FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CHI/19UD/PHI/2018/0233-0243**
Property	**:**	**Premises: 9A, 27, 29A, 42, 43 & 67 Hillbury Park, Hillbury Road, Alderholt, Fordinbridge, Hampshire SP6 3BW**
Applicant	**:**	**John Romans Park Homes Ltd**
Representative	**:**	**IBB Solicitors**
Respondent	**:**	**Mrs Judith Head and five others**
Type of Application	**:**	**Mobiles Homes Act 1983: Application by site owner for determination of new level of pitch fee.**
Tribunal Member	**:**	**Judge M Davey**
Date of Decision with reasons	**:**	**19 February 2019**

Decision

The pitch fee payable by the Respondents from 1 July 2018 shall remain unaltered.

Reasons for decision

1. These are the reasons for decision of the First-tier Tribunal (Property Chamber) (Residential Property) ("the Tribunal") in respect of an application ("the Application") to the Tribunal under paragraphs 16 and 17 of Chapter 2 of Part 1 of Schedule 1 to the Mobile Homes Act 1983 ("the 1983 Act"). The Application, dated 26 September 2018, is for determination of a new level of pitch fee in respect of mobile homes stationed at Hillbury Park, Hillbury Road, Alderholt, Fordingbridge, Hampshire SP6 3BW ("the site") and numbered 9A, 27, 29A, 42, 43, and 67.

The Application

2. The Applicant site owner is John Romans Park Homes Limited ("the Applicant"). When the Application was made to the Tribunal there were an additional five respondents. However, they subsequently accepted the proposed pitch fee and the Applicant accordingly applied to withdraw them as Respondents. The remaining Respondents to the Application are as follows:

Mrs Head	9A	Hillbury Park
Mr & Mrs Johnson	27	Hillbury Park
Mr & Mrs Smith	29A	Hillbury Park
Mr & Mrs Wright	42	Hillbury Park
Mr & Mrs Whyte	43	Hillbury Park
Mr & Mrs Mashford	67	Hillbury Park

3. The relevant law is set out in the Annex to these Reasons. Judge E Morrison issued Directions to the parties on 7 November 2018 setting out a timetable for determination of the matter. Judge M Davey was subsequently appointed to determine the matter on the basis of the written representations of the parties, none of the parties having requested an oral hearing.

The agreements

4. **Mrs Head (9A)**

A Mr & Mrs Spragg bought their home and stationed it on Pitch 9A of the site under the terms of an agreement, with the Applicant site owner, dated 25 July March 2002. On 5 April 2014 Mr & Mrs Spragg sold their home to Mr & Mrs Head, to whom they assigned the benefit of their agreement. Clause 3 of that agreement contained an obligation by the occupier to pay to the site owner a specified annual pitch fee subject to periodic review. The fee was payable monthly in advance on the first day of each month. Clause 7 of the agreement provided for an annual review of the pitch fee as from 1 July in each year. It stated that "in determining the amount of the reviewed pitch fee regard shall be had to: (i) the Index of Retail Prices (ii) sums expended by the owner for the benefit of the occupiers of mobile homes on the park (iii) any other relevant factors including the effect of legislation applicable to the operation of the park." At the time of the assignment of the agreement to Mr & Mrs Head the pitch fee was £184.56 per month.

Mr & Mrs Johnson (27)

A Mr & Mrs Curnow bought their home and stationed it on Pitch 27 of the site under the terms of an agreement with the Applicant site owner dated 7 October 2003, On 7 December 2017 Mr & Mrs Curnow sold their home to Mr & Mrs Johnson, to whom they assigned the benefit of their agreement. Clause 3 of that agreement contained an obligation by the occupier to pay to the site owner a specified annual pitch fee subject to periodic review. The fee was payable monthly in advance on the first day of each month. Clause 7 of the agreement is in identical terms to that in the agreement for No 9A (above). At the time of the assignment to Mr & Mrs Johnson the pitch fee was £161.79 per month.

Mr and Mrs Smith (29A)

Mr & Mrs Smith bought their home and stationed it on Pitch 29A of the site under the terms of an agreement with the Applicant site owner, dated 13 August 2014. The agreement stated that a monthly pitch fee of £185 was payable from that date and that it would be reviewed on 1 July each year

Mr & Mrs Wright (42)

Mr & Mrs Wright bought their home and stationed it on Pitch 42 of the site under the terms of an agreement with the Applicant site owner, dated 30 March 2012. The agreement stated that a monthly pitch fee of £165 was payable from that date and that it would be reviewed on 1 July each year

Mr & Mrs Whyte (43)

Mr & Mrs Whyte bought their home and stationed it on Pitch 43 of the site under the terms of an agreement with the Applicant site owner,

dated 4 December 2015. The agreement stated that a monthly pitch fee of £185 was payable from that date and that it would be reviewed on 1 July each year

Mr & Mrs Mashford (67)

Mr & Mrs Mashford bought their home and stationed it on Pitch 67 of the site under the terms of an agreement with the Applicant site owner dated 2 April 2009, Clause 3 of that agreement obliged the occupier to pay to the site owner a specified annual pitch fee subject to periodic review. The fee was payable monthly in advance on the first day of each month. Clause 7 of the agreement was in identical terms to that in the agreement for Pitch 9A (above)

The Law

5. The relevant law is set out in the Annex to this decision.

The pitch fee review notices

6. The Applicant, by notices dated 31 May 2018, gave notice to all six Respondents of a proposed increase in the pitch fee as set out in the table below. The letter that accompanied the notices stated that the increase would take effect on 1 July 2018. The letter enclosed a Pitch Fee Review Form (as prescribed by the Mobile Homes (Pitch Fees)(Prescribed Form)(England) Regulations SI 2013/1505), which stated that the specified increase per month reflected the percentage change in RPI over 12 months by reference to the RPI index published for May 2018.

The proposed increases

Pitch No	Last review date	Current fee £	Proposed Fee £	Increase £
9A	01 July 2017	129.69	134.10*	4.41
27	01 July 2017	161.79	167.29	5.50
29A	01 July 2017	195.72	202.37	6.65
42	01 July 2017	190.53	197.01	6.48
43	01 July 2017	193.96	200.55	6.59
67	01 July 2017	183.94	190.19	6.25

* Plus £49.00 for rental of garage.

The Applicant's case

7. The Applicant says that it has followed the procedure for obtaining an increase in the pitch fee as laid down in Part 1 of Schedule 1 to the Mobile Homes Act 1983 (as amended). In particular paragraph 17(1) of that Part provides that the pitch fee will be reviewed annually as at the review date. Paragraph 17(2) provides that at least 28 clear days before the review date the owner must serve on the occupier a written notice setting out the owner's proposals in respect of the new pitch fee. Paragraph 17 (2A) provides that such a notice will only be effective if it is accompanied by a document, which complies with paragraph 25A (inserted by the 2013 Act).

8. The Applicant site owner submits that because its notice was properly served and the Respondent occupiers have not agreed to the proposed pitch fees, the site owner is entitled, under paragraph 17(8)(a) of Part 1 of the Schedule to the 1983 Act, to apply to the Tribunal for an order determining the amount of the new pitch fees.

The Respondent's case and the Applicant's response

9. All six Respondents stated that they did not agree to the proposed increases in pitch fee as from 1 July 2018. Between them they raised a number of issues, most of which are conveniently listed in the response submitted by the Applicant's solicitor, IBB.

10. The issues are:

<u>The roads on the site:</u>

11. The Respondents all complain about the deterioration of the road surface and poorly marked speed ramps on the Park perimeter road. They state that these features, especially in the absence of pavements, make the Park hazardous, especially at night, for the elderly residents, a number of whom have suffered falls on the road due, the respondents submit, to the said hazards.

12. In response the Applicant does not accept that the condition of the road on the Park has deteriorated, either since the last review date or since 26 May 2013. The Applicant submits that the Respondents have failed to produce any evidence that there has been *"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"*, as required by paragraph 18(1)(aa) of the statutory implied terms set out in Schedule 1 to the 1983 Act.

13. The Applicant says that contractors (Mr Tim Clothier and Jaytrack Limited) together with a representative of the Applicant, Mr Stan

Jures, who lives on the site, carry out regular maintenance with regard to potholes and drainage or similar issues on the Park. The Applicant produced a note from Jaytrack in respect of three sets of tarmac repair works to the roadways in 2017/18, costing in total £5,116.20 + VAT.

14. The Applicant submits that the Park has never had pavements adjacent to the Park roads and that this is not unusual on residential park estates where residents' pitches often border onto the roadway. The Applicant says that the speed bumps on the Park have been in place for many years and have not been altered either since 26 May 2013 or within the period covered by the current pitch fee review.

Street lighting.

15. The Respondents all describe the street lighting as poor and inadequate and state that some areas of the site are in total darkness at night.

16. The Applicant does not accept that the condition of the street lighting on the Park has deteriorated, either since the last review date or since 26 May 2013, and submits that the Respondents have failed to produce any evidence that there has been *"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"*, as required by paragraph 18(1)(aa) of the statutory implied terms.

17. The Applicant says that the lighting system on the Park has been in place for many years and the Applicant believes it is adequate for the purpose of lighting the Park. The Applicant says it has not received any communications from the local Council to suggest that the street lighting is inadequate or fails to meet the standards required by the site licence.

Road signage

18. It is alleged by the Respondents, particularly Mrs Head and Mr & Mrs Whyte, that the road signage does not adequately direct the one-way system, which consequently makes for dangerous two-way traffic. The Applicant responds that the signage is perfectly adequate for its purpose and has been in place for many years without change.

State of gardens

19. Several of the Respondents state that some gardens of pitches on the Park are very poorly kept and overgrown, which they submit detracts from the amenity of the site and the welfare of other residents. The Applicant says the Respondents have not specifically identified the homes in question. It asserts furthermore, that the legal responsibility for the maintenance and upkeep of these homes, which are owned and occupied by residents, lies with the owner

occupiers and not with the Applicant. The Applicant says that when it becomes aware of such issues its usual policy is to work with the residents concerned to bring the matter under control but this can often take some time.

Rented garages

20. Mrs Head and Mr & Mrs Mashford state that rented garages on the site are in an unsightly state of disrepair.

Absence of site notice board displaying the site licence and regulations

21. The Applicant admits that, as alleged by most of the Respondents, there is no noticeboard on the Park, which displays the site licence and the park regulations. However, it says that this has been the case for many years and the situation has not changed since 26 May 2013.

Reduced water pressure

22. The Applicant does not accept, as alleged by Mr Wright, that the water pressure on the Park has deteriorated, either since the last review date or since 26 May 2013. It considers that the Respondents have failed to produce any evidence that there has been *"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"*, as required by paragraph 18(1)(aa) of the statutory implied terms. The Applicant claims to have not been told when and how the alleged drop in pressure has occurred and how it has affected residents.

Reduction in pitch boundary of pitch 42 (Mr Wright)

23. Mr Wright says that the Applicant has changed the location of the boundary between pitch 42 and the adjoining pitch, destroying three trees and four shrubs in the process, and sited another home on the land to the left of his pitch. The Applicant submits that this is not an issue that it would be appropriate for the Tribunal to address on an application for a pitch fee review. The Applicant believes that if Mr Wright wishes to pursue this allegation he should make a separate freestanding application to the Tribunal for determination of the issue. However, in any event, the Applicant does not agree with the comments made by Mr Wright in his submission. It is the Applicant's case that Mr Wright had agreed to the erection of a new good-quality boundary fence approximately 6 feet high between Pitch 42 and the adjacent pitch 44A and for the removal of all "overgrown items" on Mr Wright's pitch at no charge.

24. The Applicant also says that it had allowed Mr Wright to use the garden area next to his home provided the Applicant did not need to use this land for the siting of an adjacent home. Mr Wright, whose version of events was supported by a witness, Mrs Grimley, denies that this was the case. Mrs Grimley states, in a letter to the Applicant's solicitors, dated 20 November 2018, that she was present at a conversation between Mr Wright and the Applicant's Director, Mr John Romans, in March 2012, when the latter confirmed the boundary distance and stated that he could not do anything with the land to the side of the home, which Mr Wright was free to use.

25. Mr Wright also stated that the box containing his electricity meter had been removed from what had been open ground and placed on the land of what is now another home on the site. The Applicant's response is that the position of the electricity box (where a number of meters are housed) has not changed for many years and that in any case it is not Mr Wright's responsibility to access and read the meter.

Tree maintenance: Mr & Mrs Mashford (Pitch 51)

26. In their submission, Mr and Mrs Mashford state that their main concern is the lack of maintenance to very large trees overhanging their garden. The Applicant responds that the trees are subject to a Tree Preservation Order and in any event the responsibility for maintaining the trees lies with the occupier and not the site owner. Furthermore, it states that the condition of the trees has not changed since the last pitch fee review in 2017.

27. More generally, the Applicant says that it has taken great care to ensure that the overall amenity and appearance of the Park has been maintained during the modernisation of the site. It submits that the Respondents have not produced any evidence to support any allegation that there has been deterioration in the amenity of the Park as required by paragraph 18 (1)(aa) of the statutory implied terms and that consequently there is no basis for the Tribunal to depart from the statutory presumption in relation to the proposed pitch fee increase.

Lack of visitor parking spaces

28. Although not mentioned in the Applicant's response, Mr and Mrs Whyte raised in their submission the issue of visitor parking spaces. They state that there is an insufficent number of visitor parking spaces on the Park. In his letter to the Applicant, dated 18 May 2018, Gary Smith, of Christchurch and East Dorset Councils, stated that when he had recently visited the site he had counted 15 usable spaces. He pointed out that Condition 11.2 of the site licence recommended a minimum of one space for every three homes. This would require an

additional 10 spaces. He recommended that an old caravan stored on what was previously visitor parking should be removed and the space restored unless suitable alternative provision could be found. Mr and Mrs Whyte stated that the Applicant had fenced off an area containing four visitor parking spaces for more than a year until recently when the three spaces were gradually released. Their submission was supported by photographic evidence.

Discussion

29. The issue raised by the Application before the Tribunal can be simply stated. However, before doing so it will be helpful to refer to the relevant law. The law governing the rights and obligations of, on the one hand, mobile home site owners and, on the other hand, occupiers who have bought a home and entered into an agreement with the site owner to station that home on the site, is contained in the Mobile Homes Act 1983. That Act has since been amended on a number of occasions and has to be read alongside other related statutory orders and regulations.

30. The right of the site owner to change a pitch fee is included in the implied terms set out in the relevant schedule to the Mobile Homes Act 1983 ("the Act"). By section 2(1) of the Act, the implied terms set out in the Schedule to the Act, take effect notwithstanding any express term of the agreement. 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 Act ("the Schedule"). Paragraphs 17 to 20 were amended, as from 26 May 2013, by section 11(1) of the Mobile Homes Act 2013 ("the 2013 Act"). The amendments apply in relation to agreements made before 26 May 2013 as well as agreements made on or after that date (section 11(7) of the 2013 Act).

31. Paragraph 16 of the Schedule provides that the pitch fee can only be changed in accordance with paragraph 17, either (a) with the agreement of the occupier, or (b) 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.

32. Paragraph 17(2) provides that a review notice must be given at least 28 clear days before the review date and it must be accompanied by a document which complies with paragraph 25A (paragraph 17(2A)). It has not been disputed that those conditions have been satisfied.

33. The only issues for the Tribunal therefore are (a) whether it is reasonable for the pitch fee to be changed and if so (c) what the new pitch fee should be.

34. The first issue is whether it is reasonable for the fee to be changed. Paragraph 20(A1) provides that 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. Paragraph 20(A2) provides that in sub-paragraph (A1) "the latest index" 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 was served.

35. In the present cases the date by which the owner was required to serve a notice under section 17(2) was 28 clear days before the review date of 1 July 2018. That is to say 3 June 2018. The notices were served on 31 May 2018. The "latest index" therefore is the last index published before 31 May 2018. That figure was 279.7 as released on 23 May 2018. That index related to the month of April 2018. The other index is "that published for the month, which was 12 months before that to which the latest index relates" (i.e. for April 2017). That is 270.6 being the figure released in May 2017. Thus the increase in RPI over that period was 3.4%, a figure that is not disputed by the Respondents.

36. Paragraph 18(1) of the Schedule provides that 'when determining the amount of the new pitch fee particular regard shall be had to—

.....

(aa) in the case of a protected site in England, 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 sub-paragraph);

The date on which the sub-paragraph came into force was 26 May 2013.

37. The relevant principle of the Act is clear. On an annual pitch fee review the presumption is that the pitch fee will increase or decrease in line with any change in the rate of inflation over the relevant 12 month period *unless* the condition of the site has deteriorated or the amenity of the site (or adjoining land occupied or controlled by the site owner) has decreased since 26 May 2013. In other words an increase would be a quid pro quo for the owner having maintained the site and level of amenity during the relevant period. Thus a site owner cannot expect an

automatic increase if the site has deteriorated or a diminution in amenity has occurred (save to the extent that any such change has already been reflected in a previous review since that 26 May 2013).

38. The Applicant site owner submits that the site has been modernised and that there has been no deterioration in its condition or decrease of amenity since the relevant date. It therefore denies that there is any basis for rebutting the presumption that the pitch fee should rise by 3.4% in line with inflation as from 1 July 2018.

39. By contrast the Respondents argue that the condition of the site has deteriorated since 26 May 2013 and that there has also been a loss of amenity since that date. They therefore, argue that the condition in paragraph 18(1)(aa) is satisfied and accordingly it would be unreasonable for the presumption in paragraph 20(A1) to apply when the Tribunal determines the new pitch fees payable.

40. It is therefore necessary for the Tribunal to examine and assess these competing claims.

41. The Respondents are all agreed that in recent years the site is a far less pleasant environment in which to live than hitherto. They feel that sadly, the expectations that were raised by the selling agents, as to the attractions of the Park for elderly retired or semi-retired residents, when the Respondents bought their homes and moved onto the site, have not been fulfilled. All Respondents refer to deterioration in the general appearance of the Park. Mrs Head cites dilapidated and poorly maintained rented garages and Mr & Mrs Whyte refer to some dilapidated homes, which they allege are rented out to occupiers. The Applicant freely admits that, as alleged by the Respondents, there has never been a notice board that displays the site licence and the Park Regulations but says that the situation has not changed since 26 May 2013.

42. The Respondents say that it is with considerable reluctance that they have challenged the most recent proposed increase in the pitch fee from 1 July 2018. They submit that they have been driven to this action as a last resort because their attempts to persuade the site owner to address their grievances have met with no response. Mrs Head says that she raised many of these matters with the site owner in a letter of July 2017 to which she had no response. Mr & Mrs Mashford wrote to the site owner on 3 occasions, 20 July 2017, 2 June 2018 and 15 September 2018. On 17 September 2018 Mr & Mrs Mashford sent copies of these letters to the site owner but Royal Mail returned them as undelivered because the addressee had not accepted them. Mr & Mrs

Mashford say that on contacting the Park site office they were told to send the letters by ordinary post. They further state that they have never received a response to any of these letters

43. All of the Respondents highlight the state of the site road surfaces and the nature, positioning and condition of the speed bumps. Furthermore, in his letter of 18 May 2018 to the site owner Applicant, Gary Smith Team Leader (Housing and Pollution) Christchurch and East Dorset Councils, noted that the road surface in the vicinity of homes 18-26 and 35 to 52 was in poor condition when compared with the rest of the site. He suggested to the owner that it may wish to consider resurfacing in this area in order to prevent further degradation to the roadway.

44. The Applicant says that it has arranged and paid for tarmac repairs which were carried out to the road (1) opposite number 38, (cost £1,989 + VAT) (2) outside number 42 (cost £338 + VAT) and (3) between numbers 17 and 20 (cost £2,839.20 +VAT) in 2017/18, although it is not clear precisely when each set of repairs was carried out. However, in their submission to the Tribunal, dated 24 November 2018, Mr & Mrs Whyte say that despite the fact that approximately 35 metres of new tarmac was laid in 2018 outside number 18, the roads on the Park have gradually deteriorated and have a number of hazardous tripping areas. Mrs Smith (29A), in her letter of 23 November 2018 to the Applicant, referred to the deterioration of the road surface and the excessive height and angle of some speed bumps. Further letters from residents, by way of submissions to the Tribunal, dated 20 November 2018 (Mr and Mrs Mashford), 23 November 2018 (Mr & Mrs Smith), 24 November 2018 (Mr Wright), 26 November 2018 (Mrs Head) and 27 November 2018 (Mrs Johnson) all make reference to the poor road surface including potholes and other hazardous tripping features.

45. It seems tolerably clear therefore that despite the patch repairs carried out by the Applicant there are still untreated defective stretches of site road that pose hazards to residents. This is supported by photographic evidence from Mr & Mrs Whyte. The Tribunal finds that the balance of evidence points to the road surfaces having deteriorated since 26 May 2013.

46. All the Respondents submitted that the lighting on the site was poor and inadequate. The Applicant says that it is perfectly adequate and has not changed since 26 May 2013. However, in his letter to the Applicant dated 18 May 2018, Gary Smith, of Christchurch and East Dorset Councils, stated that he had some concerns about the lighting in some areas and asked the site owner to let him have the results of an electrical survey that the site owner had proposed to carry out. There is no evidence of any reply. Furthermore, Mr & Mrs Whyte submitted photographic evidence to the Tribunal, which indicated that areas of the site were very badly lit. They demonstrated that since the

Prestige Beach House was placed on plot 44A there has been a loss of a street lamp light along a particularly dark and poorly lit stretch of perimeter road thereby exacerbating the chance of a resident tripping. The Tribunal is convinced that, whilst much of the lighting has remained unchanged since 26 May 2013, there has been a diminution of lighting in at least one area of the site, as identified by Mr & Mrs Whyte.

47. There is a conflict of evidence with regard to the road signage on the Park. The Applicant submits that it is perfectly satisfactory and has not changed since 26 May 2013. Mrs Head says that the signage is confusing and that as a result there is dangerous two-way traffic on a one way stretch. Mr & Mrs Whyte confirm this in their submission which is supported by photographic evidence of a poorly positioned, or at times absent, No Entry sign.

48. Although Mr Wright submits that there has been reduced water pressure in recent years the Tribunal has no specific evidence as to the same and therefore finds that this is not a relevant factor for the purpose of the present Application.

49. Several residents complain that there are a number of badly maintained homes and gardens on the Park and that this detracts from the amenity of the Park. They suggest that these homes are not owned by the occupiers but are rented from the site owner by the occupiers. Mr & Mrs Whyte identify these as plots 17,21, 26,28, 48A together with an unnumbered house in the entrance drive. However, the Tribunal has no evidence as to the contractual arrangements with regard to these properties. If, as alleged, they are rented, responsibility for their condition would lie with the site owner and their condition would undoubtedly amount to a reduction in amenity/deterioration of condition.

50. With regard to Mr Wright's submissions, regarding the reduction in pitch boundary on Pitch 42 and the location of his electricity meter, these are matters of obvious concern to him but they are contractual matters between him and the Applicant and not relevant to the pitch fee review. Accordingly the Tribunal makes no finding on these matter as far as the present Application is concerned.

51. With regard to the trees affecting pitch 51, their maintenance is, as the Applicant submits, a responsibility of the occupier under the terms of the Agreement in so far as the trees are on that pitch (see paragraph 21(c) of Schedule 1 to the Act). If the trees are on land outside the pitch but within the Applicant's control the responsibility for maintaining them would lie with the Applicant (see paragraph 22(d) of Schedule 1 to the Act). It is unclear from the photographs supplied by Mr & Mrs

Whyte whether the overhanging tress are in their garden or on land outside.

52. With regard to the matter of the visitor parking spaces, the Tribunal accepts that several spaces have been unavailable at times since 26 May 2013 and that this amounts to a diminution in amenity for residents.

Conclusion

53. It is clear that Hillbury Park was marketed to potential homeowners as a pleasant and companionable environment in which residents could spend the later years of their lives. However, the evidence suggests that this is no longer the case and that the environment has deteriorated in the last two years. The Applicant site owner refers to having initiated a process of modernisation but the nature and evidence of that process is not obvious. By contrast the Respondents have demonstrated that since 26 May 2013 there has been (1) deterioration in road surfaces, despite limited repairs made by the Applicant (2) a reduction in lighting (3) temporary and reduced provision of visitor parking (4) poorly positioned or absent signage resulting in two way traffic on a one way stretch of road. These factors all amount to a deterioration in the condition, and decrease in the amenity, of the site for the purposes of paragraph 18(1)(aa) of the implied terms in Schedule 1 to the 1983 Act.

54. The Tribunal finds that in these circumstances it would be unreasonable for the presumption in paragraph 20 of Schedule 1 to the Act, that the pitch fee should change in line with the change in inflation over the relevant 12 month period, to apply.

55. The Tribunal determines it reasonable that the pitch fee payable by the Respondents from 1 July 2018 shall remain the same as that payable immediately before that date, and accordingly so orders.

RIGHTS OF 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, that 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.

Martin Davey

Chairman

19 February 2019

Annex: The Law

Chapter 2 of Part 1 of Schedule 1 to the Mobile Homes Act 1983

The pitch fee

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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.

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(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) In the case of a protected site in England, a notice under sub-paragraph (2) which proposes an increase in the pitch fee is of no effect unless it is accompanied by a document which complies with paragraph 25A.

(3) If the occupier agrees to the proposed new pitch fee, it shall be payable as from the review date.

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

(a) the owner or (in the case of a protected site in England) the occupier 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 28th day after the date on which the new pitch fee is agreed or, as the case may be, the 28th day after the date of the appropriate judicial body's order determining the amount of the new pitch fee.

(5) An application under sub-paragraph (4)(a) may be made at any time after the end of the period of 28 days beginning with the review date but, in the case of an application in relation to a protected site in England, no later than three months after the review date.

(6) Sub-paragraphs (7) to (10) apply if the owner—

(a) has not served the notice required by sub-paragraph (2) by the time by which it was required to be served, but

(b) at any time thereafter serves on the occupier a written notice setting out his proposals in respect of a new pitch fee.

(6A) In the case of a protected site in England, a notice under sub-paragraph (6)(b) which proposes an increase in the pitch fee is of no effect unless it is accompanied by a document which complies with paragraph 25A.

(7) If (at any time) the occupier agrees to the proposed pitch fee, it shall be payable as from the 28th day after the date on which the owner serves the notice under sub-paragraph (6)(b).

(8) If the occupier has not agreed to the proposed pitch fee—

(a) the owner or *(*in the case of a protected site in England*)* the occupier 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) if the appropriate judicial body makes such an order, the new pitch fee shall be payable as from the 28th day after the date on which the owner serves the notice under sub-paragraph (6)(b).

(9) An application under sub-paragraph (8) may be made at any time after the end of the period of 56 days beginning with date on which the owner serves the notice under sub-paragraph (6)(b) but, in the case of an application in relation to a protected site in England, no later than four months after the date on which the owner serves that notice.

(9A) A tribunal may permit an application under sub-paragraph (4)(a) or (8)(a) in relation to a protected site in England to be made to it outside the time limit specified in sub-paragraph (5) (in the case of an application under sub-paragraph (4)(a)) or in sub-paragraph (9) (in the case of an application under sub-paragraph (8)(a)) if it is satisfied that, in all the circumstances, there are good reasons for the failure to apply within the applicable time limit and for any delay since then in applying for permission to make the application out of time.

(10) The occupier shall not be treated as being in arrears—

(a) where sub-paragraph (7) applies, until the 28th day after the date on which the new pitch fee is agreed; or

(b) where sub-paragraph (8)(b) applies, until the 28th day after the date on which the new pitch fee is agreed or, as the case may be, the 28th day after the date of the appropriate judicial body's order determining the amount of the new pitch fee.

(11) Sub-paragraph (12) applies if a tribunal, on the application of the occupier of a pitch in England, is satisfied that—

(a) a notice under sub-paragraph (2) or (6)(b) was of no effect as a result of sub-paragraph (2A) or (6A), but

(b) the occupier nonetheless paid the owner the pitch fee proposed in the notice.

(12) The tribunal may order the owner to pay the occupier, within the period of 21 days beginning with the date of the order, the difference between—

(a) the amount which the occupier was required to pay the owner for the period in question, and

(b) the amount which the occupier has paid the owner for that period.

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 improvements—

(i) which are for the benefit of the occupiers of mobile homes on the protected site;

(ii) which were the subject of consultation in accordance with paragraph 22(e) and (f) below; and

(iii) to which a majority of the occupiers have not disagreed in writing or which, in the case of such disagreement, the appropriate judicial body on the application of the owner, has ordered should be taken into account when determining the amount of the new pitch fee;

(aa) in the case of a protected site in England, 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 sub-paragraph);

(ab) in the case of a protected site in England, 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 sub-paragraph);

(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 an 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 purpose of compliance with the amendments made to this Act by the Mobile Homes Act 2013.

(2) When calculating what constitutes a majority of the occupiers for the purposes of sub- paragraph (1)(b)(iii) each mobile home is to be taken to have only one occupier and, in the event of there being more than one occupier of a mobile home, its occupier is to be taken to be the occupier whose name first appears on the agreement.

(3) In a case where the pitch fee has not been previously reviewed, references in this paragraph to the last review date are to be read as references to the date when the agreement commenced.

19

(1) When determining the amount of the new pitch fee, any costs incurred by the owner in connection with expanding the protected site shall not be taken into account.

(2) In the case of a protected site in England, when determining the amount of the new pitch fee, no regard may be had to any costs incurred by the owner in relation to the conduct of proceedings under this Act or the agreement.

(3) In the case of a protected site in England, 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) section 8(1B) of the Caravan Sites and Control of Development Act 1960 (fee for application for site licence conditions to be altered);

(b) section 10(1A) of that Act (fee for application for consent to transfer site licence).

(4) In the case of a protected site in England, when determining the amount of the new pitch fee, no regard may be had to any costs incurred by the owner in connection with—

(a) any action taken by a local authority under sections 9A to 9I of the Caravan Sites and Control of Development Act 1960 (breach of licence condition, emergency action etc);

(b) the owner being convicted of an offence under section 9B of that Act (failure to comply with compliance notice).

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;

(b) in a case where the owner serves a notice under paragraph 17(6), means the last index published before the day by which the owner was required to serve a notice under paragraph 17(2).

(2) Paragraph 18(3) above applies for the purposes of this paragraph as it applies for the purposes of paragraph 18.

25A

(1) The document referred to in paragraph 17(2A) and (6A) must—

(a) be in such form as the Secretary of State may by regulations prescribe,

(b) specify any percentage increase or decrease in the retail prices index calculated in accordance with paragraph 20(A1),

(c) explain the effect of paragraph 17,

(d) specify the matters to which the amount proposed for the new pitch fee is attributable,

(e) refer to the occupier's obligations in paragraph 21(c) to (e) and the owner's obligations in paragraph 22(c) and (d), and

(f) refer to the owner's obligations in paragraph 22(e) and (f) (as glossed by paragraphs 24 and 25).

The Mobile Homes (Pitch Fees) (Prescribed Form) (England) Regulations 2013

Application, citation and commencement

1. These Regulations, which apply in relation to England only, may be cited as the Mobile Homes (Pitch Fees) (Prescribed Form) (England) Regulations 2013 and come into force on 26th July 2013.

Pitch fees: Prescribed form

2. The document referred to in paragraph 17(2A) and (6A) of Chapter 2 of Part 1 of Schedule 1 to the Mobile Homes Act 1983 shall be in the form prescribed in the Schedule to these Regulations or in a form substantially to the like effect.