



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

**Case Reference** : **BIR/17UD/PHI/2022/0018**

**Property** : **21 Riverdale Park, Staveley, Chesterfield  
S43 3UQ**

**Applicant** : **Cathmal Limited**

**Respondents** : **Mr Richard Wood (21)**

**Type of Application** : **Pitch Fee Review (2022)**

**Tribunal Members** : **Judge T N Jackson  
Mr N Wint FRICS**

**Date of Hearing** : **9 November 2022  
Video Hearing**

**Date of Decision** : **8 December 2022**

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**DECISION**

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9. All Respondents have paid previous pitch fee increases.

### **The Law**

10. The relevant legislation is contained within Schedule 1 Part 1 Chapter 2 of the Mobile Homes Act 1983 (as amended) ('the 1983 Act'). Paragraph 20 (1) provides that unless it would be unreasonable having regard to paragraph 18 (1), there is a presumption that the pitch fee will increase or decrease by a percentage which is no more than the percentage change in the RPI since the last review date.
11. Paragraph 18 (1) sets out factors to which "particular regard" must be had when determining the amount of the new pitch fee.

*'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) to (iii) ...*

*(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<sup>1</sup> (in so far as regard has not previously been had to that deterioration or decrease for the purpose of this sub paragraph);*

*(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<sup>2</sup> (in so far as regard has not previously been had for the purpose of this sub-paragraph).'*

12. The decisions in **Wyldecrest Parks Management Ltd v Kenyon and others [2017] UKUT 28 (LC)** and **Vyse v Wyldecrest Parks Management Ltd [2017] UKUT 24 (LC)** both refer to it being possible for us to take into account other factors which are "weighty factors".
13. For the RPI presumption to be displaced under the provisions of paragraph 18, the other considerations must be of considerable weight. "If it were a consideration of equal weight to RPI, then applying the presumption, the scales would tip the balance in favour of RPI"<sup>3</sup>.
14. Schedule 1 Part 1 Chapter 2 of the 1983 Act sets out terms implied in all Written Statements including:

Site Owners obligations:

Paragraph 22

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

<sup>2</sup> 26<sup>th</sup> May 2013

<sup>3</sup> Judge Robinson *Vyse v Wyldecrest Parks Management Ltd* [2017] UKUT 24 (LC)

The owner shall-

*(c) be responsible for repairing the base on which the mobile home is stationed and for maintaining any gas, electricity, water, sewerage or other services supplied by the owner to the pitch or the mobile home;*

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

### **The Inspection/ Hearing**

15. The Tribunal inspected the Park on 8 November 2022. Mr M Stapleton, Mrs C Stapleton, (both Directors of the Applicant Company), and Mr O Stapleton attended on behalf of the Applicant. Mr Bownes (Pitch 19), Mrs Wilson (Pitch 60), Mrs Whitehead (Pitch 110), and Mr Hodgman (Pitch 70), attended.
16. Riverdale Park is a mobile home site located on the outskirts of Staveley, approximately 5 miles from Chesterfield. The site provides over 80 park homes with its main entrance/ exit off Bent Lane and includes an Estate office, store and several visitor car parking areas. Staveley village which offers various local amenities including a large supermarket is only 2.5 miles from Junction 30 of the M1 motorway and the Park is also next to a bowling green and cricket club. Rother Valley & Poolsbrook Country Park are also nearby. The Park has recently had several new homes added which has required part of the roadway to be reconfigured at the rear entrance.
17. A hearing was held by video on 9 November 2022. Both the Tribunal and the parties experienced difficulties with the technology which significantly delayed the start of the hearing and for which the Tribunal apologises. Mr M Stapleton, Mrs C Stapleton, (both Directors of the Applicant Company), and Mr O Stapleton attended by video on behalf of the Applicant. Ms Rawson (Pitch 6) attended part of the hearing by phone. Mr Bownes (Pitch 19) attended part of the hearing by video, Mr and Mrs Hodgman (Pitch 70) and Ms Whitehead (Pitch 110) attended by video. Mrs Wilson (Pitch 60) had to leave early due to a medical appointment and was thereafter represented by Mrs Hodgman. Mrs Hodgman also represented Mr Smith (Pitch 45) who could not attend due to illness. Mr Wood (Pitch 21) did not attend.

### **The issues**

18. The Respondents variously gave the following reasons for disputing the reasonableness of the pitch fee increase:
  - (i) Breach of Park Rules
  - (ii) State of road
  - (iii) Lack of/poor maintenance of Park infrastructure and poor aesthetics
  - (iv) Drainage
  - (v) Licensing Report 2017
  - (vi) Changes to road layout

- (vii) Car parking spaces removed and each space reduced in size
- (viii) Water pressure/leaks
- (ix) Lack of access to and transparency of utilities bills
- (x) Increase is more than inflation
- (xi) Alleged mistreatment of a Respondent
- (xii) Lack of consultation with Residents Social Group re proposed works.
- (xiii) Failure to give 28 days' notice of proposed works
- (xiv) Development of the Park.
- (xv) Lack of amenities
- (xvi) Incorrect current monthly pitch fee
- (xvii) Misrepresentations when buying the park home
- (xviii) Cladding problems

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

### Breach of Park Rules

19. Several Respondents say that the Applicant has not enforced Park Rules regarding the minimum age requirement for residents; the prohibition of business activities on the Park; vehicles and parking; unkempt and poorly maintained pitches; presence of wooden structures on pitches; inflammable substances on the Park.
20. Mr Stapleton says that it is not possible to discuss matters pertaining to other residents including any action that may or may not have been or are being taken. Mr Stapleton's evidence was that he was aware of the options available to him under the Written Statement, including terminating agreements and confirmed that he had taken such action in the past. The Applicant's written submission identified steps taken. In relation to Park Rule 14 regarding the age of occupants, Mr Stapleton advised that 'reside' was interpreted as being a person's principal home and therefore there was no breach if the person was registered for council tax at another address.

### State of road

21. A number of Respondents say that until recent road surfacing in March/April 2022, the road was uneven, had potholes and had been 'patched' for years. Photographic evidence was submitted.
22. There is a footpath between nos. 58 and 56 connecting the outside row of homes to the middle row and is claimed to be in a dangerous state of repair. Photographic evidence was submitted.
23. Mr Stapleton says that the road has been historically patched as and when required as is evidenced by the photographic evidence he has provided.

### Lack of/poor maintenance of Park infrastructure and poor aesthetics

24. The Respondents refer to the Park being poorly maintained, with residents' parking spaces being used as storage yards for materials. Oil tanks, petrol and LPG canisters are stored adjacent to residents' homes leading to a potential health and safety risk.
25. It is submitted that the Applicant has failed to remove trees, replace broken drain covers and residents advised that they will have to pay if the works are completed;

refused to remove an oil tank after repeated requests and which was only removed after the Tribunal application; failed to remove litter it has made; rectify damage it caused to a Respondent's drive, kerb and garden edging and persistently damaged a 'temporary' kerb whilst demolishing two houses opposite one of the Respondent's homes. It is also claimed that the Applicant has refused to provide BT Openreach with a copy of the inspection points.

26. There were two street lights out from August 2021 to October 2021 which created a health and safety issue with the uneven road. Vegetation has not been cut back from boundaries and building materials and dead plants can be observed in the boundaries as evidenced by photographs included in the submission. Trees have not been crowned.
27. It is submitted that the Applicant has not repaired or maintained boundaries, fences, footpaths as is evidenced by the overall appearance of the Park. One Respondent says that there are no designated walkways which means that you have to walk on the main road.
28. It is submitted that the Estates Office is in a poor condition, in need of repair and has been derelict since at least 2017, although new doors have been installed after the Tribunal proceedings had commenced. It is claimed that there have been no improvements to the Park over the last 5 years.
29. Mr Stapleton says that there are very few areas within the Park for which the Applicant has responsibility with the exception of the roads, visitor car parking, and former laundry room. Maintenance was, and is carried out on a regular basis and he listed details of the ongoing maintenance programme. He advised of improvements made between April 2021 and March 2022 including altering the road layout adjacent to plots 114, 112 and 44 to soften the curve in the road, installation of new road kerbs to plots 63 and 59 where previously there had been none and replacing 4 street lamps with greener and brighter LED lamp heads. At the inspection he pointed out the Park's boundary fence and that vegetation referred to was on the neighbouring Council land rather than the Park.
30. The Estates Office is in the same condition it has been for years and is not in need of repair. The outdoor store at the side of the estates Office has been there since 2007 when the Applicant bought the Park. No LPG bottles or cannisters are stored there. There are plastic oil tanks, wheelie bins and steps. There is no general rubbish stored there. There is no ignition source to cause a fire risk. Occasionally, residents dump unwanted items in the area without permission, which causes the area to look unsightly until removed by the Applicant.
31. An oil tank was previously supplying oil to a rented home but the home now runs on LPG and the tank removed. The Applicant is unaware of any litter problems and these have not been brought to its attention. Mr Stapleton says that any road kerbs that are damaged will be replaced in line with their development plans. He says that the Applicant has never been given a plan of BT inspection points and that it has no reason to have one.
32. Comments regarding the removal of trees relate to a Respondent's former home rented in 2017-18. The trees within the Park for which the Applicant is responsible are maintained on an annual basis. Trees on resident's plots, (other than Park owned

trees) are the resident's responsibility albeit the resident has to ask for prior permission before carrying out work.

33. In relation to the street lamps, the lamp head was temporarily attached because it had to be temporarily moved to allow for the delivery of the three new park homes 108, 110 and 112. It was securely held with tie wraps for a brief period whilst also awaiting the delivery of the new LED heads.

#### Drainage

34. The Respondents say that there are insufficient drains on the road and when it rains, standing water does not drain away.
35. Mr Stapleton says that there were no top water drains when the Applicant bought the Park in 2007 and all rain water went to soak away. Since then, top water drains have been installed all around the Park at various stages of development.
36. The Respondents refer to a constant smell of sewage from bathroom sinks which suggests a drainage problem. A longstanding drainage problem still exists and blockages still occur.
37. Mr Stapleton says that traps are fitted to all sinks during manufacture of the home and if there is a problem with the manufacture, the resident needs to contact the manufacturer under the warranty. He confirms that the drains block on occasions but this has always been due to solidified fat and/or baby/toilet wipes and residents have been advised of how to dispose of such items to prevent future blockages.

#### Licensing Report 2017

38. Several Respondents say that areas of concern identified in the 2017 report remain matters of concern in 2022 and that this is evidence of lack of maintenance and management of the Park. The Licence is still not displayed correctly, there is no up to date site owner's certificate of liability insurance and an expired Site Electrical Survey. There is no Fire Safety Risk Assessment displayed. The onsite public phone does not work as it is not connected. To raise a fire alarm a bell has to be rung which is rusty and not fit for purpose. There are 81 homes on site with many disabled residents. Residents have not been informed of evacuation procedures. There are concerns regarding where the Fire Brigade could access water. Resurfacing works as recommended have only been partially completed and that was in 2022. There continues to be storage of LPG bottles and concerns regarding Domestic Fuel Tanks.
39. The Mr Stapleton says that the Licensing Report 2017 was 5 years ago, advisory only, not enforced and is not admissible as a reason for disputing the pitch fee. In 2017 and September 2020, the Tribunal had found that there had been no decrease in amenity or deterioration in condition of the Park. The Fire Risk Safety Assessment, electrical test certificates, Site Licence and public liability insurance are all displayed in the former laundry room.
40. Mr Stapleton says that fire safety equipment is maintained on a regular basis and a log of this kept. The fire bells work correctly, the correct signage is on the fireboxes and the fire extinguishers are serviced annually and certified. There has been no on-site telephone since 2017. Residents have the Applicant's office and emergency



number and should call 999 in case of a fire. Water for Fire Brigade would be sourced from fire hydrants on Bent Lane not the Park.

#### Changes to road layout

41. The Respondents say that a through road at the Park entrance allowing access for vehicles to the 'middle row' of the Park has been removed leaving only one access/exit route. Refuse collection is restricted and residents have to place wheelie bins outside the Estates Office to be emptied.
42. Mr Stapleton says that the road was removed in approximately December 2019 (as a resident occupied a reprovioned park home in May 2020 which takes approximately 3 months to commission). As the issue is historic, it should be disregarded. There are two entrances/exits on Riverdale Park and also two exits from the 'middle row' and so there is always an alternative exit route if one road is temporarily blocked. The Council had introduced larger bin wagons which could not negotiate the corner and they have not been able to access the 'middle row' from before the Park was bought by the Applicant in 2007.

#### Car parking spaces removed and each reduced in size.

43. The Respondents say that a number of car parking spaces have been removed or reduced in size to allow new homes to be sited and visitor parking spaces removed by allocating to new homes. For example, the car parking area next to Pitch 67 which was originally for 3 small cars has now been reduced to 2 spaces which are so narrow that 2 small cars cannot be parked next to each other such as to allow access and therefore the space has been reduced effectively to 1 space.
44. Mr Stapleton submits that whilst there has been a reconfiguration of the visitor car parking spaces to provide visitor parking spaces on the 'middle row', the total number of spaces on the Park has increased by one. During the redevelopment of plots 67, 108, 110 and 112, on plot parking was provided for the homes rather than spaces being 'reserved' in the visitor parking spaces as previously. The size of each parking space has not changed as is evidenced by the pavers.

#### Water pressure/leaks

45. The Respondents say that the water pressure fluctuates and that the pipes leak. To reflect the leak, the Applicant deduct 20% from the water bill invoice as was evidenced by invoice for year ending 31<sup>st</sup> March 2020. Since the increase in the number of homes, the water pressure has reduced. There has been no increase in the infrastructure although new homes have been built on the Park.
46. One Respondent referred to a test carried out by Severn Trent on 19 September 2022 on their park home which indicated a pressure of 40psi and a flow of 9 litres per minute compared to what they say is a recommended 45psi and 25 litres per minute.
47. Mr Stapleton says that water pressure is the responsibility of Severn Trent. There has only been an increase of one park home on the Park which does not affect the water pressure. Bursts occur under park homes, which are the responsibility of park home owners, and this can cause disruption to the water supply as occurred on 20 July 2022. He has not been advised of any leaks emanating from the water pipes for which



the Applicant has responsibility. The 20% reduction on water bill was calculated by comparing the previous years total usage and adjusting by taking account of the number of end users.

#### Lack of access to and transparency of utilities bills

48. The Respondents say that utility statements, which do not have start and finish dates, are placed in the old laundry room which is not suitable for elderly people to enter and which is locked and requires access to a key to enter. It is claimed that the Applicant does not provide clear details to residents in relation to recharges for services supplied and that they are merely provided with an invoice for their Pitch with no proper explanation as to the basis of the calculation. Attempts to seek clarity from the Applicant have not been successful as incomplete information has been provided.
49. Mr Stapleton says that the old laundry room is safe for residents to enter. Supplier invoices for the 12 month billing period have been displayed there since 2007 and residents are advised who has the key to the room. The supplier invoices are clear as to unit price and standing charges and correspond to the price charged to residents.

#### Increase is more than inflation

50. Several Respondent's have referred to the increase being higher than inflation and higher than the 3% increase on their fixed incomes of the state pension.
51. Mr Stapleton says that the figure has been calculated in accordance with the legislation and the published RPI figures.

#### Alleged mistreatment of a Respondent

52. It was alleged by one Respondent that due to their mistreatment at the hands of the Applicant, they were required to move address.
53. Mr Stapleton denies mistreatment. The Applicant's written submission sets out details which are private to the parties concerned and therefore are not repeated in this decision.

#### Lack of consultation with Residents Social Group re proposed works. Failure to give 28 days' notice of proposed works

54. Road resurfacing works were started on 10 March 2022 and not completed until April 2022. The Respondents say that occupiers have not been consulted about this 'improvement' and should not have to bear the cost as it is part of the Applicant's maintenance and repair obligations. A Respondent says that although there is no Residents Association, the Applicant should have the courtesy to consult with the Residents Social Group. There was no consultation with any resident regarding the road resurfacing works. The Respondents have not been consulted regarding the new homes which have high wooden fences and decking areas which the present occupiers are not allowed to have.

55. A Respondent says that less than one week's notice of the resurfacing works was given. No notice was given of the moving of mobile homes, installation of new homes, removal of the exit road and visitor parking spaces.
56. Mr Stapleton says that there is no requirement to consult with the Residents Social Group. Further, he was given short notice by the contractor and gave as much notice as he had received. The works are not an improvement the costs of which are included in the Pitch Fee review as the works commenced after its service and therefore there is not a need to consult.

#### Development of the Park.

57. The Respondents say that the further development of the Park by the Applicant has placed additional burden on the infrastructure which has not been maintained or upgraded, that main electrical circuit breakers are inadequate and require upgrade and that the fuse switches have been blocked from tripping creating a health and safety risk. For most of the year, one parking space was not available to be used as it was used to store building materials and photographic evidence was attached.
58. The Respondents say that the development work to increase the number of park homes by 6-8 is carried out during the week, at weekends and bank holidays and commences prior to 7.30 am and finishes at 6pm or 9pm on bank holidays showing a disregard for the residents living there.
59. Mr Stapleton says that the Park has undergone a major development programme, siting 8 new homes (7 of which replaced existing homes) and repositioning 3 homes all on the same stretch. The redevelopment concluded with the siting and occupation of the home on plot 114 in January 2022 which has been the only increase in the number of homes since 2017. The standard and cleanliness of a developing site will always be much lower than on an occupied site and clearance of the site has to be done in a cost-effective manner. Building materials need to be kept on developing sites and therefore there will be times when developing pitches and areas of the Park are unsightly. The only way to achieve longevity for the Park is to buy older homes and replace with new, thus improving the overall aesthetic of the Park, although the process will involve some disruption. He says that some Respondents bought homes on the area of the Park being redeveloped and moved in during the redevelopment, and therefore knew the condition of the Park before they made their purchase.
60. He says that workman arrive on site at 7.30am onwards and time before 8am is used to quietly set up the necessary materials for work that day. Noisy machinery is not used before 8am.
61. The Applicant was not made aware at any time of the allegation that the main fuse switch in the former laundry room had been wedged. Mr Oliver Stapleton's evidence was that even if this had occurred, a circuit breaker cannot be prevented from functioning in such a way as it is necessary to get into the casing rather than disable the switch.

#### Lack of amenities

62. Several Respondents say that the Park has no amenities or site enhancement features for the residents. There is no staffed Estate office, no building for the use of the residents and nothing of benefit to the residents. A Respondent says that the electrical installation will not be able to deal with the likely future demand for electric car charging points. Homes built on the land have resulted in the Park being more crowded. Other sites have better amenities for residents and lower pitch fees.
63. Mr Stapleton says that as those amenities have never existed on the Park, they cannot be considered to be a decrease in the amenity of the Park, but would be improvements towards which the Respondents would be required to contribute. There has been an increase of only one home on the Park.

#### Incorrect current monthly pitch fee

64. Three Respondents say that following discussions with the Applicant when buying the mobile homes, they each entered into a verbal agreement to pay £50, £100 and £100 respectively per month in addition to the pitch fee of £200, £250 and £250 respectively per month as part of a financial agreement to purchase the mobile home. Therefore, any pitch fee review should be calculated on the lower pitch fees of £200 and £250 respectively per month with the amount for the financial agreement being considered separately from the pitch fee.
65. Mr Stapleton says that in these cases there was no financial agreement nor any intention for there to be one. The Applicant took a commercial decision to reduce the purchase price of the home in return for a higher pitch fee and the deal was concluded when the relevant Respondents signed to say they had received the Written Statement. There is no other agreement. No interest is charged and the Applicant has no expectation of recovering the 'difference' between the asking price and reduced price at some later date. He points out that some of the Respondents had the benefit of legal advice when carrying out the purchase.

#### Misrepresentations when buying the park home

66. A Respondent refers to being sold in 2017 a Tingdene Classic when it was subsequently confirmed to be a Macworth Lodge. He was not advised that the electricity was on the last year of a 4 year fixed term agreement or that some park homes on the Park were privately rented by the Applicant rather than being owner occupied. Another Respondent raises issues with the on-site commissioning and construction work carried out by the Applicant on purchasing the park home.
67. The Applicant's written submission responds to the above issues in detail and concludes by saying that this is not relevant to the application before the Tribunal.

#### Cladding problems

68. A Respondent refers to problems with the external cladding on new homes and a dispute as to liability between the Applicant and the manufacturer, as the latter says that the 10 year warranty may be invalid due to how the Applicant has constructed the homes.
69. Mr Stapleton says that this is not relevant to the application before the Tribunal.

## **Decision**

70. We considered all the written and photographic evidence submitted. We also had regard to the inspection we carried out.
71. During the 12- month period applicable to this review, we agree that the RPI had risen by 7.8 %.
72. 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 or how it compares to other Parks. We have to consider whether there has been any **deterioration** in the condition or **decrease** in the amenity of the site in the **relevant period**. If we do so find, we have to consider whether allowing an RPI increase would generate an unreasonable result having regard to our decision on the reasonableness of the pitch fee increase generally.
73. “Amenity” in this context means the quality of being agreeable or pleasant and so we must look at any decrease in the pleasantness of the Park or those features of the Park which are agreeable from the occupier’s perspective.
74. In light of the Tribunal decision of 8 September 2020 which related to a pitch fee increase from 1 April 2020 and which determined that, to that date, there was no deterioration in the condition or decrease in the amenity of the Park such as to displace the presumption of an increase in the pitch fee by RPI Index, the relevant period for our consideration is the period 1 April 2020 to 1 March 2022.
75. Our first consideration therefore is whether anything that the Respondents have said persuades us that it would not be reasonable to increase the pitch fee by the RPI Index. In relation to each of the issues the Respondents asked us to consider, we comment below:

### Breach of Park Rules

76. It is correct that it would be inappropriate for the Applicant to disclose what action, if any, he is taking against individual residents. There is a lack of documented evidence from the Respondents of them raising alleged breaches of the Park Rules with the Applicant. Such a paper trail may, in certain circumstances, suggest that due to lack of response from a Site Owner and the time during which the alleged breach continues, that there is an ongoing breach of Site Rules which is not being appropriately managed. Depending on the alleged breach, that could, in principle, constitute a deterioration in the amenity of the Park. However, the Respondents have not provided compelling evidence from which we can make such an inference. Further, in relation to the Park Rule regarding the age of residents allowed to reside on the Park, there is clearly a difference of opinion regarding the interpretation of the word ‘reside’ which, if not resolved between the parties, could form an application to the Tribunal under section 4 of the 1983 Act to determine any question arising under the Act or any agreement to which it applies.

### State of road

77. From the inspection and evidence in the submissions provided by all parties, (which includes photographic evidence), we find that in the relevant period, repairs have been carried out to the road surfaces. Considering the road surface in those areas that had not been recently resurfaced, in the main we found the road surface to be satisfactory. We are not persuaded that in the relevant period there has been a deterioration in the condition or decrease in the amenity of the Park such as to displace the presumption of an increase in the pitch fee by the RPI Index.

#### Lack of/poor maintenance of Park infrastructure and poor aesthetics

78. The Respondents' submissions were not particularized as to where and when the concerns arose and therefore, we are unable to assess whether they occurred during the relevant period. The photographic evidence was not dated. Further, some concerns are not relevant to a pitch fee review, such as location of BT inspection points. Some concerns are due to lack of knowledge e.g. as to the boundary of the Park and/or a misunderstanding of the extent of the Applicant's responsibilities e.g. trees.

79. In the absence of any compelling evidence from the Respondents of issues during the relevant period, we accept Mr Stapleton's evidence that normal maintenance took place in 2021/22. The Park has never had footpaths and therefore the lack of footpaths is not a deterioration or decrease in the condition or amenity of the Park. The failure to display up to date certificates, for a period of time, does not, in our view, amount to a deterioration in the condition or decrease in the amenity of the Park although may be a breach of the Site Licence Conditions. That is a matter for the Council rather than the Tribunal under this application. We are not persuaded that, in the relevant period, that there has been a deterioration in the condition or decrease in the amenity of the Park.

#### Drainage

80. The evidence suggests that the current drainage system has been in situ for at least 15 years. There have been improvements by the inclusion of top water drainage. We do not accept that the increase of one park home will have caused any significant impact to the efficiency of the drainage system. The blockages are caused by improper use by residents rather than by a problem with the drainage system itself. We find that there has not been a deterioration or decrease in the condition or amenity of the Park in relation to drainage.

81. There is no evidence that the smell of sewage from bathroom sinks is due to some action/omission on the part of the Applicant as opposed to the manufacturer of the home and therefore we have not considered the matter further.

#### Licensing Report 2017

82. If the Respondents consider that the Applicant is in breach of the Site Licence, the appropriate avenue is a complaint to the Council in order that the matter can be investigated. The Licensing Report is relevant to the extent that it shows the condition of the Park as at 2017 and therefore, whilst the relevant period dates from 1 April 2020, it is useful as a guide as to how much, if at all, the condition of the Park has deteriorated or its amenity has decreased.

### Changes to road layout

83. The access road referred to was removed by December 2019 and therefore falls outside the relevant period.

### Car parking spaces removed and the space reduced in size

84. We accept the Applicant's written submission explaining the changes to car parking spaces and Mr Stapleton's evidence that, whilst the configuration of visitors' car parking spaces has changed so as to provide car parking spaces in the 'middle row', the total number of spaces has increased by one. During the hearing, it was clear that the Respondents had not fully appreciated the extent of the reconfiguration. Having inspected the Park and noted the location of the 5 areas of visitor parking, we do not consider the reconfiguration of an increased number of visitor car parking spaces and the provision of on plot parking to plots to be a deterioration in the condition or decrease in the amenity of the Park.
85. From our inspection, and as confirmed by Mr Stapleton, we note that the size of individual car parking spaces has not reduced as the original marking pavers are there. Whilst we accept that the size of cars may have increased which reduces the efficacy of the car parking spaces when two or more cars are parked together, that is not due to any action by the Applicant and does not amount to a deterioration in the condition or decrease in the amenity of the Park.

### Water pressure/leaks

86. Whilst we accept that a Respondent obtained a report from Severn Trent, this was after the date of the Pitch Fee Review Notice. Further, whilst the report establishes flow and pressure as at September 2022, we do not have the corresponding figures for April 2020 in order to establish whether there has been a deterioration in the supply. Further, even if there was a reduction in flow or pressure, the Respondents did not produce evidence to establish that such reduction was the responsibility of or due to the actions of the Applicant. We are not satisfied that over the relevant period there has been a reduction in the services that the Applicant supplies to the site or any deterioration in the quality of those services.
87. We prefer the Applicant's submission that the 20% reduction to the water bill sent to each resident reflects an acknowledgement of the use of the water by the Applicant during the development works, rather than an admission that there are significant water leaks which are the responsibility of the Applicant. The Respondents have not produced any compelling evidence of water leaks prior to April 2020 nor that any such leaks have got worse in the relevant period and we are therefore not satisfied that there has been deterioration in the condition of the Park.

### Lack of access to and transparency of utilities bills

88. We accept the Applicant's evidence that the utility statements are kept in the old laundry room. If a Respondent wishes to have their own copy, under the provisions of their respective Written Statements, the Site Owner is required to provide, free of charge, documentary evidence of any charges for utilities payable by the occupier to the Site Owner.



89. The alleged lack of transparency of the bills is not relevant to the question we have to determine and an application can be brought by the Respondents to the Tribunal under section 4 of the 1983 Act.

Increase is more than inflation

90. Section 20(A1) of Chapter 1 of Part 1 of Schedule 1 of the 1983 Act sets out how the RPI is to be calculated. As the review date is 1 April 2022, the increase of 7.8% corresponds to the last RPI Index published before 1 March 2022 as is required by the legislation (and which is further explained in the Notes attached to the Pitch Fee Review Form). That is the figure required to be used regardless of the Respondents' income.

Alleged mistreatment of a Respondent

91. The Respondent concerned did not provide any details and we were therefore unable to consider this matter. If the Respondent considers that the Applicant is in breach of its obligation under paragraph 11 of the Written Statement (entitlement to quiet enjoyment of the mobile home), then they may wish to seek legal advice as to the avenues available to them.

Lack of consultation with Residents Social Group re proposed works.  
Failure to give 28 days' notice of proposed works.

92. The road resurfacing works were carried out on 10 March and 6 April 2022, therefore after the Pitch Review Notice was issued and the Applicant has not sought to recover the cost in the Pitch Review Notice as 'improvements'. If the Applicant seeks to recover the costs as an improvement in next year's pitch fee review, the Respondents may wish to raise the above points, but they are premature in relation to this year's proposed pitch fee increase. We would point out that the law requires consultation with a 'qualifying resident's association' which the Residential Social Group is not.

Development of the Park

93. The Park has been subject to redevelopment for a number of years. More recently, this has resulted in the reprovision of park homes on 'the back row' of the Park by removing existing park homes and replacing them with new models. In total, the redevelopment has increased the number of park homes and parking spaces by one.

94. We accept the Respondents' evidence, confirmed by Mr Stapleton, that since September 2020, building materials and pallets were stored on the visitor parking areas, although Mr Stapleton says that the areas could still be used. We have noted the photos submitted by the Respondents. We considered paragraph 22(d) of the Written Statement regarding the Applicant's obligations to maintain the Park in a clean and tidy condition. The cleanliness and tidiness of a development site is always going to be much lower than a finished occupied site. The Respondents of two park homes bought their park homes on the 'back row' as part of that redevelopment and therefore occupied their homes in the full knowledge of the ongoing redevelopment. We find that the cleanliness and tidiness of the 'back row' of the Park was less than should be expected, but it only affected part of the Park, and was within the context of redevelopment. We also accept that there was noise relating to the development but we have anecdotal evidence rather than documented evidence such as complaints



to the Applicant or diaries which would assist us assessing the extent of the noise. We We therefore determine that any breach of the Applicant's obligation is not sufficient as to have amounted to a decrease in the amenity of the Park.

95. In the absence of any evidence as to when it was alleged that the main fuse board switch had been wedged, by whom and when, if at all, the Applicant had been made aware, we cannot consider the matter further.

Future need for electric car charging points  
Lack of amenities

96. We have to consider the Park as it is, rather than compare it to other Parks, the pitch fees on other Parks or what the residents may wish to see regarding amenities. Matters relating to the infrastructure of the Park which the Respondents wish to see improved, (as distinct from being maintained), fall outside of these proceedings which is concerned only with deterioration in the condition or decrease in the amenity of the Park. A pitch review is not the method by which to obtain improvements. The provision of footpaths, electric car charging points, bigger car parking spaces, a staffed Estates Office, and amenity areas for residents comprise improvements, as distinct from maintenance. We should add that any improvements requested by residents would likely be reflected in future pitch fee reviews.

Incorrect current monthly pitch fee

97. During the hearing it became apparent to the Tribunal that there had been a misunderstanding by two of the Respondents affected who were present at the hearing as to the nature of the commercial relationship entered into. Despite the respective Respondents being of the view that at the end of their agreements the Applicant would recover the amount of the reduction in the purchase price, it was confirmed by Mr Stapleton that there was no such expectation by the Applicant and that did not form part of the verbal agreement. We noted that two of the Respondents were legally represented when purchasing the park homes. We find it implausible both that a Site Owner would enter into a financial arrangement of the type described by the Respondents without protecting their position by having the agreement in writing and also that legal advisers for purchasers would not require such a financial agreement to be in writing. Further, the pitch fees in the relevant agreements refer only to 'pitch fees' and make no distinction between what the Respondents allege to be the actual 'pitch fee' as distinct from the additional payment made to reflect the verbal 'financial agreement' regarding the reduction in purchase price. We prefer Mr Stapleton's evidence and find that the pitch fees for the Respondents concerned are correctly stated in the Pitch Fee Review Notice.

Misrepresentations when buying the mobile home  
Cladding problems

98. Such matters are not relevant to the application before us (which relates solely to pitch fee increase) and are separate legal issues that need to be resolved between the relevant Respondent and the Applicant.

**Conclusion**

99. We are not persuaded that it would be unreasonable for there to be a pitch fee increase as a result of deterioration in the condition or decrease in the amenity of the Park, or otherwise in the relevant period.
100. There have been no improvements to the Park since the last review for which the Applicant is seeking to recover their costs by an increase in pitch fee. There has been no reduction in the services or the quality of services supplied by the owner in the relevant period
101. We therefore accept the presumption that the pitch fee should be increased in line with the increase in RPI index over the relevant period shall apply. We are not satisfied that the Respondents have provided sufficient evidence to displace that presumption.
102. We determine that the pitch fee for the Properties should increase from the review date of 1 April 2022 in accordance with the Pitch Fee Review Notice dated 1 March 2022.
103. If the Respondents have continued to pay the original pitch fee since that date, they must pay the difference to the Applicant.
104. We are not clear whether the Applicant has issued letters to the Respondents regarding arrears of pitch fees arising from the proposed increase. We confirm that the Respondents are not in arrears if they have continued to pay the pitch fee due before the service of the Notice of increase. The difference between the current pitch fee and the reviewed pitch fee becomes payable 28 days after this decision is issued (paragraph 17 (4)(c) Part 2 of Schedule 1 of the 1983 Act).

### **Additional thoughts**

105. We appreciate that this case was the first time the Respondents had been involved in such an application and were therefore unclear as to the legislative parameters within which we are required to consider such an application. They also did not appreciate the need to have specific, particularized and time specific evidence relating to the relevant period rather than anecdotes covering several years. They raised many 'historical' grievances (some of which were raised by Respondents who did not live on the Park when the matters occurred e.g. removal of roadway). Some Respondents raised issues which they had not experienced themselves whilst living on the Park e.g. blocked drains.
106. From our experience, disputes over pitch fee increases generally arise from a lack of communication between a Site Owner and residents, which results in a lack of clarity as to respective obligations, more particularly what is **required** of a Site Owner under the terms of the written agreement, as distinct from what residents may **wish** the Site Owner to do.
107. Whilst the Applicant has a maintenance and redevelopment programme, it does not appear to be shared with the Respondents. This is entirely a matter for the Applicant. However, we suggest that if the details were shared, the Respondents' expectations may be better managed regarding works to be carried out and timescale and would allow more open and timely discussion of any issues. However, it must be emphasized that it is not the Respondents' role to micromanage the Park.

108. We would encourage the Applicant and Respondents to look at methods to improve communication and understanding of their respective obligations under the written agreements. Any remaining areas of dispute could form the basis of an application to the Tribunal for determination of a question on a specific issue under section 4 of the 1983 Act.

**Costs**

109. No party applied for costs and we make no such award.

**Appeal**

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

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Judge T N Jackson