



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

**Case Reference** : **MAN/30UQ/PHI/2023/0405**

**Property** : **No 132 Pennine Avenue, Burlingham  
Park, Garstang, Preston, PR3 1RT**

**Applicant** : **Burlingham Park Limited**

**Respondent** : **Mr C. Mitchell**

**Type of Application** : **For the determination of a pitch fee  
under the Mobile Homes Act 1983 –  
Schedule 1 Chapter 2 paragraphs 16-  
20**

**Tribunal Members** : **Judge J.M.Going  
J.Gallagher MRICS**

**Date of Decision** : **19<sup>th</sup> August 2024**

**Date of these Reasons** : **21<sup>st</sup> August 2024**

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**REASONS FOR THE DECISION**

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## **The Decision**

**The Tribunal has determined and orders: –**

- (1) (insofar as it has not already been unambiguously agreed) that the pitch fee for the property be increased from £148 to £164.87 per calendar month with effect from 1 July 2023, and**  
**(2) that Mr Mitchell shall, within 21 days, pay Burlingham £20 by way of repayment of its application fee.**

## **Preliminary**

1. By an application (“the Application”) dated 25 September 2023 the Applicant (“Burlingham”) applied to the First Tier Tribunal Property Chamber-(Residential Property) (“the Tribunal”) for an order to be made under paragraph 16(b) of Schedule 1 of the Mobile Homes Act 1983 (“the 1983 Act”) determining the amount of a new pitch fee to be paid by the Respondent (“Mr Mitchell”) should the Tribunal consider it reasonable for the pitch fee to be changed.
2. The Tribunal issued Directions on 12 March 2024 detailing a timetable for documents to be submitted.
3. The papers presented to the Tribunal included copies of the Application, the Notice, the Written Statement completed by the parties relating to the property, evidence relating to the annual rise in the RPI, witness statements by Mrs Towers, and various correspondence and emails between the parties, photographs and plans.

## **The inspection**

4. The Tribunal members walked around Burlingham Park (“the Park”) on 19 August 2024 with Mrs Barton, her daughter Mrs Towers, and Ms Apps, their solicitor. Mr Mitchell, who had been advised of the inspection, was not at home.
5. The Park, which has been in existence since the 1950s, is understood to contain approximately 145 residential park homes. It has a site office, and a launderette. The Tribunal particularly noted those parts of the Park which had been specifically mentioned in the papers as well as the changes made since its last inspection in April 2023. As with previous inspection, the Tribunal’s overall impression was of a pleasant, tidy, well-kept estate and with the individual park homeowners, such as Mr Mitchell, and Burlingham clearly taking a pride in maintaining the individual plots and the Park to a high standard.
6. The Tribunal could not but be impressed that Mrs Barton, who despite having her arm in a sling, was not able to stop herself from picking up and

returning any odd decorative stones which had strayed from an adjoining pitch.

7. Changes noted since the Tribunal's last visit included further renewed tarmacking, kerbing, the renewal of various walkways indented to mitigate slip hazards in winter, a new streetlamp, completion of various drainage works, more salt bins, works around the launderette, as well as some new safety bollards and some metal fencing at the perimeter of the drive to No 133 Pennine Avenue, which adjoins Mr Mitchell's garden shed.

### **Background facts, timeline, and submissions**

8. The following matters are evident from the papers or are of public record and have not been disputed unless specifically referred to.

9. Burlingham is a family-owned company, and Mrs Barton and Mrs Towers are 2 of its directors.

10. The Park is a protected site within the meaning of the 1983 Act. Burlingham is its owner and operator, and Mr Mitchell has since 25 July 2019 been the owner and occupier of the property which he purchased from Burlingham.

11. The Written Statement under the 1983 Act, signed by both Burlingham and Mr Mitchell on 1 July 2019, confirmed that the pitch fee for the property was then £130 per month, and to be reviewed on the 1st day of July in each subsequent year.

12. The pitch fee for the year beginning on 1 July 2022 of £148 per calendar month was determined by the Tribunal on 6 April 2023 and confirmed by the reasons for its decision and order made on 10 April 2023 under case reference number MAN/30UQ/PHI/2022/0122.

13. On 31 May 2023 Burlingham hand delivered a letter and a duly completed Pitch Fee Review Form as prescribed under the Mobile Homes (Pitch Fees) (Prescribed Form) (England) Regulations SI 2013/1505 (which are together referred to as "the Notice") to Mr Mitchell proposing a new pitch fee of £164.87 in place of £148 per month and with effect from 1 July 2023.

14. The letter gave formal notice of the proposed increase, noting that it was based on a 12-month change in the Retail Prices Index ("RPI") of 11.4%.

15. A statement of truth made by Mrs Towers confirmed "on..... the same day as we had delivered the pitch fee review documentation, Mr Mitchell notified us that he was withholding from the monthly pitch fee an amount of £40. He alleged that there was a health and safety issue arising from the removal of steps by a neighbour which he said created an increased risk of cars going into an electricity meter cabinet and his garden shed. He wanted metal rails installed as a safety guard. On a without prejudice basis we agreed to install bollards. However, we decided to install metal railings of the same kind requested by Mr Mitchell in his initial correspondence, and which he

described as a safety guard. This work was undertaken at no cost to Mr Mitchell....There were exchanges about this and we sought clarification from him about his position over the pitch fee review..... on 4 September 2023 we wrote to Mr Mitchell asking him to provide us with his clear and unequivocal agreement to the pitch fee review. We asked him to write to us to say that he was in agreement with the pitch fee review for 2023.

He refused to do so....

While Mr Mitchell has now paid the amount of £40 which he had been withholding from the monthly pitch fee including the reviewed amount for June 2023, he has not provided his written agreement to the pitch fee review.... Our concern is that Mr Mitchell is not in agreement with the pitch fee review because he appears to be paying under protest. If Mr Mitchell had simply paid the pitch fee review in response to the proposed review, without sending the emails he did and without withholding any payment of the monthly pitch fee, we would have taken this as acceptance of our proposal and not thought any more of it. We proposed a solution which would have avoided any ambiguity surrounding the position and would have negated any application to the Tribunal but he refused to provide his written agreement. Without a determination from the Tribunal on the new level of pitch fee, we are concerned that Mr Mitchell will say at a later date, that he did not agree the review and challenge the “current pitch fee” amount next year when the pitch fee is reviewed, or start withholding payments again”.

16. The exhibited letters and emails include a letter from Burlingham dated 20 September 2023 (inter alia) repeating requests for an “unequivocal agreement” to the pitch fee review and stating “Unless you provide us with the signed agreement which we have sought from you in our letter of 4 September by no later than 4pm on 25 September, we will be left with no alternative but to apply to the Tribunal for the determination of a new level of pitch fee. We consider that this is a reasonable step for us to take in the circumstances and will be seeking the reimbursement of the application fee and any legal costs we incur”.

17. Mr Mitchell, in an email on 22 September 2023 headed “Dispute and crash barrier” stated (inter alia) “£40.00 I have deposited into your account today receipt needed.

Now you can make good the crash barrier as you have stated in your letter. I don't agree with my Council tax increase my gas, electricity, car insurance premiums cost of living demands I still pay them.

I will not sign " I, Colin Mitchell !!!?????!!!"

you have asked for absolutely ridiculous.

Prove and provide to me that all Burlingham Park residents have agreed and signed this stupid statement when you provide these which is very unlikely I will have it inspected legally by a solicitor and will not sign it...”

18. When responding to the Application he confirmed inter alia “I don't know what Burlingham Park are asking me to do, I do not owe them any money I have paid my site fees in full and are fully up to date with payments.

Are Burlingham Park asking me to give up my rights in writing to appeal against any future disputes that may occur in the future ?... and I do not understand what Burlingham Park are harassing me for”.

## **The Hearing**

19. The hearing at Preston Magistrates Court took place after the inspection. Mrs Barton and Mrs Towers were in attendance, represented by Ms Apps. Mr Mitchell represented himself.

20. The parties were thanked for the papers which have been studied beforehand. The Tribunal outlined what it had gleaned both from the papers and the inspection, the relevant statutory provisions and processes, and the extent of its jurisdiction.

21. The matters referred to in the timeline were confirmed and discussed.

22. Mr Mitchell confirmed that he had deliberately withheld £40 per month until September because of his concerns as to an enhanced risk, particularly when working in his shed, of his next-door neighbour's car hitting it and the adjoining electricity substation.

23. There was discussion as to whether the metal railing fence which had since been erected by Burlingham was sufficient to ameliorate the perceived risk, and explanations given as to why bollards had not been chosen.

24. Mr Mitchell confirmed that he had, and still, objected to being asked to confirm in writing his agreement to pay the pitch fee increase on the basis that his "100%" payments meant that was unnecessary. In terms of the written declaration "it becomes forever". He repeated the statement made in his email of 22 September 2023 to the effect that he did not agree with increased Council tax, utility and other cost of living demands but still paid them.

25. He also readily confirmed that the Park when viewed as a whole had not deteriorated since the Tribunal's previous determination, saying it had "may be improved a little".

26. There were certain references by both parties to compensatory payments made following Mr Mitchell's purchase in 2019, with the Tribunal noting that such matters were clearly outside its present remit.

27. Mrs Towers confirmed that Burlingham had deliberately delayed serving a notice in respect the current year whilst awaiting the Tribunal's decision but would do so after the decision has been issued. The Tribunal noted that the prescribed notice form contains various helpful explanatory notes as to the procedures which apply when a notice of a proposed new pitch fee is served later than 28 days before the annual review date.

28. Ms Apps in her summing up emphasised that the application had been forced upon Burlingham because of the ambiguity of Mr Mitchell's responses as to whether he had properly agreed with the increase set out in the Notice, particularly when coupled with his initial withholding of parts of the monies due. She submitted that there had been no deterioration in the condition or

decrease in the amenity of the Park since the Tribunal's last determination and that there was no other weighty consideration which should displace the statutory presumption of an inflation based increase linked to the annual change in the change in the RPI, which was what Burlingham sought.

29. When asked about the application fee, Ms Apps submitted that it should be reimbursed as part of the Tribunal's determination. Mr Mitchell submitted that the process and application had been unnecessary, and that accordingly he should not have to reimburse Burlingham's fee. In addition, he felt it was unfair that he should reimburse on this occasion because he repaid the £20 fee on the previous application.

## **The law**

30. The provisions relating to the review of a pitch fee are contained in paragraphs 16 to 20 of Chapter 2 of Part 1 of Schedule 1 to the 1983 Act.

31. 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."

32. The pitch fee can only be changed either with the agreement of the occupier, or by the Tribunal, on the application of the site owner or the occupier (Para 16). 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)). When determining the amount of the new pitch fee, particular regard shall be had to any sums expended by the owner since the last review date on improvements provided after consultation (Para 18(1)(a)) and any reduction in services supplied by the site owner or decrease in the condition or amenity of the site, or any adjoining land occupied or controlled by the site owner, which has not been taken into account in a previous pitch fee review (Paras 18(1)(aa) & (ab)). Unless it would be unreasonable, 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 retail prices index (Para 20(A1)).

33. 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)).

34. The Upper Tribunal has provided helpful advice as to how the statutory provisions should be interpreted in various cases including in *Wyldecrest v Kenyon* [2017] UKUT 28(LC) where it as said “Based on this review of the Tribunal’s decisions in this area..... the effect of the implied terms for pitch fee review can therefore be summarised in the following propositions:

(1) The direction in paragraph 16(b) that in the absence of agreement the pitch fee may be changed only “if the appropriate judicial body ... considers it reasonable” for there to be a change is more than just a precondition; it imports a standard of reasonableness, to be applied in the context of the other statutory provisions, which should guide the tribunal when it is asked to determine the amount of a new pitch fee.

(2) In every case “particular regard” must be had to the factors in paragraph 18(1), but these are not the only factors which may influence the amount by which it is reasonable for a pitch fee to change.

(3) No weight may be given in any case to the factors identified in paragraphs 18(1A) and 19.

(4) With those mandatory considerations well in mind the starting point is then the presumption in paragraph 20(A1) of an annual increase or reduction by no more than the change in RPI. This is a strong presumption, but it is neither an entitlement nor a maximum.

(5) The effect of the presumption is that an increase (or decrease) “no more than” the change in RPI will be justified, unless one of the factors mentioned in paragraph 18(1) makes that limit unreasonable, in which case the presumption will not apply.

(6) Even if none of the factors in paragraph 18(1) applies, some other important factor may nevertheless rebut the presumption and make it reasonable that a pitch fee should increase by a greater amount than the change in RPI”.

35. In *Vyse v Wyldecrest Ltd* [2017] UKUT 24 (LC) HHJ Alice Robinson noted 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 that: “...By definition, this must be a factor to which considerable weight attaches ... it is not possible to be prescriptive ... 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.”

### **The Tribunal’s Reasons and Determination**

36. The Tribunal began by carefully considering whether the procedural requirements, which are a necessary precondition to any change in the pitch fee, had been met.

37. It found that the Notice was valid, had been given in the prescribed form, correctly referred to the change in RPI over the specified period at 11.4%, and was served more than 28 days before the review date. The Application was also made within the specified time limits.

38. The Tribunal agreed with Burlingham that there was an ambiguity as to whether Mr Mitchell had properly agreed to the pitch fee increase. “Agreement” cannot be inferred by reason only by the making of a payment.

39. Having been satisfied that Burlingham had complied with the necessary procedural requirements, and that it had jurisdiction, the Tribunal then went on to consider the Application and if it is reasonable for the pitch fee to be changed.

40. It carefully considered the evidence from the parties and its inspection of the Park.

41. As confirmed at the hearing, the Tribunal is required to determine whether an increase since the last agreed review is reasonable. It is not deciding whether the level of the pitch fee itself is reasonable. The Upper Tribunal in the recent case *Wyldecrest v Whiteley and others* [2024] UKUT 55 (LC) has explained: –

“14. When a site owner and an occupier first agree a fee for the right to station a home on a pitch, there is no restriction on the amount they are able to agree. The only relevant implied terms are concerned with the annual review of the pitch fee and not with its original determination; market forces govern that bargain, but any subsequent increase is limited by the statutory implied terms.

15. The implied terms.... provide for pitch fees to be reviewed annually, either by agreement or by the FTT ..... on the application of the owner or the occupier... if the parties cannot agree, the pitch fee may only be changed by the FTT if it “considers it reasonable for the pitch fee to be changed and makes an order determining the amount of the new pitch fee.”

42. The statutory provisions which are particularly relevant to the issues in this case are those set out in the following paragraphs of Part 1 of Schedule 1 to the 1983 Act:

“18 (1) When determining the amount of the new pitch fee particular regard shall be had to—

.....

(aa).... 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).... 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);

.....

20 (A1) In the case of a protected site in England, 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 retail prices index calculated by reference only to—

- (a) the latest index, and
- (b) the index published for the month which was 12 months before that to which the latest index relates.

(A2) In sub-paragraph (A1), “the latest index”—

- (a) in a case where the owner serves a notice under paragraph 17(2), means the last index published before the day on which that notice is served”.

43. The Tribunal’s focus has to be on whether there has any been material deterioration or reduction in the condition or amenity of the Park or any adjoining land occupied or controlled by Burlingham or the services that it supplies to the Park, since the pitch fee was last determined in April 2023.

44. There was nothing from the inspection to suggest any overall or material deterioration in the condition or amenity of the Park or any adjoining land which is occupied or controlled by Burlingham, or the services supplied. On the contrary, it is clear there has been a continuing rolling programme of planned improvements. The Tribunal’s overall impression was of a well-maintained site which the owners clearly continue to take a pride in.

45. Indeed, Mr Mitchell’s own assessment when referring to the Park as a whole was that it had not deteriorated, rather it may have improved.

46. The Tribunal carefully considered his safety concerns, but, and after having particular regard to the installation of the new fence which can only be considered as an improvement, did not find his concerns to be of such significant weight to displace the statutory presumption of an annual inflation-based increase to the pitch fee. Nor did the Tribunal find any other weighty matter which should displace that presumption.

47. As the Upper Tribunal at paragraph 22 in *Britaniacrest Ltd v Bamborough* [2016] UKUT 144 (LC) made it clear, whilst the 12 months RPI adjustment presumption is not the beginning and end of a determination it is “a very strong steer that a change in the RPI in the previous 12 months will make it reasonable for the pitch fee to be changed by that amount”. In *Wyldecrest v Whiteley and others*, it confirmed “... where none of the factors in paragraph 18(1) is present, and no other factor of sufficient (considerable) weight can be identified to displace the presumption of an RPI increase, the task of the tribunal is to apply the presumption and to increase the pitch fee in line with inflation”.

48. Consequently, the Tribunal, having found that an increase was reasonable and that there was no good reason to displace the statutory presumption, determined (to avoid any future ambiguity) that the change referred to in the Notice should be confirmed, i.e. that the pitch fee increased from £148 to £164.87 per calendar month with effect from 1 July 2023.

49. Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 allows the Tribunal to order the reimbursement of its fees.

50. Having confirmed the increase proposed by Burlingham, the Tribunal also determined that Mr Mitchell should repay the application fee of £20 which it had had to pay to bring the matter to the Tribunal. It was clear from the papers that Burlingham had afforded Mr Mitchell repeated and ample opportunities, both prior to the Application and prior to the hearing, to unambiguously confirm his agreement to the changed fee in writing. If he had done so, that would have forestalled any need for the Tribunal's involvement.