



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

**Case Reference** : **BIR/17UD/PHI/2020/0010**

**HMCTS Code** : **V:CVPREMOTE**

**Property** : **26 Riverdale Park, Lowgates, Staveley  
Derbyshire, S43 3UQ**

**Applicant** : **Cathmal Ltd**

**Representatives** : **Mr and Mrs Stapleton**

**Respondents** : **Mr and Mrs Peters**

**Type of Application** : **Pitch Fee Review**

**Tribunal Members** : **Mrs A Rawlence MRICS  
Judge C Goodall**

**Date of Hearing** : **2<sup>nd</sup> September 2020**

**Date of Decision** : **8<sup>th</sup> September 2020**

**Covid-19 Pandemic: Remote Video Hearing**

This determination included a remote video hearing on the papers which has been consented to by the parties. The form of remote hearing was Video (V: CVPREMOTE). A face-to-face hearing was not held because it was not practicable, no-one requested the same, and all issues could be determined in a remote hearing. The documents referred to are in a bundle, the contents of which are noted.

Pursuant to Rule 33(2A) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and to enable this case to be heard remotely during the Covid-19 pandemic in accordance with the Pilot Practice Direction: Contingency Arrangements in the First-tier Tribunal and the Upper Tribunal the Tribunal has directed that the hearing be held in private. The Tribunal has directed that the proceedings are to be conducted wholly as video proceedings; it is not reasonably practicable for such a hearing, or such part, to be accessed in a court or tribunal venue by persons who are not parties entitled to participate in the hearing; a media representative is not able to access the proceedings remotely while they are taking place; and such a direction is necessary to secure the proper administration of justice.

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**DECISION**

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## **Decision**

**The Tribunal determine that the pitch fee for the Property should increase from the review date of 1 April 2020 in accordance with the Notice dated 1 March 2020 in the amount of £167.60 per calendar month.**

### **Reasons for the Decision**

#### **Introduction**

1. The Applicant is the site owner and the Respondents are the occupiers of 26 Riverdale Park, Lowgates, Staveley (The Property). The Respondents have not agreed the new pitch fee with effect from 1 April 2020. Consequently, the site owner must apply to the Tribunal in order to obtain an increase. There does not appear to be any dispute regarding the effective date of the review, which is stated in the agreement commenced on 23 January 2015, made between Cathmal Ltd and Mr and Mrs Peters.
2. By Notice dated 1 March 2020, the Applicant gave notice to the Respondents that it was proposed to review the pitch fee from the review date of 1 April 2020. The proposed pitch fee was £167.60 The proposed increase related to the increase in the RPI Index only.
3. The pitch fee does not include payment for water, sewerage, gas, electricity and any other services. Water and electricity bills are charged separately.
4. The Respondents did not agree to the proposed increase. Following a letter from the Applicant dated 28 May 2020 advising them of an under payment of the pitch fee, the Respondents advised by letter dated 6 June 2020 that they were in dispute. On 27 June 2020, the Applicant applied to the Tribunal for a determination of new level of the pitch fee in relation to the Property.
5. Directions were issued on 1 July 2020 stating inter alia that the Tribunal did not intend to inspect the Property unless either party objected within 14 days of the Directions. No such objection was made.
6. The Directions set out time limits for submission of bundles. These were extended after the Applicant informed the Tribunal that the Directions had not been received.

#### **The Law**

7. The relevant legislation is contained within Schedule 1 Part 1 Chapter 2 of the Mobile Homes Act 1983 (as amended). The site is a protected site under the Act.
8. The site owner must give written notice accompanied by a prescribed Pitch Fee Review Form. The Tribunal notes that the correct form and time limits have been complied with in this case.

9. Paragraph 16 of Schedule 1 states that the pitch fee can be changed only if the site owner follows the procedure set out in paragraph 17, and then only if either the occupier agrees or the FTT considers it reasonable for the pitch fee to be changed and makes an order determining the new fee.
10. Paragraph 20 (1) states the presumption that the pitch fee will increase or decrease by a percentage which is no more than the percentage change in the RPI since the last review date.
11. Paragraph 18 sets out factors to which “particular regard” must be had when determining the amount of the new pitch fee. There are five factors. Only those contained in Paragraph 18(1) (aa) and (ab) are relevant to the issues in this case. Paragraph 18(1)(aa) refers to .... “any deterioration in the condition, and any decrease in the amenity, of the Park or any adjoining land which is occupied or controlled by the owner since the date on which this paragraph came into force<sup>1</sup> (in so far as regard has not previously been had to that deterioration or decrease for the purpose of this sub paragraph)”. Paragraph 18(1)(ab) refers to “any reduction in the services which the owner supplies to the site, pitch or mobile home, and any deterioration in the quality of those services...”.

### **The issues**

12. The Respondents gave 8 reasons for disputing the reasonableness of the pitch fee increase:
  - a. The border fence at the rear of the park was in a very poor state
  - b. There had been no upkeep or maintenance of Riverdale Park
  - c. The back entrance had become a dump, with a fridge, a freezer, broken pallets, and oil containers left on the pitches there
  - d. Flooding at the site is a regular occurrence
  - e. There was broken glass left on the road outside pitch 42
  - f. Drains on the park were smelly
  - g. The Applicant had fewer trees to maintain as pitch owners were pruning their own
  - h. Park rules were being breached, in that one pitch owner kept two dogs, and some gardens were not well maintained

### **The evidence and submissions on the issues**

13. At the remote hearing Mrs Peters presented the case for the Respondents and Mr and Mrs Stapleton presented the case as Applicants.

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<sup>1</sup> 26<sup>th</sup> May 2013

#### a. The border fence

14. Mrs Peters produced photographs that showed the very poor condition of this fence.
15. The Applicants explained that they were not responsible for the fence; it belonged to the farmer next door. It adjoined that area at the park which was being redeveloped, and when that work had been carried out, they intended to erect a new fence within the land owned by the park.

#### b. Maintenance

16. The Respondent said there had been no general maintenance carried out on the park.
17. The Applicants submitted that the Park was maintained to a high standard with a professional gardener in the summer months and a general labourer and tree surgeon as required. Mr Stapleton told us that maintenance was and had been carried out throughout 2018/19. The maintenance included servicing of fireboxes and fire bells, cleaning of road gulleys, tree pruning, road repairs and road sweeping, refilling of salt bins, grass cutting and kerb edge weed killer application.
18. The Respondent accepted at the hearing that her principal concern about maintenance was the condition of the plots at the back entrance and she accepted that some general maintenance as set out by Mr Stapleton had been carried out in 2019/20.

#### c. Back Entrance

19. The Respondent produced photographs showing the part of the site immediately upon entering it from the back entrance. They showed that the 5 pitches in that area were unsightly. The homes had been demolished, leaving rubble and general debris, including discarded white goods, timber, and oil drums.
20. The Respondent challenged the Applicants' story that fridges were left out in case residents wished to take them. Her photograph (photo 3) shows a fridge dumped in stale water and not fit for any further use.
21. Mr Stapleton explained that there are 5 plots immediately inside the park when it is accessed using the back entrance (plots 31, 65, 67, 70 and 72) which were undergoing major redevelopment. These plots are not communal areas. The whole area will be landscaped when the development is complete. He did not dispute that for a part of 2019/20, the pitches in the redevelopment area had been unsightly. He explained that removing rubble and discarded items depended on enough material building up on site to justify the hiring of a skip. He stated that items and rubble were removed when economically feasible. He believed that it was inevitable that during a building project there would be some periods when pitches would be unsightly. It was not reasonable to expect otherwise. He pointed out that the redevelopment area was well away from the Respondents' pitch.

#### d. Flooding

22. The Respondent produced photographs showing that on one occasion there had been standing water outside their pitch.

23. The Applicants did not dispute the photographs but explained that in a very heavy rainstorm it was always possible for the storm drains to become overwhelmed. Mr Stapleton believed that on the occasion which had been photographed, the standing water had been exacerbated by foliage from trees pruned by pitch owners blocking the drains. They said that when the park was purchased in 2007 there were no top water drains and, as the park has been redeveloped, kerb edges and topwater drains have been installed.

e. Broken glass

24. The Respondent's complaint was that broken glass had been deposited in the road way outside pitch 42 and not cleared up. Eventually a resident had swept it up. There were about 12 pieces of glass each around 4 cm. On being asked about the time of this issue, Mrs Peters accepted that it had occurred after 31 March 2020.
25. The Applicants said there were unaware of any broken glass.

f. Drain smells

26. The Respondents' written evidence was that the drains smell. Mrs Peters did not expand on this at the hearing.
27. The Applicants' position is that the drains on the park do not smell. Internal plumbing is already complete when new homes are delivered to the site.

g. Tree Pruning

28. The Respondent said that the Applicants had told pitch owners that they should prune the trees on their own pitches. There was therefore less pruning for the Applicants to fund. They would not be pruning the tree on their plot.
29. The Applicants said there is a tree pruning programme for park owned trees and the cherry tree on the respondents' plot is within this programme.

h. Park Rules

30. The Respondent's position was that the Applicants were not enforcing park rules. One pitch owner had two dogs and some gardens were not well kept. Mrs Peters refused to say which pitch owner she suspected was not complying with the park rule regarding dogs.
31. The Applicants were not aware of any home having 2 dogs.
32. They believed the vast majority of residents keep their homes and gardens in excellent condition. Over a three year plus period the applicants did write to a homeowner asking him to tidy his garden. This plot is now much tidier than before.

**Other matters raised at the hearing**

33. At the hearing it was confirmed by the Respondent that the unsigned written statement did pertain to the Property.

34. The Respondent agreed that the RPI figure of 2.7% increase was correct for the period in question.

### **Decision**

35. The Tribunal considered all the written and oral evidence submitted.
36. During the 12- month period applicable to this review, the RPI had risen by 2.7% and this is the increase which the application seeks should be applied to the existing pitch fees to determine the new pitch fee.
37. For the purposes of the 1983 Act, the issue is not the actual condition of the site, nor indeed the actual amenity of the site. We have to consider whether it would be reasonable to increase the pitch fee, and we are required in particular to take note of whether there has been any **deterioration** in the condition or **decrease** in the amenity of the site in the relevant period, and, if we do so find, we have to consider whether allowing an RPI increase would generate an unreasonable result having regard to our decision on the reasonableness of the pitch fee increase generally.
38. “Amenity” in this context means the quality of being agreeable or pleasant and so we must look at any decrease in the pleasantness of the site or those features of the site which are agreeable from the occupier’s perspective.
39. Our first consideration then is whether anything that the Respondents have said persuades us that it would not be reasonable to increase the pitch fee. Our view is that the Respondents points are insufficient to persuade us that a pitch fee increase would not be reasonable. On each of the reasons which the Respondents asked us to consider:
- a. **Rear fence:** We do not think the condition of the rear fence has any bearing on the pitch fee. We accept that it does not belong to the park.
  - b. **General maintenance:** We accept the evidence of the Applicants that normal maintenance took place in 2019/20.
  - c. **Back entrance condition:** We find that for most of 2019/20, the rear part of the park near the back entrance was unsightly as it was being redeveloped. We note that there is a covenant in paragraph 22.(d) of the Written Statement that the owner must:

*“maintain in a clean and tidy condition those parts of the protected site, including access ways, site boundary fences and trees, which are not the responsibility of any occupier of a mobile home stationed on the protected site.”*

We think that this condition applies to the 5 plots at the back entrance. The Tribunal notes the Applicant’s view that the area was undergoing redevelopment. The standard of cleanliness and tidiness of a development site is always going to be much lower than a finished occupied site and clearance of the site has to be done in a cost-effective way. This area is at the rear of the site and only forms a small part of the site. Although the Respondents would

have preferred to have the entire site tidy, the Tribunal determines that any breach of obligation, as stated in paragraph 39, is not sufficient to affect the amenity of the park.

- d. **Flooding:** We do not think that the fact that the storm drains may occasionally become overloaded in very heavy rain should result in it being unreasonable for there to be a pitch fee increase. The evidence suggests the storm water drainage has improved at the site during the Applicants' ownership.
  - e. **Glass:** We do not think that the fact there was some broken glass in the road outside pitch 42 is sufficient for us to find it would not be reasonable to increase the pitch fee. Only a small amount of glass was deposited. We accept Mr Stapleton's evidence that he was unaware of the problem, which was resolved sensibly by a resident sweeping up the glass.
  - f. **Drains:** We are unable, for lack of any convincing evidence, to make a finding that there were any drain smells, at least of such severity as to affect consideration of whether the existence of smells would make it unreasonable to increase the pitch fee.
  - g. **Pruning:** We do not consider that, if there has been a reduction in the pruning regime (and we were presented with no evidence of the financial impact of any claimed reduction), this would result in it being unreasonable to increase the pitch fee. Any change to the pruning arrangements, on the evidence, has had no impact upon the Respondents, as they have said they will not prune their own tree and the Applicant has said their tree is still within the site pruning schedule.
  - h. **Park Rules:** Mrs Peters refused to disclose the names of those she considered were not complying with the rules on the number of dogs. In fact, we were not provided with a copy of the rules in any event, but we have assumed that there is a rule that two dogs are not allowed, which was not disputed by the Applicants. There is therefore no basis for us finding that there has been any breach of that rule. We accept the Applicants' evidence, contained in the photographs included in their written submissions, that generally the park looks neat and tidy and is kept well by the pitch owners. There is therefore no basis for a determination that the Applicants are not enforcing the park rules. This therefore cannot have an impact upon the pitch fee.
40. The Tribunal are not persuaded that it would be unreasonable for there to be a pitch fee increase as a result of deterioration in the condition or decrease in the amenity of the Park, or otherwise, so as to displace the presumption of an increase in the pitch fee by the RPI Index.
41. The Tribunal determine that the pitch fee for the Property should increase from the review date of 1<sup>st</sup> April 2020 in accordance with the Notice dated 1<sup>st</sup> March 2020.
42. If the Respondents have continued to pay the original pitch fee since that date, they must pay the difference to the Applicant.

## **Costs**

43. No party applied for costs and the Tribunal make no such award.

## **Appeal**

44. If any party is dissatisfied with this decision, they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties and must state the grounds on which they intend to rely in the appeal.

.....

A J Rawlence



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

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Judge C Goodall**

**Date of Hearing** : **2<sup>nd</sup> September 2020**

**Date of Decision** : **8<sup>th</sup> September 2020**

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This determination included a remote video hearing on the papers which has been consented to by the parties. The form of remote hearing was Video (V: CVPREMOTE). A face-to-face hearing was not held because it was not practicable, no-one requested the same, and all issues could be determined in a remote hearing. The documents referred to are in a bundle, the contents of which are noted.

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**DECISION**

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## **Decision**

**The Tribunal determine that the pitch fee for the Property should increase from the review date of 1 April 2020 in accordance with the Notice dated 1 March 2020 in the amount of £167.60 per calendar month.**

### **Reasons for the Decision**

#### **Introduction**

1. The Applicant is the site owner and the Respondents are the occupiers of 26 Riverdale Park, Lowgates, Staveley (The Property). The Respondents have not agreed the new pitch fee with effect from 1 April 2020. Consequently, the site owner must apply to the Tribunal in order to obtain an increase. There does not appear to be any dispute regarding the effective date of the review, which is stated in the agreement commenced on 23 January 2015, made between Cathmal Ltd and Mr and Mrs Peters.
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e. Broken glass

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32. They believed the vast majority of residents keep their homes and gardens in excellent condition. Over a three year plus period the applicants did write to a homeowner asking him to tidy his garden. This plot is now much tidier than before.

**Other matters raised at the hearing**

33. At the hearing it was confirmed by the Respondent that the unsigned written statement did pertain to the Property.

34. The Respondent agreed that the RPI figure of 2.7% increase was correct for the period in question.

### **Decision**

35. The Tribunal considered all the written and oral evidence submitted.
36. During the 12- month period applicable to this review, the RPI had risen by 2.7% and this is the increase which the application seeks should be applied to the existing pitch fees to determine the new pitch fee.
37. For the purposes of the 1983 Act, the issue is not the actual condition of the site, nor indeed the actual amenity of the site. We have to consider whether it would be reasonable to increase the pitch fee, and we are required in particular to take note of whether there has been any **deterioration** in the condition or **decrease** in the amenity of the site in the relevant period, and, if we do so find, we have to consider whether allowing an RPI increase would generate an unreasonable result having regard to our decision on the reasonableness of the pitch fee increase generally.
38. “Amenity” in this context means the quality of being agreeable or pleasant and so we must look at any decrease in the pleasantness of the site or those features of the site which are agreeable from the occupier’s perspective.
39. Our first consideration then is whether anything that the Respondents have said persuades us that it would not be reasonable to increase the pitch fee. Our view is that the Respondents points are insufficient to persuade us that a pitch fee increase would not be reasonable. On each of the reasons which the Respondents asked us to consider:
- a. **Rear fence:** We do not think the condition of the rear fence has any bearing on the pitch fee. We accept that it does not belong to the park.
  - b. **General maintenance:** We accept the evidence of the Applicants that normal maintenance took place in 2019/20.
  - c. **Back entrance condition:** We find that for most of 2019/20, the rear part of the park near the back entrance was unsightly as it was being redeveloped. We note that there is a covenant in paragraph 22.(d) of the Written Statement that the owner must:

*“maintain in a clean and tidy condition those parts of the protected site, including access ways, site boundary fences and trees, which are not the responsibility of any occupier of a mobile home stationed on the protected site.”*

We think that this condition applies to the 5 plots at the back entrance. The Tribunal notes the Applicant’s view that the area was undergoing redevelopment. The standard of cleanliness and tidiness of a development site is always going to be much lower than a finished occupied site and clearance of the site has to be done in a cost-effective way. This area is at the rear of the site and only forms a small part of the site. Although the Respondents would

have preferred to have the entire site tidy, the Tribunal determines that any breach of obligation, as stated in paragraph 39, is not sufficient to affect the amenity of the park.

- d. **Flooding:** We do not think that the fact that the storm drains may occasionally become overloaded in very heavy rain should result in it being unreasonable for there to be a pitch fee increase. The evidence suggests the storm water drainage has improved at the site during the Applicants' ownership.
  - e. **Glass:** We do not think that the fact there was some broken glass in the road outside pitch 42 is sufficient for us to find it would not be reasonable to increase the pitch fee. Only a small amount of glass was deposited. We accept Mr Stapleton's evidence that he was unaware of the problem, which was resolved sensibly by a resident sweeping up the glass.
  - f. **Drains:** We are unable, for lack of any convincing evidence, to make a finding that there were any drain smells, at least of such severity as to affect consideration of whether the existence of smells would make it unreasonable to increase the pitch fee.
  - g. **Pruning:** We do not consider that, if there has been a reduction in the pruning regime (and we were presented with no evidence of the financial impact of any claimed reduction), this would result in it being unreasonable to increase the pitch fee. Any change to the pruning arrangements, on the evidence, has had no impact upon the Respondents, as they have said they will not prune their own tree and the Applicant has said their tree is still within the site pruning schedule.
  - h. **Park Rules:** Mrs Peters refused to disclose the names of those she considered were not complying with the rules on the number of dogs. In fact, we were not provided with a copy of the rules in any event, but we have assumed that there is a rule that two dogs are not allowed, which was not disputed by the Applicants. There is therefore no basis for us finding that there has been any breach of that rule. We accept the Applicants' evidence, contained in the photographs included in their written submissions, that generally the park looks neat and tidy and is kept well by the pitch owners. There is therefore no basis for a determination that the Applicants are not enforcing the park rules. This therefore cannot have an impact upon the pitch fee.
40. The Tribunal are not persuaded that it would be unreasonable for there to be a pitch fee increase as a result of deterioration in the condition or decrease in the amenity of the Park, or otherwise, so as to displace the presumption of an increase in the pitch fee by the RPI Index.
41. The Tribunal determine that the pitch fee for the Property should increase from the review date of 1<sup>st</sup> April 2020 in accordance with the Notice dated 1<sup>st</sup> March 2020.
42. If the Respondents have continued to pay the original pitch fee since that date, they must pay the difference to the Applicant.

**Costs**

- 43. No party applied for costs and the Tribunal make no such award.

**Appeal**

- 44. If any party is dissatisfied with this decision, they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties and must state the grounds on which they intend to rely in the appeal.

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A J Rawlence



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

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**HMCTS Code** : **V:CVPREMOTE**

**Property** : **26 Riverdale Park, Lowgates, Staveley  
Derbyshire, S43 3UQ**

**Applicant** : **Cathmal Ltd**

**Representatives** : **Mr and Mrs Stapleton**

**Respondents** : **Mr and Mrs Peters**

**Type of Application** : **Pitch Fee Review**

**Tribunal Members** : **Mrs A Rawlence MRICS  
Judge C Goodall**

**Date of Hearing** : **2<sup>nd</sup> September 2020**

**Date of Decision** : **8<sup>th</sup> September 2020**

**Covid-19 Pandemic: Remote Video Hearing**

This determination included a remote video hearing on the papers which has been consented to by the parties. The form of remote hearing was Video (V: CVPREMOTE). A face-to-face hearing was not held because it was not practicable, no-one requested the same, and all issues could be determined in a remote hearing. The documents referred to are in a bundle, the contents of which are noted.

Pursuant to Rule 33(2A) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and to enable this case to be heard remotely during the Covid-19 pandemic in accordance with the Pilot Practice Direction: Contingency Arrangements in the First-tier Tribunal and the Upper Tribunal the Tribunal has directed that the hearing be held in private. The Tribunal has directed that the proceedings are to be conducted wholly as video proceedings; it is not reasonably practicable for such a hearing, or such part, to be accessed in a court or tribunal venue by persons who are not parties entitled to participate in the hearing; a media representative is not able to access the proceedings remotely while they are taking place; and such a direction is necessary to secure the proper administration of justice.

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**DECISION**

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## **Decision**

**The Tribunal determine that the pitch fee for the Property should increase from the review date of 1 April 2020 in accordance with the Notice dated 1 March 2020 in the amount of £167.60 per calendar month.**

### **Reasons for the Decision**

#### **Introduction**

1. The Applicant is the site owner and the Respondents are the occupiers of 26 Riverdale Park, Lowgates, Staveley (The Property). The Respondents have not agreed the new pitch fee with effect from 1 April 2020. Consequently, the site owner must apply to the Tribunal in order to obtain an increase. There does not appear to be any dispute regarding the effective date of the review, which is stated in the agreement commenced on 23 January 2015, made between Cathmal Ltd and Mr and Mrs Peters.
2. By Notice dated 1 March 2020, the Applicant gave notice to the Respondents that it was proposed to review the pitch fee from the review date of 1 April 2020. The proposed pitch fee was £167.60 The proposed increase related to the increase in the RPI Index only.
3. The pitch fee does not include payment for water, sewerage, gas, electricity and any other services. Water and electricity bills are charged separately.
4. The Respondents did not agree to the proposed increase. Following a letter from the Applicant dated 28 May 2020 advising them of an under payment of the pitch fee, the Respondents advised by letter dated 6 June 2020 that they were in dispute. On 27 June 2020, the Applicant applied to the Tribunal for a determination of new level of the pitch fee in relation to the Property.
5. Directions were issued on 1 July 2020 stating inter alia that the Tribunal did not intend to inspect the Property unless either party objected within 14 days of the Directions. No such objection was made.
6. The Directions set out time limits for submission of bundles. These were extended after the Applicant informed the Tribunal that the Directions had not been received.

#### **The Law**

7. The relevant legislation is contained within Schedule 1 Part 1 Chapter 2 of the Mobile Homes Act 1983 (as amended). The site is a protected site under the Act.
8. The site owner must give written notice accompanied by a prescribed Pitch Fee Review Form. The Tribunal notes that the correct form and time limits have been complied with in this case.

9. Paragraph 16 of Schedule 1 states that the pitch fee can be changed only if the site owner follows the procedure set out in paragraph 17, and then only if either the occupier agrees or the FTT considers it reasonable for the pitch fee to be changed and makes an order determining the new fee.
10. Paragraph 20 (1) states the presumption that the pitch fee will increase or decrease by a percentage which is no more than the percentage change in the RPI since the last review date.
11. Paragraph 18 sets out factors to which “particular regard” must be had when determining the amount of the new pitch fee. There are five factors. Only those contained in Paragraph 18(1) (aa) and (ab) are relevant to the issues in this case. Paragraph 18(1)(aa) refers to .... “any deterioration in the condition, and any decrease in the amenity, of the Park or any adjoining land which is occupied or controlled by the owner since the date on which this paragraph came into force<sup>1</sup> (in so far as regard has not previously been had to that deterioration or decrease for the purpose of this sub paragraph)”. Paragraph 18(1)(ab) refers to “any reduction in the services which the owner supplies to the site, pitch or mobile home, and any deterioration in the quality of those services...”.

### **The issues**

12. The Respondents gave 8 reasons for disputing the reasonableness of the pitch fee increase:
  - a. The border fence at the rear of the park was in a very poor state
  - b. There had been no upkeep or maintenance of Riverdale Park
  - c. The back entrance had become a dump, with a fridge, a freezer, broken pallets, and oil containers left on the pitches there
  - d. Flooding at the site is a regular occurrence
  - e. There was broken glass left on the road outside pitch 42
  - f. Drains on the park were smelly
  - g. The Applicant had fewer trees to maintain as pitch owners were pruning their own
  - h. Park rules were being breached, in that one pitch owner kept two dogs, and some gardens were not well maintained

### **The evidence and submissions on the issues**

13. At the remote hearing Mrs Peters presented the case for the Respondents and Mr and Mrs Stapleton presented the case as Applicants.

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<sup>1</sup> 26<sup>th</sup> May 2013

#### a. The border fence

14. Mrs Peters produced photographs that showed the very poor condition of this fence.
15. The Applicants explained that they were not responsible for the fence; it belonged to the farmer next door. It adjoined that area at the park which was being redeveloped, and when that work had been carried out, they intended to erect a new fence within the land owned by the park.

#### b. Maintenance

16. The Respondent said there had been no general maintenance carried out on the park.
17. The Applicants submitted that the Park was maintained to a high standard with a professional gardener in the summer months and a general labourer and tree surgeon as required. Mr Stapleton told us that maintenance was and had been carried out throughout 2018/19. The maintenance included servicing of fireboxes and fire bells, cleaning of road gulleys, tree pruning, road repairs and road sweeping, refilling of salt bins, grass cutting and kerb edge weed killer application.
18. The Respondent accepted at the hearing that her principal concern about maintenance was the condition of the plots at the back entrance and she accepted that some general maintenance as set out by Mr Stapleton had been carried out in 2019/20.

#### c. Back Entrance

19. The Respondent produced photographs showing the part of the site immediately upon entering it from the back entrance. They showed that the 5 pitches in that area were unsightly. The homes had been demolished, leaving rubble and general debris, including discarded white goods, timber, and oil drums.
20. The Respondent challenged the Applicants' story that fridges were left out in case residents wished to take them. Her photograph (photo 3) shows a fridge dumped in stale water and not fit for any further use.
21. Mr Stapleton explained that there are 5 plots immediately inside the park when it is accessed using the back entrance (plots 31, 65, 67, 70 and 72) which were undergoing major redevelopment. These plots are not communal areas. The whole area will be landscaped when the development is complete. He did not dispute that for a part of 2019/20, the pitches in the redevelopment area had been unsightly. He explained that removing rubble and discarded items depended on enough material building up on site to justify the hiring of a skip. He stated that items and rubble were removed when economically feasible. He believed that it was inevitable that during a building project there would be some periods when pitches would be unsightly. It was not reasonable to expect otherwise. He pointed out that the redevelopment area was well away from the Respondents' pitch.

#### d. Flooding

22. The Respondent produced photographs showing that on one occasion there had been standing water outside their pitch.

23. The Applicants did not dispute the photographs but explained that in a very heavy rainstorm it was always possible for the storm drains to become overwhelmed. Mr Stapleton believed that on the occasion which had been photographed, the standing water had been exacerbated by foliage from trees pruned by pitch owners blocking the drains. They said that when the park was purchased in 2007 there were no top water drains and, as the park has been redeveloped, kerb edges and topwater drains have been installed.

e. Broken glass

24. The Respondent's complaint was that broken glass had been deposited in the road way outside pitch 42 and not cleared up. Eventually a resident had swept it up. There were about 12 pieces of glass each around 4 cm. On being asked about the time of this issue, Mrs Peters accepted that it had occurred after 31 March 2020.
25. The Applicants said there were unaware of any broken glass.

f. Drain smells

26. The Respondents' written evidence was that the drains smell. Mrs Peters did not expand on this at the hearing.
27. The Applicants' position is that the drains on the park do not smell. Internal plumbing is already complete when new homes are delivered to the site.

g. Tree Pruning

28. The Respondent said that the Applicants had told pitch owners that they should prune the trees on their own pitches. There was therefore less pruning for the Applicants to fund. They would not be pruning the tree on their plot.
29. The Applicants said there is a tree pruning programme for park owned trees and the cherry tree on the respondents' plot is within this programme.

h. Park Rules

30. The Respondent's position was that the Applicants were not enforcing park rules. One pitch owner had two dogs and some gardens were not well kept. Mrs Peters refused to say which pitch owner she suspected was not complying with the park rule regarding dogs.
31. The Applicants were not aware of any home having 2 dogs.
32. They believed the vast majority of residents keep their homes and gardens in excellent condition. Over a three year plus period the applicants did write to a homeowner asking him to tidy his garden. This plot is now much tidier than before.

**Other matters raised at the hearing**

33. At the hearing it was confirmed by the Respondent that the unsigned written statement did pertain to the Property.

34. The Respondent agreed that the RPI figure of 2.7% increase was correct for the period in question.

### **Decision**

35. The Tribunal considered all the written and oral evidence submitted.
36. During the 12- month period applicable to this review, the RPI had risen by 2.7% and this is the increase which the application seeks should be applied to the existing pitch fees to determine the new pitch fee.
37. For the purposes of the 1983 Act, the issue is not the actual condition of the site, nor indeed the actual amenity of the site. We have to consider whether it would be reasonable to increase the pitch fee, and we are required in particular to take note of whether there has been any **deterioration** in the condition or **decrease** in the amenity of the site in the relevant period, and, if we do so find, we have to consider whether allowing an RPI increase would generate an unreasonable result having regard to our decision on the reasonableness of the pitch fee increase generally.
38. “Amenity” in this context means the quality of being agreeable or pleasant and so we must look at any decrease in the pleasantness of the site or those features of the site which are agreeable from the occupier’s perspective.
39. Our first consideration then is whether anything that the Respondents have said persuades us that it would not be reasonable to increase the pitch fee. Our view is that the Respondents points are insufficient to persuade us that a pitch fee increase would not be reasonable. On each of the reasons which the Respondents asked us to consider:
- a. **Rear fence:** We do not think the condition of the rear fence has any bearing on the pitch fee. We accept that it does not belong to the park.
  - b. **General maintenance:** We accept the evidence of the Applicants that normal maintenance took place in 2019/20.
  - c. **Back entrance condition:** We find that for most of 2019/20, the rear part of the park near the back entrance was unsightly as it was being redeveloped. We note that there is a covenant in paragraph 22.(d) of the Written Statement that the owner must:

*“maintain in a clean and tidy condition those parts of the protected site, including access ways, site boundary fences and trees, which are not the responsibility of any occupier of a mobile home stationed on the protected site.”*

We think that this condition applies to the 5 plots at the back entrance. The Tribunal notes the Applicant’s view that the area was undergoing redevelopment. The standard of cleanliness and tidiness of a development site is always going to be much lower than a finished occupied site and clearance of the site has to be done in a cost-effective way. This area is at the rear of the site and only forms a small part of the site. Although the Respondents would

have preferred to have the entire site tidy, the Tribunal determines that any breach of obligation, as stated in paragraph 39, is not sufficient to affect the amenity of the park.

- d. **Flooding:** We do not think that the fact that the storm drains may occasionally become overloaded in very heavy rain should result in it being unreasonable for there to be a pitch fee increase. The evidence suggests the storm water drainage has improved at the site during the Applicants' ownership.
  - e. **Glass:** We do not think that the fact there was some broken glass in the road outside pitch 42 is sufficient for us to find it would not be reasonable to increase the pitch fee. Only a small amount of glass was deposited. We accept Mr Stapleton's evidence that he was unaware of the problem, which was resolved sensibly by a resident sweeping up the glass.
  - f. **Drains:** We are unable, for lack of any convincing evidence, to make a finding that there were any drain smells, at least of such severity as to affect consideration of whether the existence of smells would make it unreasonable to increase the pitch fee.
  - g. **Pruning:** We do not consider that, if there has been a reduction in the pruning regime (and we were presented with no evidence of the financial impact of any claimed reduction), this would result in it being unreasonable to increase the pitch fee. Any change to the pruning arrangements, on the evidence, has had no impact upon the Respondents, as they have said they will not prune their own tree and the Applicant has said their tree is still within the site pruning schedule.
  - h. **Park Rules:** Mrs Peters refused to disclose the names of those she considered were not complying with the rules on the number of dogs. In fact, we were not provided with a copy of the rules in any event, but we have assumed that there is a rule that two dogs are not allowed, which was not disputed by the Applicants. There is therefore no basis for us finding that there has been any breach of that rule. We accept the Applicants' evidence, contained in the photographs included in their written submissions, that generally the park looks neat and tidy and is kept well by the pitch owners. There is therefore no basis for a determination that the Applicants are not enforcing the park rules. This therefore cannot have an impact upon the pitch fee.
40. The Tribunal are not persuaded that it would be unreasonable for there to be a pitch fee increase as a result of deterioration in the condition or decrease in the amenity of the Park, or otherwise, so as to displace the presumption of an increase in the pitch fee by the RPI Index.
41. The Tribunal determine that the pitch fee for the Property should increase from the review date of 1<sup>st</sup> April 2020 in accordance with the Notice dated 1<sup>st</sup> March 2020.
42. If the Respondents have continued to pay the original pitch fee since that date, they must pay the difference to the Applicant.

**Costs**

- 43. No party applied for costs and the Tribunal make no such award.

**Appeal**

- 44. If any party is dissatisfied with this decision, they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties and must state the grounds on which they intend to rely in the appeal.

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A J Rawlence