FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/22UC/PHI/2022/0003**
HMCTS code (audio, video, paper)	**:**	**F2F**
Park	**:**	**Kingsmead Park, Coggeshall Road, Braintree, Essex CM7 9DW**
Applicants	**:**	**Maurice Lipton (No.58) and the other park home owners named in Schedule 1**
Representative	**:**	**Maurice Lipton**
Respondent	**:**	**WVC Park Homes Limited**
Representative	**:**	**Miss Amanda Gourlay, instructed by Apps Legal**
Type of application(s)	**:**	**Applications under the Mobile Homes Act 1983 to determine pitch fees**
Tribunal member(s)	**:**	**Judge David Wyatt** **Mrs M Hardman FRICS IRRV (Hons)**
Date	**:**	**8 August 2022**

DECISION

Covid-19 pandemic: description of hearing

This has been a face-to-face hearing. The documents we were referred to are those described in paragraphs four and five below. We have noted the contents.

Decisions of the tribunal

(1) The tribunal is not satisfied that any of the Applicants were precluded from applying to the tribunal to determine the new pitch fees.

(2) The tribunal considers it reasonable for the pitch fees to be changed and orders that the amounts of the monthly pitch fees payable by the Applicants from 1 January 2022 are those proposed by the Respondent, as set out in the last column of the table at Schedule 1 to this decision.

Reasons

Applications

1. On 4 March 2022 Maurice Lipton (No.58) applied to tribunal on behalf of the occupiers of 51 park homes at the Park, under paragraph 16 of the terms implied by Chapter 2 of Part I of Schedule 1 to the Mobile Homes Act 1983 (the "**Implied Terms**") to determine the pitch fees payable from 1 January 2022.

Procedural history

2. The tribunal arranged a telephone case management hearing (**CMH**) for 31 March 2022. On 29 March 2022, the Respondent sent a position statement and supporting documents. The Respondent contended all but two of the Applicants had paid the increased monthly instalments for January, February and March 2022. They said none of the Applicants had expressed any disagreement until they made the application. Accordingly, they said, the tribunal had no jurisdiction because the new pitch fees had been agreed.

3. The CMH on 31 March 2022 was attended by Mr Lipton for the Applicants and Kirstie Apps, solicitor for the Respondent, with William Dowling (a director of the Respondent) in attendance. Mr Lipton accepted the details in relation to the Applicants (pitch fees for 2021, the Respondent's proposed pitch fees for 2022, and payments by the Applicants) set out in the spreadsheet at exhibit WD2 to Mr Dowling's first witness statement. After hearing from Mr Lipton and Miss Apps, I declined to strike out any of the applications and gave case management directions for bundles of case documents to be produced by the Applicants, bundles in response to be produced by the Respondent and permission for a reply from the Applicants.

4. On 15 April 2022, the Respondent sent a formal application enclosing written submissions: (a) to strike out under rule 9(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (the "**Rules**"); or (b) for directions for a hearing of a preliminary issue of whether 49 of the 51 applicants had agreed the pitch fee for 2022. On 19 April 2022, the Applicants sent a written response to the application. On

20 April 2022, the Applicants delivered their substantive document bundles, pursuant to the earlier directions (Bundle A of 116 pages and Bundle B numbered 117 to 223). These included a request that the tribunal grant "relief" against the pitch fees payable for 2021. The tribunal confirmed in response that it would not in these proceedings be determining the pitch fees payable for 2021, only the pitch fees payable for 2022, as sought in the Applicants' substantive applications. Mr Lipton accepted this.

5. On 3 May 2022, I gave a written decision and further case management directions. For the reasons explained in that decision, I was not satisfied that any of the applications should be struck out without a substantive hearing to decide whether the tribunal had jurisdiction or that it would be appropriate to direct a preliminary issue hearing. I extended the time for the Respondent's document bundles and any reply from the Applicants. I directed an inspection (as proposed by the Respondent in their applications) followed by a face to face hearing. The Respondent produced their bundle of 379 pages together with eight videos (of different parts of the Park, taken on 4 May 2022) which we viewed in advance of the hearing. With an extension of time, the Applicants produced a reply bundle of 27 pages. On 29 June 2022, the tribunal gave permission for the Respondent to rely on a PDF bundle of additional documents (seven pages). In advance of the hearing, Mr Lipton produced a skeleton argument for the Applicants and Miss Amanda Gourlay of counsel produced a skeleton argument for the Respondent.

6. We inspected the Park at 10am on 14 July 2022 and then conducted the hearing at Chelmsford Magistrates Court. Mr Lipton represented the Applicants. Dawn Loring and Valerie Wood gave evidence for the Applicants. The Respondent was represented by Miss Gourlay, with Kirstie Apps in attendance. Mr Dowling gave evidence for the Respondent. Keith Schofield attended and was offered for cross-examination, but neither Mr Lipton nor the tribunal had any questions for him. The Respondent had estimated that two days would be required for the hearing and that was arranged on a contingency basis, but it proved possible to conclude the hearing in one day. We are grateful to Mr Lipton and Miss Gourlay for their assistance.

Pitch fees – law

7. By paragraph 29 of the Implied Terms, "*pitch fee*" means: "*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 and sewerage or other services, unless the agreement expressly provides that the pitch fee includes such amounts…*".

8. By paragraph 16 of the Implied Terms: "*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."

9. Paragraphs 17 to 20 of the Implied Terms are set out in Schedule 2 to this decision. In essence, paragraph 17 requires a notice and prescribed document proposing any new pitch fee. By paragraph 17(3) or (7), if the occupier agrees to the proposed new pitch fee, it shall be payable as from the relevant date. By paragraph 17(4) or (8), if the occupier does not agree to the proposed new pitch fee:

    (a) application may be made to the tribunal to determine the amount of the new pitch fee (with a window for such applications between 28 days and three months after the review date or, if the proposal notice was served later than 28 days before the review date, between 56 days and four months after the date the proposal notice was served, subject to a power under paragraph 17(9A) for the tribunal to permit a late application if it is satisfied that: "*…in all the circumstances, there are good reasons for the failure to apply within the applicable time limit…*"); and

    (b) the occupier: "*…shall continue to pay the current pitch fee to the owner until such time as…*" the new pitch fee is agreed or determined.

10. By paragraph 17(4)(c) (or 17(8)(c) and (10)), the new pitch fee determined by the tribunal is payable from the review date (or the 28th day after a late proposal notice), but the occupier will not be treated as being in arrears until the 28th day after the new pitch fee is determined.

11. Paragraph 18(1) provides that, "*When determining the amount of the new pitch fee, particular regard shall be had…*" to specified matters, including those in paragraph 18(1)(aa) and (ab). These refer to deterioration in condition or decrease in amenity of the site (aa), and/or reduction in (and/or deterioration in the quality of) the services the owner supplies to the site, pitch or mobile home (bb), since the date on which these sub-paragraphs came into force (26 May 2013) so far as regard has not previously been had to this for the purposes of these sub-paragraphs (i.e. when determining previous pitch fees).

12. By paragraph 20(A1), "*Unless this would be unreasonable having regard to paragraph 18(1)…*" there is a presumption that the pitch fee shall (in essence) change in line with RPI. In Britanniacrest v Bamborough [2016] UKUT 144 (LC), the Upper Tribunal said [at 31]: "*…The fundamental point to be noted is that an increase or decrease by reference to RPI is only a presumption; it is neither an entitlement nor a maximum, and in some cases it will only be a starting point of the determination. If there are factors which mean that a pitch fee increased only by RPI would nonetheless not be a reasonable pitch fee as contemplated by paragraph 16(b), the presumption of only an RPI*

increase may be rebutted…". As Miss Gourlay noted, in Bamborough and in Vyse (mentioned below), the appellant had been seeking an above-RPI increase.

13. In Bamborough at [33], the Upper Tribunal said: "*…the increase in RPI in the previous 12 months is important, but it is not the only factor which may be taken into account*." In Vyse v Wyldecrest Ltd [2017] UKUT 24 (LC) HHJ Alice Robinson noted [at 45] that: "*…the factors which may displace the presumption are not limited to those set out in paragraph 18(1) but may include other factors…*" and said [at 50] that: "*…By definition, this must be a factor to which considerable weight attaches … it is not possible to be prescriptive … What is required is that the decision maker recognises that the "other factor" must have sufficient weight to outweigh the presumption in the context of the statutory scheme as a whole.*" Miss Gourlay pointed out that this followed the observation at [47] that: "*…the issue of reasonableness is not at large. It is not open to the FTT to simply decide what it considers a reasonable pitch fee to be in all the circumstances. Reasonableness has to be determined in the context of the other statutory provisions.*"

Issues

14. The Particulars of Agreement in Part 2 of Mr Lipton's written statement for his pitch agreement state that it was made with "*Braintree Park Ltd*" to begin on 7 February 2014. They indicate that water and sewerage services are not included in the pitch fee (striking those out from the statement of services included in the pitch fee) and that an additional charge will be made for water. The document provides for the pitch fee to be payable monthly (£164.94 in 2014) and the pitch fee review date to be 1 December in each year.

15. The Respondent's letters proposing the increased pitch fees for 2022, with the prescribed explanatory form, had been sent to the park home occupiers on about 24 November 2021. The Respondent proposed to increase the 2021 pitch fees in line with RPI (6%) with effect from 1 January 2022. The 2021 and proposed 2022 pitch fees are set out in the table at Schedule 1 to this decision. In their application form to the tribunal to determine the pitch fees for 2022, the Applicants confirmed the pitch fee did not include payment for water, sewerage, gas or electricity. They said it did include (as, they said, "*other services*") upkeep of roads, hedges, lighting, fire safety, upkeep of the communal areas, maintenance of fire equipment, gritting roads, maintenance and the electric gates. They confirmed the 2021 pitch fees had been agreed.

16. As Miss Gourlay pointed out, there was no issue as to the validity of the notices, the Respondent's calculations of the RPI increases or compliance with paragraph 17 of the Implied Terms. The basic issues between the parties were: (a) whether the tribunal did not have jurisdiction to consider the applications in relation to 49 of the 51 Applicants because they should be treated as having agreed the proposed new pitch fees by paying them in January, February and March 2022;

and (b) whether it is reasonable to change the 2021 pitch fees (paragraph 16 of the Implied Terms) and, if so, what pitch fees to determine for 2022.

Background

17. In about March 2019, the Respondent purchased Kingsmead Park from Braintree Park Limited. On 4 March 2019, Braintree District Council ("**BDC**") transferred/granted a site licence for the Park (calling it "*Braintree Park*") to the Respondent. Mr Dowling said the previous owner had redeveloped the Park over the preceding five years or so, buying back park homes, siting and selling new ones and working on the infrastructure. Mr Lipton said that, as part of this development, in 2014/15 the car park at the front of the Park had been closed to accommodate two additional park homes. He accepted that after the nuisance of the building works the development by the previous owner enhanced the "*look*" of the Park.

18. The Park now appears fully developed. It was said to accommodate 69 plots (15 singles and 54 twins), some of which have their own parking spaces. 67 are owner-occupied. One has been split into two units and is rented out by the Respondent. The remaining plot (No.71) had been cleared for some time and the Respondent has now sited a new park home on it. The entrance road to the Park leads through electronic vehicular and pedestrian gates to a central visitor parking/turning area, with two narrow internal access roads leading out from the main entrance road to either side and some additional parking at the eastern edge of the Park. When we inspected, the electronic vehicular gates were left open, apparently because they had been damaged and were awaiting repair (noted below). There is also a side pedestrian gate near the north-west corner of the Park.

19. Mr Dowling explained that operation of the Park is managed from the Respondent's head office at Felstead Manor, Staines-upon-Thames, Surrey. Mr Dowling's partner, Lianne Dowling, has been the property manager since September 2021. As part of her role, she manages the day to day operation of the Park. Mr Dowling said the group now owns five other residential parks in the south of England; the Park was the first park home site they acquired.

20. Mr Lipton is the chairman of the Kingsmead Park Residents Association ("**KPRA**") of which it appears the Applicants are members. He said Henry Simmons of Braintree Park Limited had taken pride in the Park although in the last year or so of their ownership some maintenance was neglected. For example, on 13 February 2019 (when the Respondent was in the process of purchasing, or had just purchased, the Park), Dawn Loring had as secretary of the KPRA written to Mr Dowling to express concern about various matters, including the state of the roads from the main entrance gates, display of the site licence and a cracked electricity box. Mr Dowling replied to this letter promptly and the central visitor parking/turning area was resurfaced later in 2019.

21. On 5 March 2019, Mrs Dowling wrote to inform KPRA that the "caretaker" had decided to step down earlier than expected and ask whether any other resident would be willing to take on the role. In his witness statement, Mr Dowling explained that the site caretaker (Mr Mills) had lived at the Park. He said Mr Mills had moved to North Devon to a new park being developed by the previous owner. Again, this is considered in more detail below.

22. Problems with the electric gates from April 2019 took a long time to remedy and were ultimately resolved in July 2019. At the time, the Respondent said they were considering removing the gates and KPRA explained they should or could not; they said the pitch fee had been previously increased by agreement with the previous owner to reflect improvement works which included provision of the gates. The Applicants said after the Respondent purchased the Park its representatives had initially attended once a month, but since September 2019 had visited infrequently. Mr Lipton said the Park had been neglected since then, particularly in 2021. The bundles include a large volume of correspondence in 2019 between Mr Lipton and others on behalf of KPRA and the Respondent. Relatively little correspondence was produced for 2020 (perhaps unsurprisingly, given the pandemic). Further correspondence from KPRA expressing concerns and making requests was produced in 2021. In May 2021, Mr Lipton on behalf of the KPRA had approached BDC to report concerns about the site and ask BDC to investigate.

23. On 9 August 2021, Mrs Loring wrote to Mr Dowling to raise concerns from KPRA's members about trees, shrubs and roadside weeds not been dealt with, fences on boundaries of pitches, wooden structures on pitches, lighting, electrical supply problems, the electric pedestrian entrance gate, pot holes in the roads and parking (repeating earlier suggestions that an unused site office be removed for parking space). It appears Mr Lipton later wrote to Mr Dowling to press for a response to this letter, saying: "*Many members are now asking committee members* ***"what are we paying our pitch fees for?*** *The Park is deteriorating in upkeep and this is not being addressed … The Park is looking very downtrodden and is not amenable…*". Mr Dowling then telephoned on about 8 September 2021 to discuss this (as noted in a further e-mail from Mr Lipton said to have been sent on 9 September 2021). Mr Dowling confirmed he remembered speaking to Mr Lipton in early September 2021 about the 9 August 2021 letter.

24. BDC inspected the Park in September 2021 and raised various items with the Respondent about the conditions in the site licence. They made recommendations and kept Mr Lipton informed. Mr Lipton pressed BDC to inspect the Park again in December 2021, but (understandably) they did not have the resources to inspect again at that time. In February and April 2022, the officer from BDC visited the Park again and in March 2022 they provided further advice to the Respondent and to Mr Lipton, noting the progress which had been made.

25. Mr Schofield leads a maintenance team and is employed by WVC Vehicle Solutions Ltd. Mr Dowling said that company "*subsidises*" the Respondent, explaining at the hearing that the Respondent had acquired several park home sites knowing they were a long-term investment. Mr Schofield said he lives in Surrey and between 2019 and 2021 he and his colleague Nicu Butucel would visit approximately once every six weeks, arriving around 10am and aiming to leave around 4pm, to maintain the Park. He said this could include pruning, occasionally cutting the grass on the communal areas (although this had often already been cut by residents), spraying weed killer or weeding, filling up salt boxes, checking the drains, using a leaf blower to clear any debris from the ground, checking the roadways, fire safety equipment and entrance gates. He said they would also visit to deal with matters reported by residents, if they could attend in a reasonable time, or third-party contractors would be arranged if they could not. He described other work, such as helping maintain pitches for some residents and clearing blocked drains without charging residents where blockages were in pipework inside their park homes or were said to have been caused by flushing unsuitable materials.

26. In his second witness statement, Mr Dowling responded to the complaints made by the Applicants in their documents. We consider these below. With his witness statement, he produced a spreadsheet detailing third-party invoices for costs in relation to the Park. These appear to total:

    (a) in 2021, £1,051.24 for snow plough equipment for a quad bike and £3,202.46 for other expenses;

    (b) in 2020, £2,394; and

    (c) in 2019, £10,740 for tarmac works, £1,404.46 for security gate electrical repairs and £2,309.60 for other expenses.

Jurisdiction/agreement

27. Mrs Morgan (No.11) and Mrs Appleby (No. 79) had not paid the proposed new pitch fees, so it was not disputed that they had been entitled to apply to the tribunal to determine the new pitch fees. Miss Gourlay made a persuasive argument that other Applicants who had made three monthly payments of the new pitch fee before the application was made to the tribunal had agreed it under ordinary contractual principles. The proposal notice was the offer. Miss Gourlay submitted that all the Applicants (apart from the two identified above) communicated to the Respondent their acceptance of that offer by paying the increased fee at the beginning of each month. It was said there was no risk to occupiers in continuing to pay the current pitch fee because under the Implied Terms they would not be in "*arrears*" until 28 days after the new fee was agreed or determined. The Implied Terms say that if the occupier does not agree the proposed new pitch fee they "*shall*" continue to pay the current pitch fee until the new one is agreed

or determined. Miss Gourlay contrasted pitch fees for park homes with service charges for residential leasehold property, where (by section 27A of the Landlord and Tenant Act 1985) a tenant cannot apply to the tribunal to determine a service charge matter agreed or admitted by that tenant but they are not to be taken to have agreed or admitted any such matter by reason only of having made any payment.

28. Mr Lipton had written to BDC about the proposed new pitch fee, saying the increase was "*perfectly legitimate*" and copying this to Mrs Loring (who did not object). However, this was not communicated to the Respondent at the time. We accept Mr Lipton's evidence that his meaning was that the increase had been calculated in line with the corresponding increase in the RPI, not that the fees were agreed or that the various matters the Applicants were unhappy about had been resolved to justify that fee. He later discussed the proposed new pitch fee with BDC, amongst his other concerns, and it appears they may have referred the Applicants to guidance about applications to the tribunal.

29. Until the Applicants applied to the tribunal in early March 2022 (when Mr Lipton informed the Respondent that they had done so), they made no explicit statement that they were paying the proposed new pitch fees under protest, or the like. It appears most of them simply amended their standing orders (or the like) to from January 2022 increase their automatic monthly payments to the amounts proposed by the Respondent. We recognise the KPRA had been unable for some time to meet to decide what to do, but the Applicants had the pitch fee proposal notices from late November 2021. It might have been much better and safer if the Applicants had expressly said that payments were being made under protest or pending an application to the tribunal.

30. However, we do not accept Miss Gourlay's submission that paragraph 17(4)(b) or (8)(b) of the Implied Terms "*mandates*" payment of the existing pitch fee if the new proposed fee is not agreed. No case law authority for this was suggested and it would be wrong to base this on the word "*shall*" in isolation. This should be construed taking into account the other relevant Implied Terms, including the provision in paragraph 17(4)(c) (or (8)(c)) that the new pitch fee becomes payable as from the review date (or the date 28 days after a late proposal notice), which is before any application can be made to a tribunal (given the window for applications) and likely to be several months before that pitch fee can be determined by a tribunal. The saving provision says only that occupiers will not be treated as being in "*arrears*" provided they pay the difference within 28 days of the new fee being agreed or determined. Paragraph 17 provides that if the occupier agrees the proposed new pitch fee it shall be payable from the relevant date, not that any payment of the proposed new pitch fee shall be taken to be agreement of that new pitch fee whatever the circumstances might be.

31. Miss Gourlay submitted that the explanatory notes in the prescribed form (which must accompany notices proposing new pitch fees) are consistent with the Respondent's case, but we do not accept that. The

notes explain that if the occupier accepts the new pitch fee they can let the site owner know or simply pay the proposed amount from the effective date, but the occupier is: "*…not obliged to accept the proposal or pay the proposed amount. Failure to pay the new pitch fee will not result in the occupier being in arrears … If the occupier does not accept the proposed pitch fee they can let the site owner know but the occupier does not have to do so. Provided the current pitch fee continues to be paid that is the maximum amount payable unless the tribunal decided a different figure.*" These notes do not suggest that the occupier must continue to pay the previous pitch fee if they do not agree the proposed new fee. They say the occupier is not "*obliged*" to pay the proposed new fee, and interim "*failure*" to pay the proposed new fee will not result in the occupier being in "*arrears*".

32. Miss Gourlay also referred to other points said to indicate that any payment of the proposed new pitch fee constitutes agreement of that fee, leaving the tribunal without jurisdiction to determine it. First, it was said that it was unlikely to be possible to obtain written agreement from every occupier on each pitch review. If payment of the new fee did not constitute acceptance, to avoid the risk of losing the right to apply to the tribunal to determine the new pitch fee (given the window noted above for applications to the tribunal), it was suggested the: "*…only solution for a site owner is likely to be a "just in case" application to the tribunal…*", which would be wasteful and cannot be what was envisaged by the Implied Terms. It seems to us that this risk is not a real one and does not give any real weight to the Respondent's preferred interpretation. At a certain point, occupiers who simply paid a proposed new fee each month (or other period) without complaint would be taken to have agreed it. If that is wrong, or they had not made quite enough payments to constitute agreement but somehow had done so for long enough to be past the normal time limits before attempting to dispute the pitch fees, the site owner would plainly have good reasons for seeking (under paragraph 17(9A) of the Implied Terms) an extension of the usual time limit to apply to the tribunal to determine the pitch fee.

33. Next, it was said there was no mechanism in the Implied Terms for refund of overpayments of pitch fees if the proposed new fee was paid but then a lower fee could be determined by a tribunal. Miss Gourlay contrasted this with the provisions for refunds if the prescribed pitch fee form had not been used (paragraph 17(11) and (12)) and on termination (paragraph 7). It was said that, since the park home legislation was designed to protect occupiers, a pitch fee refund provision would have been included if payment did not constitute acceptance. Such design seems more likely to suggest that a single payment would not necessarily constitute acceptance depriving the occupier of the right to apply to the tribunal to determine the new fee, particularly in view of the points noted below about park home occupiers. Paragraph 7 is obviously needed for refunds on early termination, because there would be no continuing relationship. Paragraphs 17(11) and (12) appear to be a specific enforcement mechanism added to encourage compliance when the additional requirement was created (by amendment of the 1983 Act)

for the prescribed explanatory form to be used for pitch fee reviews. In contrast, there is no obvious need for express provision to account for overpayments if a pitch fee is ultimately determined at an amount lower than the fee proposed and paid. In an ongoing relationship those initial overpayments can be set off against future monthly payments and the site operator may be in a better position to make the necessary calculations. That does not seem more difficult than leaving occupiers who have paid a previous pitch fee which is less than a new pitch fee determined by the tribunal responsible for ensuring that within 28 days they accurately calculate the shortfall over several months and pay this to the site owner, failing which they will be in arrears.

34. Similarly, it was said receipt of a new pitch fee without knowing whether it had been agreed could create practical problems, since the owner would not know whether the additional sums belong to it, or can be spent on the site, or are held on trust, and so on. Again, we are not satisfied that this would be a real problem. Any uncertainty should not continue for a long time and businesses should expect to allow for such contingencies where they are seeking increases in their income.

35. It appears the Park has always been for residents who are at least 50 years of age. As Mr Lipton pointed out and as has been observed in the case law, park homes are often owned by elderly people. It was not disputed that, in this case, many of the Applicants are in their 80s and some are in their 90s. As Mr Lipton argued, park home occupiers might tend to pay what they are billed while they pursue any complaints to seek a refund or the like and prepare to apply to the tribunal. Interpreting the Implied Terms objectively as part of the relevant pitch agreements, it is to be expected that occupiers might take the cautious approach of simply paying what was proposed (particularly the first payment(s), since they cannot apply to the tribunal until at least 28 days after the review date, or 56 days after a late review notice) while they prepared to apply to the tribunal within the window for doing so, preferring to be up to date if the pitch fee was increased to the level sought or in credit if it was not, rather than having then to calculate and pay the difference for what might have been many months.

36. In any event, in the circumstances of this case, we are not satisfied that the payments made by the Applicants were enough to constitute agreement of the new proposed fee. In particular:

    (a) although three increased payments were made by 49 of the 51 Applicants, only just over two months passed between the first increased payments in early January and the application to the tribunal (and Mr Lipton's communication to the Respondent about this) in early March (the application could not have been made until late January or, generally, after late March);

    (b) one of those Applicants (No.63) was shown in the table annexed to Mr Dowling's first witness statement to have made no payments for 2022, but was said by Mr Dowling in his second statement to have

made the payments for 2022 and to be in arrears for earlier years. Another was also said to be in arrears. Another did not pay precisely the amount sought (No.12, paying 1p less);

(c) moreover, the Applicants did not simply pay the new proposed pitch fees without complaint. Their payments have to be considered in the context of their letter in August 2021, the complaint to and inspection by and advice from BDC in September 2021 and the specific reference by Mr Lipton in September 2021 to pitch fees, saying in bold text to Mr Dowling - in the context of the matters being complained about in relation to the Park - that members of KPRA were asking what they were paying their pitch fees for (as recited above).

Pitch fees

37. Accordingly, we move on to consider (in relation to all the Applicants, rather than just two of them) whether it is reasonable for the 2021 pitch fees to be changed for 2022 and, if so, what the pitch fees payable from 1 January 2022 should be. In their application form, the Applicants said there had since the relevant date (26 May 2013) been deterioration in the condition and/or decrease in the amenity of the Park (paragraph 18(1)(aa)) and a reduction in the services that the owner supplies to the site, pitch or mobile home and/or a deterioration in the quality of those services (paragraph 18(1)(ab)) and that regard had not previously been had to these matters when previous pitch fees were determined. They referred to various "*services*" (noted above) which appeared to be the subject of complaints. They also alleged that since the Respondent had taken over the Park they had: "*...failed continually to comply with their licence to the detriment of the amenities of the Park.*"

38. On 5 May 2022, Mr Lipton confirmed in correspondence with the Respondent's solicitors that the Applicants' case was that there should be no change to the pitch fee for 2022, which should be the same as paid in 2021. At the hearing, following the inspection, Mr Lipton fairly acknowledged that the Park now looks "*brilliant*" and said Mr Dowling could now be proud of it. Mr Lipton observed that the Respondent's gardeners had been working for three days before the inspection to help achieve that. Mrs Loring agreed the Park now looked "*beautiful*" but said it had taken two years of complaints to make that happen. The documents prepared by the Applicants pursuant to the case management directions raised a range of matters and complaints. We summarise below the main issues or groups of issues which the Applicants were or had been concerned about.

39. As noted above, it was said that in 2014/15 a car park at the front of the Park had been closed by the previous site owner to accommodate two additional park homes. Mr Lipton did not rely on this as a significant factor, but we asked questions about it. It is difficult to see from the aerial photographs what changes were made over time, but the front car park must have had several spaces if it could be used to accommodate

two new park homes. However, we have no detail about this and no real information about any other changes made since 2013. It was not disputed that there had been work on the infrastructure and the development work had ultimately improved the appearance of the Park. Moreover, following repeated requests from KPRA, Mr Dowling had agreed to remove a site office from the Park, freeing up a small paved area next to other parking spaces for residents and their visitors to park one or perhaps two small cars. Mr Lipton pointed out that it had taken a long time for the Respondent to do this. On the limited information provided, removing the site office and allowing parking on this area mitigates the earlier removal of the front car park. Depending on what other changes were made during the past development, it may not have compensated fully for this because more parking spaces were probably lost than have now been provided and the site office was not removed until relatively recently. Our assessment of the evidence produced to us is that this is not a very significant negative factor for the purposes of the pitch fee payable for 2022, but we keep it in mind.

40. We were concerned that (it appeared from the papers) there had been an on-site resident caretaker under the previous owner but that had been lost, with a new site owner and maintenance team based on the other side of London. Again, Mr Lipton had not specifically relied on this as a significant factor, but Mr Dowling had fairly explained in his witness statement that the "caretaker" had a very good relationship with the previous owner and (as Mr Dowling understood it) would undertake a lot of the maintenance of the Park, as well as helping the owner co-ordinate maintenance through outside contractors. As Mr Lipton observed, the survey report produced more recently for the Respondent wrongly assumes there is a residential caretaker for the Park. We had heard about the Respondent's arrangements for maintenance and Mr Dowling told us there are now four maintenance people in the team, but this did not seem a substitute for a residential caretaker.

41. However, Mr Lipton fairly and helpfully explained that in fact there had been no real caretaker under the previous owner. The "caretaker" had been chairman of the KPRA at that time, but there had been a falling out with the committee. He and another resident who knew the previous owner had simply been good contacts to report problems to the previous owner. They may (as with other sites operated by the Respondent) have read meters for the previous owner. Another resident had trimmed shrubs on the Park, but then decided he did not wish to continue doing that. Accordingly, despite what Mr Dowling had understood, it appears the loss of the "caretaker" (or anyone else who lived on the Park and assisted the previous owner) was not a significant negative factor. Residents can report problems directly to the Respondent and Mr Lipton has been very active in following up such matters for residents. Further, it appears better arrangements are now in place for day to day matters such as light bulb replacement, as noted below.

42. The Applicants' main concern was about the general upkeep of the Park, referring to various issues. First, the Applicants had been unhappy

about the surfaces of the roads on the Park. As noted above, the Respondent had resurfaced the central visitor parking and turning area in 2019. It appears other parts of the roads had since deteriorated and that was one of the matters raised by Mr Lipton with BDC. On 8 March 2022, following his inspection in February 2022, the officer from BDC explained to Mr Lipton: *"My opinion was that the road surface conditions are generally good throughout. There are a few locations where wear is starting to occur which will worsen over time if not addressed in the near future, and here are also a number of loose/uneven kerbstones…"*. The Respondent acted on advice from BDC about this. On 23 March 2022, Mr Dowling responded to BDC, updating them on progress and making proposals about some of the items which had been raised. He confirmed that the loose kerbstones and two "small" potholes which had been identified would be repaired, and an identified junction and gulley area would be resurfaced, that month. Mrs Loring said at the hearing that a pothole near the main entrance had not been repaired, but that did not appear to have been mentioned before the hearing and was not observed at the inspection. The officer from BDC had written to the Respondent on 23 June 2022 to confirm that he considered all the items previously requested of the Respondent had been completed. The Applicants produced no photographs of any potholes. In our assessment, the matters noted by BDC in February 2022 were not a significant negative factor and were all resolved in March 2022. Parts of the roads on the Park have a rather patchy appearance where repairs or works have been carried out, but when we inspected the roads seemed to be in satisfactory condition.

43. The Applicants had also been unhappy about gritting arrangements and the contents of salt bins becoming solid, but accepted they had been re-stocked. A large bag of salt had been delivered and left on the road for a long time. Mr Dowling said that people had been sent to grit and clear roads in the winter of 2019, although the Applicants' witnesses did not recall that. In our assessment, these matters are not a significant negative factor for the purposes of this pitch fee review.

44. Mrs Loring also alleged failure to keep the kerbs and roads clean and swept. She was taken to photographs in a valuation report produced for the Respondent or its funders which were probably taken in November 2021. Mr Lipton pointed out that the footers of pages of this report refer to February 2022 and it contains some information which is incorrect for this Park, but the date marker is probably an automatic date generated when the report was printed, or the like, and we keep in mind that parts of the report were incorrect. Mrs Loring said these photographs showed loose grit on the roads/kerbs, but accepted the photographs were a fair reflection of their condition in November 2021. In our assessment, these photographs show roads, kerbs and other areas which are reasonably clean and clear. The Applicants also said that hedges had not been trimmed and other areas had not been maintained properly. They produced a photograph of some small weeds growing in and around a surface-water drainage channel and some weeds growing beside a wall outside No.57. The former had been cleared. Mr Dowling said the latter

had been obscured at least in part by a skip, so the weeds had probably not been seen immediately by the maintenance people. In our assessment, the limited matters evidenced by the Applicants (particularly when considered against the photographs from late 2021 in the valuation report) are not significant negative factors.

45. The Applicants had also referred to problems with drainage. The part of the Park near Mrs Wood (No.44)'s park home did not have obvious surface-water drains nearby. The park home opposite (No.18) has gutters which (peculiarly) run straight onto paving slabs next to the road. The natural slope in this area causes water to run over the road. Mrs Wood said the water came over the road onto her pitch, causing the base of her garden shed to be damp and to break up. Mrs Wood confirmed this had been a problem ever since No.18 was put in by the previous site owner ("*Henry*"). She pointed out that the problem could easily be resolved by the owner of No.18 taking up the slabs underneath their gutters and putting in grit or the like, but they had been unwilling to do so. No evidence was produced about when these concerns were first raised. They do not appear to have been raised with BDC and they are not mentioned in the letter of August 2021 from KPRA setting out the matters they were concerned about. Accordingly, on the evidence produced, we are not satisfied that this is a significant negative factor for the purposes of the pitch fee review for 2022. While we cannot advise, it appears to be something which should be discussed between the Respondent, Mrs Wood and the owner of No.18 to resolve the surface-water drainage from the pitch. If that is not resolved within a reasonable time, it may be relevant to future pitch fee reviews, at least for No.44.

46. The Applicants had been unhappy that the pitch at No.71 had been empty for a long time, producing a photograph showing the empty pitch and forms for the concrete base left untidily on the ground. Mr Dowling accepted that the plot had been left empty for some nine to 12 months, which was far longer than he had wanted. He explained that because of delays in the industry it had taken much longer than expected for the new park home to be delivered. Having inspected (with the new home installed) and considered the single photograph produced by the Applicants of what the empty pitch had looked like, we can see the appearance of the empty pitch was not ideal but in our assessment it is not a very significant negative factor.

47. Mr Lipton had also been concerned about combustible (wooden) structures (such as fences, benches, swing seats and the like) which some residents had installed for or been keeping on their pitches. This was not permitted under the licence conditions, which expect fire separation distances. It appears no occupier complained to the Respondent about this until August 2021. Following the advice from BDC and the fire officer in September 2021, the Respondent wrote promptly to the relevant occupiers and followed this up. Most of the offending items had now been removed or moved to acceptable locations, but Mr Lipton pointed out that some still remained. He also felt that having allowed the situation to continue was a failure of management, whether or not it

had been reported by residents. The Respondent said they had continued to write to the few remaining occupiers who had not yet dealt with the items on their pitches as requested and had to take proportionate enforcement action. They observed that some of the Applicants, or their relatives, had been among the occupiers who had been asked to move such items. They alleged that Mrs Loring's son was one of those who still had not complied with the request to move an item on their pitch. As noted above, BDC have confirmed that all matters they had requested have been completed. In our assessment, while of course the situation should be kept under review as part of general good management, this is not a significant negative factor.

48. There had been disagreements about the meaning of the restrictions in the park rules about pets. These refer to small/medium dogs. The Applicants insisted this must mean no more than one small/medium dog, so the Respondent must not countenance prospective purchasers with two dogs. We accept Miss Gourlay's submission that as matters stand the wording is balanced by the accompanying wording in the rule about pets confirming that the obligation not to allow anything which becomes a nuisance, inconvenience or disturbance includes the behaviour of pets. Mrs Loring said Mr Dowling had been very rude when (in effect) she had intervened to discourage people with two large Labrador retrievers from buying a home on the park. Mr Dowling had obviously been unhappy about apparently losing the sale as a result, but in his witness statement he apologised for being rude. Although we make no findings about this, we can see that it might be possible for two small quiet dogs not to be a nuisance in a reasonably-proportioned park home but two energetic working-breed dogs probably would be, so we expect that (in result) Mrs Loring was right. There was no evidence that any occupiers had been allowed to keep dogs which were causing a nuisance. On the evidence produced we are not satisfied that the previous disagreement about the meaning of the park rule about pets is a significant negative factor for the purposes of this pitch fee review.

49. As noted above, there had also been concerns about the time taken to repair the electronic gates in April-July 2019. It does appear that part of the delay was caused because those attending first reported that the problem had been resolved when it had not, or new problems came to light after the first problem was identified and fixed. However, there was no suggestion that the vehicular access gates had not been working after July 2019 until recently, when they were physically damaged. The Respondent was arranging to have them repaired (we were told the requisite parts had been ordered) and there were no complaints about that. The Applicants had said the electric pedestrian gate beside the vehicular gate had "spasmodically" not been working, but we had no details about this. The problem was said to have been attended to in August 2021. The residents had not been keen on a combination lock for the other pedestrian gate to the side of the Park, so the Respondent had provided a key lock and a large number of keys for the residents. In the round, we are not satisfied that the matters in relation to the gates are a significant negative factor for the purposes of this pitch fee review.

50. The Applicants had also been unhappy about replacement of light bulbs in the communal lamp posts around the Park. As Mr Lipton pointed out, most residents tend to go to bed quite early, so in the later hours little light comes from park homes, and it is important for elderly residents to have reasonable communal lighting. Mrs Loring said in the past parts of the Park had been very dark, once for at least five nights and possibly up to about 10 days. When we inspected, we noted the lights either side of the main gate and the lamp posts around the Park. Mr Lipton produced a photograph in the dark, which was probably taken in early 2022 from outside his park home (No.58, beside the central turning/parking area) looking toward the main gates, when it was said four lamps had been out at the same time. It was said Mrs Dowling had asked the drainage people to replace the lamps and they had replaced three, with the fourth only dealt with later. An undated e-mail from Mrs Dowling, instructing maintenance people to deal with a lamp which should have been attended to on a previous visit but was still not working, noted there was a "*weekly issue with light bulbs going on the park*" and said she would be asking Mr Lipton to update her on a monthly basis because it was not viable to send someone out "*weekly*". When asked about this, Mr Dowling said that if failures were reported maintenance people were sent promptly, acknowledging that lights cannot be left out for long. The parties agreed that the issue now appeared to have been resolved for the future. Mr Lipton had helpfully suggested a local contractor who could quickly and efficiently replace bulbs and the Respondent had engaged them to do this. It appears there were occasions previously when failed lights were not restored to operation as quickly as they could have been, but taken in the round (and particularly in view of the current arrangements) we are not satisfied that this is a significant negative factor for the purposes of this pitch fee review.

51. There were also concerns that it had taken time to install adequate fireproofing in a wooden hut which houses electrical installations for the Park. Mr Dowling explained BDC had initially requested a structure with a tiled roof, but following discussions had accepted that installation of double-layered fire protection board would be sufficient. Although the delay seems to have been the result of that negotiation and the work was not then carried out until May/June 2022, in our assessment this is not a significant negative factor.

52. The Applicants had also been concerned about fire boxes (units which contain fire extinguishers) and the need for monthly checks of these, concerns about electricity supplies tripping and other matters. The Respondent said the requisite checks were being done (as explained in the uncontested witness statement from Mr Schofield) and referred to invoices from 2021 for the renewed fire risk assessment and fire extinguisher service. As Miss Gourlay pointed out, BDC had inspected in September 2021 with a fire officer and asked for a copy of the renewed fire risk assessment when it had been done, arrangements for equipment checks, records of testing, replacement of worn signage (about what to do in the event of fire) and an electrical installation testing certificate. BDC have since confirmed that everything they have requested has been

completed, although it is not clear whether the checks expected by the 2019 fire risk assessment were being carried out regularly as they should have been before this was raised in 2021. Mr Lipton had raised his other concerns with BDC (such as possible changes to "speed bumps"); BDC had discussed these with Respondent and decided not to recommend any further action in relation to them. On the information provided, we are not satisfied that any of these, or any of the other matters raised by the Applicants but not described specifically above, are significant negative factors for the purposes of this pitch fee review.

Conclusion

53. We bear in mind that, as Mr Lipton submitted, these may be the last homes of many of the residents. The condition, amenity and services in relation to the Park are very important for the quality of their lives and their safety. Having inspected, we can see that maintenance, appearance and safety are particularly important for such a closely developed Park. As Mr Dowling acknowledged, KPRA had brought many of the relevant issues to his attention by August 2021 and BDC wrote in September 2021 with the matters they were concerned about, proposing they be completed in two months, but the Respondent had only recently finished everything they had been asked by BDC to do. That said, some of the earlier correspondence from KPRA was not very clear or specific about some of what they were unhappy about, in some respects it may have been asking for more than might have been reasonable to expect and some concerns were not raised until later. KPRA sent its main letter for the purpose of these proceedings in August 2021, having already approached BDC. The Respondent began to take action promptly in September 2021 (when, for example, it wrote to all residents with structures which BDC or the fire officer had asked to be removed from or moved in their pitches), liaised cooperatively with BDC and had completed most of the main recommendations by the end of the first quarter of 2022.

54. Miss Gourlay made careful submissions about what can properly be considered to relate to the "*condition*" or "*amenity*" of the Park and what "*services*" or other weighty factors might be relevant, dealing with the wording used in the application form (where the Applicants, who did not have the benefit of legal advice, may not fully have understood how the various expressions fit with the Implied Terms). In essence, Miss Gourlay submitted that the Applicants were alleging temporary poor management, not deterioration in condition or decrease in amenity, and that "*services*" does not mean "*management*", referring to examples of parts of the Implied Terms which provide for services available on the site, reading meters for services supplied and services supplied to the pitch or mobile home. We were not convinced by some of those submissions, not least because:

    (a) the definition of pitch fee (set out above) makes it clear that it is a fee for <u>maintenance</u> of the common areas, as well as for the use

of those common areas and the right to station the mobile home on the pitch;

(b) as Mr Dowling acknowledged, it is well established that generally a site owner cannot make any service charge or other additional charge for any services not included in the pitch fee; they can only recover true third-party charges for such services (normally utilities, such as water bills from the statutory undertaker);

(c) paragraph 18(1)(ab) of the Implied Terms requires the tribunal when determining the amount of the new pitch fee to have particular regard to any reduction in the services or deterioration in the quality of the services that the owner supplies to the mobile home, the pitch or the site; and

(d) we are not satisfied that (whether alone or together with other factors) management failings could not be "other factors" to be taken into account (see paragraph [13] above) for the purposes of the pitch fee review. We do not see that only individually weighty factors can be taken into account, if many individually less serious "upkeep" or "management" failings (for example) together carry significant weight.

55. However, we do not need to decide such points. Even assuming that we can take into account all matters complained of by the Applicants (whether they relate to condition, amenity, services or are other factors), when we step back and consider everything in the round we are not satisfied that the negative factors are sufficient to outweigh the presumption of an increase in line with RPI (or to make that unreasonable). All the factors together came close to doing so and resulting in a smaller increase, particularly in view of the time taken to remedy the various matters identified and the fact that the Respondent should be keeping the Park in good condition and maintaining it effectively without involvement of the local authority or the like. However, it seems to us that the assistance of the local and fire authority and these pitch fee review proceedings have (albeit belatedly) achieved the desired effect. We are satisfied that it is reasonable to increase the pitch fees from those payable in 2021 and that the new pitch fees proposed by the Respondent are reasonable in context.

56. It appears that, until now, residents have generally paid increased pitch fees over the years without challenge. They are now more familiar with pitch fee reviews and tribunal proceedings. The Respondent now knows that, if they do not keep the Park in its current condition and attend to relevant matters, the Applicants might dispute future proposed increases, paying the existing pitch fees and leaving it to the site owner to pay to apply to the tribunal to determine what the pitch fees should be. But we hope that situation will not arise. It appears that in 2019 the Respondent was new to the park homes sector (this being the first site they had purchased, as noted above), but they have since expanded their

holdings and their maintenance team, and appear to have developed the type of arrangements with local contractors which seem likely to be necessary to provide adequate day to day maintenance when their offices are remote.

Name: Judge David Wyatt **Date:** 8 August 2022

Schedule 1 - monthly pitch fees determined for 2022

Applicant(s)	**Park home**	**2021 (£)**	**2022 (£)**
Mr G Cox	2	170.02	180.23
Mrs M Lowe	6	193.79	205.43
Mr A Robinson	7	188.67	200
Mrs S Flack	10	170.05	180.27
Pamela Morgan	11	170.05	180.27
P Fensome	12	170.05	180.27
Mr D McKinlay	14	165.56	175.50
Mr & Mrs M Watson	17	170.05	180.27
John and Brenda Redmond	18	196.61	208.41
Mr and Mrs A Fitch	21	164.78	174.68
Mrs S Rose	28	170.05	180.27
Mr R Littlemore	31	170.05	180.27
Mr K Harman	33	170.05	180.27
Robert and Janet Clarke	34	199	210.95
Hazel Ballard	37	193.81	205.45
Maurice Copsey	39	160.27	169.90
Mr W Hart	39a	193.75	205.38
Helen Budd	40	193.75	205.38
Florence Laithwaite	41	187.56	198.83

Mrs G Chadwick	42	170.05	180.27
Mr & Mrs V Wood	44	170.05	180.27
Mr & Mrs J Wilkinson	46	193.75	205.38
Mr M Smith	47	170.05	180.27
Bernard Peel and Brenda Coplestone	50	193.75	205.38
Mr K Hogan	51	170.05	180.27
Michael Reece	52	170.05	180.27
Mr A Tracey	54	156.58	165.98
Maurice Lipton	58	193.75	205.38
M Hedges	60	170.02	180.23
Doreen Powell	61	193.75	205.38
Dawn Loring	62	193.75	205.38
Mrs B Orton	62a	166.71	176.73
Alison Head	63	170.02	180.23
Mr Bruce	65	154.58	163.87
Heather Hadaway	66	165.56	175.50
Roy and Rita Burroughs	68	181.73	192.65
Mr & Mrs R Repman	69	193.75	205.38
Mr & Mrs Peter Milden	73	193.75	205.38
Chris Holding	74	206.86	219.29
Lesley Hawkins	75	193.76	205.39
Ron and Mrs S Snuggs	76	193.75	205.38
Margaret Hurst	77	193.75	205.38
Mr G Austen	78a	193.75	205.38
Mrs F Appleby	79	187.56	198.83
Sharron Brown	80	199	210.95

M E Brown	81	193.77	205.41
Chris Cook	82	170.06	180.27
L Loring	83	143.05	151.64
Norman and Suzanne Pearce	84	185.92	197.09
Mrs Andrews	86	193.75	205.38
Mr P Overy	87	156.68	166.09

Schedule 2 – paragraphs 17-20 of the Implied Terms

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) 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] … the occupier may apply to the [tribunal] 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 [tribunal] 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 [tribunal] 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 … 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) 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 … 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 [tribunal] under paragraph 16(b); and

(c) if the [tribunal] 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 ... 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) ... 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 [tribunal] 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 ..., 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 [tribunal], on the application of the owner, has ordered should be taken into account when determining the amount of the new pitch fee;

(aa) ... 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) ... 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) … 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; and …

(1A) But … 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) … 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) 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) 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) 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).

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).