



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

Case Reference : CHI/19UG/PHI/2014/0018-20

Property : 4, 12 & 13 Knoll Park, Gatemore Road, Winfrith,  
Newburgh, Dorset. DT2 8LD

Applicants : Mr T J & Mrs D H Clothier

Representative : Mr Romans

Respondents : Mr & Mrs G Young (4 Knoll Park)  
Mrs D Hurst (12 Knoll Park)  
Mrs J E Pearson (13 Knoll Park)

Representative : ---

Type of Application: Determination of new level of Pitch Fee pursuant  
to Schedule 1 Mobile Homes Act 1983 (as  
amended)(“the 1983 Act”)

Tribunal Members : Judge P.J. Barber  
Mr D Lintott FRICS Surveyor Member  
Mr J Mills Lay Member

Date and venue of Hearing : 22<sup>nd</sup> 2014 October Weymouth County Court, The  
Law Courts, Westway Road,  
Weymouth, Dorset. DT4 8BS

Date of Decision: 7th November 2014

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**DECISION**

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## Decision

(1) The Tribunal determines new monthly Pitch Fees, each with effect from 1<sup>st</sup> July 2014 as follows :

- 4 Knoll Park £127.70
- 12 Knoll Park £158.45
- 13 Knoll Park £129.88

## Reasons

### INTRODUCTION

1. The Applicants proposed new Pitch Fees as from 1<sup>st</sup> July 2014, separately for each of Pitch Numbers 4, 12 & 13, at Knoll Park, Gatemore Road, Winfrith Newburgh, Dorset DT2 8LD (“the Site”); the Respondents have not agreed the proposed new Pitch Fees and consequently the Applicants made three separate applications to the Tribunal for determination of new Pitch Fees pursuant to Paragraph 14, Part 1 of Schedule 1 to the Mobile Homes Act 1983 (as amended). Directions were issued in these matters variously on 19<sup>th</sup> August 2014; 1<sup>st</sup> September 2014 & 12<sup>th</sup> September 2014, providing for all three applications to be consolidated and heard together and, following request from the Applicants, an oral hearing of the matters.
2. **4 Knoll Park** – Mr & Mrs G Young occupy their pitch under an Agreement dated 10<sup>th</sup> May 2000; the last review date was 1<sup>st</sup> July 2013 and the current Pitch Fee is £124.59. The Agreement provides for annual review of the Pitch Fee on each 1<sup>st</sup> July; the proposed new Pitch Fee is £127.70, based on an increase of 2.5% purportedly reflecting the rise in the Retail Prices Index. In her statement to the Tribunal dated 27<sup>th</sup> August 2014, Mrs Young said she had not agreed to pay the increase in the Pitch Fee because of the unsightly condition of the area around her home and the lack of maintenance; referring also to a large metal fence which she said the Applicants had erected around her home and failures, in particular, to maintain the hedging and grounds.
3. **12 Knoll Park** – Mrs D Hurt occupies her pitch under an Agreement dated 29<sup>th</sup> August 1999; the last review date was 1<sup>st</sup> July 2013 and the current Pitch Fee is £154.59. The Agreement provides for annual review of the Pitch Fee on each 1<sup>st</sup> July; the proposed new Pitch Fee is £158.45, based on an increase of 2.5% purportedly reflecting the rise in the Retail Prices Index. In her statement to the Tribunal dated 27<sup>th</sup> August 2014, Mrs Hurt said that her reasons for refusing to pay the increase in the Pitch Fee included concern that the driveway at the Site was unsafe with ruts and potholes, lack of maintenance to the area where she parks her car, the overgrown Leylandii hedge and a general lack of maintenance to the Site.
4. **13 Knoll Park** – Mrs J E Pearson occupies her pitch under an Agreement dated 26<sup>th</sup> February 1999; the last review date was 1<sup>st</sup> July 2013 and the current Pitch Fee is £126.72. The Agreement provides for annual review of the Pitch Fee on each 1<sup>st</sup> July; the proposed new Pitch Fee is £129.88, based on an increase of 2.5% purportedly reflecting the rise in the Retail Prices Index. In her statement to the Tribunal dated 27<sup>th</sup> August 2014, Mrs Pearson said she was refusing to pay the increase in the Pitch Fee broadly due to the decrease in amenities and services since the last review date, referring to a worsening in the surface of the access

road, deterioration in the boundary fence, the overgrown Leylandii hedge and a general lack of sufficient maintenance. Mrs Pearson indicated however that she did not challenge the validity of the notice of increase and the RPI and arithmetical calculations.

5. The Tribunal was provided with copies of each of the Pitch Fee Review Forms served by the Applicants respectively on the Respondents on 31<sup>st</sup> May 2014. The three applications to the Tribunal are each dated 3<sup>rd</sup> August 2014 and each is made on the same grounds, namely that since the last review date:
  - (1) the Applicants have spent money on improvements which are for the benefit of the occupiers of park homes on the Site
  - (2) there had been a change in the law which is directly relevant to the actual costs of the management or maintenance of the Site

### **INSPECTION**

6. The Tribunal inspected the Site immediately prior to the hearing in the presence of Mr Clothier, Mr Romans and Mr Clothier Junior; also present were Mrs Young, Mrs Hurt, Mr Lockwood and Mrs Pearson. The Tribunal were advised that the access drive leading from Gatemore Road to the Site, is separately owned and does not form part of the Site. The Tribunal inspected the interior of 4 Knoll Park and noted sections of timber placed within the Leylandii hedging adjoining, and at close quarters to the lounge window; the Tribunal also noted wire mesh fencing enclosing two narrow vacant sites, one on each side of 4 Knoll Park; the fencing was labelled "Construction Site" and enclosed somewhat uncared for areas, including an old concrete base originating from a previous much smaller home.
7. The driveway leading to the homes was noted to be in poor and uneven condition, consisting of loose scalplings which were worn away in some areas. There were overhead telephone cables and a telegraph pole on the Site. The hedging to the western boundary of the Site to the rear of 12 & 13 Knoll Park, and certain other homes, was noted to be overgrown on the inside edge.
8. There were some areas of grass adjoining the drive and parking areas which were not clearly defined. There were signs of a previous more regulated parking layout scheme which appeared to have more recently been abandoned; there were a limited number of apparently allocated or reserved parking spaces noted at the inspection, which appeared to adjoin the newer or more recently installed homes. There were a total of 15 homes on the Site, numbered from 1 – 17, but there were no Numbers 3 or 6.

### **THE LAW**

9. The material parts of Schedule 1 the 1983 Act (as amended) are as follows:

*"16. The pitch fee can only be changed in accordance with paragraph 17, either*

  - (a) with the agreement of the occupier, or*
  - (b) if the appropriate judicial body, on the application of the owner or the occupier, considers it reasonable for the pitch fee to be changed and makes an order determining the amount of the new pitch fee.*

*17(1) The pitch fee shall be reviewed annually as at the review date.*

*(2) 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.*

*(2A)...*

*(3)...*

*(4) If the occupier does not agree to the proposed new pitch fee-*

*(a) the owner 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) the new pitch fee shall be payable as from the review date but the occupier shall not be treated as being in arrears until the 28<sup>th</sup> day after the date on which the new pitch fee is agreed, or as the case may be, the 28<sup>th</sup> day after the date of the appropriate judicial body's order determining the amount of the new pitch fee.*

*(5-10) not relevant*

*18(1) 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 improvement...-*

*(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 decreased 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)*

*(b)(ba) and (c) ...*

*(2) and (3) ...*

*19 ...*

*20(A1) ...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 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 subparagraph (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;*

*(b) .....*

The expression “the date on which this paragraph came into force” in paragraphs 18(1)(aa) and (ab) mean, by virtue of Sections 11 and 15(3) of the Mobile Homes Act 2013 (“the 2013 Act”) 26<sup>th</sup> May 2013.

### **HEARING & REPRESENTATIONS**

10. The hearing was attended by Mr Romans as representative for the Applicants, together with Mr Clothier, and also Mr Clothier Junior. For the Respondents, Mrs Young, Mrs Hurt and Mrs Pearson were in attendance and Mr Lockwood was also present.
11. The Tribunal asked the Respondents, by way of a preliminary issue, to confirm whether they were challenging either the validity of the notices of increase, the RPI, or arithmetic calculations and they said they were not.
12. Mrs Pearson said she had refused to pay the pitch fee increase, owing to poor conditions on the site, particularly the drive and parking area; she said that potholes are inadequately filled and that the grass is not often cut. Mrs Pearson also referred to a lack of trimming to the inside edge of the Leylandii hedging adjoining the rear of her pitch at 13 Knoll Park, adding that she had had to pay £70.00 this year to have it trimmed. Mr Romans referred to water filled potholes in the court car park and said that whilst they were filled with water today, there had been no sign of puddles on Site at the inspection today. Mrs Pearson also made reference to metal mesh fencing of the former pitch sites on either side of 4 Knoll Park. Mr Romans said these fences had been installed for health & safety reasons and were necessary to keep trespassers off those areas. Mr Romans referred to sets of comparative photographs taken of the Site on behalf of the Applicants in May 2013 and May 2014, at Pages 25-29 and 30-34 of the bundle, which he said showed little change over the period. Mrs Pearson was unable to produce any specific evidence regarding frequency of grass cutting; she said that before the Applicants had acquired the Site 8 years ago, the hedging had been regularly trimmed including on the inside edges. Mr Romans was adamant that the condition had changed little as between 2013 and 2014; he said that the potholes had been filled in February and again in May 2014.
13. Mrs Young said she had not paid any pitch fee increases over the last 3 years and questioned why application to the Tribunal had not previously been made in respect of her pitch fee increases, when they had been made last year in respect of 12 & 13 Knoll Park. Mrs Young said there had been incidents arising when Mr Clothier had accused her of damaging the hedging at the Site and she considered that Mr Clothier was trying to drive her off the Site by erecting, what she referred to, as unsightly wire mesh fencing and boards in the hedging at close proximity to her property. In regard to health & safety, Mrs Young said that most of the residents were in their 60s and the Site is generally very quiet, so that the idea of trespassers is absurd. Mrs Young also referred to propane gas bottles on the vacant sites and questioned the withdrawal of previous allocated parking spaces. Mr Romans said that the Agreements did not provide for allocated parking and that the propane gas bottles had been removed in 2012; he added that the wire mesh fencing has been there since 2010; accordingly he said, the position in regard to those matters had not in any event changed in the period 2013-2014.

14. Mrs Hurt said that when she had bought her home 15 years ago from Mr Romans, she had been told that it included parking. Mr Romans acknowledged that he had in fact been the Site owner from about 1990-1999, but added that whilst there were provisions in the Site licence regarding parking provision on the Site, there were no allocated parking spaces, or references to such rights in the Agreements. Mrs Hurt said that as she has a disability, she finds it difficult to walk, and relies on a wheelchair which is difficult to manoeuvre across the uneven and poorly surfaced access drive; she added that she has difficulty getting into her car in the winter months, owing to the potholes and a requirement for medical reasons to avoid her foot becoming wet. Mrs Hurt also complained that when Mr Clothier had cut the hedge in November 2013, the cuttings had been left in her garden and were still there today; she referred to the photograph at Page 56 of the bundle. Mr Romans said that the cuttings had been there at the date of the previous Tribunal hearing last year and submitted that the position had therefore not changed over the course of the year.
15. The Tribunal asked Mr Romans to explain why the wire mesh fences panels adjacent to 4 Knoll Park included a sign reading "Construction Site" when clearly no construction was taking place; Mr Romans said that as Mr Clothier is a builder he had simply used fencing from another site to save on cost. Mr Romans maintained that the fencing was required for health and safety reasons and that the Site's insurers would require fencing to be erected around vacant pitches.
16. In closing, Mrs Pearson said that when he had taken over the Site several years ago, Mr Clothier had promised residents that everything would be run as before; she added that this had simply not happened and the Site had gradually deteriorated. Mrs Young said that Mr Clothier was harassing her and she said she would not be intimidated and that her home was definitely not for sale and she had no intention of moving out. Mrs Hurt referred to a lack of courtesy shown to her by Mr Clothier, referring to delivery of her copy of the Tribunal bundle, anonymously in an envelope without her name on it. Mr Romans said that many of the issues raised today by the Respondents had been raised at the hearing last year and that in reality, there has been no substantial deterioration in condition or decrease in amenity of the Site over the course of the period 2013-2014. Mr Romans added that it was not fair for the Respondents to attempt to discredit the Applicants generally as he said they had done during the course of the hearing.

## **CONSIDERATION**

17. The Tribunal have taken into account all the oral evidence and those case papers to which we have been specifically referred and the submissions of the parties.
18. In regard to the period under consideration the Tribunal notes the effect of paragraph 18 to Schedule 1 of the 1983 Act as amended. In particular, regard should be had to any deterioration in condition, or decrease in amenity of the Site since 26<sup>th</sup> May 2013, unless regard has previously been had to that reduction or deterioration. This means that the relevant period for 4 Knoll Park is 26<sup>th</sup> May 2013 to 1<sup>st</sup> July 2014, but in the case of 12 & 13 Knoll Park, the relevant period should be 1<sup>st</sup> July 2013 to 1<sup>st</sup> July 2014, given the previous determination made in respect of those two properties.

19. In respect of the above period(s) the Tribunal is of the view that whilst there may have been some deterioration in condition or reduction in amenity, the actual degree of change in the relevant period(s) was hard to quantify with accuracy, on the basis of the evidence as presented. It was clear that the drive had been in a relatively poor condition for a number of years and similarly that the hedge had not been trimmed by Mr Clothier over an extended period. Similarly the metal mesh fencing had evidently been in position for several years. On balance, the Tribunal considers that any change in condition or amenity over the relevant period(s) was so relatively slight, as not to justify departure from the requirement under paragraph 20 of Schedule 1 of the 1983 Act (as amended), as to a presumption that pitch fees should increase or decrease by reference to the change in the retail prices index for such period. None of the Respondents had challenged the arithmetic calculations in regard to RPI. Accordingly the Tribunal determines that the new pitch fees are the amounts as proposed by the Applicants in each notice of increase in pitch fee, respectively for 4, 12 & 13 Knoll Park.

20. We made our decisions accordingly.

Judge P J Barber

#### **PERMISSION TO APPEAL**

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.