



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

Case Reference : MAN/32UH/PHI/2024/0015-0019

Property : 6,8,10,30 and 31 Harpswell Park,
Harpswell Lane, Hemswell,
Gainsborough, Lincolnshire,
DN 21 5 UT

Applicant : A &T James trading as James Park Homes

Representative : Mr D Hall

Respondent : Mr R Doy (6) MAN/32UH/PHI/2024/0015
Mr and Mrs Cardwell (8) MAN/32UH/PHI/2024/0016
Mr and Mrs Rockall (10) MAN/32UH/PHI/2024/0017
Mr J Rawlinson (30) MAN/32UH/PHI/2024/0018
Mr and Mrs Boniface (31) MAN/32UH/PHI/2024/0019

Representative : Mr Rockall

Type of Application : Pitch Fee Review (2023)
Mobile Homes Act 1983-Schedule 1 Chapter 2
Paragraph 16

Tribunal Members : Judge T N Jackson
Mr A Davis MRICS FAAV

**Date and venue of
Hearing** : 16 September 2024
Sheffield Magistrates Court

Date of Decision : 17 September 2024

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DECISION

Decision

We determine that the pitch fee for the Properties should increase from the review date of 1 December 2023 in accordance with the Notice dated 26 October 2023 in the amounts detailed below:

6 Harpswell Park	£200.22	per month;
8 Harpswell Park	£183.80	per month;
10 Harpswell Park	£145.90	per month;
30 Harpswell Park	£226.30	per month;
31 Harpswell Park	£176.98	per month.

Reasons for decision

Background

1. Each Respondent had signed a Written Statement in relation to their respective Property described above which detailed the pitch fee and contained an annual review date. The pitch fee was last reviewed on 1 December 2022.
2. By Pitch Fee Review Form dated 26 October 2023, the Applicant gave notice to each of the Respondents that they proposed to review the monthly pitch fee from the review date of 1 December 2023. The proposed and current monthly pitch fees detailed in the respective Pitch Fee Review Forms were as set out below:

Plot	Proposed	Current
6	£200.22	£187.65
8	£183.80	£ 172.26
10	£145.90	£136.74
30	£226.30	£212.09
31	£176.98	£165.87

3. The proposed increase related to the increase in the CPI Index only, namely 6.7 %.
4. The Pitch Fee Review Forms were accompanied by a covering letter which stated that the resident's 'new monthly payment' comprised the proposed pitch fee above plus 'a water/sewage charge including administration for 2 resident(s): £21.10*' (or £10.78 for 1 resident) and provided a monthly total. The letter did not explain the relevance of the *. To use Plot 6 as an example, the proposed pitch fee was £200.22 plus the £21.10, totalling a 'new monthly payment of £221.32'. This resulted in new monthly payments for each plot said to be £221.32, £204.90, £167.00, £237.08, (1 resident) and £198.08 respectively.
5. On 15 December 2023, the Applicant wrote to Mr Rockall to remind him that he had not updated his standing order to reflect the proposed pitch fee which had come into effect from 1 December 2023. The letter stated that the water/sewerage charge of £21.10 for 2 people was not included in the calculation following an earlier Tribunal's decision. On 21 December 2023, Mr Rockall responded and queried the method of

calculation, stating that the cost of water and sewerage charges should be deducted from the current pitch fee before any CPI percentage increase could be calculated. Once that calculation had been made and the CPI increase added, then the following years water and sewerage charges should be added to produce the correct figure. He suggested that based on the Applicant's calculation, the cost of water and sewerage would be free of charge to the Properties involved.

6. The Respondents have followed the above method of calculation and, with one exception, are paying the calculated amounts which are less than the proposed pitch fees. The exception is said to be paying the 2021 pitch fee due to an ongoing dispute regarding another issue. The Respondents did not make an application to the Tribunal. On 24 January 2024, the Applicant applied to the Tribunal for a determination of new level of the pitch fee in relation to the Properties. Directions were issued on 29 April 2024. The parties' documents included the Written Statements for each of the Properties.

The Written Statements

7. Plot 6
The agreement commenced on 29/7/2021 at a monthly pitch fee of £181. Under the heading 'Pitch Fee', it provides that 'the following services are included in the pitch fee -water and sewerage.' Under the paragraph is an instruction in italics '(Cross out the services which are not included and add any others which are included in the pitch fee). Under a heading 'Additional charges', where the agreement suggests that matters for which an additional charge will be made should be listed, nothing was written.
8. Plot 8
The agreement commenced on 20/10/23 at a monthly pitch fee of £172.26 with no services stated to be included within the pitch fee. Additional charges were to be made for water (monthly), sewage (monthly) and electricity (quarterly).
9. Plot 10
The agreement commenced on 17/7/90 at a fortnightly pitch fee of £10. An addendum to the agreement states 'Mains services -Water and sewage inclusive in pitch fee. Electricity as per meter readings.' Clause 3(6) of Part IV of the Agreement provides that the occupier is to pay charges i.e. electricity, gas, phone and other services.'
10. Plot 30
The agreement commenced on 17/6/2022 at a monthly pitch fee of £200.04 and states that 'the following services are included in the pitch fee-water and sewerage.' Under the heading 'Additional charges', none were listed.
11. Plot 31
The agreement commenced on 1/6/2017 at a monthly pitch fee of £151.03 and states that 'the following services are included in the pitch fee-water and sewerage.' Under the heading 'Additional charges', none were listed.

The Law

12. The relevant legislation is contained within Schedule 1 Part 1 Chapter 2 of the Mobile Homes Act 1983 (as amended) ('the 1983 Act'). Paragraph 20 (1) provides that unless it would be unreasonable having regard to paragraph 18 (1), there is a presumption that the pitch fee will increase or decrease by a percentage which is no more than the percentage change in the RPI since the last review date.
13. The Mobile Homes (Pitch Fees) Act 2023 amended the 1983 Act to substitute CPI for RPI in any pitch fee review on or after 2 July 2023.
14. Paragraph 18 (1) sets out factors to which "particular regard" must be had when determining the amount of the new pitch fee. These relate to expenditure on any improvements by the owner since the last review date; 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 and 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. Paragraph 19 refers to costs incurred by a site owner which cannot be considered by the Tribunal when making its determination. Neither of these paragraphs are relevant in the current case.
15. Paragraph 21 provides that:

'The occupier shall –

- (a) Pay the pitch fee to the owner;*
- (b) Pay to the owner all sums due under the agreement in respect of gas, electricity, water, sewerage or other services supplied by the owner;*
- (c) ...*
- (d) ...*
- (e) ...'*

16. Paragraph 22 (b) provides that:

'The owner shall-

- (a)...*
- (b) if requested by the occupier, provide free of charge documentary evidence in support and explanation of:*
 - (i) any new pitch fee;*
 - (ii) any charges for gas, electricity, water, sewerage or other services payable by the occupier to the owner under the agreement; and also*
 - (iii) any other charges, costs or expenses payable by the occupier to the owner under the agreement;'*

17. Paragraph 29 defines 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 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.'

The Inspection/ Hearing

18. Neither party requested an inspection. A hearing was held and was attended by Mr D Hall as representative for the Applicant and Mr R Rockall on his own behalf as a Respondent and also as representative of the remaining Respondents. Mr and Mrs Boniface (Plot 31) also attended.

Preliminary issue

19. Mr Rockall had a letter of authority authorizing him to represent the occupiers of pitches 6,8,17,17A,30,31 and 35. He referred to acting on behalf of the residents of the 8 pitches in their dispute with the Applicant.
20. The Tribunal advised Mr Rockall that as the residents of pitches 17, 17A and 35 were not parties to the application served by the Applicant, then the Tribunal would not be dealing with any matters relating to those pitches.

The submissions

Applicant

21. The Applicant's representative says that the Written Statements of plots 6,10,30 and 31 state that water and sewerage is included within the pitch fee. He does not agree with Mr Rockall's method of calculation, namely that the additional monthly charges applicable to other residents who are legally obliged to pay the added charges should be deducted from the pitch fee for occupants whose water and sewage is included within the pitch fee before calculating any increase/decrease during the annual pitch review. The Written Statement states only that water and sewerage is included but does not set down a breakdown of the pitch fee and therefore the CPI percentage increase should be applied to the whole of the current pitch fee.
22. The Applicant sent covering letters with the Pitch Fee Review Forms in October 2023 which included a reference to water and sewerage charges to be paid in addition to the pitch fee. At the hearing, the Applicant's representative apologized for the administrative error resulting in the inclusion of that reference and stated that at no time were those additional charges requested from the Respondents and the Applicant only expected to receive the pitch fees as determined by the Tribunal determination in 2023.

Respondents

23. Mr Rockall refers to an earlier Tribunal determination dated 15 May 2023, (MAN/32UK/PHI/2023/0013), which related to the pitch fee review from 1 December 2022 including these Properties. In that case, the Pitch Fee Review Form was accompanied by a letter to the Respondents advising that in addition to the new pitch fee, they were to make a monthly payment of 'Water including Admin charge for 2 resident(s): £24.12' or (where appropriate) 'Water including Admin Charge for 1 resident (s): £12.29'. The Tribunal determined that as the Written Statements expressly included the cost of water and sewerage services within the pitch fee, the additional charge for water claimed from the Respondents by the Applicant was not

payable. Mr Rockall submitted that the Tribunal determination, which included Plot 8, overruled Plot 8's Written Statement.

24. Mr Rockall says that as the Mobile Homes Act 1984 (sic) prevents a site owner from making a profit from the sale of water, the correct method of calculation on a pitch review where the pitch fee includes water and sewerage is to deduct the water and sewerage charges from the current pitch fee, apply the CPI percentage to the balance to calculate the increase and add the increase to the non- water and sewerage element of the pitch fee to arrive at a subtotal. The water and sewerage charges for the proposed year are then added to the subtotal to result in the proposed pitch fee. For Pitch 10 this would equate to £141.27 per month, (namely £136.74-£24.12= £112.62 + £7.55 (6.7%) plus 2023/4 water and sewerage charges of £21.10= £141.27), This compares to the Applicant's proposed pitch fee of £145.90 per month.

Decision

25. We considered all the written evidence submitted including the earlier Tribunal determination and the Written Statement of each Property. We do not accept Mr Rockall's assertion that the earlier Tribunal decision had changed Plot 8's Written Statement. The Tribunal decision was dated 15th May 2023 and yet the Written Statement for Plot 8 with which we are concerned began on 20 October 2023 and is clear that water and sewerage are not included in the pitch fee.
26. Mr Rockall did not dispute the CPI percentage increase figure used by the Applicant. We agree with the Applicant that during the 12- month period applicable to this review, as at September 2023, the month before the Pitch Fee Review Notices were served, the CPI had risen by 6.7%.
27. The issue related solely to whether the CPI percentage increase should be applied to the whole of the pitch fee or whether a deduction should first be made to reflect the element for water and sewerage included in the pitch fee. We therefore did not need to consider the matters set out in section 18 of the 1983 Act.
28. In our opinion, the Respondents misunderstand the difference between a pitch fee and an additional charge. This misunderstanding was not helped by the fact that the covering letter with the Pitch Fee Review Notice sent to each of the Respondents referred to the requirement to pay an additional charge for water and sewerage. At the hearing, the Applicant's representative stated that this was an administrative error and that the Applicant intended to comply with the earlier Tribunal determination. We accept that it was an error, as we note that the * on the letter against the phrase regarding additional payment for water and sewerage only appeared to be on the letters to Respondents whose pitch fee included water and sewerage. The * was not on the covering letter sent to Plot 8 where the pitch fee does not include water and sewerage. However, the letter did not explain the purpose of the *. This error was unfortunate as it clearly affected the Respondents' understanding of the position and confused matters.
29. Where a pitch fee expressly includes water and sewerage without any differentiation to allow a figure to be calculated, then, there is no 'charge' for water and sewerage. The amount of the additional charge for water and sewerage made to other residents who do not have water and sewerage included within their pitch fee is therefore irrelevant.

30. Mr Rockall referred to site owners not being able to make a profit on the supply of water. The supply of water is regulated by a statutory regulator. OFWAT has power under section 150 of the Water Industry Act 1991 to fix maximum charges which may be made by a reseller of water to a customer.
31. Paragraph 6 of the Water Resale Order 2006 imposes maximum charges which a 're-seller' may recover from a 'purchaser' for metered or unmetered water supplies. 'Purchaser' is defined in paragraph 5 of the Order as 'a person who occupies any dwelling and who buys from a re-seller any water or sewerage services.' A 're-seller' is defined and includes any person who is not a statutory undertaker who provides a supply of piped water to any purchaser.
32. We had regard to the case of *Sayer [2014] UKUT 0283 (LC)* a matter determined by the Upper Tribunal. The case involved a similar matter namely, where a pitch fee included the supply of water, did the annual RPI increase apply to the whole pitch fee or only to that part not referable to the supply of water. In paragraph 38, the Deputy President Martin Rodgers KC says:

'In my judgement the RPT was correct to approach the effect of the 2006 Order on the basis that the water was not charged separately. On that basis, I do not consider that the 2006 Order applies to the supply of water by the site owner to Mr Sayer. Mr Sayer is not a 'purchaser' within the definition in paragraph 5 of the 2006 Order because he does not buy his water from the site owner in the manner contemplated by the Order. Mr Sayer receives water in return for payment, but he does so as part of a wider bargain which includes the rights to station his mobile home on the pitch (together with any other rights and services conferred by the agreement) in return for which he pays a single undifferentiated and indivisible pitch fee. It is impossible to apply the maximum charge provisions of paragraph 6 of the Order to such an arrangement.'

33. In paragraph 39 he continues:

'I do not consider that the statement on the OFWAT website, on which Mr Sayer relied, is a comprehensive statement of the law (which it does not purport to be) rather than a statement of good practice, and I do not consider that it applies to arrangements in which water is received as part of the services for which the pitch fee is payable without any separate amount being attributed to it.'

34. In paragraph 40 he says:

'Although the implied term implied into the agreement by paragraph 22 of Schedule 1 to the 1983 Act requires the owner to provide documentary evidence and an explanation of any charges for water or other services payable by the occupier to the owner under the agreement, I am satisfied that in this case there are no charges. The only charge is the single pitch fee for the totality of the services provided. It is a misconception to equate the costs incurred by the site owner with a charge to the occupier.'

35. In paragraph 41 he continues:

‘For so long as water charges continue to be subsumed into the pitch fee the effect is that the Park Owner is restricted to the RPI increase in the pitch fee irrespective of the increase in the cost to it of supplying water to the Park. Correspondingly, the owner is not required to provide the information which would be required by the 2006 Order if a separate charge was levied.’

36. With the exception of Plot 8, the Written Statements are clear that water and sewerage are included within the pitch fee and there is not a separate figure included within the pitch fee to reflect the specific amount attributable to those elements. We did not find anything in the present case that would allow us to distinguish it from the *Sayer* case and we therefore adopt the same reasoning as set out in the case of *Sayer*. We do not accept Mr Rockall’s calculation method and we determine that in relation to Plots 6,10,30 and 31, the 6.7% CPI increase should be applied to the whole of the current pitch fee without any deductions.
37. We note that as water and sewerage are included within the pitch fee, then the Applicant takes the risk if the cost of those elements increases in any year beyond CPI, (as it may well do in the short term within the context of current concerns regarding the performance of water companies in relation to pollution and water quality).
38. In relation to Plot 8, it is clear that there are additional charges in relation to the water and sewerage and which are charged separately to the pitch fee. Therefore, the Respondent’s argument regarding the correct method of mathematical calculation does not apply in any event. We determine that in relation to Plot 8, the 6.7% CPI increase applies to the current pitch fee.
39. In relation to all the Properties, we therefore determine that the CPI increase of 6.7% should apply to the whole of the pitch fee and that the Applicant’s calculations are correct. We make no findings regarding any additional charges to be added to the pitch fee in relation to water and sewerage, (in pitches where they are not included in the pitch fee), electricity or other services.
40. We determine that the pitch fee for the Properties should increase from the review date of 1 December 2023 in accordance with the Notices dated 26 October 2023.
41. If the Respondents have continued to pay the original pitch fee since that date, they must pay the difference to the Applicant.
42. The Respondents are not in arrears if they have continued to pay the pitch fee due before the service of the Notice of increase. The difference between the current pitch fee and the reviewed pitch fee becomes payable 28 days after this decision is issued (paragraph 17 (4)(c) Part 2 of Schedule 1 of the 1983 Act).

Obiter

43. In his written submissions and at the hearing, Mr Rockall raised other matters of concern relating to the Applicant. As these fell outside the application before us, we could make no comment. Mr Rockall may wish to seek legal advice regarding those matters, or where appropriate, apply to the Tribunal under section 4 of the 1983 Act

for a determination on any question arising under the 1983 Act or any agreement/
Written Statement to which it applies.

Appeal

44. If either party is dissatisfied with this decision, they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties and must state the grounds on which they intend to rely in the appeal.

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Judge T N Jackson