassed area near to Number 11 was perished, where a skip had previously been stationed.
- (f) The mobile home at Number 12 had been renovated. The resident of Number 13 complained that the porch at Number 12 was now less than 10 feet from her mobile home.
- (g) The branches of a large tree in the middle of the Site had grown up among various overhead cables.
- (h) The three additional parking spaces had been re-surfaced with tarmac or asphalt.
- (i) The security light over the garages was said to be operational, although it was not switched on during the inspection as it was daytime.
- (j) Inspection and access covers for the drainage system were visible running through the Site. They were not overflowing during the inspection and the residents confirmed that these had not done so for some time.

(k) The pumping station in the back garden of Number 14A was operational during the inspection. The residents stated that the capacity of the tank was 600 litres and that it was installed in 2015.

(l) Residents drew the attention of the Tribunal to the remnants of a tree which they said had collapsed in 2020, and where the lighting which had previously been affixed to it had not been replaced.

The parties' cases

12. The Applicant referred to the statutory presumptions of an increase in line with RPI. It explained that it could not pre-empt what the Respondents' objections might be and so it would have to await receipt of the Respondents' statements of case before commenting further, but that it was not aware of any reasons to depart from the statutory presumptions.

13. Many of the Respondents took issue with the extent of the proposed increases. In particular, they drew attention to several allegations of poor management of the Site, an inadequate standard of maintenance and a decline in the condition of the Site (although many of the Respondents conceded that several of the issues complained of had been dealt with more recently by the Applicant). In particular, the following issues were raised:-

General poor management

- (a) Applicant is unresponsive
- (b) Excessive tree growth (not lopped)
- (c) Poor lighting / malfunctioning lamps
- (d) Poor gardening – overgrown hedge; blowing leaves around
- (e) Skips being dumped/left for long periods without warning
- (f) Poor signage leading to abuse of the residents' car park by neighbouring businesses
- (g) Sewage overflowing due to increased workload from new commercial premises next door connecting into the same system, with the pumping station backing up, and one of the residents having to unblock this himself
- (h) The electricity box contains a wasps' nest and is too dangerous to install a smart meter
- (i) Delayed replacement of fire safety equipment

Maintenance, degradation and loss of amenity

- (j) Roads and pavements – potholes filled with gravel only
- (k) Poor car park surface maintenance
- (l) Mossy crazy paving
- (m) Damage to grassed area from a skip being left for a long period
- (n) Decision to let the office space and allow office workers to use the residents' spaces at the front (loss of amenity)

(o) Number 12 dilapidated and unsightly while vacant

14. Several of the Respondents' submissions did not relate to issues which the Tribunal could take into account in relation to the appropriate statutory criteria. These included desired improvements such as better lighting, matters for which the Applicant is not responsible such as certain boundary structures, and economic considerations such as the cost of living and comparable pitch fees on other sites.
15. Some of the Respondents made late submissions and these were not taken into consideration, as no application was made for permission to rely upon them.
16. Various of the Respondents supplemented their assertions with digital photographs and copies of correspondence referring to these issues. Most of the photographs were undated and it was not always clear when they were taken, but they appeared to have been mainly taken between May and July 2023. Several of the Respondents also noted contemporaneously in their submissions and evidence that remedial works were being undertaken in late June or early July 2023.
17. Copies of correspondence provided included a letter from the Applicant's solicitors, which was undated but which the context suggests was sent in early 2023. In the letter, the Applicant's solicitors state that "*It is understood that [sic] is maintenance work planned for this year to address most, if not all, of the issues raised. There was an intention to deal with them before now but regrettably other pressures have intervened.*" This appears to amount to a tacit admission that there had been general delays in arranging repairs and maintenance on the Site.
18. Although some of the Respondents did not make any written submissions or provide any evidence of their own, the issues raised by the majority of the Respondents related to the overall condition of the Site and so are also relevant to all cases.
19. The Applicant provided a detailed statement in reply to the issues raised, which the Tribunal has considered. The Applicant correctly identified that several of the Respondents' complaints were not relevant to the Tribunals' considerations, as discussed above. The Applicant also asserted that if there had been a gradual deterioration in the condition of the Site over several previous years, then this was not an issue which fell to be determined within the current rent review period.
20. The Applicant suggested that certain issues were requests for improvements, even though it appeared to the Tribunal that the issue was whether the Respondents had been adversely impacted by poor management of the Site, rather than the adequacy of the physical amenities themselves. Examples falling within this category included poor signage, blocked drains, and allegations of poor communications.

21. The Applicant further suggested that most of the issues had been resolved since the pitch fee increases, and generally took issue with the quality of the evidence presented by several of the Respondents.

Discussions and Determination

22. After reviewing the parties' submissions in light of the statutory provisions and relevant case law, the Tribunal's conclusions on the key issues are as follows.
23. The statutory presumption in favour of the RPI increase, which the Tribunal found to be correctly calculated using the percentage change between the index figures in October 2021 and October 2022, would stand unless the Tribunal finds there are grounds to depart from that presumption.
24. In *Vyse v Wyldecrest Ltd* [2017] UKUT 24 (LC) HHJ Alice Robinson noted [at 45] 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 [at 50] that: "...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."
25. The Tribunal accepts that most of the Respondents have raised a number of complaints regarding the management of the Site and the maintenance of the facilities which were demonstrated by the written and photographic evidence supplied. The issue is, however, whether the condition of the Site has deteriorated or is adversely impacted by poor management.
26. Almost of the complaints regarding maintenance concerned a gradual deterioration over several years, dating back to around 2016 or 2017. The Tribunal could tell from the photographic evidence, and the sheer volume of written submissions (many of which raised similar complaints) that the overall condition of the Site had deteriorated somewhat until June/July 2023. However, with the exception of the perished grass, the Tribunal notes that there was little evidence to compare the condition of the Site in 2023 with previous years, which made it difficult to establish whether significant deterioration had occurred within the most recent year end. The Tribunal considers, on the balance of probabilities, that most of the deterioration was gradual over several years. As such, any adverse impact suffered in relation to deterioration between one year and the next in previous years is not truly relevant to the most recent pitch fee increase, as the historic impact is superseded by any subsequent increases (even if those were not challenged at the time). The extent of the deterioration in the condition of the grass is relatively minor in the scheme of the Site as a whole and will hopefully be temporary.

27. On balance, the Tribunal does not find there has been material “deterioration in the condition, [or] decrease in the amenity, of the site” since the previous pitch fee review last year. The Tribunal finds, therefore, that the deterioration or decrease will already have been taken into account in the previous pitch fee reviews.
28. The Tribunal does, however, find that there have been failures in the standard of management of the Site. There is evidence of delays (including a tacit admission in correspondence sent by the Applicant’s own solicitors). There was also evidence of neglect in some cases in undertaking what should be routine repairs and maintenance – especially to the sewage system, fire safety equipment and gardening. Although repairs were eventually carried out to the road, these have been undertaken in a very patchwork manner and to a questionable standard in some areas – and whilst the Tribunal notes that the impact of this issue technically falls within the following fee increase year, it is indicative of the Applicant’s general approach.
29. The Tribunal in this case attaches weight to the standard of management evidenced and finds that this outweighs the presumption that the pitch fees will increase in line with the RPI. Taking this factor into account, the Tribunal finds it would be unreasonable to apply the full RPI increase to the pitch fees.
30. On this basis, the Tribunal finds that the pitch fees should be increased by a uniformly reduced percentage of **10.7%**. The Tribunal’s calculations are attached as **Annex B**.

Compliance with time limits, and effective date of increase

31. Most of the Respondents have not taken any issue with the review date or the notice procedure and the Tribunal finds that this accorded with the required statutory procedure, except where set out below. Accordingly, the pitch fee increases for the Respondents take effect from 1st January 2023 except where indicated otherwise below.
32. Mr Phillips of Number 3 stated in his letter to the Tribunal that, *“On 8th December 2022 I received the notice of pitch fee review and increase for 2023.”*
33. Mr and Mrs Williamson of Number 11 stated in their letter to the Tribunal that, *“The pitch fee review notice, although dated the 30th November 2022, was not received until mid/late December 2022.”*
34. Mr and Mrs Phillips of Number 19 stated in their letter to the Tribunal that, *“On 8th December 2022 we received the notice of pitch fee increase for 2023. Technically this should have been received by 1st December in order for the increase to take place on 1st January 2023.”*

35. Of relevance in this consideration was a statement in the letter to the Tribunal from Ms Pendlebury of Number 14, who said, *'I would also like to point out that the address being used (presumably to "gentrify" the address) is actually quite different to the address given by the Post Office and used by the Council, sometimes causing problems with post and delivery.'*

36. Paragraph 17(2) Chapter 2, Part 1 of Schedule 1 to the Mobile Homes Act 1983 requires that:-

At least 28 clear days before the review date the owner shall serve on the occupier a written notice setting out his proposals in respect of the new pitch fee.

37. Sub-paragraphs (6) and (8) go on further to provide that:-

(6) Sub-paragraphs (7) to (10) apply if the owner—

(a) has not served the notice required by sub-paragraph (2) by the time by which it was required to be served, but

(b) at any time thereafter serves on the occupier a written notice setting out his proposals in respect of a new pitch fee.

[...]

(8) If the occupier has not agreed to the proposed pitch fee—

(a) the owner or the occupier may apply to the appropriate judicial body for an order under paragraph 16(b) determining the amount of the new pitch fee;

(b) the occupier shall continue to pay the current pitch fee to the owner until such time as the new pitch fee is agreed by the occupier or an order determining the amount of the new pitch fee is made by the appropriate judicial body under paragraph 16(b); and

(c) if the appropriate judicial body makes such an order, the new pitch fee shall be payable as from the 28th day after the date on which the owner serves the notice under sub-paragraph (6)(b).

38. Section 7 of the Interpretation Act 1978 provides that:-

Where an Act authorises or requires any document to be served by post (whether the expression "serve" or the expression "give" or "send" or any other expression is used) then, unless the contrary intention appears, the service is deemed to be effected by properly addressing, pre-paying and posting a letter containing the document and, unless

the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

39. The Applicant did not dispute the statements of Mr Phillips of Number 3, Mr and Mrs Williamson of Number 11 or Mr and Mrs Phillips of Number 19. The Tribunal therefore finds, on the balance of probabilities, that in the cases of Numbers 3, 11 and 19 the presumption of delivery in the ordinary course of post is rebutted and the Tribunal further finds, on the balance of probabilities, that the date of service for these Respondents was 8th December 2022. Accordingly, their pitch fee increases will take effect under sub-paragraphs (6) to (10) instead and the effective date in their cases shall be the 28th day after 8th December 2022, i.e. 5th January 2023.
40. As no other Respondents disputed the date of service, the presumption is not rebutted in their cases.

Costs

41. No party has requested that the Tribunal impose an order for costs.

Name:
Tribunal Judge L. F. McLean
Tribunal Member Mr S. Wanderer MRICS

Date: 29th February 2024

Rights of appeal

1. By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal is required to notify the parties about any right of appeal they may have.
2. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.
3. The application for permission to appeal must arrive at the regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
4. If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

5. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.
6. If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Annex A- List of Respondents

Case Reference	Respondent
MAN/ooEQ/PHI/2023/0103	Mr J Massey
MAN/ooEQ/PHI/2023/0104	Mr T Phillips
MAN/ooEQ/PHI/2023/0105	Mr D Ravenscroft
MAN/ooEQ/PHI/2023/0106	Ms S Lennon
MAN/ooEQ/PHI/2023/0107	Mr G Carroll
MAN/ooEQ/PHI/2023/0108	Mr P Salmon
MAN/ooEQ/PHI/2023/0109	Mr M Harris
MAN/ooEQ/PHI/2023/0110	Mr Prosser
MAN/ooEQ/PHI/2023/0111	Mr Williamson
MAN/ooEQ/PHI/2023/0112	Mr J Leake
MAN/ooEQ/PHI/2023/0113	Ms E Pendlebury
MAN/ooEQ/PHI/2023/0114	Ms L H Jones
MAN/ooEQ/PHI/2023/0016	Mr Bergin
MAN/ooEQ/PHI/2023/0117	Mr G & Mrs M Phillips
MAN/ooEQ/PHI/2023/0118	Mr B Taberner
MAN/ooEQ/PHI/2023/0119	Ms E Scales
MAN/ooEQ/PHI/2023/0120	Mr R Cairns

Annex B- Determinations of Pitch Fees

Case Reference	Respondent	Fee Determined	Effective From Date
MAN/ooEQ/PHI/2023/0103	Mr J Massey	£249.93	1 st January 2023
MAN/ooEQ/PHI/2023/0104	Mr T Phillips	£264.37	5 th January 2023
MAN/ooEQ/PHI/2023/0105	Mr D Ravenscroft	£224.91	1 st January 2023
MAN/ooEQ/PHI/2023/0106	Ms S Lennon	£232.16	1 st January 2023
MAN/ooEQ/PHI/2023/0107	Mr G Carroll	£236.62	1 st January 2023
MAN/ooEQ/PHI/2023/0108	Mr P Salmon	£271.95	1 st January 2023
MAN/ooEQ/PHI/2023/0109	Mr M Harris	£254.81	1 st January 2023
MAN/ooEQ/PHI/2023/0110	Mr Prosser	£225.99	1 st January 2023
MAN/ooEQ/PHI/2023/0111	Mr Williamson	£243.34	5 th January 2023
MAN/ooEQ/PHI/2023/0112	Mr J Leake	£236.21	1 st January 2023
MAN/ooEQ/PHI/2023/0113	Ms E Pendlebury	£270.50	1 st January 2023
MAN/ooEQ/PHI/2023/0114	Ms L H Jones	£249.38	1 st January 2023
MAN/ooEQ/PHI/2023/0016	Mr Bergin	£241.35	1 st January 2023
MAN/ooEQ/PHI/2023/0117	Mr G & Mrs M Phillips	£278.22	5 th January 2023
MAN/ooEQ/PHI/2023/0118	Mr B Taberner	£251.96	1 st January 2023
MAN/ooEQ/PHI/2023/0119	Ms E Scales	£247.33	1 st January 2023
MAN/ooEQ/PHI/2023/0120	Mr R Cairns	£252.31	1 st January 2023