



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

**Case Reference** : **MAN/16UB/PH1/2016/0060**

**Properties** : **23; 25; 26 and 27 Nepgill, Nepgill Park,  
Bridgefoot, Workington, CA14 1WB, and  
4; 5; 14; 18; 21; 22; 30 and 34 Millbanks Court,  
Nepgill Park, Bridgefoot, Workington, CA14 1WB**

**Applicant** : **Acrebind Ltd.**

**Respondents** : **(1) Mr & Mrs Straughton  
(2) Mrs O Martin  
(3) Ms L Roscamp  
(4) Mrs C Caton  
(5) Mr J Wilson  
(6) Mr & Mrs F Ratcliffe  
(7) Mrs P Round  
(8) Mr & Mrs J Lockett  
(9) Mrs J Bowes  
(10) Mr A Moore  
(11) Ms J A Marchbank  
(12) Mr & Mrs D Birch**

**Type of Application** : **Under paragraph 16 of Schedule 1 to the Mobile  
Homes Act 1983 – determination of pitch fee**

**Tribunal Members** : **Judge P Forster  
J Platt FRICS**

**Date of Decision** : **9 January 2017**

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**DECISION**

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1. The pitch fees payable from 1 April 2015 take into consideration the annual license fee charged by Allerdale Borough Council under s.5A of the Caravan Sites and Control Act 1960 as amended by s.1 of the Mobile Homes Act 2013.
2. The pitch fees payable from 1 April 2016 are calculated on the pitch fees payable from 1 April 2015 increased by the percentage increase in the Retail Price Index.
3. The Tribunal determined that the monthly amounts payable by each of the Respondents in 2015 and 2016 respectively, are:

<u>Respondent</u>	<u>2015</u>	<u>2016</u>	<u>increase</u>
Mr & Mrs Straughton	£99.74	<u>£101.04</u>	£1.30
Ms Rosecamp	£99.74	<u>£101.04</u>	£1.30
Mr Wilson	£136.12	<u>£137.89</u>	£1.77
Mr & Mrs Ratcliffe	£136.12	<u>£137.89</u>	£1.77
Mrs Round	£136.12	<u>£137.89</u>	£1.77
Mr & Mrs Lockett	£136.12	<u>£137.89</u>	£1.77
Mrs Bowes	£136.12	<u>£137.89</u>	£1.77
Mr Moore	£162.98	<u>£165.10</u>	£2.12
Ms Marchbank	£122.74	<u>£124.34</u>	£1.60
Mr & Mrs Birch	£122.74	<u>£124.34</u>	£1.60

### **The Background**

4. This is an application under paragraph 16 of Schedule 1 to the Mobile Homes Act 1983 (“the 1983 Act”) for the Tribunal to determine the level of a new pitch fee from 1 April 2016.
5. The application was made by Acrebind Ltd. (“the Applicant”) the site owner of Nepgill Park, Bridgefoot, Workington, CA14 1WB.
6. Nepgill Park is a residential park home site. It is a protected site within the meaning of the 1983 Act. The development of park homes and their physical standards are regulated through the planning system by the grant of planning permission and by the site licencing system contained in the Caravan Sites and Control of Development Act 1960 (“the CSCD Act 1960”). In this case, the licencing authority is Allerdale Borough Council.
7. There have been four previous sets of proceedings between the Applicant and park home owners on Nepgill Park, some of whom are the Respondents in this case. The members of this Tribunal decided each of those earlier applications. As well as the present proceedings, there is also a sixth case MAN/16UB/PHC/2016/0008.
8. Three of the cases were heard together in 2012: MAN/16UB/PHC/2012/0007, MAN/16UB/PHI/2012/0014 and MAN/16UB/PHI/2012/0016. The decision in the 2012 cases concerned the pitch fees for 2006 to 2012. So far as relevant to the present case, the Tribunal found that any change in the annual pitch fee was limited to the rise and fall of the Retail Price Index.
9. The Tribunal issued directions to the parties on 30 August 2016. It was decided that the application would be determined without a hearing unless any of the parties requested one. No such request was made and so the application has been decided on the papers without a hearing.

### **The Applicant's Case**

10. Allerdale Borough Council, relying on powers under the 1960 Act as amended by the Mobile Homes Act 2013 ("the 2013 Act"), imposed a fee of £1,013.76 on the Applicant for "the annual inspection of the residential caravan site". The fee was invoiced on 16 December 2014 and it was paid by the Applicant on 9 January 2015. The Applicant included the fee in the review of the annual pitch fee which was effective from 1 April 2015. The fee of £1,013.76 was divided between the 64 pitches on the site resulting in an annual increase of £15.84 for each park home.
11. When the Applicant came to review the pitch fee in 2016, it relied on advice given by the Leasehold Advisory Service and by Allerdale Borough Council's Legal Advisory Service that the annual fee charged by the local authority could be recovered through the pitch fee but that it was a one-off addition and that it could not be added again in future years.
12. The Applicant relied on the explanatory notes to the 2013 Act in respect of the amendments made by s.11 to Chapter 2 of Part 1 of Schedule 1 to the 1983 Act. A new paragraph 18(1)(b) was inserted which provides that site owners may only take into account any direct effect on the costs payable by the owner in relation to the maintenance or management of the site of any enactment that has come into force since the last review date.
13. The Applicant's case was that due to the changes in the law from 1 April 2014 it was legally permitted to apply the annual license fee, as a direct cost payable by the owner in relation to the maintenance and management of the site, through the pitch review process undertaken in 2015.

### **The Respondents' Case**

14. The Respondents relied on the Tribunal's 2012 decision, namely that any change in the pitch fee was limited to the rise and fall of the Retail Price Index. Ms Marchbank repeated a comment attributed to Mrs Morgan that the "Tribunal Judges ruling of 2012" could be ignored. Ms Marchbank made the point that "surely a clerk at the local Council Offices, does not have the right to tell the Park Owners to ignore" the Tribunal's decision.
15. Ms Marchbank appended to her written submission a copy of a decision made in another case which considered the annual license fee, CAM/22UH/PHI/2014/0019, ("the Essex case"). It was decided that an annual license fee was a cost of management and could be passed on to the park home owners as a "separate service item".
16. The difficulty perceived by the Tribunal in the Essex case was that if it allowed a straightforward increase in the pitch fee, then it would be increased by the rate of inflation each year. If there was no actual increase in the annual license fee the amount to be recovered as part of the pitch fee would increase each year and that would be "artificial and unwarranted". The Tribunal's solution was to allow the annual license fee but as a "separate service item" so that in subsequent years it would only increase if the fee was increased and would not be subject to the Retail Price Index.
17. Mrs Bowes made a separate written submission. Her point was that the Council's charge was for a site inspection and that it was not a license fee. Mrs Bowes said that it would be fairer to separate the charge from the pitch fee and pay it as a service charge.

18. Mrs Bowes put forward two reasons for her argument. Firstly, that the charge should only be applied if the Applicant had paid it. Mrs Bowes stated that the Council had inspected in 2014 but that there had not been an inspection in 2015. The site was inspected on 19 February 2016 only a few days before the Applicant served the pitch fee review notice on 22 February 2016. By that date the Council had not raised an invoice and the Applicant had not paid the charge.
19. Mrs Bowes' second reason was that the pitch fees on Nepgill Park vary according to the size of the pitch. The larger the pitch the higher the fee. Therefore, to apportion the charge for the site inspection by dividing it by 64 imposed a greater burden on those occupying smaller pitches. It would be better to treat the site inspection fee as a service charge.
20. There was also a written submission from Mr Moore. He stated that in 2015 an inspection was not carried out by the Council as planned because of storm Desmond. He agreed that the Applicant was entitled to recoup the site inspection fee but not until it had been paid to the Council. The point that he made was the same as the one made by Mrs Bowes. Mr Moore also referred to the Essex case.
21. Mr Lockett made a written submission. He stated that he intends to pay his share of the site inspection fee "as and when we are invoiced for the same". He stated that the inspection fee should be paid as a separate item and not "incurring RPI". That view was also expressed by Mr & Mrs Ratcliffe in their written submissions to the Tribunal.

### **The Issue**

22. How should the annual license fee made by the Council be recovered from the Respondents? As part of the pitch fee or as a separate service charge? How should the Retail Price Index be applied to the pitch fee?

### **The Law**

23. The relevant 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:

- 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 court [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.
  - (4) If the occupier does not agree to the proposed new pitch fee-
    - (a) the owner may apply to the court [appropriate judicial body] for an order under paragraph 16(b) determining the new pitch fee
- 18 (1) When determining the amount of the new pitch fee particular regard shall be had to—
  - (ba) in the case of a protected site in England any direct effect on the costs payable by the owner in relation to the maintenance or management of the site of any enactment which has come into force since the last review date.
  - (1A) but in the case of a pitch in England, no regard shall be had, when determining the amount of the new pitch fee, to any costs incurred by the owner since the last review date for the purposes of compliance with the amendments made to this Act by the Mobile Homes Act 2013

- 19 (3) When determining the amount of the new pitch fee, no regard may be had to any fee required to be paid by the owner by virtue of –
- (a) S.8(1B) of the Caravan Sites and Control of Development Act 1960 (fee for application for the site licence conditions to be altered);
  - (b) S.10(1A) of that Act (fee for the application for consent to transfer the site licence).
- 20A (1) 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 price index calculated 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.

### **The Decision**

24. By the time that the Tribunal came to consider the application two of the original twelve Respondents, Mrs Martin and Mrs Caton had withdrawn their opposition to the pitch fee proposed by the Applicant. That left the other ten Respondents to continue with the proceedings.
25. There was no dispute between the parties about the undertaking of a pitch fee review, the service of notices of increase and the time limits for the application to the Tribunal. The figures used and the percentage increase under the Retail Price Index were not disputed. The Respondents did not dispute the Applicant’s right to recover the annual license fee. The questions for the Tribunal were: how should the annual license fee be recovered from the Respondents? should the fee be recovered as part of the pitch fee or as a separate service charge? how should the Retail Price Index be applied to the pitch fee?
26. The right of the Applicant to change the pitch fee is included in the implied terms set out in the 1983 Act.
27. S.1 (1) of the 2013 Act amended the CSCD Act 1960 by inserting s.5A (1) which provides that a local authority which has issued a site license in respect of a relevant protected site may require the license holder to pay an annual fee fixed by the authority.
28. Neggill Park is a relevant protected site. The 2013 Act came into force on 1 April 2014. Allerdale Borough Council using its power under s.5A(1), on 16 December 2014, imposed a license fee on the Applicant.
29. S.11(3) the 2013 Act amended paragraph 18 of Chapter 2 of Part 1 of Schedule 1 to the 1983 Act about the matters to which site owners must have particular regard, and the costs to be disregarded, when determining the amount of the new pitch fee. The amendments made by the 2013 Act apply to existing pitch agreements as well as to those made after commencement of the Act.
30. The previous provision in paragraph 18(1)(c) which allowed site owners to take into account the effect of any enactment which had come into force since the last review date when determining the new pitch fee, was replaced with a new paragraph 18(1)(ba) which specifies that site owners may only take into account any direct effect on the costs payable by the owner in relation to the maintenance or management of the site of any enactment that has come into force since the last review date.

31. The annual license fee charged by the Council under s.5A(1) of the CSCD Act 1960 is a cost payable by the Applicant in relation to the management of Nepgill Park and is a direct effect of the amendments made by the 2013 Act. That is a matter to be taken into account by the Tribunal under paragraph 18(ba) of Chapter 2 of Part 1 of Schedule 1 to the 1983 Act when determining the pitch fee.
32. The explanatory notes to s.1(8) of the 2013 Act includes a statement that site owners will be able to recover the cost of the annual license fee through the pitch fee review, by adding this to the pitch fee in the first year that the license fee is introduced. The cost of the license fee will then remain part of the pitch fee and any subsequent change in the Retail Price Index will be applied to it.
33. The annual license fee charged by the Council is for the administration and monitoring of site licenses. When requiring a license holder to pay an annual fee the local authority must inform the license holder of the matters to which they have had regard in fixing the fee for the year in question and the extent to which they have had regard to deficits or surpluses in the accounts for the annual fee for previous years. The purpose of the fee is to enable local authorities to recover the costs incurred in operating licensing schemes. The amount of the fee is based on the cost of the Council performing its licensing functions. This is made clear in guidance for local authorities published by the Department for Communities and Local Government.
34. It was inaccurate for Allerdale Borough Council to describe the fee as “an annual inspection of the residential caravan site...”. That has given rise to an assumption that the fee is in respect of an annual inspection of the site. The power under s.5A(1) is to require the license holder to pay an annual fee fixed by the local authority. Mrs Bowes’ statement that the Council’s charge was for a site inspection and was not a license fee was incorrect. However it was described, the Council’s charge was for a license fee.
35. In the Essex case, relied on by the Respondents, the passing of the cost of the annual license fee was not the main issue in the case. There was no detailed consideration about the nature of such a fee and it was simply stated that “it has been established that this is a cost of management and can be passed on under the new provisions [of the 2013 Act]”. There was no discussion about the relevant statutory provisions.
36. In the present case, the Tribunal had sight of two written agreements: for 5 Millbanks Court occupied by Mr & Mrs Ratcliffe and for 25 Nepgill occupied by Mrs Martin. On the basis of the Tribunal’s previous knowledge of the site, all the agreements are in the substantially the same form. Provision is made for park home owners to pay, in addition to the pitch fee, “general and/or water rates which may from time to time be assessed or payable in respect of the mobile home or the pitch (and/or a proportionate part thereof where the same are assessed in respect of the residential part of the park) and charges in respect of electricity gas water telephone and other service”. There was obviously no express provision for an annual license fee to be charged by the local authority because it was not introduced until 2014. The license fee cannot properly be described as a “separate service item” because it does not involve the provision of a service by the Council or the Applicant or anyone else to the Respondents. It cannot properly be described as an “other service” for which the Respondents would be liable under the site agreements. The annual licence fee is a levy imposed under statute by the local authority to defray the costs of operating a licensing scheme. It is a cost payable by the Applicant to manage and operate the site.
37. This Tribunal is not bound by the decision of the Tribunal in the Essex case. It considered that decision but distinguished it from the present case.

38. "Pitch fee" is defined in paragraph 29 of Part 1 of Chapter 2 of Schedule 1 of the 1983 Act as meaning "the amount which the occupier is required to pay by the agreement to the owner for the right to station the mobile home [park 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".
39. A pitch fee may only be changed by agreement or by the Tribunal if, on the application of the owner or the occupier, it considers it reasonable for it to be changed. The 1983 Act provides for the matters to be taken into consideration when determining the pitch fee which includes the effect of any enactment coming into force since the last review date.
40. When the pitch fees were originally negotiated between the Applicant and the Respondents the possibility that an annual fee might be levied by the Council was not in their contemplation. The Applicant, as any site owner would have done, when negotiating the pitch fee, will have taken into account the costs of running and managing the site. A subsequent change in the law which affects those costs could be prejudicial to either the site owner or the individual park home owners. Paragraph 18 (ba) of Chapter 2 of Part 1 of Schedule 1 to the 1983 Act mitigates the potentially prejudicial effects of changes to the law and specifically the changes made by the 2013 Act.
41. As defined, the pitch fee reflects the costs taken into account by the site owner when granting a licence to the park home owner to station a park home on the pitch. The annual license fee made by the local authority is properly a management cost and not something to be charged for separately and recovered as a service charge.
42. The decision made in 2012 is not to be ignored as suggested by Ms Marchbank but it has to be subject to subsequent changes in legislation as provided for by the 2013 Act. The change was not brought about by "a clerk at the local Council" but by an act of parliament.
43. The Tribunal found that it was reasonable for the pitch fee to be changed and it took into consideration the matters specified in the 1983 Act including the effect of the 2013 Act which came into force on 1 April 2014. It was reasonable taking into account the annual license fee levied by the Council and payable by the Applicant.
44. The charge made by the Council in 2014 was properly taken into account by the Applicant when the pitch fee was changed from 1 April 2015.
45. The Tribunal found that it was reasonable to increase the pitch fee in accordance with the increase in the Retail Price Index. This was not disputed by the Respondents. There is a statutory presumption that the pitch fee will follow the Index.
46. When the pitch fee was reviewed again in 2016 it was correct to apply the Retail Price Index to the amount of the 2015 pitch fee. The adjustment made in 2015 was a one-off event.

47. Mrs Bowes argued that the license fee should only be recovered from the park home owners after it has been paid by the Applicant. In the circumstances of the present case, the Council made a charge on 16 December 2014 and again in 2016. Confusion has been caused by erroneously linking the fee to an inspection. The Council has the obvious intention of imposing an annual fee. The pitch fee was adjusted from 1 April 2015 based on the invoice of 16 December 2014. The Council's delay in raising an invoice for the annual fee was a benefit to the Applicant but an invoice was issued in the early part of 2016. The annual license fee is a continuing management cost and therefore reflected in the pitch fee which does not vary depending on payment of the license fee by the Applicant.
48. The Council calculated the fee of £1,013.76 by reference to the 64 permitted pitches on Nepgill Park, making a charge of £15.84 for each pitch. Mrs Bowes suggested that the license fee should be treated as a service charge but payable in proportion to the size of the individual pitches. The Tribunal found that the license fee is to be considered as part of the pitch fee and that it is not a fee for the provision of a service. The amount of each pitch fee is to be calculated in accordance with the individual site agreements.
49. In the 2012 decision, the Tribunal determined that the pitch fee was distinct and separate from the cost of running the sewage treatment plant and should be billed separately. The costs to be divided by 67 representing 59 pitches, 5 flats and 3 houses. The empty pitches are the responsibility of the Applicant. The site license is for 64 pitches and does not include the flats and houses.
50. The Respondents asked for clarification about when the pitch fee should be paid. That is determined by the individual agreements between the Applicant and the each Respondent. The agreements attached to the application in respect of 5 Millbanks Court and 25 Nepgill Park provide that the pitch fee is payable by equal monthly payments.