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

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| **Case Reference** | **:** | **CHI/40UC/PHI/2021/0097** |
| **Property** | **:** | **Premises: 41 Chilton Park, Chilton Trinity, Bridgwater, Somerset TA6 3JW** |
| **Applicant** | **:** | **Dawn Pickering** |
| **Representative** | **:** | **Tozers Solicitors** |
| **Respondent** | **:** | **David J and June Iles** |
| **Type of Application** | **:** | **Mobile 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** | **:** | **14 March 2022** |

## Decision

**The Tribunal determines that the amount of the new pitch fee, payable from 31 August 2021, is £122.81 per month as proposed in the Applicant's Notice dated 2 August 2021.**

## 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 24 November 2021, is for determination of a new level of pitch fee in respect of a mobile home, 41 Chilton Park, Chilton Trinity, Bridgwater, Somerset TA6 3JW ("the site").

## The Application

2. The Applicant is Mrs Dawn Pickering ("the Applicant"). It appears that she is representing herself and Mr Paul Pickering, the joint owners of the site who trade under the name of Pickering Parks. The Respondents to the Application are David J and June Iles who own the mobile home, 41 Chilton Park. The Applicant is represented by Tozers Solicitors.

3. Mrs Joanne Grist, Legal Officer, issued Directions to the parties on 6 January 2022 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 Site

4. On 14 May 2009, Sedgmoor District Council issued a licence, under the Caravan Sites and Control of Development Act 1960, ("the 1960 Act"), to Paul Pickering and Dawn Pickering. The licence authorised the use of land situate at PT OS 2938, known as Chilton Park Mobile Home Site, Chilton Street Bridgwater Somerset ("the site"), to be used as a caravan site. The licence was granted subject to "The Current Standard Licence Conditions." The Conditions, which are set out in a Schedule attached to the licence, include the following condition.

**1. The Boundaries and Plan of the Site**

(i) The boundaries of the site from any adjoining land shall be clearly marked by a man made or natural feature.

(ii) No caravan or combustible structure shall be positioned within 3 metres of the boundary of the site.

(iii) (a) A plan of the site shall be supplied to the local authority upon the application for a licence and thereafter whenever there is a material change to the boundaries or layout of the site, or at any other time on the demand of the local authority (b) the plan supplied must clearly illustrate the layout of the site including all relevant structures, features and facilities on it and shall be of suitable quality.

5. The Tribunal was not provided with a copy of any such plan. However, the Respondents have provided a copy of the plan of the proposed development submitted with the earlier planning application. The plan indicated two "recreational areas" on the site. One is a wooded area next to the western boundary of the site and the other is a rectangular area in the centre of the site. (The Respondents say that the latter now forms the gardens of the homes adjacent to it). Planning permission was granted on 23 September 2004.

6. On 23 February 2005 the Applicant(s) acquired under a separate title a wedge shaped "green" area of land immediately beyond the northern boundary of the site as indicated on the plan. That area stretched from the western end of that northern boundary to its eastern end. Both parties refer it to as "the Green".

7. It is evident from an aerial photograph of the site that there is no physical boundary separating the Green from the site. However, there is a hedge that marks the boundary between the northern side of the Green and the adjoining field beyond.

## The agreement

8. A Mr & Mrs Ridings bought their home, numbered 41, and stationed it on an identified pitch under the terms of an agreement, with the Applicant site owner, dated 3 February 2010. On 29 November 2011 Mr & Mrs Ridings sold their home to the Respondents, Mr & Mrs Iles, to whom they assigned the benefit of their agreement. Clause 7 of the agreement contained an obligation by the occupier to pay to the site owner a specified pitch fee of £100. Clause 8 of the agreement provided for an annual review of the pitch fee as from 1 September in each year. The pitch fee specified in the assignment was £105 per month and the review date was stated to be 1 September 2012.

## The Law

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

## The pitch fee review notice

10. The Applicant, by a notice dated 2 August 2021, gave notice to the Respondent of a proposed increase in the pitch fee from £121.47 per month to £122.81 per month, the increase to take effect from 31 August 2021 being a date later than the review date of 1 September 2020. 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 June 2020, which was 1.1%.

## The Applicant's case

11. 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 1983 Act (as amended) ("the Schedule").

12. 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 the Schedule, to apply to the Tribunal for an order determining the amount of the new pitch fee.

## The Respondents' case and the Applicant's response

13. The Respondents gave two reasons for not accepting the proposed pitch fee. First, that there has been "a reduction of the amenities of the site", which they submit makes it unreasonable for the pitch fee to be increased.

14. The Respondents say that when they came to the site in 2011 they asked the sales manager, Mr Mervyn Scane, about the intended use for the Green and he told them that the Green was set aside for residents' recreational purposes. The Respondents also say that since they came to live at the site in November 2011 they have seen many residents using this land to entertain children, take exercise and even at one time using it for golf practice. They state that in the past there were two picnic benches placed on the area and residents used these regularly. Indeed, in June 2012 the then site manager, Malcolm Squire, showed no objection to a "street party" being held on the area to celebrate the Queen's Diamond Jubilee, an event that was eventually cancelled because of adverse weather conditions.

15. The Respondents say that it therefore came as a great surprise to them when, in April 2020 in an undated letter, the site manager, on behalf of the Applicant, informed the Respondents that they understood the

Green to have been used for recreational purposes at a time when Covid regulations prohibited the same and furthermore the site's insurance policy bars residents from using "green spaces on the park" for social purposes. The Respondents replied and explained that a group of residents had met on the Green observing social distancing in order to help formulate a plan for assisting residents on the site who had to self isolate and had no family nearby. However, they would no longer meet in such circumstances

16. Soon afterwards the Respondents were visited by a police officer (PCSO Simpkin), who told them that gatherings for social purposes on the Green were in breach of the park rules. When challenged by the Respondents the site manager denied having told the PCSO about the rules, but he confirmed that the insurance policy means that the Green was only available for dog walking. The Respondents say that this was repeated in an email letter from the Applicant dated 30 April 2020 in which the Applicant stated that the Green "is privately owned by my husband and I and is not part of the site".

17. The Respondents conclude that the "removal of any right for residents to use this area, apart from dog walking, related in the 30th April email is, in our opinion, a reduction of the amenities of the site. From that point we feel that our Pitch Fee should not be increased in line with the proposal."

18. The Respondent's second ground for resisting the Application stems from the email from the Applicant dated 30 April 2020 and a further email dated 24 November 2021. In that later email the Applicant stated that "part of the green is included within the site but part is not and is adjoining land privately owned by my husband and I ...The green, including the privately owned part, is only available to and used by residents of the park and is treated by us as part of the park. As such we need to ensure that all of the green is maintained and so the groundsman employed by us maintains all of the green."

19. The Respondents submit that if the Green is privately owned, the cost of its maintenance (i.e. mowing by the groundsman) should not be met from pitch fee funds. The Respondents calculate that the pitch fee increase amounts to £16.08 per year, which they say is around the value of their share of the groundsman's estimated remuneration for maintaining this area of private land. They say that maintenance of private property should not be a business expense of the Park and therefore the pitch fee should not be increased by RPI.

20. With regard to the first ground, the Applicant says that they bought the Green in 2005 and although it is not included in the site nor covered by the site licence they have allowed and continue to allow residents to use it for walking (with or without a dog) but not for parties or other functions for which they are not insured. The Applicant says she was surprised by the Respondents' assertion that the sales manager in 2011,

Mr Scane, was supposed to have stated that the Green was set aside for recreational purposes, because it has never formed part of the site. Indeed there is a separate recreational wooded area within the site boundaries.

21. The Applicant says that the letter sent to all residents in April 2020 has been misunderstood. It was simply intended as a reminder to residents that outdoor social gatherings were prohibited by Covid regulations and as such would be in breach of the Agreement (which forbids unlawful use of the site) and also because social gatherings are in any event not covered by the Applicant's public liability insurance with regard to the Green. It was not intended to mean that residents could not walk on the Green without a dog.

22. The Applicants have assumed that the Respondents are arguing that paragraph 18(1)(aa) of the Schedule is applicable when they submit that there has been a "reduction of amenities." In response they argue that paragraph 18(1)(aa) of the Schedule does not apply either because

"….there has been no change in the residents' ability to use the Green or any reduction in the amenity of the Park site or adjoining land controlled by me and my husband. The residents continue to be allowed to walk on the green. Even a change in law during the pandemic did not prevent residents walking on the Green, only in doing so in groups. I have never given permission for social gatherings or parties on the Green so there has been no reduction in that use of the Green. Also the Respondents complain that they are affected because they don't have a dog and that they therefore cannot walk on the Green. As explained that is not the case but even if it were it would mean that only those without dogs were affected. Paragraph 18(1)(aa) refers to a decrease in amenity of the whole site or adjoining land and not to the situation where the site or land remains the same but some residents believe they cannot use it."

23. The Applicant also says that there has not been a removal of amenity, because that term means pleasantness of view or experience. She also says that there is no suggestion that there has been any deterioration in the condition of the Park or the Green. She concludes that therefore paragraph 18(1)(aa) of the Schedule is not engaged.

24. With regard to the second ground, the Applicant says that because residents have been permitted to use the Green, although it is not part of the site, they (the Applicant) consider the maintenance of the Green to be a legitimate expense of the Park and in any event is not a matter to which regard is to be had for the purposes of paragraph 18(1)(aa) on review of the pitch fee. They also say that the cost of maintenance is not as high as that claimed by the Respondents.

**Discussion**

25. 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 1983 Act. That Act has since been amended on a number of occasions and has to be read alongside other related statutory orders and regulations.

26. Section 1(1) of the 1983 Act provides that the act applies to any agreement under which a person (defined as "the occupier") is entitled to station a mobile home on land forming part of a protected site and to occupy the mobile home as his main residence.

27. Section 1(2) of the Act requires the owner of the protected site to give to the proposed occupier a written statement containing various specified matters including terms implied by section 2(1).

28. Section 2(1) provides that the implied terms are the applicable terms set out in Part 1 of Schedule 1 to the Act ("the Schedule). By section 2(1) of the Act, the implied terms take effect notwithstanding any express term of the agreement.

29. Provisions relating to the review of a pitch fee are contained in paragraphs 16 to 20 of 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).

30. "Pitch fee" is defined in paragraph 29 of the Schedule as

> "The amount which the occupier is required by the agreement to pay to the owner for the right to station the mobile home on the pitch and for use of the common areas of the protected site and their maintenance, but does not include amounts due in respect of gas, electricity, water, sewage or other services, unless the agreement expressly provides that the pitch fee includes such amounts."

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(1) of the Schedule provides that the pitch fee will be reviewed annually as at the review date. Paragraph 17(2) provides 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). Paragraph 17(6) provides that 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 the new pitch fee. Paragraph (6A) provides that such a notice will only be effective if it is accompanied by a document, which complies with paragraph 25A.

33. 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);

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

35. 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(6) means the last index published before the day by which the owner was required to serve a notice under paragraph 17(2).

36. In the present case the Applicant served a notice, under paragraph 17(6), on 1 February 2021. The Tribunal, on 26 July 2021, determined that the notice of increase was defective and void. The Applicants then

served the notice of 2 August 2021. The Tribunal accepts that this was a valid notice.

37. 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 September 2020. That is to say 4 August 2020. The notice was served on 2 August 2021 and stated that the proposed pitch fee would take effect on 31 August 2021 being a date later than the review date. The "latest index" therefore is the last index published before 4 August 2020. That figure of 292.7 was as released in July 2020. That index related to the month of June 2020. The other index is "that published for the month, which was 12 months before that to which the latest index relates" (i.e. for June 2019). That is 289.6 being the figure released in July 2019. Thus the increase in RPI over that period was 1.1%. When applied to the pitch fee of £121.47 payable at the time of the notice the increased fee comes to £122.80617, i.e. £122.81 per month.

38. The statutory provisions with regard to alteration of the pitch fee are by no means straightforward on first reading but have been examined on a number of occasions by the Upper Tribunal and on one occasion by the Court of Appeal. It is now clear following these decisions that on annual review of the pitch fee there is a presumption that the fee will change (or as the case may be remain the same) in proportion with the changes in RPI over the relevant 12 month period. However, if the presumption would produce an unreasonable amount it can be rebutted. Paragraphs 18(1) specifies particular matters to which the Tribunal must have regard when determining whether the increase would be unreasonable. Paragraphs 18(1A) and 19 specify matters that must be disregarded.

39. Nevertheless, the Tribunal is not limited as to the other factors to which it may have regard. Thus the Applicant's suggestion that the paragraph 20(1A) presumption can only be rebutted by the presence of one of the specified factors in section 18 is not correct.

40. In *Britaniacrest v Mr Edward W Bamborough, Mrs M A Bamborough* [2016] UKUT 144 (LC), 2016, the Upper Tribunal judge observed that

> **"....**the FTT has a wide discretion to vary the pitch fee to a level of a reasonable pitch fee taking into account all of the relevant circumstances, and that the increase in RPI in the previous 12 months is important, but it is not the only factor which may be taken into account."

The Court of Appeal approved of this interpretation of the relevant provisions in the Schedule in *PR Hardman and Partners v Greenwood* [2017] EWCA Civ 52.

41. The dispute in the present case relates to use of the area referred to as the Green. The Respondents have presented two reasons why they believe that the pitch fee should not be increased. They say first that use of the Green by residents until April 2020 was unrestricted (other than by law, as in the case of Covid-19 restrictions on outdoor gatherings) and therefore its restriction to use by dog walkers after that date (save where limited by law) is a reduction of the amenities of the site" making it unreasonable for the presumption in paragraph 20(A1) to apply when the Tribunal determines the new pitch fee payable. Until the Applicant's email of 30 April 2020 they had believed that the Green was a recreational area that was part of Chilton Park.

42. In so far as the Respondents' argument might be said to be a reference to paragraph 18(1)(aa) the Tribunal agrees with the Applicant that there has not been any deterioration in the condition of the site or any decrease of amenity of the site (or adjoining land occupied or controlled by the site owner) since the relevant date. The Green has not changed its character during the relevant period.

43. But is there any other material factor that might rebut the presumption in paragraph 20(A1)? As noted above, whether or not any of the factors to which the Tribunal is directed to have regard by paragraph 18 are present the Tribunal has a wide discretion to find that the presumption has been rebutted for some other relevant reason.

44. The issue raised by the Respondents relates to permission for residents to use the Green for recreational purposes. It is clear that the residents have no express contractual entitlement to make use of the Green for any purpose. Nevertheless, the Applicants have not prevented residents from using the Green for certain purposes. The ambit of that permission at different times is less than clear. The Tribunal accepts that the Applicant has never given permission for parties or other social "gatherings".

45. Indeed the Applicant has recently refused a resident permission for use of the land for a party to celebrate the Queen's Platinum Jubilee, stating in her letter to the resident, dated 17 January 2022, that

"The area of grass at the bottom of the park known as the Green is privately owned by my husband and is not formally included within the Chilton Park site nor covered by the site licence. We have allowed residents to use it for exercising their dogs and for this reason it is mowed and cut back by our maintenance man. We do not currently intend for any greater use of the land and reserve the right to withdraw the permission for residents to use it for dog walking. Consequently we will not be granting consent to any parties being held on it or any use beyond dog walking on it."

46. By contrast in her statement in reply in the present proceedings, dated 7 February 2022, and accompanied by a statement of truth, the Applicant inconsistently states, that "....we have always allowed residents to use it [the Green] for exercise, primarily for dog walking but also walking without dogs. We have never told any resident that they could not walk on it..." Furthermore in her reply to the Respondents' statement of case she states that the Respondent may walk on the Green even without a dog.

47. The Tribunal finds that there has never been permission express or implied granted by the Applicant for unrestricted use of the Green by residents. There has clearly been implied permission to use for walking (with or without dogs) and this has not changed since the last pitch fee review. Thus even if relevant to the pitch fee review, as to which see below, there has been no change sufficient to rebut the presumption in paragraph 20(A1) of the Schedule.

48. This brings us to the Respondent's alternative ground. They argue that if, which is undoubtedly the case, the Green is private land and does not form part of the protected site, the cost of maintaining the Green should not be a business expense of the Applicants. They say that they should not have to pay an RPI increase because it equates more or less to their share of the cost of maintenance of the Green for the year 2020/2021. It is not clear whether the Respondents link this claim to what they believe to be a change of the circumstances in which residents are permitted to use the Green. That is to say to use only for dog walking.

49. The Applicants disagree and say, "We have treated the Green as part of the Park since we bought it, although it is not formally included within the Park site, and have always allowed residents to use it" and therefore its maintenance costs should be regarded as a valid expense of the Park business. Furthermore, they submit that this matter does not fall under paragraph 18(1)(aa).

50. The Tribunal agrees that this matter does not fall within paragraph 18(1)(aa) because it does not concern the amenity of the site or the Green. But is the matter otherwise relevant to the determination by the Tribunal of a reasonable pitch fee?

51. As noted above, "pitch fee" is defined in paragraph 29 of the Schedule as

> "The amount which the occupier is required by the agreement to pay to the owner for the right to station the mobile home on the pitch and for use of the common areas of the protected site and their maintenance..."

52. Thus when determining what is a reasonable pitch fee the Tribunal is concerned only with payment for the right to station the mobile home

on the pitch and for the use and maintenance of the common areas of the protected site.

53. Section 5(1) of the 1983 Act provides that "protected site" has the same meaning as in Part 1 of the Caravan Sites Act 1968, section 1(2) of which, in turn so far as material and as amended, provides that

"For the purposes of this Part of this Act a protected site is any land in respect of which a site licence is required under Part 1 of the Caravan Sites and Development Act 1960."

By section 1(1) of the 1960 Act a site licence is required for any land, which is a "caravan site." Section 1(4) explains that the expression "caravan site" means

"land on which a caravan is stationed for the purposes of human habitation and land which is used in conjunction with land on which a caravan is so stationed"

54. In *John Romans Park Homes v Hancock and others*, [2018] UKUT 249, the Upper Tribunal stated that the question whether a caravan site with planning permission is a protected site for the purpose of the 1983 Act depends solely on the terms of the relevant planning permission and site licence pertaining to the site (if a site licence has been granted).

55. In the present case the Applicant wants to treat the Green as if it were part of the site but at the same time deny the residents any *right* to use the Green as a recreational facility, albeit that they appear to have given residents an implied gratuitous revocable licence for its use. Nevertheless, it remains the case, as the Applicant concedes, that the Green is not within the Park or covered by the site licence. It follows that, in the absence of agreement between the parties, the pitch fee does not include payment for use or maintenance of the Green, which is not a designated recreation area within the protected site.

56. But does this mean that the Applicant should be denied a pitch fee increase in line with the change in RPI? It would appear that since the Respondents took an assignment of the agreement the pitch fee has been increased by reference to RPI on each review. In essence the Respondents now seek a nil increase in the pitch fee for the relevant year to "compensate" for the Applicant maintaining the Green from the pitch fee. However, as explained above, the cost of maintaining the Green is not an expense recoverable by way of pitch fee in the absence of agreement to the contrary between the Applicant and residents.

57. Furthermore, the Tribunal does not have evidence of historic or current site expenses or the extent to which if any those expenses have included maintenance of the Green, which we now know not to be wholly part of the protected site. It is also not clear whether the Respondents or other residents would at any time have been willing to agree a pitch fee increased by RPI on the basis that the Applicant permits them to make use of the Green for walking, albeit a permission that could be withdrawn at any time. Bearing in mind that the present Application is made under paragraph 17 and not under section 4 of the 1983 Act, the Tribunal can see no reason why the presumption in paragraph 20(1A) of the Schedule should not apply and therefore determines that the pitch fee will increase to the sum specified in the Applicant's notice of 2 August 2021.

## 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 by email to rpsouthern@justice.gov.uk 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.

## Annex: The Law

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

*The pitch fee*

**16**

The pitch fee can only be changed in accordance with paragraph 17, either—

(a) with the agreement of the occupier, or

(b) if the appropriate judicial body, on the application of the owner or the occupier, considers it reasonable for the pitch fee to be changed and makes an order determining the amount of the new pitch fee.

**17**

(1) The pitch fee shall be reviewed annually as at the review date.

(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.