



**First-tier Tribunal  
Property Chamber  
(Residential Property)**

**Case reference** : CAM/12UE/PHI/2014/0017

**Park Home Address** : Numbers 1, 12, 41, 44 and 45  
Pinehill Park, Sawtry Way, Wyton,  
PE28 2DZ

**Applicants** : William Green and Mitzie Green

**Respondents** : Mr N B Lowry and Mrs M E Lowry (No.1)  
Mr N Baker and Mrs E Baker (No.12)  
Mrs P M Balaam (No.41)  
Mr and Mrs Turley (No.44)  
Mrs B Wood (No.45)

**Date of Application** : 26<sup>th</sup> June 2014

**Type of application** : to determine the new pitch fee -  
paragraph 18 of Schedule 1 to the  
Mobile Homes Act 1983, as amended ("the  
Act")

**The Tribunal** : David S Brown FRICS (Chair)  
David S Reeve

**Date of Decision** : 4<sup>th</sup> November 2014

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**DECISION**

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**The Tribunal determines that the new pitch fee for the pitch of each Respondent shall be £126.03 per month for the period 1<sup>st</sup> April to 31<sup>st</sup> October 2014 and £129.65 per month for the period 1<sup>st</sup> November 2014 to 31<sup>st</sup> March 2015.**

**Reasons**

**Introduction**

1. The Respondents are the occupiers of park homes at Pinehill Park. They have not agreed to an increase in pitch fees with effect from 1<sup>st</sup> April 2014. The site owners must therefore apply to this Tribunal if they are to obtain an increase in pitch fee.
2. The Applicants have submitted separate applications in respect of each Respondent. All of the applications are being determined together as the relevant dates and pitch fees are the same in each case.
3. On 25<sup>th</sup> February 2014 notice was served on the Respondents that the site owner proposed that as from 1<sup>st</sup> April 2014 the pitch fee would be

increased by 2.8% in line with RPI, from £126.03 to £129.65 per month. The RPI rate is not contested by the Respondents.

4. Mrs Wood has informed the Tribunal that she does not agree to the proposed new pitch fee but does not wish to attend the hearing. Mr and Mrs Turley were included as respondents by the Applicants as occupiers who had not agreed the new pitch fee. They have not replied to correspondence from the Tribunal. If, in fact, they have subsequently agreed the proposed new pitch fee they are no longer respondents in this case.

#### **The Occupation Agreement**

5. Copies of the occupation agreements have been produced which seem to comply in all material respects with those terms imposed by the Mobile Homes Act 1983 ("the 1983 Act").

#### **The Law**

6. The site owner can only change the pitch fee annually with the agreement of the occupier or, in the absence of agreement, by a determination of the new pitch fee by this Tribunal.
7. The site owner must give the occupier written notice accompanied by a prescribed Pitch Fee Review Form. The Tribunal notes that the prescribed form has been used and the relevant time limits have been complied with in this case.
8. Paragraph 18(1) of Chapter 2 of Schedule 1 to the Act provides that when determining the amount of the new pitch fee, regard shall be had to -
  - sums expended by the site owner since the last review date on certain improvements,
  - any deterioration in the condition and any decrease in the amenity of the site or adjoining land occupied or controlled by the site owner since 26<sup>th</sup> May 2013 (in so far as it has not previously been taken into account),
  - any reduction in services supplied by the site owner or deterioration in the quality of such services since 26<sup>th</sup> May 2013 (in so far as it has not previously been taken into account),
  - any direct effect on the costs payable by the site owner in relation to the maintenance or management of the site of an enactment which has come into force since the last review date,but no regard shall be had to any costs incurred by the site owner since the last review date for the purpose of complying with the amendments to the Act made by the Mobile Homes Act 2013.
9. Paragraph 19 also excludes from consideration certain other costs, not relevant in this case.
10. As to the amount of any increase or decrease in the pitch fee, the starting point is that regard shall be had to the RPI. Paragraph 20 of Chapter 2 of Schedule 1 to the 1983 goes further than this by saying

that there is a presumption that the pitch fee will change with the RPI, unless this would be unreasonable having regard to paragraph 18(1).

11. Upon application, the Tribunal has to determine whether any of the factors listed in section 18(1) apply and, if so whether such factors make it unreasonable for the pitch fee to increase or decrease in line with the percentage change in the RPI. There is no requirement to find that the level of the pitch fee itself is reasonable.

#### **The Applicants' Case**

12. In their applications, the Applicants state that there has not been any deterioration in the condition or any decrease in the amenity of the site since 26 May 2013 nor any reduction in the services or deterioration in their quality.
13. Mr Green informed the Tribunal in a letter dated 15<sup>th</sup> October 2014 that the gates are now working, the roads have been repaired and the CCTV will be repaired in the next week.

#### **The Respondents' case**

14. Mr and Mrs Lowry state that they object to the new pitch fee because of lack of maintenance over the past 12 months. The electric gates and the CCTV have not been operating and the roads are crumbling. They have told Mr Green that they are willing to pay the new pitch fee once these items have been repaired.
15. They produce a copy of a Residents' Association Newsletter of August 2013 which refers to the roads having been repaired in April but are breaking up again and the gates not having been working for three months. They also produce a copy of the minutes of a Residents' Association meeting on 26<sup>th</sup> September 2013 referring to the roads and gates which have still not been repaired.
16. Mr and Mrs Baker state that they do not dispute the RPI figure only that the site has not been maintained and has deteriorated over the last 12 months. They say the roads were repaired in April 2013 but it was a very poor repair and they were breaking up again within weeks. Mr Baker has provided photographic evidence. The majority of residents are elderly, they say, and the broken roads are a trip hazard and dangerous.
17. When they purchased their home they were told that the Park was a 5 star site with security gates and CCTV. One set of gates was replaced by a barrier about 5 years after they moved in. During 2013 the other gates stopped working. The site is no longer secure, especially at night. Another feature of the site, they say, is the CCTV. It is not operating properly. They feel that the amenities of the site have deteriorated over the past year.
18. They have informed the site owners that they would not pay the pitch fee increase until repair works had been carried out.
19. Mrs Balaam states that her complaint is lack of security on the

park. Her reason for moving there was the security offered by a gated estate with CCTV.

20. Mrs Wood has written to the Tribunal. She states that she disagrees with the proposed pitch fee because of the very poor quality and lack of drainage to the roads. She says that touch up repairs have not been completed and this is an issue of concern. She also cites the fact that the main gates and the CCTV have been inoperable for a long period. She says she is fed up with being fobbed off and with the site owner's disregard of his responsibility. She refers to failure to provide her with a Gold Shield Certificate but that is not something that we can take into account.

### **The Inspection**

21. We inspected the site on the morning of the hearing in the presence of Mr Green, Mr Baker, Mr Lowry and Mr James (the Park Manager). We found it to be a good quality mobile home park. It has two entrances, one with a metal barrier, with open pedestrian access at the side, and one with a pair of tall wooden gates. The gates are now working except for the key pad. The gates can be operated by means of a fob or by entering a code number on the key pad.
22. The roads have the appearance of brick paving but are in fact decorative concrete by Stencil Tech. There are numerous cracks and also several areas which are worn and chipped, with some large patches of repair which are uneven and of unmatched material. It is clear that some areas of past repair have cracked again. Some of the cracks and repairs are unsightly but the roads are basically serviceable.

### **The Hearing**

23. The hearing on 24<sup>th</sup> October was attended by Mr and Mrs Lowry, Mr and Mrs Baker, Mrs Balaam, Mr Green and Mr James.
24. All those present signified their agreement that the review date is 1<sup>st</sup> April and the relevant RPI percentage is 2.8%. We referred to the proposals by two of the Respondents (also adopted by Mrs Balaam at the hearing) that they would pay the new pitch fee from the date of the repairs to the gates and CCTV. Mr Green indicated that he would be prepared to accept that arrangement in principle but he was unable to agree to it because he was concerned about the reaction of the other residents.
25. It was agreed by all present that the wooden gates stopped working in August 2013 and were working again, apart from the key pad, in September 2014, also that some repairs to the roads had been carried out in April 2013 but further deterioration had occurred up to the review date. The CCTV stopped working in March 2014 and had been repaired yesterday.
26. The normal arrangement with the gates, and the barrier, is that they are closed at 10pm and opened again at 6am, on a timer. Access to the Park is therefore restricted between those times to residents with key fobs or persons using the key pad code.

27. Mr Lowry stated that the defective gates were a security issue. While they were not working, anyone could get onto the Park at any time of the day or night. When their home was sold to them, they were informed that it was a secure site. There are many elderly residents and some with disability. Mr Baker and Mrs Balaam concurred.
28. Mr Green said that when the gates stopped working he waited for the residents to say whether they wanted the gates or a barrier. There was then a delay because the contractors who installed the gates would not attend to them. He said they wanted to keep the site secure and he understood that residents felt insecure.
29. There was some disagreement about who suggested a barrier as an alternative. Mr Baker had produced a Residents' Association newsletter which stated that "There has been a rumour that they (*the gates*) will be removed and a barrier fitted" but he had also produced minutes of the AGM of the Association on 23<sup>rd</sup> March 2014 which states that the residents "had agreed that a barrier could be fitted instead of the broken gates".
30. With regard to the CCTV, Mr Lowry said that the security was an amenity which had been lost. Mr Green explained that the camera by the wooden gates was now fixed on the entrance. New power packs were required and had been fitted yesterday but the main fault had ultimately been found to be the receivers in the office and not the cameras themselves.
31. Mr Lowry said that the roads were getting worse. The repairs in April had been botched. Mrs Baker said that she uses a walker and the loose stones made the wheels jam. Mr Baker said that the repairs have not been well done. Some were temporary. Some of the cracks are getting bigger and more are appearing.
32. Mr Green replied that during the last 16 or 17 months there have been three lots of repairs. He acknowledged that there are cracks but said one can see cracks and potholes in roads everywhere one goes. He thinks that they need to put some jetseal or something similar on them.

### **Conclusions**

33. As to whether a change in the pitch fee is reasonable, the Tribunal is conscious of the wording of the 1983 Act that the starting point is a change in line with the RPI. There is no dispute that the formalities imposed by the 1983 Act as to the undertaking of a pitch fee review, the service of notice of increase plus statutory information and the time limits for the application to this Tribunal have been complied with.
34. With regard to the roads, they have been much repaired and this type of concrete slab construction will almost inevitably be prone to cracking over time due to thermal and/or structural movement. With this type of surface finish, it is almost impossible to match repairs to the original surface. Many of the cracks and repairs clearly predate 26<sup>th</sup> May 2013. The difficulty in relation to section 18 is that where there is a steady ongoing deterioration of roads, the degree of change of condition in any one review period may not, in itself, warrant a departure from an RPI

increase. There may come a point where general disrepair becomes so extensive that further deterioration in a year does take the disrepair over the limit but that state has not yet been reached here.

35. The fault in the CCTV system did not occur until March 2013, just before the review date, and it has now been repaired. This short period of non operation does not warrant an adjustment to the pitch fee increase.
36. It is clear that the security of the site is a feature which was advertised to prospective residents, attracted at least some of them to the park and is valued by them. In practice, the prevention of vehicles entering the park during part of the night might not be a strong deterrent to a determined criminal but the restricted access does create a feeling of security for residents, by virtue of which they can sleep easy in their beds. Whether the provision of such a security measure is an amenity or a service is perhaps arguable, but in either event paragraph 18 applies. The defective gates diminished that security for a prolonged period and we find that the adverse effect makes it unreasonable for the pitch fee to be increased by the percentage change in the RPI from the review date.
37. We accept that the Applicants were not deliberately delaying repairs to the gates but they were dilatory. The repairs have now been effected, apart from the key pad, and security has been restored. We are conscious of the fact that if the pitch fee increase is reduced to below RPI with effect from the review date, that reduction will carry forward year by year, each subsequent percentage increase being applied on review to a reduced figure. We find that, whilst an adjustment to the current pitch fee review is warranted, such prolonged effect would not be reasonable.
38. We note that the three Respondents present at the hearing expressed a willingness to pay the new pitch fee once the repairs had been completed and we conclude that this would be a reasonable basis on which to adjust the new pitch fee. Paragraph 20 of Chapter 2 does not specifically permit the Tribunal to determine the new pitch fee in this way but neither does it prohibit this approach, which we consider provides a fair and just result.
39. We therefore determine that the new pitch fee shall be the same as the previous pitch fee until 1<sup>st</sup> November and will then increase to £129.65 per month.

*Any party to this Decision may appeal against the Decision with the permission of the Tribunal. The provisions relating to appeals are set out in Part 6 of **The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013**. An application for permission to appeal must be delivered to the Tribunal within 28 days after the Tribunal sends the Decision to the person making that application.*

**D.S.Brown FRICS (Chair)**