FIRST TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**BIR/44UE/PHI/2022/0019-31**
HMCTS	**:**	**Cloud Video Platform**
Site	**:**	**Marston Edge, Lower Quinton, Stratford-upon-Avon, Warwickshire CV37 8LJ**
Applicant	**:**	**Marston Edge Limited**
Representatives	**:**	**Amanda Gourlay of Counsel instructed by Apps Legal Limited**
Respondents	**:**	**1 Ash Court – Sandra Andrews** **4 Oak Court – Paul & Susan Betts** **6 Oak Court – Malcolm & Mrs Jayne Welch** **7 Oak Court –Eileen Badcock** **10 Oak Court – Mark Frazer** **16 Oak Court – Bernard & Hazell Worrall** **4 Maple Court – Mark Bryan** **5 Sycamore Court – Tracey & John Millward** **6 Sycamore Court – Ronal & Linda Gould** **7 Chestnut Court – Mr Peter, Mr Gordon & Mrs Jones** **10 Chestnut Court – Patricia Barlow** **11 Chestnut Court – Jean Jastrzebska**
Representative	**:**	**Paul Betts**
Type of Application	**:**	**Pitch Fee Review under Mobile Homes Act 1983, Schedule 1, Part 1, Chapter 2, para.16.**
Tribunal	**:**	**I.D. Humphries BSc (Est Man) FRICS (Chair)** **Judge J.R. Morris**
Date of Application	**:**	**29th June 2022**
Date of Directions	**:**	**5th July 2022**
Date of Hearing	**:**	**19th October 2022**
Date of Decision	**:**	**13th December 2022**

DECISION

Decision

1. The Tribunal determines the Pitch Fee at £202.07 per plot with effect from 1st April 2022.

Reasons

Introduction

2. On the 29th June 2022 the Tribunal received thirteen applications for the Applicant, the Site Owner of Marston Edge mobile home site ("the Site"). Fiona and Nigel Barker, of 3 Maple Court, did not respond to the Applicant's application. The Tribunal sent a letter to them on 28th July 2022 requesting a response within 7 days otherwise they would be taken to no longer be in dispute. No response was received.

3. The applications are under paragraph 16 of Chapter 2 of Part 1 of Schedule 1 to the Mobile Homes Act 1983 ('the 1983 Act') for the determination of a new pitch fee with effect from 1st April 2011. The Respondents are the Occupiers of the thirteen pitches on the Site.

4. Directions were issued on 5th July 2022 in compliance with which the parties provided statements of case and supporting documents.

5. Copies of each of the Respondents' Written Agreements were provided.

6. A copy of the Pitch Fee Review Notice for each of the Respondents was provided.

7. A copy of the Pitch Fee Review Form dated 21st February 2022 as prescribed by The Mobile Homes (Pitch Fees) (Prescribed From) (England) Regulations SI 2013/1505 for each of the Respondents was provided. The Form stated that:
    - the Current Pitch Fee is £187.45
    - the Proposed New Pitch Fee is £202.07
    - the Review Date on which the proposed Pitch fee is to take effect if 1st April 2022.
    - In accordance with paragraph 20(A1) of Chapter 2 of Part 1 of Schedule 1 to the Mobile Homes Act 1983, the proposed pitch fee was calculated upon the percentage increase in the Retail Prices Index (RPI) over 12 months by reference to the RPI published for January 2022 which was 7.8% calculated, resulting in an increase of £14.72.

Issues

8. The Respondents did not dispute the amount of the Current Pitch Fee or the calculation of the RPI increase of 7.8% or the calculation undertaken to arrive at the increased figure of £202.07 for the Proposed Pitch Fee.

9. The matters disputed are:

1. The First Issue is the validity of the Pitch Fee Review Form accompanying the Pitch Fee Review Notices for the years 2020, 2021 and 2022 in that it was submitted the Forms had not been signed by the Site Owner contrary to Paragraph 17 (2A) of Chapter 2 of Part 1 of Schedule 1 of the Mobile Homes act 1983 which provides that a notice under paragraph 17 (2)) which proposes an increase of pitch fee is of no effect unless it is accompanied by a document which complies with paragraph 25A of the Mobile Homes Act 1983. It was submitted that, as the Site Owner is a company, to be valid, the Prescribed From must be signed by a director of the company, and they were in fact signed by Mr Nicolas Allen who is not a director. Therefore, the reviews are invalid.

2. The Second Issue is there had been a reduction in the amenity of the Site since 2021 and that having regard to the matters set out in paragraph 18(1) of Chapter 2 of Schedule 1 to the 1983 Act the reduction or deterioration in the site should be taken into account by a tribunal when determining a pitch fee. It was submitted that there should be no increase or a reduction for the following reasons:

a) Since 2021, the north Ditch has not been maintained;

b) Since 2021, consent must be obtained from the Site Owner to use the communal area;

c) There has been a loss of enjoyment due to the conduct of the Site Owner.

Description

10. The Tribunal inspected the Site on 19th October 2022 with representatives of both parties in attendance.

11. It comprises a modern Park Home Development in open countryside fronting the B4632 about 5 miles south of Stratford-upon-Avon. Originally a Caravan Club certified location, it was redeveloped and expanded by the present owners around 2013 to create 47 pitches, most of which have been sold. The site has electric entrance gates, new tarmac roads, level pitches and a central community area with pergola for communal use. The Tribunal found it to be an attractive and well maintained park.

The Law

12. The Law is set out in Annex 2 of this Decision and Reasons.

The Hearing

13. A hearing was held on 20th September 2022, which was attended by Ms Amanda Gourlay of Counsel representing the Applicants together with Mr Ben Brain and Mr Nicholas Allen. Mr Paul Betts attended representing the

Respondents together with Mr Peter Jones and Mr Bernard Worrall. The Respondents had been assisted in preparing their case by Mr Ibraheem Dulmeer of Counsel.

Issue 1 – Validity of Prescribed Form - Evidence and Submissions

14. The First Issue concerning the validity of the Prescribed Pitch Fee Review Forms involved legal argument. The Respondents were not represented at the hearing but they had received legal advice in preparing their written statement of case which raised and addressed the First Issue. The Applicant's written statement of case was also prepared by its legal representative who gave a full response to the First Issue. The First issue was therefore not argued in detail at the hearing as the respective arguments had already been presented in the written statements of case.

Applicant's case

15. The Applicant provided a written statement of case supported by a witness statement by Mr Ben Brain, Mr Michael Brain and Mr Nicholas Allen together with photographs and correspondence.

16. The Applicant stated in the written statement confirmed by Counsel for the Applicant at the hearing that it was denied that the Pitch Fee Reviews conducted for 2020, 2021, 2022 were invalid because the Pitch Fee Review Form was signed by Mr Nicholas John Allen. The Applicant admitted that on 21st February 2022, Mr Allen was no longer a director of Marston Edge Limited. It was submitted that there is no legal requirement that the pitch fee review form must be signed by a director of a site owner company.

17. The Applicant sated that the letter of 21st February 2022, the Pitch Fee Review Notice, was signed electronically by Mr Brain, a director of Marston Edge Ltd and the name of the company appears immediately below his name. The accompanying pitch fee review form also dated 21st February 2022, the Pitch Fee Review Form, bore the manuscript signature of Mr Nicholas Allen. Beneath that signature, the name and address of the site owner(s) for the purpose of serving notices was supplied being:
"Marston Edge Limited,
Campden Road,
Long Marston,
Stratford-upon-Avon,
Warwickshire,
CV37 8LJ".

18. The Applicant submitted that there had been compliance with the terms implied by the Mobile Homes Act 1983 into the Respondents' Written Agreements and the Pitch Fee Review Regulations and the pitch fee review was valid as follows:
    a) Mr Allen was authorised by the site owner to sign the pitch fee review form on its behalf;
    b) The pitch fee review notice contained the name, address and details of the site owner, and was signed by one of the directors;

c) On the pitch fee review form. there is no information missing that is required by the terms implied by the Mobile Homes Act 1983 or the Pitch Fee Review Regulations;
d) The site owner's signature is not explicitly required by the Pitch Fee Review Regulations or by the implied terms;
e) The insertion of a signature is a purely procedural requirement: it is neither jurisdictional nor relating to the eligibility of either the site owner or any homeowner for a pitch fee review;
f) The name and address of the site owner for the purposes of serving notices is in any event provided on the pitch fee review form.

19. It was further submitted that even if there had not been complete compliance with the Pitch Fee Review Regulations. the non-compliance is trivial and the pitch fee review for 2022 is still valid for the following reasons:
a) Any missing information is not of critical importance in the context of the scheme. It is not required by the statute either specifically or generally;
b) Any missing information is of secondary importance or merely ancillary;
c) The certainty of the site owner's proposals are not in doubt;
d) The name and address of the site owner for the purposes of serving notices is provided on the pitch fee review form;
e) The amount of pitch fee payable can be achieved by the process laid down by the terms implied by the Mobile Homes Act 1983 therefore the outcome of the dispute will itself provide certainty;
f) Whilst it is correct that the site owner may immediately serve the documentation for another pitch fee review if the impugned pitch fee review form is invalid, there is no authority as to the correct rate of RPI to apply, nor can it have been the case that Parliament could have intended that so minor an error could have such significant an impact on the pitch fee payable by homeowners and/or recoverable by site owners.
g) No inference can be drawn to the effect that if a site owner does not sign the prescribed form, Parliament must have intended a pitch fee review to be invalid.

20. In support of the above submissions the Applicant referred to *Shaw's Trailer Park v Sherwood* [2015] UKUT 0194 (LC) [*Shaw*], to which the Respondents also referred, in which case the wrong RPI figure was inserted into the pitch fee review form served by the owner. In that case this led to the notice being held to be invalid.

21. In contrast the Applicant referred to *Newbold v Coal Authority* [2014] 1 WLR 1288 on which Sir Stanley Burnton said:

> [58] If I ask my personal assistant to type up a notice to quit in my name, and to post it, the notice is given by me, not by my personal assistant. If I ask her to sign it in my name or expressly on my behalf, and to post it, it remains a notice given by me. It is not a notice given by her.

[70] … it may be that even non-compliance with a requirement is not fatal. In all such cases, it is necessary to consider the words of the statute or contract, in the light of its subject matter, the background, the purpose of the requirement, if that is known or determined, and the actual or possible effect of non-compliance on the parties.

22. The Applicant then referred to *Natt v Osman* [2014] EWCA Civ 1520 to which Martin Rodger QC referred in *Shaw's Trailer Park v Sherwood and others* [2015] UKUT 0194 (LC), where the Court of Appeal at [28] considered the distinction between the validity of documents in "two broad categories":

(l) those cases in which the decision of a public body is challenged, often involving administrative or public law and judicial review, or which concern procedural requirements for challenging a decision whether by litigation or some other process, and

(2) those cases in which the statute confers a property or similar right on a private person and the issue is whether non-compliance with the statutory requirement precludes that person from acquiring the right in question.

[31] …The Court of Appeal cases show a consistent approach in relation to statutory requirements to serve a notice as part of the process for a private person to acquire or resist the acquisition of property or similar rights conferred by the statute. . . The court has interpreted the notice to see whether it actually complies with the strict requirements of the statute; if it does not, then the court has, as a matter of statutory interpretation, held the notice to be wholly valid or wholly invalid…

23. Sir Terence Etherton C went on to state that:

[33] In cases such as the present, that is to say the acquisition of property rights by private persons pursuant to statute, the intention of the legislature as to the consequences of non—compliance with the statutory procedures (where not expressly stated in the statute) is to be ascertained in the light of the statutory scheme as a whole. In some cases, for example, the court has held in favour of invalidity where the notice or the information which is missing from it is of critical importance in the context of the scheme: see, for example, [enumeration added]

a) *Burman's* case [2002] Ch 256 (the landlord's counter-notice under the 1993 Act was described as integral to the proper working of the statutory scheme);

b) the *Speedwell Estates* case [2002] l EGLR 55 (the omissions in tenant's notices under the LRA 1967 to supply information required by paragraph 6(1) of Schedule 3 were said by Rimer J (with whom the other judges agreed) not to be mere inaccuracies in the particulars as a whole); and

c) *Cadogan v Morris* [1999] 1 EGLR 59 (failure of tenant to state in a notice under section 42 of the 1993 Act the premium which he actually intended to pay as opposed to the one which was stated but was unrealistically low and he did not in reality intend to pay).

[34] By contrast, the court has held in favour of validity where the information missing from the statutory notice is of secondary importance or merely ancillary. [Enumeration added]

a) In both *Newbold's* case and *7 Strathray Gardens Ltd v Pointstar Skinning & Finance Ltd* [2005] EGLR 53, for example, the missing particulars in the notice were not prescribed by the statute itself but by regulations made under it and were not of a kind which Parliament could have intended should result in the invalidity of the notice.

b) A broadly comparable situation was that in *Tudor's* case, where the omitted particulars (the addresses of the tenants signing the notice) were not specified in the relevant statutory provision in the Landlord and Tenant Act 1987 authorising the service of the notice but in the general provision in section 54(2) of that Act which required any notice served under any provision of Part I or Part III by the requisite majority to specify the names of all the persons by whom it is served and the addresses of their flats. Carnwarth LJ, who gave the only reasoned judgment, said (at para 33) that "Section 54 is not a substantive provision, but is ancillary to the various notice provisions and (at para 34) that the requirement to state addresses in the notice was merely supportive.

24. With regard to the specific issue of the validity of a notice by reason of its signatory the Applicant referred to *Elim Court RTM Co Ltd v Avon Freeholds Ltd* [2017] EWCA Civ 89 which concerned the acquisition of the Right to Manage under the Commonhold and Leasehold Reform Act 2002. Similarly, in the present case the procedure for acquiring the right to manage is set out in the Commonhold and Leasehold Reform Act 2002 which is supported by regulations, set out in the Right to Manage (Prescribed Particulars and Forms) (England) Regulations 2010 (SI 2010/825). A Right to Manage company must claim the right to manage by serving a notice on the landlord. Regulation 8(2) of the 2010 Regulations provides that claim notices shall be in the form set out in Schedule 2 to those Regulations. The prescribed form in Schedule 2 has a space for a signature. The text above it reads "Signed by authority of the company", with beneath, "[Signature of authorised member or officer]". The notice given by the Elim Court RTM Company read thus: Signed by authority of the company [manuscript signature of Mr Dudley Joiner] RTMF Secretarial, Company Secretary.

25. It was not in dispute that Mr Joiner was in fact authorised to sign the claim notice on behalf of the RTM company and that he was a director of the RTM company. It appears however to have been said by the landlord that Mr Joiner's signature was the signature of the company secretary, which was itself a company and that in that event, there must be compliance with section 44 Companies Act 2006.

26. On the facts, the Court of Appeal held that Mr Joiner had signed the notice as a person authorised to do so by the RTM Company and that the notice was valid. It also held that:

[48] where a notice is capable of two interpretations, one of which will lead to the conclusion that it is valid, and the other to the conclusion that it is invalid, the former interpretation should be preferred.

[56] … It does not follow that if a case falls within the second category every defect in a notice or in the procedure, however, trivial, invalidates the notice. As Sir Terence Etherton C pointed out even if there is no principle of substantial compliance the court must nevertheless decide as a matter of statutory construction whether the notice is wholly valid or wholly invalid.

[68] [in that case] the consequences of non-compliance are not fatal to the validity of the notice if the claim notice is signed by someone who is actually authorised by the RTM company to sign it.

27. With reference specifically to the reviews of 2020 and 2021 the Applicant submitted that the Respondents were estopped from submitting that there was any non-compliance with any statutory or other requirements in the Pitch fee Review Form by their conduct in paying the reviewed pitch fee throughout 2020 and 2021. This conduct unambiguously communicated their acceptance of the reviewed pitch fee to the Applicant which the Applicant relied on and therefore:
    (a) The Applicant did not issue fresh pitch fee review notices for either 2020 or 2021; and
    (b) the sums received from the Respondents were used to meet the cost of operating the Park;
    (c) the Applicant based the proposed pitch fee review for 2021 on the 2020 pitch fee that the Respondents had represented to be the correct fee by their payment of it.

    It would be inequitable for the Respondents now to resile from their acceptance of the reviewed pitch fee:
    (a) More than two years have passed since the 2020 pitch fee review;
    (b) over a year has passed since the 2021 pitch fee review;
    (c) the Applicant has expended sums on the site on the basis that the pitch fee reviews were valid.

28. The Applicant said that, alternatively, as a consequence of their conduct in paying the reviewed pitch fee without making an application to the Tribunal under paragraph 17(4) of their agreements for a determination of the amount of the new pitch fee, the Respondents had waived the requirement that the pitch fee review forms for 2020 and 2021 be signed by the Applicant

29. In addition, if the Pitch Fee Review Notice were found to be invalid for the years 2020 and 2021 the Tribunal may by virtue of paragraph 17(12) reimburse the Respondents provided they had made an application for such reimbursement under paragraph 17(11). The Applicant submitted that none of the Respondents had made such an application.

30. In response to the Tribunal's questions Mr Brain referred to the witness statements made by Mr Allen and himself. He said that when he and his

family purchased the Site in 2016, they had very little experience of setting up and managing a Park Home Site. Mr Allen was the director of Avon Estates Limited and was very experienced in owning and operating both holiday and residential parks. Mr Brain and Mr Allen agreed that over the course of 2017 to 2019 Avon Estates Limited and Marston Edge Limited would work together, with Avon Estates Limited developing the site as a Park Home Site and selling the park homes on Marston Edge Limited's behalf. Avon Estates Limited subcontracted the redevelopment works to Park Evolution Limited.

31. Mr Brain and Mr Allen stated that they had personally had a working relationship with regard to the running of Marston Edge and that their respective companies had worked in partnership to develop Marston Edge. Mr Brain confirmed that Mr Allen had authority to sign the Pitch Fee Review Forms on behalf of Marston Edge Limited as the Site Owner for the years 2020, 2021 and 2022.

Respondents' Case

32. The Respondents stated in the written statement confirmed at the hearing that the legislation to conduct pitch reviews became obligatory from 26th May 2013 through section 11 of the Mobile Homes Act 2013 which resulted in amending the implied terms in Chapter 2 of Part 1 of §schedule 1 of the Mobile Homes Act 1983 relating to pitch fees. The purpose of these changes was to improve transparency of pitch fee reviews, according to paragraph 3.74 "Summary of consultation responses and next steps" October 2012

33. The Respondents said that the site owner is Marston Edge Limited, Companies house number 11203723 and according to records obtained from Companies House, Mr Nicholas John Allen resigned as a Director from Marston Edge Limited on 25th March 2019. The current Directors are Mr Benjamin Thomas James Brain and Mrs Jeanette Ann Brain, neither of whom have signed the Pitch Fee Review Form for 2020, 2021 or 2022. These were signed by Mr Nicholas John Allen. The Respondents submitted that the Pitch Fee Review Form is invalid as it is not completed by the site owner, nor the director, as required by the Mobile Homes (Pitch Fees) (Prescribed Form) (England) Regulations 2013/1505. Reference was made to Paragraph 17 (2A) of Chapter 2 of Part 1 of Schedule 1 of the Mobile Homes act 1983 which provides that a notice under paragraph 17 (2)) which proposes an increase of pitch fee is of no effect unless it is accompanied by a document which complies with paragraph 25A of the Mobile Homes Act 1983.

34. In support of this submission the referred the tribunal to the Upper Tribunal's decision in *Shaw's Trailer Park v Sherwood and others* [2015] UKUT 0194 (LC) where Martin Rodger QC, Deputy President at paragraphs 32-33 stated as follows:

> [32] In its recent decision in *Natt v Osman* [2014] EWCA Civ 1520, which concerned the validity of a notice under s. 13 of the Leasehold Reform, Housing and Urban Development Act 1993, the Court of Appeal considered the modern approach to the consequences of non-compliance with the process or procedure laid down by a statute for the

exercise or acquisition of some light in relation to property conferred by that statute. The Chancellor, with whom Lord Justice Patten and Lady Justice Gloster agreed, emphasised that the proper approach in such cases (in contrast to cases involving challenges to the decisions of public bodies, or compliance with procedural rules in litigation) is not to ask whether there had been substantial compliance or to consider the particular circumstances of the recipient of the notice or the degree of prejudice which may or may not have been caused by the non-compliance. On the contrary (at [31]):

"The Court of Appeal cases show a consistent approach in relation to statutory requirements to serve a notice as part of the process for a private person to acquire or resist the acquisition of property or similar rights conferred by the statute. In none of them has the court adopted the approach of "substantial compliance" as in the first category of cases. The court has interpreted the notice to see whether it actually complies with the strict requirements of the statute; if it does not, then the Court has, as a matter of statutory interpretation, held the notice to be wholly valid or wholly invalid."

[33] This stricter approach has the great advantage of certainty in relation to property rights. It seems to me to be applicable to the procedures, statutory in origin, for initiating a review of pitch fees under agreements to which the 1983 Act applies. Perhaps more importantly, paragraph 17(6A) of Chapter 2 of Part 1 of Schedule 1 to the Act is explicit in prescribing that a notice which proposes an increase in the pitch fee "is of no effect unless it is accompanied by a document which complies with paragraph 25A". That express statement of the consequences of non—compliance removes any doubt, and leaves no room for considerations of whether any prejudice has been suffered as a result of the non—compliance. The only relevant question is therefore whether the first review form complied with paragraph 25A.

35. An up-to-date site licence was been provided confirming that Marston Edge Limited is the site licence holder.

36. The Respondents submitted that the invalid Pitch fee Review Form made the Notice of Increase ineffective and that proposed pitch fee for 2022 was not payable.

37. It was also submitted by Mr Mark Bryan, Mr Ronald and Mrs Linda Gould, Mr Bernard and Mrs Hazel Worrell and Ms Eileen Badcock that the arguments regarding Mr Allen's signature rendered the review undertaken in 2020 and 2021 also invalid. Therefore, the increase from £2,160.00 per annum to £2,218.32 for 2020 should be reimbursed by the site owner, amounting to £58.32 and the increase from £2.218.32 per annum to £2,249.40 for 2021 should be reimbursed amounting to £31.08 for each of the Respondents except Mr Mark Frazer.

38. At the hearing the Respondents also submitted that the Notice of Review was invalid as the Notice included the name of Avon Estates as well as Marston

Edge Limited. However, this was not a document that had been put in issue by the Respondents.

Issue 1 – Validity of Prescribed Form - Decision

39. The Tribunal considered all the evidence and submissions of the parties.

40. In *Natt v Osman* [2014] EWCA Civ 1520 the Court of Appeal held that the identification of statutory provisions as being mandatory or directory was unsatisfactory. The Court identified two broad categories of cases. This case, like that which was the subject in *Natt v Osman,* is in the second category of those cases in which the statute confers a property or similar right on a private person and the issue is whether non-compliance with the statutory requirement precludes that person from acquiring the right in question. In such cases the courts have not adopted the approach of "substantial compliance". The statutory requirements have either been complied with or not. If not then, in this case, the document giving effect to the right is either invalid or valid. If it is invalid because it does not comply with the statutory requirements then the tribunal must look to the act to see what the effect of invalidity is. In the present case, the term implied into the Respondent's Written Agreement by paragraph 17(2A) of Chapter 2 of Part 1 of Schedule 1 to the 1983 Act is explicit in prescribing that a notice which proposes an increase in the pitch fee "is of no effect unless it is accompanied by a document which complies with paragraph 25A" as stated in *Shaw's Trailer Park v Sherwood and others* [2015] UKUT 0194 (LC).

41. Therefore, the question for the Tribunal was whether the Pitch Fee Review Form was compliant or not. The parties agreed that the only part of the Form which was being disputed as not being compliant was Section 6: Signature of Site Owner. The parties agreed that the signature was that of Mr Nicholas Allen. The dispute was that the Applicant said that a person who was not a director of a site owner company could be authorised to sign the Pitch Review Form whereas the Respondents contended that the Form had to be signed by a director of the company.

42. The Tribunal found that the legislation did not preclude an authorised person signing on behalf of the site owner, nor was there a requirement that where the site owner was a company the Pitch Fee Review Form had to be signed by a director or officer of the company. The Tribunal considered the reason for including section 6 on the form and found it was to inform the occupiers of the name and address of the site owner for the purposes of serving notices, to give a date for the Form and, by way of the signature, to verify that the site owner is responsible and liable for the contents of the Pitch Fee Review Form.

43. Unlike a document such as a testamentary instrument, a power of attorney or a Land Registry transfer where legislation sets out specific provisions as to the signatories, the Pitch Fee Review Form has no such requirements. The Tribunal saw no reason why a site owner, whether a company or an individual, could not authorise another to sign on the site owner's behalf for reasons of commercial expediency, provided the other information required by section 6 were included.

44. The Tribunal therefore determined that the Pitch Fee Review Forms were compliant with the statutory provisions and valid.

Issue 2 - Reduction in Site Amenity - Evidence and Submissions

Applicant's Case

45. The Applicant referred the Tribunal to paragraph 20(A1) of the implied terms which states that unless it 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 of decrease in the Retail Prices Index calculated by reference to -
    (a) The latest index: and
    (b) The index published for the month which was 12 months before that to which the last index relates.

46. The Applicant said referred to *Vyse v Wyldecrest Parks (Management) Ltd* [2017] UKUT 24 (LC) in which the Upper Tribunal considered the operation of the provisions in paragraphs 16 to 20 of the implied terms and the appropriate approach to be taken. It was held that:
    (1) The starting point is that there is a presumption that a pitch fee shall not increase or decrease by more than the relevant RPI percentage unless it is unreasonable to do so.
    (2) The presumption operates unless it is displaced by other competing matters which renders an increase unreasonable.
    (3) Particular regard must be had to the matters at paragraph 18(1) of the schedule, but other "weighty matters" may also displace the presumption.

47. The Applicant noted that the Respondents assert that they do not agree to an increase because of an alleged "decrease in the amenity of the site", and that the RPI presumption should be displaced because:
    (1) The north ditch has not been maintained since 2021
    (2) Since 2021 consent for using the communal area must be obtained by the site owner before using this area;
    (3) The Respondents have suffered examples of loss of enjoyment due to the behaviour and/or intimidation/trespassing on their pitch from the site owner.

48. The Applicant submitted that even if the allegations were proven on the facts, the above matters would not render an increase in line with RPI unreasonable.

The North Ditch

49. With regard to the North Ditch the Applicant stated that it was not within the boundaries of the Site and therefore its condition could not amount to a decrease in amenity. It was admitted in written statements that it was part of other land owned by the Applicant adjacent the 'site' and although grass in the ditch had not been cut over the summer of 2022, it only needed cutting after 1st April 2022, the date of the pitch fee review.

50. The Applicant referred to the First Tier Tribunal's decision in *Sines Parks Holding Ltd v Muggeridge and others* CHI/43UB/PHI/2020/0046, 0047, 0048, 0049 where it was stated that:

> [118] In order for there to be a deterioration in the condition or amenity of the site, that would have to mean changes which are long lasting or permanent and affect the 'fabric' of the site, rather than temporary matters such as an accumulation of litter for a brief period, the presence of vehicles for works or bonfires.
>
> [135] For the purposes of the 1983 Act, the issue is not the actual condition of the park, nor indeed the actual amenity of the park. Even if the Tribunal was to accept that the park has not always been maintained to a standard which the Respondents might reasonably expect, it has to consider whether there has been any deterioration/decrease in the condition or amenity of the park in the relevant period, i.e. since 26 May 2013, and, if it did so find, whether it would thereby be unreasonable for the pitch fees to be increased on the basis of the sum requested lower [than the agreed increase in the retail prices index] (in this case the site owner had sought to increase the pitch fee by an amount which was lower than the relevant RPI amount).

The Communal Area

51. The Applicant denied that Mr Michael Brain informed residents in conversation that the Respondents and other occupiers were prohibited from using this area without the site owner's permission. All residents are permitted to use this communal area. None of the Respondents or any of the residents on the Site have ever been denied the use of this area. They can and should continue to use it.

Loss of Enjoyment due to Site Owner's Behaviour

52. The Applicant stated that none of the Respondents' complaints came within paragraph 18(1) regarding decrease in amenity.

Respondents' Case

53. The Respondents referred the Tribunal *Britaniacrest Limited v Mr and Mrs Bamborough* [2016] UKUT 0144 (LC):

> [24] First, paragraph 18(1) (ab) requires the FTT to have regard to any reduction in services which the owner supplies to the site, the pitch or an individual home. That is consistent with the pitch fee being payment for a package of rights provided by the owner to the occupier, including the right to station a mobile home on the pitch and the right to receive services. Where such services are reduced, or the quality diminishes, the Act requires that reduction or deterioration to be taken into account (presumably as a factor justifying either a reduction in the pitch fee or a smaller increase than would otherwise be allowed).

54. The Respondents submitted that the pitch fee increase is unreasonable and should be negated and/or reduced based on the following reasons:
    (1) The north ditch has not been maintained since 2021.
    (2) Since 2021 consent for using the communal area must be obtained by the site owner before using this area.
    (3) The Respondents have suffered examples of loss of enjoyment due to the behaviour and/or intimidation/trespassing on their pitch from the site owner, examples have been provided.

The North Ditch

55. The North Ditch is owned the Site Owner and not the residents therefore, the residents were not permitted to maintain the area due to health and safety reasons. As a result, since July 2021, the ditch has not been maintained by the site owner and consequently the area has become overgrown and is an unpleasant eyesore. This is extremely disagreeable for the residents and also lowers the standard of the site.

56. Furthermore, the Respondents said that they are extremely concerned from the perspective of health and safety and also hygiene, as this area would be perfect for attracting vermin [Betts1.p177]- This is supported by information found on specialist pest control website, "Rentokil" whereby an "unkept ditch" can be classed as perfect "nest-building material" providing "easy access to food and water".

The Communal Area

57. There is only one communal area on site, since moving onto the site, the Respondents and other occupiers have used this area as a recreational space for their pastimes, for example, bowls was often played there. However, in mid—2021. the Mr Michael Brain (the father and/or agent of Mr Benjamin Thomas James Brain) informed residents, in conversation. that the Respondents and other occupiers were prohibited from using this area without the site owner's prior consent. Consequently, they were no longer permitted to enjoy the unused spot.

58. It is submitted that any unrestricted or unmarked areas should be treated as communal (paid for by pitch fees) and no such consent should be required from the site owner. Reserving the use of this area, unless granted permission by the site owner, is simply unjustified. This has prevented the Respondents and other occupiers from enjoying the communal areas freely. It is submitted that having a requirement for the Respondents to request permission from the site owner for use of this area is in fact a preventative measure whereby they are unable to use this area freely.

Loss of Enjoyment due to Site Owner's Behaviour

59. The Respondents referred to three occasions when they had felt intimidated and/or concerned by the Site Owner's actions.

a) Mr Michael Brain, had walked into a Respondent's mobile home without consent or invitation. Entering into this individual's home, unauthorised, caused alarm, distress and inconvenience to the elderly, vulnerable individual. Reference was made to the witness statement of Ms Jean Jastrzebska.

b) Mrs Milward was intimated over a situation relating to permission to move a box, whereby the site owner's father, Mr Michael Brain sent her a text making her feel extremely intimated and vulnerable. A copy of the text from Mr Brain to Mrs Milward was provided.

c) A letter was posted through Mr and Mrs Welch's letterbox after 9 pm. Mr Welch in his Witness statement outlines that this correspondence alleged that Mr Welch was running a business when in fact Mr Welch was simply helping neighbours to improve their park homes. The fact that the letter was posted through Mr and Mrs Welch's letter box after 9 pm is contrary to the implied terms which state that post can only be posted between 9 am and 6 pm as per paragraph 12(a) of chapter 2 of Part 1 of Schedule 1 of the Mobile Homes Act 1983. This caused worry and anxiety to both Mr and Mrs Welch.

60. For the reasons submitted above, the Tribunal was asked to exercise its powers to determine whether a reduction in the pitch fee level was justified.

Issue 2 - Reduction in Site Amenity - Decision

North Ditch

61. From the Tribunal's own knowledge and experience the ditch is considered to be a watercourse and habitat subject to environmental legislation. It adjoins the protected site and could potentially come within paragraph 18(1)(aa) of the Implied Terms as adjoining land owned by the Site Owner and any deterioration in its condition or decrease in amenity could be taken into account by the Tribunal.

62. The Tribunal was presented with photographic evidence showing the North Ditch overgrown in 2022 [Respondent bundle 174] which the Tribunal finds to be deterioration in its condition, but there was no evidence to show it had been overgrown at the date of review on 1st April 2022 and had in any case been temporary as it had been cleared by the date of Tribunal inspection on 19th October 2022 . While the Tribunal finds it a deterioration in condition, it was insufficient to displace the presumption of increase in paragraph 20(A1) of the Implied Terms.

Communal Area

63. When the Tribunal inspected the site there was nothing to prevent anyone gaining access, no locks on the gates and no signage to that effect. There had clearly been an issue between some residents and the Site Owner regarding the identity of parties using the area, but unless residents had been actively prevented from using the land it cannot be regarded as loss of amenity within the ambit of paragraph 18(1)(aa) of the Implied Terms.

Loss of Enjoyment due to Site Owner's behaviour

64. It is unfortunate that Ms Jastrzebska felt her privacy had been invaded by the Site Owner gaining access to her home without consent or invitation and the Tribunal has sympathy with this view, but bearing in mind the constraints of the statutory provisions, the Tribunal is unable to find there has been any deterioration in the condition or loss of amenity of the Site.

65. Equally, the Site Owner's father, Mr Michael Brain's text to Mrs Milward refusing consent to a box by the site office for storing second hand books was unfortunate but does not represent a 'loss of amenity' within the Implied Terms. The residents had never been given permission to instal items such as a box for second hand books around the site however well intentioned, and refusal to give permission for such items cannot be regarded as 'loss of amenity'.

66. The Tribunal finds the letter delivered to Mr & Mrs Welch after 9.00 pm was an infringement of the Mobile Homes Act 1983 Schedule 1, Chapter 2, paragraph 12(a), but this was insufficiently detrimental to displace the presumption of a pitch fee increase in paragraph 20.

Summary

67. Having inspected the site, considered the parties' written submissions and oral evidence at the Hearing, the Tribunal finds the points raised by the Respondents insufficient to over-turn the presumption of fee increase in the Mobile Homes Act 1983 Schedule 1, Chapter 2, paragraph 20, and accordingly determines the pitch fee at £202.07 per plot with effect from 1st April 2022.

I.D. Humphries B.Sc.(Est.Man.) FRICS
Chair

APPENDIX 1 - RIGHTS OF APPEAL

1. If a party wishes to appeal the 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.

2. 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.

3. 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.

4. 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.

APPENDIX 2 – THE LAW

The Law

1. Section 2 of the Mobile Homes Act 1983 ("the Act") provides that the terms of Part 1 of Schedule 1 to the Act shall be implied and shall have effect notwithstanding the express terms of the Agreement. Paragraphs 16 to 20 of Chapter 2 of Schedule 1 to the Act were introduced by the Mobile Homes Act 1983 (Amendment of Schedule 1) (England) Order 2006. The relevant provisions of the legislation that apply to this decision given the issues raised are as follows:

2. Paragraph 16 provides:

   The pitch fee can only be changed in accordance with paragraph 17, either—
   - (a) with the agreement of the occupier, or
   - (b) if the court, 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.

3. Paragraph 17 provides:

   (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 subparagraph (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 court 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 court 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 court 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.

Sub- Paragraphs (6) to 10 are not applicable to this case

(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.

4. Paragraph 18 provides:

(1) When determining the amount of the new pitch fee particular regard must 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 paragraphs 22(f) and (g); and
    (iii) to which a majority of the occupiers have not disagreed in writing or which, in the case of such disagreement, the court [tribunal] 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 [26th May 2013] (in so far as regard has not previously been had to that deterioration or decrease for the purposes of this subparagraph);
  (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 subparagraph);

(b) in the case of a protected site in Wales any decrease in the amenity of the protected site since the last review date;

(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

5. Paragraph 20 provides that:

(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)

6. Paragraph 25A (1) stipulates that:

(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).

(2) Regulations under this paragraph must be made by statutory instrument.

7. The Regulations in paragraph 25A (2) are The Mobile Homes (Pitch Fees) (Prescribed Form) (England) Regulations 2013/1505.