FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CHI/40UE/PHI/2019/0057-96**
Properties	**:**	**Various properties at Beauford Park, Norton Fitzwarren Taunton TA2 6QJ**
Applicant (Site Owner)	**:**	**JB & J Small Park Homes**
Applicant's Representatives	**:**	***Agent*: Rob Edwards, of Real Estate Directors Ltd** ***Counsel*: David Osborne, representing the Site Owner**
Respondents	**:**	**Owners and occupiers of various Mobile Homes at Beauford Park**
Representative	**:**	**George Kendal, Pitch No 71**
Type of Applications	**:**	**Applications by Site Owner for Determinations of new level of Pitch Fee**
Tribunal Members	**:**	**Judge Professor David Clarke** **Simon Hodges FRICS**
Dated	**:**	**25 July 2019**

DETERMINATION AND STATEMENT OF REASONS

DETERMINATION

In respect of all cases before the Tribunal:

The Tribunal determines that it considers it unreasonable for the pitch fee to be changed or increased and orders that the amount of pitch fee in each case shall continue to be the fee that applied on 31 December 2018.

The Tribunal so holds since it determines that the Pitch Fee Review Forms served on each owner or occupier in all the cases before the Tribunal were defective, and therefore ineffective to qualify as a valid Pitch Fee Review Notices, because each form averaged the increase of all the pitch fees across the Park instead of calculating the increase based on the individual pitch fee as required by law.

The Tribunal further decides that, if the pitch fee review notices had been valid, the Tribunal would have still have determined that all pitch fees should remain at their existing level in the light of the decrease in amenity of the site since the last review date, namely the removal of all facilities for visitor parking and the removal and non-replacement of two street lights.

In respect of cases numbered 0069 (Skett, number 29), 0083 (Spencer, 49), 0084 (Hewitt, 52), 0087 (Curtis, 57), and 0092 (Lamb, 63): The Tribunal determines that, in respect of these cases, there is clear evidence of subsidence and earth movement affecting the bases upon which the mobile homes rest and the site owner is in breach of its responsibilities to repair the bases impacted; and that this results not only in a decrease in amenity for those parts of the site affected but also in a decrease in amenity of the site as a whole.

STATEMENT OF REASONS

Background to the applications

1. This determination and statement of reasons is a consolidated judgement in the case of 33 separate applications by JB & J Small Park Homes ("the Site Owner") against 33 owners or occupiers of mobile homes at Beauford Park, Norton Fitzwarren, Taunton, TA2 6QJ. The applications were heard together. The 33 owners or occupiers (hereafter together referred to as "the Respondents") are:

Case Number	*Pitch Number*	*Name*	*Present at Hearing?*
0058	2	Fairbairn	Yes
0059	4	Hill	Yes
0060	10	North	No
0061	14	Jackman	No
0063	18	Cox	Yes
0064	19	Pape	Yes
0065	21	Mitchell	Yes
0066	23	Donaldson	No
0068	25	Kirkham	No
0069	29	Skett	Yes
0070	32	Ambrose	Yes
0071	34	Cerri	No
0072	35	Attew	Yes
0073	36	Tavener	Yes
0074	37	Howard	Yes
0075	39	Plumridge	No
0076	40	Chilcott	No
0078	41	Margetts	No
0079	43	Sparks	Yes
0080	43A	Edwards and King	Yes
0082	48	Larcombe	Yes
0083	49	Spencer	Yes
0084	52	Hewitt	Yes
0085	54	Hammond	No
0087	57	Curtis	No
0088	58	Cooke	Yes
0089	59	Hopley	No
0090	61	Lucas	Yes
0091	62	Payne	Yes
0092	63	Lamb	Yes
0094	70	Jordan	Yes
0095	71	Kendal	Yes
0096	The Lookout	Peacock	Yes

2. In the case of Bale, 0062, at number 15, the objection was withdrawn shortly before the hearing and the pitch fee increase accepted. The Tribunal also did not deal with cases numbered 0057, 0067, 0077, 0081, 0086 and 0093.

3. There were three observers at the hearing who were also mobile homes owners at Beauford Park. Two of them Lee (number 1A and Durant (number 50) indicated that they had objected to the pitch fee increase but Sully (number 22) had not.

4. The 33 applications with which this Tribunal is concerned were made in identical form by the Site Owner through its authorised agent, Real Estate Director Ltd ("the Agent"). It may be noted that, subsequent to these applications, the Site Owner changed its name to Sovereign Park Homes Estates Limited, and that the Agent will cease their duties at Beauford Park on 1 September 2019, but nothing turns on either of these points. At the hearing, the case was mainly presented by Mr Edwards, from the Agent. However, Mr Edwards had only been involved for a period of two years and could not assist the Tribunal on any matter prior to that time. Mr David Osborne, a barrister, was also present, representing the Site Owner, but he did not have instructions on some of the matters raised by the Tribunal and there was no other person present on behalf of the Site Owner.

5. The issues raised before the Tribunal began on 29 November 2018 with each Respondent being served by the Agent on behalf of the Site Owner with a Pitch Fee Review Notice served under the Mobile Homes (Pitch Fees) (Prescribed Form) (England) Regulations SI 2013/1505 ("the 2013 Regulations"). These notices were in very similar form. They recorded that the last review date was 1 January 2018 and gave a notice of increase from 1 January 2019. However, the Tribunal was informed that there had been no pitch fee review in relation to 1 January 2018 and that the current pitch fee recorded on the notices had been applicable for at least two years. Each notice recorded a different current pitch fee in a range between the lowest at £152.07 per calendar month and the highest at £168.78, with many different amounts in between. The notice set out the proposed new pitch fee in each case. The calculation of that pitch fee was calculated as a sum of two figures, A and B, where A was the current pitch fee and B was:

> "75% of the average Retail Prices Index calculated from a percentage increase of 3.30% to all pitch fees across the park with the average taken".

The RPI adjustment was amplified as follows:

> "In accordance with paragraph 20(A1) of Chapter 2 of Part 1 of Schedule 1 to the Mobile Homes Act 1983, we have calculated the RPI adjustment as the percentage increase in the Retail Prices Index (RPI) over 12 months by reference to the RPI published for October 2018 which was 3.30%, applied to all pitch fees across the park with the average taken".

6. A large number of the residents at Beauford Park objected to the increase proposed leading to the 33 applications being made which were heard by the Tribunal.

Beauford Park

7. The Tribunal inspected Beauford Park prior to the hearing. Some detailed comments arising from the inspection will be made when considering the complaints by the Respondents about the state of various aspects of the Park. A general description is given here.

8. The Park consists of over 70 mobile homes arranged around three parallel roads at right angles to the main road (the B3227) just outside Norton Fitzwarren and a few miles from Taunton. These park roads are in the shape of a trident, joined by a link cross road at the northern end of the Park where there is the access to the main road, though the entrance from the main road is to one side rather than in the middle. The Tribunal understands that the Park has been redeveloped by the Site Owner over the last six years or so with modern style mobile homes (there is one old style caravan which was on a pitch before the redevelopment but remains since the resident declined offers to move). Redevelopment is, the Tribunal was told, not yet complete. An old barn near the main road had, just before the hearing, been demolished and Mr Edwards said there was a plan for two more homes on that site. Next to the entrance to the Park there is an unused building, partially painted pink and in a poor state of repair, and its future use is either uncertain or was not disclosed to the Tribunal. There are some very recently designated pitches to the west of the entrance to the Park and between the main road and the park road linking the three other roads of the site. We were told that the road had recently been realigned and two lamp-posts removed. Another recent mobile home had been established to the east of the park entrance on what was previously been a site office and visitor parking spaces.

9. The owners and occupiers of pitches on the Park are generally house-proud and the vast majority are neat pitches, often with well-maintained gardens. Most pitches have off street parking, often but not invariably for two cars; but quite a number have only one such parking space and at least one pitch (a 'back section') had no vehicular access and no space for parking at all.

10. The entrance to the Park is wide but on our inspection was found to be in a very poor state indeed – that matter will be discussed below. The three park roads are narrow, so that a parked vehicle on such a road would block access for all except small vehicles. There are no pavements and no link footpaths between the three roads. There is no green space or communal areas at all and the impression given is of a site where every possible space has been used, or in the case of the old barn site, will be used, to establish pitches.

11. The pitches at the top or southern end of the Park are close to a stream beyond the Park boundary. It was in this area that the Tribunal saw on the inspection very significant subsidence that impacted a number of pitches.

Submissions on behalf of the Site Owner

12. In a brief opening address, Mr Osborne stressed that these were cases of pitch fee increases and the Tribunal should only take account of matters affecting all residents. It was not an exercise in relation to specific pitches. The responsibilities of each party to an agreement was governed by the statutory responsibilities set out in the Mobile Homes Act and in the rules of the site.

13. Mr Edwards explained how the pitch fee increases had been calculated. For the review date 1 January 2019, he took the Retail Prices Index figure for October 2018 – 3.3% - and

he then adopted the average of the increases from each pitch calculation. Those increases differed from pitch to pitch since the current pitch fee varied from pitch to pitch. The average increase was £4.97. It was then decided (he did not say if this was the Site Owners decision, or his as agent, or a joint one) that the increase should be mitigated so that only 75% of that average increase was levied. Each pitch fee was therefore increased by £3.73.

14. When questioned by the Tribunal about the averaging approach, Mr Edwards explained that the decision to average the increases was because, in 2018, residents had expressed concern at the differences between pitch fees charged. In 2018, there had been a proposal to raise the pitch fees by 100% of the RPI amount but the Site Owner had subsequently withdrawn that proposal. This withdrawal, according to Mr Kendal for the Respondents, was said in 2018 to be because of the then state of the Park, especially the new road being realigned for the new homes by the park entrance. So there had been no pitch fee increase in 2018 but there had been pressure (if there had been an increase) for a level increase. So that approach, of averaging the increases across the Park, had been applied.

15. Though the way the averaging had been applied was explained in the pitch fee notice, the reasons for the decision to reduce the increase to 75% of the maximum permitted had not been set out in communication to the Respondents. Mr Edwards explained that the reduction was because of feedback about the disruption at the entrance to the Park and, in response to a question from the Tribunal, Mr Edwards said the amount had been determined as a reasonable sum after consultation with the site owner.

16. Mr Edwards had filed a witness statement dealing with the various matters raised in written submissions by individual Respondents. At the hearing, these submissions were heard and considered as each aspect or issue raised was explained to the Tribunal. Mr Edwards witness statement and his submissions will be mentioned below as each issue is set out.

Submissions by the Respondents

17. For and on behalf of all the Respondents, Mr Kendal's first submission was that the methodology applied in the pitch fee notices was wrong. He maintained that every single pitch fee should be separately calculated and not averaged. If a discount was then to be applied, such a percentage discount should be worked out separately as well. He noted that the reason for the discount had not been communicated to the residents.

18. Mr Kendal then moved to consider the considerable number of complaints raised by the Respondents which, they claimed, were grounds for resisting the pitch fee increase. No single Respondent raised all the matters discussed below in their written submissions but all were mentioned by more than one person and some were highlighted by a considerable number.

State of the park entrance

19. This was a concern of many. On inspection, the Tribunal could see the very poor state of the road surfacing, with a few potholes and a raised manhole cover (which had been

very recently temporarily repaired, replacing the traffic cones placed round it as a warning - there were photos of the cones in the papers before the Tribunal). Mr Kendal noted that the residents are mostly seniors, some have difficulty walking and without a pavement a few would not leave the Park because of the hazards. The entrance had been dug up many times and was very much worse than it had been. Ms Pape, from Number 19, gave evidence that she fell and broke her nose because of the poor state of the road. Residents who used mobility scooters found it very difficult to negotiate the entrance to shop in the village because of the poor surface and since there was no pavement.

20. Mr Edwards agreed that the condition of the road entrance was unsatisfactory but explained in his witness statement that there is a drain running underneath the entrance road and through the site. Council investigations that involved digging up the road found that the drain was damaged and asked that any resurfacing should be delayed until the repair was done. In response to the concern that the matter had not been resolved within a reasonable time and that there was no evidence that any work was imminent, Mr Edwards produced to the Tribunal an email from the County Roads department advising that the contractors would start repair work on 21 October 2019. Mr Edwards submitted that it would not be a good use of resources to resurface the entrance if it was to be dug up again in a few months time. The manhole cover had been attended to with a temporary repair to reduce the existing hazard and that manhole would be permanently secured once the damaged drain culvert is repaired and the road resurfaced. In his concluding submissions, Mr Osborne noted that there were only two potholes, and the condition of the entrance was not as bad as described - though he accepted it could and should be safer in the long run.

State of the roads generally

21. Some Respondents pointed to the state of the roads generally in the Park claiming that they were in a poor state. Mr Edwards responded that they are generally in good condition. From the inspection by the Tribunal, there was some merit in both positions. At some points, there were dips and an uneven surface which will need to be attended to in due course but overall the rest of the park roads were in a serviceable condition. In his closing statement, Mr Osborne submitted that, despite some undulation, the road surfaces were adequate and not unsafe.

Surface water flooding

22. A number of Respondents had concerns with flooding in times of heavy rain. It was said that the drains were inadequate and on inspection there was some evidence of this even in dry weather with the mud and dirt around one of the drains. A number of Respondents said the problem had been there from the start; another (Ambrose, No 32) claimed it had recently become worse with the surfacing of the new realigned road. On what was termed the 'third road' it was said that the drains were just soakaways that became puddled water because of a concrete block below the surface.

23. In his witness statement, Mr Edwards said he had monitored the situation. It was an issue which was not specific to this site. He accepted that storm water gathered at the southern end of the Park (where the Tribunal noted the evidence of mud and dirt around one drain cover) due to the slight gradient towards the stream. He claimed however that

the problem only occurred in periods of heavy rain, that the water did not drain away at a slower rate than would be expected of a public system and that improvement works were not necessary.

Foul water drains

24. A few residents (Sparks, number 43; King 43A; Durant, 50) strongly complained of issues with the foul drainage and sewage systems servicing their pitches with major concerns of flow back into showers, damaged pipes and broken seals. Reference was also made to earlier problems which had been serious though ultimately attended to. Mr Edwards claimed that blocked drains were attended to and frequently problems were because of using the drain in unsuitable ways – wet wipes were mentioned. Mr Osborne noted that the agent did have a complaints record so that all such matters were followed up. It was important that complaints were made to the Agent when problems occurred.

Visitors Parking

25. A significant complaint from a large number of Respondents concerned the removal of the visitor's parking spaces from the Park. The Tribunal was told that originally there had been a small site office with a number of parking spaces available in front of the office. It was said that there were eight such spaces. As part of the recent extension of pitches and homes at the northern end of the site next to or close to the entrance road, the site office had been removed, a new pitch and mobile home ("the Gatehouse") had been erected on the site to the east of the entrance and new pitches and homes to the west beyond the pink building. There were now no visitor parking spaces on the Park.

26. Evidence was given of the problem that has resulted. At least eight pitches have only one parking space and one or two none at all. Even where there are two spaces on a pitch, visitors may have nowhere to park for family events and in such cases residents were reliant on the goodwill of neighbours to allow parking of extra cars on neighbouring pitches. Delivery vans have no option but to block roads. The only solution is to park haphazardly around the entrance (which is where Tribunal members had to park when undertaking their inspection). When complaints were made about the loss, the Respondents claimed that the attitude of the Site Owner was that there is no need for visitor parking spaces.

27. Mr Edwards accepted in his witness statement, and at the hearing, that the communal car parking spaces had been removed with the recent installation of new homes at the northern end of the site. He justified their removal on the basis that each resident has a driveway and he had not received reports of specific parking incidents.

28. Mr Edwards also appeared to say at one point that as agent he would be content for vehicles to be parked on the estate roads though he accepted it was against the site rules. The Tribunal requested a copy of the site rules and these were sent after the conclusion of the hearing. Rule 33 says:

> 'Parking is not permitted on roads or grass verges'.

Rule 34 adds:

> Vehicles must be parked in authorised parking spaces'.

29. The submissions relating to parking were expanded in the closing statements on behalf of the Site Owner. It was said that there is nothing in the Mobile Homes Act which requires parking to be supplied. It was accepted however that the loss of parking had been 'insensitively handled' and apologies were tendered with the comment that the offending employee had left the company. When pressed by the Tribunal on the issue of whether the removal of these spaces was a 'decrease in amenity', it was claimed that the parking spaces by the site office were only temporary and for potential purchasers of pitch sites. This was strongly disputed by many Respondents who claimed that there had been a sign saying 'Visitors Car Park' and that visitors to residents routinely parked in those spaces. The problem had been dealing with outsiders who parked there before walking into the village.

Removal of street lighting

30. When the re-aligned road was constructed recently to accommodate the new pitches at the northern end of the site, two lamp posts were removed. It was claimed by some Respondents that there was a promise to replace them. In any event, Mr Edwards accepted in his witness statement that two were removed (and, the Tribunal was told, a third is now situated on one of the new pitches (the Lookout) and no longer gives the same illumination). The justification, according to Mr Edwards, is that:

> 'Whilst the lights were lost, the new homes have added illumination to this part of the Park. There is no requirement therefore for additional lights in this area'.

However, in his closing statement, Mr Osborne appeared to accept that street lighting does matter.

Promise of Security Gates

31. In the various submissions of individual Respondents, there is some reference to unfulfilled promises that it was said that had been made to them. It is not clear whether it is claimed that these promises were made by the Site Owner or its agent at the time (Mr Edwards and his firm have only been agents since April 2017). Thus Lucas (number 61) says they were promised no increase in their pitch fee until the site was completely finished. Others refer to promises to do remedial or other work that have not been met. The main recurrent claim of an unfulfilled promise is that the entrance to the Park would be fitted with security gates (Chilcott, number 40, Sparks 43, Jordan 70, Peacock, "The Lookout"). No written evidence was available to support any claim that the promise was made nor details of when it was made or the context in which any promise was made.

32. Mr Edwards said that he has never committed to provide security gates though he concedes that he 'understands these conversations were held with previous site managers'. He adds that there have been no reports of crime so there would appear to be no immediate requirement for such gates; and that installation might be difficult because of the nature of the access directly from the B3227. Mr Osborne in his closing statement said that security gates would be 'fanciful'.

33. On inspection, the Tribunal found the entrance to be wide enough for security gates to be provided but agrees that the lack of depth from the main B3227 road presents a particular problem in that they might result in traffic being stationary and backing up on the main road whilst waiting for the gates to open.

Subsidence

34. Some pitches on the Park have suffered significant problems with subsidence, particularly pitches towards the southern end of the site alongside the brook. The Tribunal was told that the subsidence issues at number 50 (Mr Durant, present as an observer) and number 51 were such that those two residents had not been asked for a pitch fee increase. Number 52 (Hewitt) had had the base replaced but the garage remained unrepaired. Ms Skett, at number 29, is a Respondent who received a pitch fee notice. The Tribunal inspected her mobile home. While her home itself did not appear to be damaged – she had had to adjust the supporting jacks – the Tribunal did on inspection note significant subsidence to the base. The skirting between the home and the base had dropped by 5 inches at one corner and the steps were badly misaligned. Paving slabs were very uneven and dropped significantly at one point. The garage doors would not shut and the garden subsidence made it very difficult to maintain. There was a conflict of evidence about how much the Site Owner knew with Mr Osborne questioning whether the issues had been brought to the Site Owner's attention while Mrs Skett maintained that Messrs Small had known all about what was clearly a long standing problem.

35. There were other complaints about subsidence, observed by the Tribunal on its inspection, which may have been less severe but were still a real concern such as a sinking driveway (Lamb number 63), sinking patio, cracked base and cracks in support wall (Curtis, 57) and dropped skirting (Spencer 49).

Boundary fences

36. A number of Respondents mentioned the inadequacy of boundary fences between pitches. However, in his witness statement Mr Edwards pointed out that the maintenance of fences between pitches was the responsibility of the residents and this assertion was not challenged at the hearing.

37. However, Mr Edwards accepted that it is the Site Owner's responsibility for the upkeep of the perimeter boundary fences of the Park. On inspection, the Tribunal noted the fencing concerns of Mr Curtis at number 57 where the boundary of the Park is at a higher level than the adjoining residential garden and in a poor state of repair with broken fence poles and an inadequate retaining wall. In his witness statement, and at the hearing, Mr Edwards accepted the fence needed attention. Mr Spencer at number 49 also expressed concerns (at the hearing) about the boundary with the brook and Mrs Skett (29) made the same point in her submission.

Other issues

38. There were quite a number of other issues raised by Respondents in the paperwork but not strongly pressed either by Mr Kendal or other Respondents at the hearing. The more significant of these are as follows:

1. The derelict barn. There were complaints that this was an eyesore but at the time of the inspection it had been demolished and was a fenced off pile of rubble. A point was made at the hearing that it was a loss of the last bit of green space. The Tribunal was told it was planned to provide two further pitches.

2. The derelict pink building. Similar points were made about this building, a former sales office. The future use has not been determined. It is in poor repair but not unsafe and is kept locked.
3. Winter salt spreading. A number of residents would like this service but there was no suggestion it had ever been provided previously, so there cannot be a reduction in amenity. Mr Edwards stated that legal advice was not to spread salt because of potential issues of liability in the event of injury.
4. Electric box for street lighting. This was a complaint of Mr Tavener at number 36. The electric box is on the back of his pitch and has not been moved to a public area. But it seems that it has always been in that position. Mr Edwards merely commented that it was fit for purpose notwithstanding its position.

The applicable law

39. The applicable law is contained in the Mobile Homes Act 1983 (as amended) ("the Act") and a pitch fee can only be changed in one of two ways, either by agreement with the occupier or if a Tribunal considers it reasonable for the pitch fee to be changed and makes an order determining the amount of the new pitch fee (Schedule 1, chapter 2, paragraph 16 of the Act). Since there was no agreement between the parties, it falls to the Tribunal to determine the pitch fees in these cases.

40. A Tribunal may only determine a new pitch fee in accordance with paragraphs 17 to 20 and 25A of Schedule 1, chapter 2, of the Act. The Tribunal does not have unlimited discretion but is bound to determine the pitch fee in accordance with the provisions of that Schedule.

41. The first step is for the Site Owner to serve a pitch fee increase notice which must be accompanied by the form provided for by paragraph 25(1) and the 2013 Regulations. The notice must comply with the Act and the 2013 Regulations.

42. In the absence of agreement, as here, there may be an application to the Tribunal. Paragraph 18 sets out the matters to which the Tribunal is to have regard. The relevant provision in this case is Paragraph 18(i)(aa) which states:

> "Any deterioration in the condition, and any decrease in the amenity, of the site . . . 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 . . .)".

43. Finally, there is a presumption (paragraph 20 of Schedule 1, Part II, of the Act) that the pitch fee shall increase or decrease by a percentage which is no more or no less than the increase or decrease in the Retail Prices Index unless such an increase or decrease would be unreasonable in the light of the matters to which the Tribunal is to have regard under paragraph 18.

44. It should be noted that a Tribunal should not find deterioration in condition or decrease in amenity except on clear evidence. Moreover, it is not every complaint that an occupier might raise that will amount to a deterioration in condition or a decrease in amenity. The matter or matters complained of must be serious enough to amount to a

demonstrable and clear deterioration or decrease in amenity. There is also authority that a deterioration or decrease cannot be demonstrated if the complaints only relate to the impact on one individual pitch. However, it is proper for a Tribunal to have regard to matters which constitute a deterioration in condition or decrease in amenity that relate to a number of occupiers but not necessarily to the whole park.

Determinations and reasons

45. The Tribunal, in respect of all cases before the Tribunal, determines that it considers it unreasonable for the pitch fee to be changed or increased and orders that the amount of pitch fee in each case shall continue to be the fee that applied on 31 December 2018.

Relating to the method of the pitch fee calculation
46. The Tribunal so holds since it determines that the Pitch Fee Review Forms served on each owner or occupier in all the cases before the Tribunal were defective, and therefore ineffective to qualify as a valid Pitch Fee Review Notices, because each form averaged the increase of all the pitch fees across the Park instead of calculating the increase based on the individual pitch fee as required by law. The reason is simply that put forward by Mr Kendal in his first submission. The combination of the provisions in paragraphs 17, 20 and 25A of the Regulations require the new pitch fee to be calculated by reference to each current pitch fee, which will be, or may be, different depending on the original agreement in each case. The calculation in the Form requires there to be an RPI adjustment measured by reference to the change over 12 months by reference to the most recently published index applied to each individual pitch fee. It was not permissible to take an average increase across the Park. The pitch fee notices in each case are therefore invalid. But if each calculation had been done as the Regulations require, it would then have been perfectly in order to offer a lower increase at 75% of each such calculation.

47. Since the Tribunal is satisfied that the pitch fee notices in each case are of no effect, because the notice was not accompanied by a document that satisfies paragraph 25A of Schedule 1, Part II of the Act, the Tribunal orders, by virtue and under paragraph 17(12) that the Site Owner repay any overpayment made to any occupier who has paid the increased fee, the repayment being the difference between the amount that the occupier was required to pay to the owner for the period in question and the amount that the owner has paid for that period.

Relating to a decrease in amenity
48. Though that is sufficient to determine all cases, the Tribunal further determines that, if the pitch fee review notices had been valid, the Tribunal would have still have determined that all pitch fees should remain at their existing level in the light of the decrease in amenity of the site since the last review date, namely in respect of the removal of all facilities for visitor parking and the removal and non-replacement of two street lights. The recent removal of all visitor parking spaces is a significant decrease in the amenity of this site, not only to the minority who have only one parking space (or none at all) but to everyone. This is because most residents will have one or even two vehicles of their own so there is a need for visitor parking; and visitors who are not close friends or invited guests would be unlikely to think of parking on a driveway. The comment made

by Mr Edwards that parking would be tolerated on the roads cannot be taken seriously when the roads are too narrow for this to be done and it is prohibited by the site rules. In the opinion of the Tribunal, the decrease in amenity from the total recent loss of the communal parking spaces is serious enough to negate any pitch fee increase due on 1 January 2019.

49. The Tribunal is of the opinion that future pitch fee increases will be dependent upon the re-provision of visitor parking. It will be for the Site Owner to decide how this might be done. Part of the old barn site could be used, or the site of the disused pink building; or perhaps by careful planning of the design and use of the entrance way; or by a combination of more than one of these possibilities.

50. Similar comments on decrease of amenity can be made about the removal and non-replacement of two street lights. It is insufficient to claim that they are not needed because there is ambient lighting from the new homes. There is a demonstrable decrease in amenity and there is no reason why they should not be replaced. However, if this had been the only matter demonstrated, the Tribunal would have reduced a valid pitch fee increase by having regard to this matter rather that negating the increase in full.

Relating to subsidence

51. In respect of cases numbered 0069 (Skett, number 29), 0083 (Spencer, 49), 0084 (Hewitt, 52), 0087 (Curtis, 57), and 0092 (Lamb, 63), the Tribunal determines that there is clear evidence of subsidence and earth movement affecting the bases and pitches upon which the mobile homes rest and the site owner is in breach of its responsibilities to repair the bases impacted; and that this results not only in a decrease in amenity for those parts of the site affected but probably also in a decrease in amenity of the site as a whole. This is because the failure to attend to such matters will or may impact of the value of all homes in the Park in the event of a sale. If this had been the only matter demonstrated, then the Tribunal would have negated any valid pitch fee increase for those pitches impacted by subsidence.

Other matters

52. On all other matters, the Tribunal determines that they would not give rise to having to be taken into account under paragraph 18(1)(aa) of the Regulations. There was clearly a strong case for doing so in relation to the condition of the entrance way into the Park. If the Tribunal had felt that there was no good reason for the failure to restore, this would have been a matter to which the Tribunal would have had regard. But the Tribunal is satisfied that there is a cause for the condition of the road from the work previously undertaken and still to be done on the damaged culvert and that a date has been fixed to undertake the work. If however, the disrepair has not been remedied by the time the next pitch fee notice is given, there would be a very strong case for regard to be had to the disrepair at that stage.

53. The Tribunal also considered very carefully as to whether the condition of the boundary fence alongside pitch 57 (Curtis) was a matter to which regard should be had, especially as there were also complaints from Mrs Skett at pitch 29 and the Spencers at number 49. It was the view of the Tribunal that maintenance of the boundary fences at

the site were a matter of concern of all and not just for the residents of the pitches most impacted. However, as with the issue of the entrance road, we heard the agent say that the matters would be attended to. If suitable repairs have not been effected by the time of the next pitch fee increase, then the matter can be raised again.

54. In the opinion of the Tribunal, none of the other issues reached the threshold of 'deterioration in condition' or 'decrease in amenity' since the last review date. The state of the road surfaces beyond the entrance were not, in the opinion of the Tribunal in a such a state that regard should be had in relation to a pitch fee increase. There was minimal evidence of surface water flooding and the Tribunal could not be satisfied on the evidence available that the problems went beyond what was to be expected in times of heavy rainfall.

55. The submissions in relation to foul water drainage were, in one or two individual cases, concerning. However, there was no real evidence relating to these problems beyond assertions by individual Respondents which was sufficient for a Tribunal to have regard in a pitch fee review. There was also insufficient evidence that the site of the now demolished barn, or the unused pink building, was a deterioration of the site as a whole or involved a decrease in amenity in any way. Finally, the claim that there was a promise to provide security gates could not, even if true, amount to such deterioration or decrease since there never has been any security gates. Even if the Respondents has provided compelling evidence that there was a representation on which they had relied to their detriment (and there was no evidence at all to that effect), the Tribunal was not persuaded that it would have been a matter to which it could have regard in a dispute about a pitch fee increase.

Right of Appeal

56. 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.

57. 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.

58. 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.

59. 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 that the party who is making the application for permission to appeal is seeking.

Judge Professor David Clarke
16 August 2019