Delegated Decision

31 January 2024

Gypsy and Roma Traveller Permanent Site Pitch Fee Review 2024/2025

Report of Housing Solutions Management Team

Marion Thompson, Housing Manager

Electoral division(s) affected:

Countywide

Purpose of the Report

1 This report reviews the Gypsy, Roma, and Traveller (GRT) permanent site pitch fee for 2024/2025.

Executive summary

2 The Mobile Homes Act provides for the right of security of tenure for certain Gypsy Roma Traveller sites, pursuant to the Mobile Homes Act 1983 ("the Act") which are known as protected sites.

3 Paragraph 15 of Chapter 4 of Schedule 1, part 1 of the Mobile Homes Act 2011 provides that the pitch fee will be reviewed annually as at the review date and at least 28 clear days before the review date. When reviewing the pitch fees, the Council must take into consideration legislative changes which were put into place in 2011.

Recommendation(s)

4 It is recommended that the current pitch fees are increased by Consumer Price Index (CPI) of 6.7% in 2024/2025.

Background

5 Durham County Council owns and manages 6 permanent Gypsy and Roma Traveller Sites as set out in the table below:

Name	**Location**	**Current size**	**Built**
Adventure Lane	West Rainton, DH4 6PW	19	2014
Drum Lane	Birtley, DH3 2AF	19	2014
East Howle	Ferryhill, DL17 8SA	25	2011
Ash Green Way	Bishop Auckland, DL14 6RS	25	2015
St. Phillip's Park	Coundon Grange, DL14 8XG	25	2009
Tower Road	Maiden Law, DH9 7XR	13	2014
TOTAL		**126**	

6 The Pitch Fee was last reviewed in April 2023 when a decision was made not to increase the pitch fee.

7 Residents on all six sites (excluding 4 residents on St Phillips Park) pay for:

(a) The pitch fee – this incorporates improvements to the sites, Warden service charges, communal facilities service charges which reflect the ongoing cost of community facilities and maintenance of communal spaces and any costs associated with the maintenance of the site generally.

(b) A separate water and sewerage charge.

(c) Residents on East Howle and St Phillips Park are also required to pay for the electricity used as the pitches on these two sites are not individually metered.

8 The existing pitch fees are outlined below:

Pitch Fees – Weekly Charge	**2018/2019**
a) Double Pitches (101 Pitches) Pitch fee – This includes wardens and communal charges. Other Charges – water & sewerage **Total**	£71.71 Residents are billed individually via water meter. **£71.71**
b) Single Pitches (St Phillips Park Only – 21 Pitches) Pitch fee – This includes wardens and communal charges. Other Charges – Water & Sewerage **Total**	£67.54 Residents are billed individually via water meter. **£67.54**
c) Other Single Pitches (4 Pitches on St Phillips Park) **Total**	 £30.43 £30.43

*The pitch fee is lower for these 4 tenants following a Tribunal Decision in October 2014.

2024/2025 - Pitch Fee Review

9 Paragraph 15 of Chapter 4 of Schedule 1, part 1 of the legislation provides that the pitch fee will be reviewed annually as at the review date and at least 28 clear days before the review date the owner must serve on the occupier written notice setting out the owner's proposals in respect of the new pitch fee. If the occupier agrees to the proposed new pitch fee it is payable from the review

date, however if the occupier does not agree Durham County Council may apply to a Tribunal for an order to determine the amount of the new pitch fee.

10 For the purposes of this report the 'Review Date' is the 1 April, or the first Monday in April as outlined within the individual written statements issued to residents.

11 The pitch fee is reviewed annually, and it was last increased in April 2017. This reflected the costs incurred for improved amenities available post-refurbishment.

12 There is a presumption under the Act that the pitch fee will increase or decrease, by a percentage which is no more than any percentage increase or decrease in the Retail Price Index since the last review date, unless this would be unreasonable having particular regard to paragraph 16 (1)

13 The Act provides that the pitch fee should not be increased by more than the annual change in the Retail Price Index (RPI) reported in the previous 12 months. RPI was superseded by Consumer Price Index (CPI) in 2013 as RPI was not held to meet international standards. However, it is still used by the government as a base for various purposes. CPI is now used by Social Housing Providers when applying a rent increase.

14 Following advice from Legal and Democratic Services increasing by CPI deviates from the approach taken over the past 9 years.

15 It had previously been thought pitch fee increases were linked to improvements on sites, however Legal and Democratic Services have reviewed both the Mobile Homes Act 2011 and the pitch agreement.

16 Advice states that pitch fees can be increased by CPI but not above this without improvements to amenities on site.

17 The table below shows increased rents across the different pitches.

Pitch Fees – Weekly Charge	**2024/2025**
a) Double Pitches (101 Pitches)	£76.51
Pitch fee – This includes wardens and communal charges.	Residents are billed individually via water meter.
Other Charges – water & sewerage	
Total	**£76.51**

b) Single Pitches (St Phillips Park Only – 21 Pitches) Pitch fee – This includes wardens and communal charges. Other Charges – Water & Sewerage **Total**	£72.07 Residents are billed individually via water meter. **£72.07**
c) Other Single Pitches (4 Pitches on St Phillips Park) **Total**	£30.43 £30.43

*As a result of the Tribunal's decision in 2014, 4 residents currently pay a much lower pitch.

Main implications

18 The increases will generate £577.93 per week or £30, 052.36 per annum additional income in 2024/2025.

Conclusion

20 It is recommended that pitch fees are increased by CPI of 6.7%.

Background papers

Legal & Democratic Services advice – Appendix 1.

Other useful documents

None

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Appendix 1: Implications

Legal Implications

None

Finance

None

Consultation

None

Equality and Diversity / Public Sector Equality Duty

The Equality Act 2010 requires that the Council, when exercising its functions, must have "due regard" to the need to eliminate discrimination to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it and to foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Human Rights

None

Crime and Disorder

None

Staffing

None

Accommodation

None

Risk

There is a potential risk that the Council could be taken to a tribunal by tenants.

Procurement

None

Appendix 2: Advice regarding Gypsy, Roma, and Traveller sites

1 Are the GRT sites generally regulated by MHA 1983?

The Mobile Homes Act 1983 (MHA) governs any agreement under which a person is entitled to station a mobile home on a protected site and to occupy it as their only or main residence. This includes Gypsy, Roma, and Traveller (GRT) sites provided by local authorities.

The site owner must give to the proposed occupier of the mobile home a written statement of the terms of the agreement setting out certain specified matters including the terms implied into the agreement by MHA and any site rules. The relationship created is not one of landlord and tenant but of licensor and licensee.

The agreement therefore includes the implied terms in Schedule 1 to MHA. The implied terms for local authority GRT sites differ from those that apply to other mobile home sites as there is no statutory right to assign an agreement upon sale or gift of a caravan. The implied terms that apply to permanent pitches on a local authority GRT site are set out in chapter 4 of Schedule 1. There are separate implied terms in chapter 3 for transit pitches. I understand that we are only concerned with permanent pitches.

The implied terms confer a degree of security of tenure on the occupier by restricting the site owner's ability to terminate the agreement. In principle the agreement is binding on the original occupier's assignees. Where the occupier dies during the term of the agreement, the agreement passes to the widow, widower or surviving civil partner of the deceased occupier or, if none, any resident member of the deceased occupier's family or, if none, the person inheriting the mobile home under the occupier's will or intestacy rules (with exceptions).

Generally, disputes are brought before the First-tier Tribunal (Property Chamber).

Part 3 of Durham County Council's standard agreement should therefore align with chapter 4 of Schedule 1. I have checked one set of wording against the other, short of a full proof-reading exercise, and generally the wording of part 3 does seem to follow that of chapter 4. There are just two points to note at this stage. First, the Mobile Homes (Pitch Fees) Act 2023, which came into force on 2 July 2023, amended MHA to change the inflationary index for annual pitch fee reviews from RPI to CPI. Secondly, some words appear to be missing from the definition of "review date" in paragraph 27 of part 3.

I would suggest carrying out a detailed check of part 3 against the current text of chapter 4 and updating the DCC wording, as necessary.

The various references to MHA in the standard agreement are correct.

2 In relation to existing pitch agreements, is there any scope for increasing the service charges or utility charges either under the terms of the standard agreement or via MHA or some other legal mechanism to reflect additional costs?

As far as I have been able to ascertain, the owner is free to charge for services in addition to the pitch fee. I have not seen any example of a completed agreement but paragraphs 7 and 9 of part 1 of the standard agreement that has been supplied to me suggest that DCC's pitch fee includes the warden's charge and various "communal" charges but that we make an additional charge for water, sewage and (where the council makes the supply) electricity. We do not seem to levy a service charge equivalent to what might be payable under a business or residential lease. I recall from a previous discussion that we only supply electricity to two sites and that on the other sites the occupiers are directly responsible to the supplier for electricity charges. The standard agreement also allows us to charge separately for any new services that we provide.

The first part of paragraph 9 suggests that any unmetered weekly charge for water and sewerage can be reviewed annually on the first Monday of April. It does not say on what basis, but it seems reasonable to assume that this is intended to cover increases in the cost to the council. The second part of paragraph 9 suggests that where a water meter is installed the weekly charge may also be reviewed quarterly to reflect usage. There is no indication of when the quarters begin and end – 1 April to 30 June and so on. In relation to electricity, the agreement states only that the "occupier is responsible for and shall pay all charges relating to the use of electricity on the pitch."

I see no legal basis on which to levy a service charge to cover increased costs associated with the wardens or the provision of communal services, or indeed costs relating to the wardens' managers if those managers are not providing new services, but I will comment separately on reviewing pitch fees.

There is some scope to increase the utility charges on the terms of the standard agreement but the lack of detail in the agreement about reviewing water and sewerage charges does perhaps increase the risk of a challenge if we seek to increase our charges in line with those of our supplier and there is no explicit right in the agreement to review electricity charges when they apply. Furthermore, under part 3 of the standard agreement and chapter 4 of Schedule 1 to MHA, if required by the occupier, the owner must produce, free of charge, documentary evidence in

support and explanation of any charges for services payable by the occupier to the owner under the agreement.

I have not identified any other legal mechanism for adjusting utility charges.

There is also some statutory regulation. Under the Water Resale Order 2016, if the water supply is metered, the occupier is only required to pay for a measured amount consumed plus an amount representing a standing charge paid by the owner divided by the number of occupiers supplied. If the supply is not metered, the occupier may only be charged the average bill for a water supply (and if appropriate sewerage service) by the relevant supplier, as published by Ofwat, unless the owner can justify a higher charge. Electricity and gas charges are regulated by Ofgem under the Electricity Act 1989 and Gas Act 1986 respectively via the Maximum Resale Price (MRP) Direction. This legislation imposes a maximum price at which electricity and gas can be supplied by the owner to the occupier; it must be the same price as that paid by the owner, including standing charges, so the owner must not make a profit on the supply. I assume that the council is complying fully with these requirements.

As mentioned above, the implied terms in MHA do give the occupier some security of tenure so it will not generally be possible for the council to terminate one agreement with an occupier and replace it with another on more favourable terms.

3 Is there any statutory restriction on how these fees are set or presented in the agreement?

I have not identified any legal restrictions on how utility charges are set or presented in the agreement. We could therefore, in a new agreement, make more explicit the basis on which water and sewerage charges are to be reviewed and adjust the frequency of reviews. We could also provide for the review of electricity charges when they apply. The obvious place to do this would be paragraph 3 of part 4 of the standard agreement.

In a new agreement we could also theoretically levy a service charge to cover services other than utilities that are not included in the pitch fee but this would be at risk of legal challenge on the basis that the owner charges the pitch fee to cover the use of the common areas of the park and their maintenance as well as the right to station a mobile home on a pitch. We would also need to be mindful of the statutory regulation of service charges. I am not aware of any such regulation that is specific to mobile homes but for example residential service charges are regulated by the Landlord and Tenant Act 1985 so we would need to be satisfied that the relevant provisions are being complied with or they do not apply to DCC’s sites. I suspect we will conclude that this not a sensible route to go down.

4 Are the rent review provisions in the standard agreement compliant with MHA?

As mentioned above, part 3 of the standard agreement does seem generally to follow that of chapter 4 of Schedule 1, with the notable exception of CPI having replaced RPI as the inflationary index for pitch fee reviews.

In new agreements the wording will need to be altered at paragraphs 18(1) and 27 of part 3. A detailed comparison of the two sets of wording would be a sensible precaution.

For pitch fee reviews with review dates on or before 16 August 2023, owners may still use RPI to increase the pitch fee, but only if the necessary notice and form were served by 1 July 2023. For pitch fee reviews with review dates on or after 17 August 2023, owners are required to use CPI instead of the RPI under the 2023 Act.

5 What are the criteria for increasing rent and likewise the procedure?

The main provisions in the standard agreement relating to review of the pitch fee are paragraphs 14 to 18 of part 3 which mirror the equivalent provisions of chapter 4 of Schedule 1 to MHA subject to the change in the inflationary index from RPI to CPI. Paragraph 20 contains the owner's obligation to provide evidence in support and explanation, which includes any new pitch fee, and obligations to consult.

Paragraph 14 notes that the pitch fee can only be changed in accordance with paragraph 15 and either with the agreement of the occupier or if the Tribunal, 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. Paragraph 15 contains detailed procedural requirements. Paragraphs 16 to 18 deal with quantum.

Paragraph 15(1) states that the pitch fee will be reviewed annually as at the review date. Paragraph 8 of part 1 of the standard agreement states that the pitch fee will be reviewed on the first Monday in April of each year.

Paragraph 18(1) contains a presumption that the pitch fee cannot be changed by more than the annual change in CPI (formerly RPI) unless this would be unreasonable having regard to paragraph 16(1). That in turn states that "particular regard must be had to" sums expended by the owner since the last or first review date on certain improvements, any "decrease in the amenity" of the site and legislative changes. Conversely paragraph 17 states that no regard may be had to costs incurred by the owner in connection with expanding the site or relating to the proceedings under MHA or the agreement.

Clearly, the starting point in any pitch fee review is going to be an adjustment in line with CPI, with scope to consider the factors referred to in paragraph 16(1). Beyond that, whilst the words "particular regard must be had" suggest that other factors may be considered, we should assume that a Tribunal will generally be reluctant to order increases to reflect those. In my research I have not identified any reported cases specifically on pitch fee reviews under chapter 4 of Schedule 1, so it is difficult (if not impossible) to gauge how the Tribunal is currently approaching disputed reviews within chapter 4. I understand that DCC took one or more cases to Tribunal in the relatively recent past and lost and wonder if that was on the basis that we were seeking to increase the pitch fee other than to reflect owner's improvements. This is pure speculation, but it is conceivable that the current historically high rates of inflation might make the Tribunal more sympathetic towards the owner's position.

To propose changing the pitch fee, the owner must use the new pitch fee review form introduced in July of this year. This contains narrative about the quantum of pitch fee reviews but that is based on chapter 2 of Schedule 1 which contains the implied terms that apply to non-GRT sites. Chapter 4 regulates the type of site that we are concerned with here and contains different wording in relation to pitch fee reviews. The narrative should therefore be treated with caution. I assume that housing colleagues are generally familiar with the procedural requirements.

We once again come back to the point that the implied terms confer a degree of security of tenure on the occupier by restricting the owner's ability to terminate the agreement to cases where the occupier is in breach of the terms of the agreement, the occupier has ceased to occupy the mobile home as their only or main residence or, having regard to its condition, the mobile home is having a detrimental effect on the amenity of the site.

6 Specifically can the rent be increased to reflect increased costs to the council relating to (a) repairs, maintenance, and cleaning or (b) increased wage and/or utility costs associated with the service and other charges?

In DCC's standard agreement the pitch fee is inclusive of the warden's charge and various communal charges, including grounds maintenance, costs associated with communal buildings and winter maintenance, with an additional charge being made for water, sewerage and (where applicable) electricity. The key issue would therefore seem to be whether the council can increase the pitch fee via the review mechanism in the standard agreement to reflect increased costs incurred in employing the warden or providing services that are included in the pitch fee. I assume that those costs comprise staff wages, utility charges incurred by the council and suppliers' charges.

Having regard to the wording of paragraphs 16(1) and 18(1) of part 3 of the agreement, I anticipate that we would struggle to persuade the Tribunal to order an

increase in the pitch fee pitch fee beyond the annual change in CPI to reflect anything other than owner's improvements that meet the requirements of paragraph 16(1) and changes in the law. That is with the caveat that I have found no reported cases specifically on reviews under chapter 4.

Mark Clayton

12 December 2023