



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

Case References : BIR/47UC/PHI/2022/0032-35, 37, 39-47

Site : Three Counties Park, Sledge Green, Malvern, Worcestershire
WR13 6JW

Applicants : Mr J Fury and Mrs E Fury, Silverstone Parks Ltd (T/A
Highgrove Parks Ltd)

Representative : Michael Mullin of Counsel instructed by Apps Legal Limited

Respondent (1) : 1 Three Counties Park – Mr J Power & Mrs R Power
2 Three Counties Park – Mr & Mrs MA Bown
9A Three Counties Park – Mr & Mrs Doody
15 Three Counties Park – Mr C Lousada
49 Three Counties Park – Mr C Seymour & Mrs B Seymour
51 Three Counties Park – Mr R Haines & Mrs D Keeling
55 Three Counties Park – Mr J Lockyear & Mrs S Lockyear
57 Three Counties Park – Mr D Hawkins & Mrs M Hawkins
62 Three Counties Park – Mr B Gibbon & Mrs P Gibbon
63 Three Counties Park – Mr J Callaghan & Mrs G Callaghan
65 Three Counties Park – Mr P Cain & Mrs Cain
66 Three Counties Park – Mr K Bennett & Mrs Bennett

Representative : Mr C Lousada

Respondent (2) : 60 Three Counties Park - Mr R Elliott and Mrs R Elliott

Respondent (3) : 61 Three Counties Park - Mr R Bream and Mrs D Bream

Type of Application : Pitch Fee Review (2022)

Tribunal Members : Judge David R. Salter (Chairman)
I. D. Humphries BSc (Est Man) FRICS (Surveyor)

Date of Hearing : 29 November 2022

Date of Decision : 16 May 2023

DECISION

Decision

The Tribunal determines that the monthly pitch fee for the properties that are the subject matter of the respective applications should increase, as follows, from the review date of 1 April 2022:

- 1 Three Counties Park from £137.72 to £148.46**
- 2 Three Counties Park from £148.70 to £160.30**
- 9A Three Counties Park from £167.32 to £180.37**
- 15 Three Counties Park from £137.72 to £148.46**
- 49 Three Counties Park from £182.09 to £196.29**
- 51 Three Counties Park from £182.09 to £196.29**
- 55 Three Counties Park from £182.09 to £196.29**
- 57 Three Counties Park from £179.58 to £193.58**
- 60 Three Counties Park from £182.09 to £196.29**
- 61 Three Counties Park from £182.09 to £196.29**
- 62 Three Counties Park from £182.09 to £196.29**
- 63 Three Counties Park from £182.09 to £196.29**
- 65 Three Counties Park from £182.09 to £196.29**
- 66 Three Counties Park from £182.09 to £196.29**

Reasons for the Decision

Introduction

- 1 The Applicants are the owners of Three Counties Park, Sledge Green, Malvern, Worcestershire WR13 6JW ('Three Counties Park'). This is a residential mobile home park. It is a protected site within the meaning of the Mobile homes Act 1983 (as amended) ('the 1983 Act'). The Respondents occupy 1, 2, 9A, 15, 48, 51, 55, 57, 60, 61, 62, 63, 65 and 66 Three Counties Park respectively under the terms of agreements entered into with the Applicants and to which the 1983 Act applies.
- 2 In each instance, the annual review date is 1 April and the pitch fee is paid monthly. The pitch fee for the properties was last reviewed on 1 April 2021. The current pitch fees for the properties are variable and dependent upon when the aforementioned agreements with the Applicants were entered into.

- 3 By Pitch Fee Review Notices dated 1 March 2022 ('the Notices'), the Applicants gave notice to each of the Respondents that it proposed to review their pitch fees from the review date of 1 April 2022 and, thereby, to increase such pitch fees in accordance with the percentage increase in the RPI over the twelve period pertinent to this review, namely 7.8%
- 4 The Respondents did not agree to the proposed increase but they did not make consequential applications to the Tribunal by way of challenge to that increase. Accordingly, the Applicants made individual applications to the Tribunal dated 28 June 2022 (received by the Tribunal on 30 June 2022) for the determination of a new level of pitch fee.
- 5 Initial Directions were issued by the Regional Judge on 11 July 2022. The Directions were concerned, principally, with matters pertaining to the preparation and submission of statements and related documents by the parties to the applications. More particularly, each of the applications and supporting documents were deemed to be the Applicants' respective Statements of Case whilst the Respondents were afforded the opportunity to submit Statements in Response setting out in full their reasons for opposing the proposed new pitch fee and also including all matters of fact and law relied upon and an exhibition of all relevant documents to which, in turn, the Applicants might file Statements in Reply. Further, the Directions encouraged the Respondents to appoint, if possible, a single representative and to submit a joint statement in response.
- 6 In Directions No.2 issued by the Regional Judge on 25 August 2022, it was acknowledged that the parties had complied with the initial Directions. However, the Directions also noted that Mr and Mrs Elliott (60 Three Counties Park) and Mr and Mrs Bream (61 Three Counties Park) had prepared further Written Responses to the Applicants' statement in reply. There was no provision in the initial Directions for such further submissions. Accordingly, Directions No.2 directed that, as a matter of procedural fairness, Mr Lousada (15 Three Counties Park), who had been appointed to represent the other Respondents, should, similarly, have the opportunity to make a Written Response to the Applicants' Statement in Reply. Further, Directions No.2 gave the Applicants the right to serve a Further Statement in Reply.
- 7 Directions No.2 also directed that, in view of the parties' submissions, the Tribunal should inspect Three Counties Park and conduct, thereafter, a face-to-face hearing.
- 8 The Regional Judge issued Directions No.3 on 5 October 2022 in order, chiefly, to clarify the position pertaining to the submission of Witness Statements by the parties. In this respect, Directions No.3 recorded that in response to Directions the Applicants had submitted Witness Statements made by Mr Fury, on two separate occasions, and Mr C Andrews.

Directions No. 3 continued as follows:

"The overriding objective in Rule 3 [*of the Tribunal Procedure Rules*] requires avoiding unnecessary formality and seeking flexibility in the proceedings. The Tribunal must also ensure, as far as practicable, that the parties are able to participate fully in proceedings.

The Respondents have not served Witness Statements. They have however served Statements in Response and Responses. In neither case were the Respondents required by Directions to prepare Witness Statements.

Accordingly, I exercise my powers under Rule 18(1)(g) to direct that the manner in which the Respondents may give evidence is orally at the hearing.

The Statements in Response and Responses shall stand as evidence in chief of the Respondents.”

Further, Directions No.3 reminded the parties that they may not, without permission of the Tribunal, give evidence of any matters not set out in Statements in Response/Response and Witness Statements respectively.

- 9 Subsequently, Mr Lousada adduced in evidence Witness Statements made by Mr Haines (51 Three Counties Park) and Mr Callaghan (63 Three Counties Park) dated 14 October 2022 and 7 October 2022 respectively.

Inspection

- 10 The Tribunal inspected Three Counties Park on 29 November 2022 together with Mr Fury and his representatives, Mr Mullin (Counsel) and Miss Apps of Apps Legal Limited (Solicitors), and several of the Respondents, namely Mr Lousada (15 Three Counties Park), Mr Elliott (60 Three Counties Park), Mr Bream (61 Three Counties Park) and Mr Cain (65 Three Counties Park). Mrs Moxey, Mr Fury’s personal assistant, was also in attendance.
- 11 The frontage of Three Counties Park runs alongside the A438 and it is situated in relatively close proximity to the market towns of Malvern, Ledbury and Tewkesbury. It occupies an attractive rural location with outstanding views of the surrounding countryside, including the Malvern Hills. Access to and egress from the site is by way of the A438.
- 12 Three Counties Park is licensed to accommodate 74 park homes, although at the time of the Tribunal’s inspection there were 73 homes on the site. Three Counties Park is a somewhat irregular shape which is attributable, possibly, to the manner in which the site has evolved over time. The Tribunal noted, in particular, the relatively recent addition of a significant number of newly introduced mobile homes, understood to be 22 in number, to an area situate in what might be described, in the absence of any sub-division of the site into distinct areas, as the western part of the site. Three Counties Park is served by a network of roads which traverse the site. The mobile homes are positioned in such a way as to ensure that each home has easy access to one or other of such roads. Parking facilities are available on certain pitches and there is a relatively spacious parking area, primarily for the use of visitors, near to the entrance and in close proximity to the site office. The mobile homes are of diverse ages and types and the pitches vary in size.
- 13 The Tribunal undertook a general inspection, walking around the site roads and taking note, in particular, of any common areas, parking facilities, the ‘visitors’ parking area and the access to and from the A438. The Tribunal also, in so far as this was possible, had regard to any material features of the site which had been referred to in the parties’ written submissions. In the latter respect, the Tribunal took particular cognisance of the Klargester and its location and whilst in that vicinity experienced the unpleasant smell associated with it.

Hearing

- 14 The individuals who attended the inspection were also present at the hearing which was held on the same day as the inspection at the County Court in Worcester. Mr C Andrews, who is responsible for grounds maintenance at Three Counties Park, Mr Callaghan (63 Three Counties Park) and Mr Gibson (pupil to Mr Mullin) also attended. Mr Mullin presented the Applicants’ case, Mr Lousada spoke for himself and for the Respondents he was representing whilst Mr Bream and Mr Elliott put forward their individual cases.

Relevant Law

- 15 The relevant law is contained within Part I Chapter 2 of Schedule 1 to the 1983 Act (“the Schedule”) and the 2013 Regulations.
- 16 ‘Pitch fee’ is defined in paragraph 29 of the Schedule as follows:
- “pitch fee” means the amount which the occupier is required by the agreement to pay to the owner for the right to station the mobile home on the pitch and for use of the common areas of the protected site and their maintenance, but does not include amounts due in respect of gas, electricity, water and sewerage and other services, unless the agreement expressly provides that the pitch fee includes such amounts.
- 17 Paragraph 17(1) of the Schedule provides that the pitch fee shall be reviewed as at the review date and in this regard paragraph 17(2) states that ‘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’. Paragraph 17(2A) specifies that this notice is of no effect unless it is accompanied by a document that complies with paragraph 25A.
- 18 Paragraph 25A requires this document to be in the form prescribed by the Secretary of State in regulations. Presently, this is the 2013 Regulations. In the 2013 Regulations, it is stated in paragraph 2 that the document ‘shall be in the form prescribed in the Schedule to these Regulations or in a form substantially to like effect.’ Further, paragraph 25A provides that, substantively, the document must specify any percentage increase or decrease in the retail prices index (‘RPI’) calculated in accordance with paragraph 20(A1) (see below, paragraph 19), explain the effect of paragraph 17, specify the matters to which the amount proposed for the new pitch fee is attributable, and refer to various owner’s and occupier’s obligations.
- 19 Paragraph 20(A1) states that there is a presumption that the pitch fee shall increase or decrease by a percentage which is no more than the percentage change in the RPI since the last review date (‘the statutory presumption’), unless this would be unreasonable having regard to paragraph 18(1).
- 20 Paragraph 18 sets out factors to which ‘particular regard’ must be had when determining the amount of the new pitch fee and so far as material provides:
- 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...;
- (aa)...any deterioration in the condition, and any decrease in the amenity, of the site or any adjoining land which is occupied or controlled by the owner since the date on which this paragraph came into force (in so far as regard has not previously been had to that deterioration or decrease for the purposes of this sub-paragraph);
- (ab)...any reduction in the services that the owner supplies to the site, pitch or mobile home, and any deterioration in the quality of those services, since the date on which this paragraph came into force (in so far as regard has not previously been had to that reduction or deterioration for the purposes of this sub-paragraph;...
- 21 Sub-paragraphs 18(1)(aa) and 18(1)(ab) came into force on 26 May 2013.
- 22 The Upper Tribunal considered the operation of these provisions and the approach to be adopted by the Tribunal in *Vyse v Wyldecrest Parks (Management) Ltd* [2017] UKUT 24

(LC)(‘*Vyse*’). It is accepted that the following propositions emerge from that decision – 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, the presumption operates unless it is displaced by other competing matters which render an increase unreasonable and particular regard must be had to the matters at paragraph 18(1) of the Schedule, but other ‘weighty matters’ may also displace the presumption.

- 23 However, the Upper Tribunal has not given any guidance as to how paragraphs 18(1)(aa) and 18(1)(ab) might be applied and what may constitute a deterioration in the condition of the site and a decrease in the amenity or a reduction in services supplied and decrease in the quality thereof. In this respect, First-tier Tribunals have provided some pointers. Hence, in relation to paragraph 18(1)(aa), it has been mooted that a deterioration in the condition and amenity of a site encompasses changes that are long lasting or permanent and affect the ‘fabric’ of the site rather than changes that are temporary in nature. Further for the purposes of the 1983 Act, the Tribunal is not concerned with the actual condition of the site or the actual amenity of that site, and while the Tribunal may accept that the site has not always been maintained to a standard that might reasonably be expected the question it must determine is whether there has been any deterioration/decrease in the condition and amenity of the site in the relevant period.
- 24 With regard to paragraph 18(1)(ab), the Upper Tribunal in *Britaniacrest v Bamborough* [2016] UKUT 0144 (LC) commented:
- “[24]...paragraph 18(1)(ab) requires the FTT to have regard to any reduction in services the owner supplies to the site 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).”
- 25 More generally, it would appear that for the RPI presumption to be displaced under the provisions of paragraph 18, the other considerations must be of considerable weight, because as Her Honour Judge Robinson opined in *Vyse* [50], ‘If it were a consideration of equal weight to RPI, then applying the presumption, the scales would tip the balance in favour of RPI’.

Submissions

- 26 The Applicants seek a determination by the Tribunal of a level of pitch fee that reflects the percentage increase in the RPI over the twelve month period applicable to this review, namely 7.8%.
- 27 The Respondents, individually and collectively, accept that, in principle, the Applicants have a right to review the pitch fee annually (with a review date of 1 April), do not challenge the legitimacy of the Notices dated 1 March 2022 or question that the RPI increased by 7.8% over the twelve month period germane to the review (although, Mr Lousada contested the application of the percentage increase in the RPI *per se*). Nevertheless, each of the Respondents has not paid the increase in the pitch fee sought by the Applicants and in explaining their respective reasons for failing to do so they raised issues for the attention of the Tribunal, (involving, in the absence of a joint response, some degree of overlap) that they believed to be pertinent to the pitch fee review for 2022.

28 For ease of treatment, the afore-mentioned issues are identified from the evidence presented by the three Respondents starting with the issues raised by Mr Lousada, in his own name and in his representative capacity followed by those raised by Mr and Mrs Elliott and Mr and Mrs Bream respectively (see, paragraphs 29-61). A summary of the Applicants' submissions and of their response to each of the issues raised by the Respondents follows. References are to the parties' written evidence unless otherwise stated.

Respondent (1) – Mr Lousada et al

29 At the outset, Mr Lousada explained that, principally, there are three reasons why he and the residents he represented refused to pay the proposed percentage increase in the pitch fee sought by the Applicants. Those reasons are as follows:

- the large and unprecedented rise in the pitch fee was not warranted or justified by the services and standards existing on Three Counties Park and there had been a reduction in some services during the year;
- the site owner has failed, despite a request, to provide any documentary or factual evidence of any kind to support the proposed increase; and
- the site owner has based the increase, apparently, purely on the RPI which is a guide line only for increases and not a legal requirement.

30 Mr Lousada also set out the percentage increases in the pitch fee for Three Counties Park since 2013/2014:

2022/2023	7.8%	2017/2018	2.6%
2021/2022	1.4%	2016/2017	1.3%
2020/2021	2.7%	2015/2016	1.1%
2019/2020	2.5%	2014/2015	2.8%
2018/2019	4.0%	2013/2014	3.3%

As to the proposed increase of 7.8%, he commented 'an increase of double the highest percentage increase in the last ten years and four times the percentage increase in the previous year, seems excessive to say the least.' Moreover, Mr Lousada observed that such an increase should be related to the maintenance costs of Three Counties Park incurred by the Applicants and to any improvements that have been made by them for the benefit of the residents. He referred to paragraph 18(1)(a) and to the duty on the Tribunal when determining the amount of a new pitch fee to take into account any sums expended by the site owner on such improvements since the last review and inferred that, in the absence of any improvements since that review, it would unreasonable to determine a level of pitch fee that was commensurate with the increase in the RPI.

31 More particularly, Mr Lousada addressed each of the above stated reasons for the non-payment of the proposed percentage increase in the pitch fee as follows.

Diminished standard of maintenance and services

32 Mr Lousada referred, generally, to what he regarded as the minimal maintenance undertaken by the Applicants and a perceived reduction in the services supplied by the Applicants when those services were compared with the provision in previous years. More specifically, Mr Lousada drew the following matters to the Tribunal's attention and supported his evidence in some instances with photographs.

Site office

- 33 Mr Lousada stated that some mobile home parks employ a resident warden to assist residents, but no such person is in post at Three Counties Park. There is a site office which in previous years was manned by a member of staff on most weekdays. However, this practice ceased in 2021. As a consequence, residents who require assistance with problems have nowhere to go and no-one with whom they may consult. Mr Lousada opined that this was an actual reduction in services provided by the Applicants.

Site maintenance

- 34 Mr Lousada informed the Tribunal that, in his opinion, maintenance undertaken at Three Counties Park is 'fairly minimal' and, merely, consists of grass cutting, weed killing on the roadside verges and unoccupied pitches and general cleaning up. He added that two individuals used to be engaged on this work, but they have seldom been in evidence for many months. They are supposed to be present two days a week. Mr Lousada intimated that, in practice, a resident assists the Applicants and has been carrying out weed spraying. Other residents have taken it upon themselves to prune bushes at the front of their pitches.

Mr Lousada presented in evidence several undated photographs ('Photograph E') the first two of which he said portrayed weeds growing through the gravel surface adjacent to the site office and, the third, a large overgrown bush that was obscuring the junction of a side road on the site.

At the hearing, Mr Lousada sought to establish the nature of the work that Mr Andrews undertakes at Three Counties Park and the frequency of his visits to the site. Mr Andrews stated that he attends Three Counties Park with a colleague, on average, two days a week carrying out maintenance work. He agreed with Mr Lousada that this included what might be regarded as hard and soft landscaping. The former might include work on the site roads and slabbing and the latter might encompass cutting and strimming grass, tending to bushes and trees, weed killing, and removing hedge and grass cuttings and leaves). Mr Lousada told Mr Andrews that he had not seen him carrying out this work.

Notwithstanding Mr Andrews' evidence, Mr Lousada remained of the opinion that there is very little to maintain at Three Counties Park and, moreover, he was convinced that even the little maintenance that is required had been reduced by the Applicants.

Maintenance of the sewerage system and the Klargest

- 35 Mr Lousada stated that during the year the sewerage system was a regular source of unpleasant smells that were experienced mainly by residents whose mobile homes are situate in the immediate vicinity of the Klargest, whilst, on occasions, the wind strength and direction may cause the smell to spread over the entire site. Mr Lousada said that the resident of 55 Three Counties Park, a pitch that is adjacent to the Klargest, is frequently unable to use his garden or invite visitors because of the noxious smells.

Mr Lousada said that for the emanation of these smells, it is immaterial whether or not the cover on the Klargest is removed or whether the Klargest is being emptied. For example, the cover was on the Klargest when the smell was evident on 26 and 27 August 2022.

The Environmental Health Agency of the Malvern District Council was contacted in 2020 and residents were asked to keep diaries of when the smell occurred. Mr Lousada attributed this problem to either the overloading of the system caused by the addition of some 20 'new' homes with which the system cannot cope or to the lack of proper maintenance.

Mr Lousada intimated that, notwithstanding numerous complaints by residents to Mr Fury and the above-mentioned environmental concerns, ‘nothing whatsoever has been done to alleviate the problem over the last couple of years’.

Condition of the site roads, parking bays/driveways

- 36 Mr Lousada made a number of points about what he regarded as the very poor condition of site roads, parking bays/driveways. First, with the exception of the ‘new’ area, Mr Lousada described the site roads as being in ‘very poor condition, rough, uneven and disintegrating.’ Some patching of these roads had been carried out, but only after the notification of the proposed increase in the pitch fee. Mr Lousada referred the Tribunal to undated Photograph A (comprising two photographs), which he had adduced in evidence, and which he said were ‘of different points on the old road surface showing the almost total breakup of the tar surface where patching was not carried out.’ Mr Lousada also indicated that, in his opinion, many parking bays on pitches were, similarly, in very poor condition. He accepted that residents were responsible for keeping parking bays in a ‘clean and tidy condition’, but he submitted that the responsibility for carrying out major works or repairs lay with the Applicants. Further, Mr Lousada said that some driveways are poorly constructed and as a consequence they experience water pooling, and, also, in some instances they are uneven and breaking up (he indicated that examples of the latter are shown in undated Photograph B (two photographs) which he had presented in evidence). Mr Lousada added that he was aware that Mr Hawkins (57 Three Counties Park) had spoken to Mr Fury about his poorly constructed driveway and the poor flood water drainage controls from the houses higher up on the site. Finally, Mr Lousada stated that during the Winter of 2022 each of the street lights in the car park near the entrance to the site failed leaving that area in total darkness. This was reported to Mr Fury. It was three weeks before they were repaired.

‘Old’ garages

- 37 Mr Lousada acknowledged the belated demolition of ‘old’ garage buildings which had been an enduring eyesore apparent on entry to Three Counties Park. However, Mr Lousada related that following the demolition piles of rubble were left. No effort to remove them had been made prior to the present pitch fee dispute. Some piles remain together with an old mechanics pit which is filled with broken bricks (the latter evidenced by undated Photograph C).

Egress from Three Counties Park onto A438

- 38 Mr Lousada expressed the opinion that egress from Three Counties Park by car onto the narrow A438 is dangerous, because the view of oncoming traffic from the right is obscured by vegetation and railings. Further, oncoming traffic on the A438 is often travelling considerably in excess of the speed limit. Mr Lousada indicated that this concern about obscured visibility was reported to Mr Fury, but no action has been taken.

Mr Lousada presented in evidence an undated photograph (‘Photograph F’) which he believed showed the nature of this hazard to a driver preparing to exit Three Counties Park.

Lack of evidence in support of the proposed increase

- 39 Mr Lousada referred to a fact sheet, which had been issued by the Department of Community and Local Government, and which, in his opinion, imposed a duty on a site owner to provide documentary evidence, on request, to support any charges such as pitch

fee increases. Accordingly, he wrote to Mr Fury in a letter dated 28 May 2022 delivered by hand to the site office in the following terms:

‘It seems to me in the circumstances (there being no residents association) that if you increase the site fees it is up to you to justify such increases. This has not been done. Perhaps you need to call a meeting of residents and lay before them justification for such large increases with facts and figures and thus seek mutual agreement.’

- 40 Mr Lousada indicated that there was no response to this request either from Mr Fury or from his solicitor in her letter of 13 June 2022 by way of reply to his letter. He was aware that Mr Bream had also written a letter to Mr Fury seeking documentation in support of the proposed increase in the pitch fee to which he has not received a reply. Mr Lousada added that he was aware that a resident (48 Three Counties Park) had approached Mr Fury and queried how the increase in the pitch fee could be justified. Mr Fury replied that he had sought the increase ‘because I can’.

He added that, in the event, Mr Fury has ‘never produced a single fact, piece of information, or documentary evidence of any kind to try and justify the exceptional percentage rise in the site fees.’ In the absence of any such evidence, Mr Lousada opined that it must be assumed that the Applicants have used the 7.8% increase in the RPI as the sole justification for the pitch fee increase.

The RPI and the statutory presumption

- 41 In considering the use of the percentage increase in the RPI to determine the level of the pitch fee, Mr Lousada stated, initially, that he could appreciate the rationale for doing this in previous years when interest rates had been low and, accordingly, he also understood the corresponding inclination for Tribunals to use it on the ground that such percentage increases applied equally to both parties. However, he asserted that such an approach can no longer be regarded, presently, as reasonable ‘in the extraordinary economic and political circumstances prevailing today’ which have led to a rise in inflation in the UK to over 10%. Thus, he submitted that whilst the percentage increase in the RPI might have a bearing on the level of the pitch fee it should not, without scrutiny, be the ‘sole arbiter’ and to regard it as the sole arbiter is ‘unfair, unjust and unreasonable’.

Mr Lousada said that many residents at Three Counties Park were elderly and reliant upon pensions that have risen by only 3%. Consequently, the proposed increase in the pitch fee to 7.8% in line with the percentage increase in the RPI will affect them seriously financially. On the other hand, Mr Lousada intimated that it is impossible to assess the impact of the current high rate of inflation on the Applicants’ income because they have not supplied the necessary ‘facts and figures’ relating to the rise in their costs attributable to inflationary pressures (although, an indication of some of the costs incurred could be gleaned from the invoices adduced in evidence by the Applicants).

Further, Mr Lousada observed that the statutory presumption which has led to the proposed increase of 7.8% is one that may be displaced by evidence that suggests a contrary position should be taken. In this respect, he asserted that, surely, the extraordinary economic and political circumstances to which he had alluded were ‘weighty factors’ that call into question whether and to what extent, if at all, reliance should be placed on the statutory presumption to determine the level of pitch fee.

- 42 More generally, Mr Lousada also questioned whether the use of percentage increases in the RPI is appropriate for present purposes. He drew attention to the component elements of the Index which, in his opinion, cover all the costs which an individual usually incurs in everyday life, but few of these costs were pertinent to running costs

incurred by site owners. In this circumstance, he contended that the Index is 'heavily weighted' against residents.

43 Mr Lousada concluded:

'We believe that the unprecedented site rent rise demanded this year is neither reasonable nor justified and that now and in future years the link to the RPI should be viewed as [a] much looser guide than in the past and should be subject to the scrutiny of actual costs, and should take into account the existing economic climate.'

In light of this conclusion, Mr Lousada asked the Tribunal to freeze the proposed increase in the pitch fee thereby maintaining the pitch fee at the 2021 level and to 'direct that in future where the site owner wishes to increase rents by a substantial amounts he should be warned that he must, on request, supply occupiers with documentary evidence to support his claims.'

44 In keeping with Mr Lousada's broad stance that the proposed increase in the pitch fee was 'unfair, unjust and unreasonable', Mr Haines indicated in his Witness Statement that he could see no justification for the unprecedented proposed increase in the pitch fee. Similarly, he also believed the maintenance carried out at Three Counties Park to be minimal and, in his opinion, did not warrant any increase in the pitch fee.

In their Witness Statements, Mr Haines (51 Three Counties Park) and Mr Callaghan (63 Three Counties Park) also alluded to what they perceived to be the ambivalent attitude of Mr Fury towards the proposed increase in the pitch fee when the matter was raised with him. Mr Haines said that when he spoke to him about the increase in the pitch fee and how it could be justified Mr Fury simply said that he was pursuing the proposed increase 'because he was allowed to'. Whilst Mr Callaghan related that when he spoke to Mr Fury about why he had sought the 'great increase' in the pitch fee Mr Fury said 'because I can' and 'it was the law to do this'.

45 At the hearing, Mr Lousada reiterated his submission that an increase in the pitch fee commensurate with the percentage increase in the RPI was 'unfair, unjust and unreasonable' and patently disregards the financial impact on residents. There was no need for the pitch fee to be increased by the maximum amount. He also reaffirmed his opinion that there must be some correlation between an increase in the pitch fee and the actual costs incurred by the Applicants which, in view of the low level of maintenance carried out at Three Counties Park, were likely to be minimal.

Respondent (2) – Mr and Mrs Elliott

46 Mr and Mrs Elliott impressed upon the Tribunal that they found it impossible to submit their objection to the proposed increase in the pitch fee as parties to a joint response, principally, because they believed that their reasons for objecting to the proposed increase are unique and deserving of separate consideration. They added that they have not consulted or colluded with any person in taking the stance they have adopted or in connection with the reasons for their refusal to pay the proposed increase in the pitch fee.

47 Mr and Mrs Elliott identified the following three reasons for their refusal to pay the proposed increase in the pitch fee:

- the Klargester cesspit and the regular escape of abhorrent odours;
- the regular blocking of the sewerage system and resulting flooding and pollution within the curtilage of their home; and

- the poorly maintained and condition of the site.

48 Mr and Mrs Elliott elaborated upon each of the above-stated reasons in their evidence, which included a series of numbered exhibits, as follows.

The Klargestester and the regular emission of abhorrent odours

49 Mr and Elliott stated that they believed the Klargestester to be at least 35 years old, in shoddy condition, noisy and without a ventilation system. They contended that, due its inefficiency, it is unable to cope with the demands of the 74 mobile home units permitted by the site licence. The Klargestester emits abhorrent smells, regularly, and this occurs whether or not its cover is removed. Their research indicated that a Klargestester should not emit smells, but, if it does, this could be attributed to a number of reasons the most pertinent of which for present purposes being the fact that the system is old and not working efficiently. It has only been emptied twice this year.

Mr and Mrs Elliott stated that there is no evidence that the Applicants have at any time replaced the Klargestester or upgraded it. They opined that either of these options should be adopted by the Applicants, that is, the Klargestester should be replaced or upgraded. At the hearing, Mr Elliott said that he was pleased to learn that the Applicants have plans to replace the Klargestester.

Mr and Mrs Elliott included an aerial photograph dated May 2021 that showed, *inter alia*, the proximity of the Klargestester to their pitch (Exhibit R.E. 16) and pointed out that the west wind, which is the predominant wind that affects the site, funnels between 67 and 68 Three Counties Park into their pitch. Mr and Mrs Elliott also adduced in evidence a diary of 'bad odour incidents' covering the period between 1 June 2022 and 26 July 2022 inclusive (Exhibit R.E. 1) which, notwithstanding the paperwork adduced in evidence by the Applicants that suggested the Klargestester is properly maintained, supported their contention that it is no longer working efficiently, and, as such, constitutes evidence of a deterioration in the provision of this service provided by the Applicants. At the hearing, Mr Elliott said that the Klargestester has never ceased to emit smells and continues to do so regularly.

Regular blocking of the sewerage system and consequent flooding and pollution

50 Mr and Mrs Elliott stated that since they moved into their mobile home in September 2021 the sewerage system from the 'older part of the site' has blocked three times and each time in the same area of the pipework which is close to the Klargestester. They succinctly summed up their understanding of what is an on-going problem (it is their belief that there have been five blockages in the last four years) and outlined the timely, although ineffectual, efforts of the Applicants to combat it in the following words:

'This sewerage has nothing to with our particular property other than flowing underneath within the piped system. There is, however, a manhole which is properly covered. Due to the system blocking near to the Klargestester, the sewerage backs up and escapes through this manhole and into our garden causing the flooding raw sewage. Other than screw down the manhole cover, unblock the sewage and wash out the area where the blockage occurs, nothing has been done to modify the area around the blockage to alleviate this problem.'

Mr and Mrs Elliott presented in evidence Exhibits R.E. 2 to R.E. 9 each of which they explained is illustrative of sewerage overflows in their garden which had recurred notwithstanding rodding and flushing that had been carried out by the Applicants. Mr and Mrs Elliott accepted that Mr Fury always responded to the sewerage blockage problems in a timely fashion. They also included in their evidence Mr Elliott's

uncorroborated recollection of attempts to deal with a blockage and consequent flooding on 29 June 2022 that involved, amongst others, Mr Fury and Dan, a representative of D.C. Merrett & Company Limited which had been contacted by Mr Fury with a view to clearing the blockage. The gist of Mr Elliott's account is as follows. There was discussion as to where the blockage(s) in the system might be and what could be done. In the event, an investigation of the Klargestere revealed accumulated fat that was blocking the system after which Mr Elliott reports Dan as saying that the system further up was probably also blocked by solid fat and that he would flush out what he could but that his lorry did not have the capability to flush the whole system out. Dan also flushed out the system in the vicinity of the manhole situated on 60 Three Counties Park. Mr Elliott expressed the view, which he relayed to Mr Fury, that there needs to be long-term resolution of this problem, whilst Dan recommended that the whole site be flushed out so that a start could be made with a clean system. Mr Fury agreed to do the latter. At the hearing, Mr Elliott said that there was no evidence that Mr Fury had acted on this. He added that there continues to be a lack of free flow within the system.

Mr and Mrs Elliott refuted any suggestion that the blockages were caused by their actions or those of their predecessors in title. In their opinion, the principal fault lies with the configuration of the sewerage system that is now required to accommodate the 'new' mobile homes; there are two systems of which the new system has primacy). They observed:

'Since the introduction of the new Homes this has created a long-term problem with the sewerage system and causing the most basic of services to have deteriorated and on occasions defective, putting at risk the health, safety and welfare of residents due to the inadequate and poorly performing sewerage system..'

Mr and Mrs Elliott also substantiated their view that the cause for the blockages lay with the sewerage system with the following statement:

'...it has been established that when the Home plots were first laid, each plot had its own manhole however Mr. Fury ordered that they be closed up and now there is only one manhole cover in our road and that is within Plot 59. On each occasion of blockage and flooding Mr. Fury has initially tried to blame the residents of No. 60 and then subsequently other residents on site. He was clearly made aware after the first blockage that there were two separate systems and yet his first thought is to blame the resident at No 60 despite the blockage being in the old system.'

At the hearing, Mr Elliott stated that the immediate cause of the blockages is most likely to be a collapsed pipe or pipes and in so doing referred to a report by Dynarod that he had commissioned.

Mr and Mrs Elliott also said that Mr Elliott held several conversations with Mr Fury about the sewerage problem following Mr Fury's expressed wish to sort out matters through conversation, but his subsequent failure to communicate creates the impression that he is doing nothing to resolve issues. In the words of Mr and Mrs Elliott 'he has a propensity to agree to keep us informed but nothing changes and he doesn't'. More generally, Mr and Mrs Elliott also pointed out that, notwithstanding their best efforts, there had been an absence of any 'meaningful dialogue' between them and Mr Fury with a view to resolving the pitch fee dispute.

Mr and Mrs Elliott added that their enjoyment of their mobile home is diminished by the sewerage flooding risk and the regular smell from the Klargestere that permeates it and that because of these issues they were reluctant to invite family and friends to visit. They observed that if they had known about these problems, which were not disclosed to them

by the previous owners of their pitch, they would not have moved onto Three Counties Park.

At the hearing, Mr Elliott said that he and his wife were living in a 'cesspit' and they were constantly worried about the threat to their health posed by the recurring flooding of raw sewage into their garden and its surrounds and its related and permeating smell. In his opinion, a solution to the deficiencies in the sewerage system could and should have been achieved through dialogue and communication with the Applicants.

Poor maintenance and condition of the site

- 51 Mr and Mrs Elliott informed the Tribunal that in their estimation Three Counties Park is showing signs of neglect. In this respect, they stated, specifically, that only minimal maintenance work is carried out and repairs carried out to the surfaces of the roads and footpaths are of 'a very low standard' leaving them uneven and, consequently, creating significant trip hazards for residents all of whom have to satisfy the minimum age for residency.

In relation to the condition of the roads, Mr and Mrs Elliott added that at the time of the demand for the increase in the pitch fee 'the road into and on the site was in need of considerable repair, the entrance to the site looked unwelcoming and the site hut neglected', whilst the so-called speed ramps are neither legal nor marked or signed. Further, the 'building footprint' on the left-hand side of the access road was a shambles with demolition rubble and bricks and completely open when it might be expected that this area would be either be fenced off or warnings of hazards put in place. Mr and Mrs Elliott referred to Exhibit R.E. 16 showing the building rubble and to Exhibit R.E. 17 that, in their opinion, provides a better image of the 'building footprint'. They acknowledged that since April 2022 'some work has been done on tidying up the site and the road surface' and, referred, initially, to Exhibits R.E. 10 to R.E. 15 and, thereafter, to a photograph of the 'building footprint' dated 17 August 2022, but they maintained that 'the standard of repair is way below that of acceptability, the site office still looks shabby and the building footprint, although tidier, is still dangerous and an eyesore'.

Further, Mr and Mrs Elliott stated that 'it is clear that the two named maintenance men are not spending two days a week on this site...'. Also, in light of the low standard of the maintenance undertaken and, on occasions, the manner in which it was carried out, they doubted that these individuals are properly trained or have the level of skill required to carry out the work that they are expected to do.

Mr and Mrs Elliott added that, to their knowledge, no work has been undertaken by the Applicants to improve the site either aesthetically or to upgrade it in any way.

Conclusion

- 52 In conclusion, Mr and Mrs Elliott contended that they had provided compelling evidence to warrant a finding that an increase in the pitch fee is unreasonable. Further, they also believed that the deterioration in the condition and amenities of Three Counties Park should be regarded as long lasting and treated as permanent unless something radical is done to alter the position.

Accordingly, Mr and Mrs Elliott submitted that there should be no increase in the pitch fee.

Respondent (3) – Mr and Mrs Bream

- 53 Mr and Mrs Bream indicated that their decision not to pay the proposed increase in the pitch fee was made independently and, it followed, therefore, that in making that decision they were not influenced by anyone. It was reached for reasons that they had brought to the attention of the Applicants.
- 54 Mr and Mrs Bream set out the reasons for withholding payment of the proposed increase in the pitch fee in their evidence as follows. Such evidence included a series of photographs that were taken by Mr Bream after payment of the increase in the pitch fee became due on 1 April 2022.

Lack of evidence to support the proposed increase in the pitch fee

- 55 Mr and Mrs Bream informed the Tribunal that in letters written by Mr Bream to Mr Fury relating to their withholding of payment of the proposed increase in the pitch fee Mr Bream invited Mr Fury to discuss the contents of the letters with him or to provide any relevant documentation that was supportive of the significant increase that had been demanded.

Mr and Mrs Bream continued that, regrettably, no acknowledgement was received from Mr Fury and no relevant documentation was forthcoming. Further, Mr and Mrs Bream intimated that there is no prospect of face-to-face discussions with Mr Fury as matters relating to Three Counties Park are simply placed in the hands of his solicitor.

Reduction in the provision of essential/routine maintenance and services

- 56 Mr and Mrs Bream opined that there is a ‘marked reduction’ in the provision of essential/routine maintenance carried out on the site by the two-man maintenance team led by Mr Andrews. This maintenance team has not attended twice weekly during 2022, as expected, and there should be a resumption of the level of maintenance seen in previous years. Mr and Bream suggested that a review of their daily schedule and time sheets in 2022 would confirm this reduction. However, when questioned by Mr Bream at the hearing, Mr Andrews indicated that no work schedules or time sheets are available.

In this context, Mr and Mrs Bream cited the site owner’s repairing and maintenance obligations under paragraphs 22(c) and 22 (d) of the Schedule.

In addition, Mr and Mrs Bream contended that there is also a reduction in the services provided by the Applicants in respect of the manning of the site office. The site office was once regularly manned, but it is now ‘virtually redundant’ with either Mrs Moxey or Mr Fury making ‘only unscheduled and brief ad hoc mail pick up visits’.

Maintenance of common areas – the site of the ‘old’ garages

- 57 Mr and Mrs Bream welcomed the dismantling by the site maintenance team of a ‘large unused and dilapidated wooden storage shed/garage’ that was situated in a main thoroughfare into Three Counties Park, although, in their opinion, this was long overdue. However, Mr and Mrs Bream informed the Tribunal that this work gave rise to a number of consequential concerns. First, an unsightly pile of rubble was left and a manhole cover was only partially covered with a makeshift slab. Secondly, the concrete base, which is adjacent to a communal walk way and road has numerous health and safety risks for pedestrians and motorists. Thirdly, two knee-high makeshift and slip shod loose brick stacks have been erected by a resident in order to conceal an unused water standpipe and manhole. Mr and Bream added that one of these stacks protrudes into the road with only a single non-reflective traffic cone to signify the existence of the hazard.

In relation to these matters, Mr and Mrs Bream presented three photographs in evidence, namely RB1, RB1a and RB2 which they described as showing, respectively, the pile of rubble in the concrete base area, numerous trip hazards for pedestrians and the obstruction protruding into the road/walkway and numerous health and safety hazards for pedestrians and motorists in a main communal walkway.

Mr and Mrs Bream questioned whether the condition of this area is consistent with the standards laid down for the maintenance of common areas in the Model Standards for Caravan Sites in England (2008) which require every part of the park to which the public have access to be kept in a 'clean and tidy condition'.

At the hearing, Mr Bream accepted that resurfacing work carried out by the Applicants on this area in September 2022 amounted to an improvement when compared to its earlier condition.

Site roads and footpaths to be maintained in good condition

58 Mr and Mrs Bream stated that earlier in 2022 random and patchwork repairs had been carried out to the road network on the site by an external contractor. Such works were random in that there was apparently no approved plan, no final sign off on the completion of the work and numerous areas where necessary repairs had been identified by the contractor but no remedial work undertaken. Mr and Mrs Bream also raised what in their opinion is the poor quality of the work that has been carried out and also noted there are 'signs of some patches failing already'.

Mr and Bream presented supporting photographic evidence which they deemed to be illustrative of the poor quality of the work that has been carried out, areas which are in need of repair but remain untouched and unfinished patchwork repairs. They designated these photographs RB3-RB9 with the following descriptors - RB3 (trip hazard created following recent shoddy patchwork repairs to the main road walkway), RB4 (trip hazard to pedestrians left unattended on the main road walkway during patchwork repairs), RB5 (typical example of the poor patchwork repairs), RB6 (area identified for repair by the contractor but never completed), RB7 (speed bump left unrepaired), RB8 (area left unattended to during patchwork repairs) and RB9 (unfinished patch work repairs creating trip hazard on the main communal walkway and road deemed to be acceptable by the park owner).

Mr and Mrs Bream also referred to the 'very poor condition' of a communal footpath that runs between 'the two halves of the park' in respect of which 'only old slipshod patch repair work' has been carried out with a view to providing a more level surface and which, as Mr Bream pointed out during the inspection, has no lighting. Mr and Mrs Bream said that this pathway is used regularly by residents of all ages some of whom have mobility issues and for whom the uneven surface presents significant trip hazard risks. In this regard, they presented two further illustrative photographs in evidence designated and described as RB10 (poor quality, uneven surface and shoddy repairs creating trip hazards on communal pathway) and RB11 (poor repair patching on park pathway). Mr and Mrs Bream said that there was an incident about eighteen months ago when a resident (Cheryl of 22 Three Counties Park) tripped on this path and injured her wrist.

Mr and Mrs Bream observed that it is critical that Three Counties Park is safe for residents and visitors to walk around and, to do so, without numerous risks and hazards in the road and pedestrian walkways.

At the hearing, Mr Bream established that checking health and safety matters for the Applicants was not explicitly within the remit of Mr Andrews. Although, Mr Andrews

indicated that if he came across any health and safety issues he reported them to the Applicants.

Inadequate provision for sewage disposal and sanitation

- 59 Mr and Mrs Bream expressed their concern about two on-going issues, namely the shortcomings of the aged Klargester evidenced by the 'pungent sewage odours' that are frequently emitted from it (especially, during warm conditions in the Summer months and regardless of whether or not its lid is on) and the unacceptable health hazards created by the regular failure of the sewerage system to cope with the demands that are put upon it.

In the former respect, Mr and Mrs Bream accepted that the Applicants have acknowledged that from time-to-time there will be smells coming from the Klargester. They welcomed the increase in the emptying regime (albeit after complaints from residents and visits from the Environment Agency) that is paid for by the residents, but, in the absence of any supporting evidence, they did not believe that, as claimed by Mr Fury, the number of complaints to him about the smell has decreased since this enhanced emptying regime was introduced.

Further, Mr and Mrs Bream indicated that, until they became aware of plans to replace the Klargester, they did not know if any remedial action is planned in relation to the Klargester, and added that they did not profess to know the reasons for the Klargester's apparent lack of fitness for purpose, but they surmised that 'this could simply be due to the increased habitation in the new park phase of the additional 24 homes causing the decomposition process to falter and slow down to breaking point'.

At the hearing, Mr Bream pointed out that many of the invoices of We Build It Ltd relating to the servicing of the Klargester presented in evidence by the Applicants were undated and their completion, largely, amounted to ticking boxes. In his opinion, these were not genuine service agreements.

As to the inadequacies of the sewage system, Mr and Mrs Bream referred to five instances when volumes of raw sewage were discharged from the manhole in the back garden of their adjacent neighbours (presently, Mr and Mrs Elliott) that lies within 1.5 metres of their pitch, As a consequence, pungent odours were released, the lawn of No 60 was saturated and there was some leakage onto the communal walkway behind Nos 60 and 61 Three Counties Park. They submitted that this was unacceptable and constituted a significant health and safety risk. Mr and Bream also opined that the remedial action taken by the Applicants by way of response to these incidents, which included rodding the sewage pipe in the manhole on a number of occasions, flushing out the drain and replacing the manhole cover with a new one that was screwed down, was insufficient and inadequate. They concluded that the recurrence of such discharges suggests that the Applicants have not taken any effective preventative action to curb them. Mr and Mrs Bream added that on the fifth occasion a drainage contractor recommended that 'a complete flush of this particular sewage pipe should be carried out'. They have not received any communication from the Applicants about whether the recommended 'flush' has been completed or whether there is any effective preventative action planned.

Mr and Mrs Bream submitted that these circumstances relating to the shortcomings of the Klargester and the sewerage system amounted to a breach of the provision in the site licence pertinent to drainage and sanitation, namely that '[T]here shall be satisfactory provision for foul and waste water drainage either by connection to a public sewer or by discharge to a properly constructed septic tank'.

Lack of communication

- 60 Mr and Mrs Bream stated that notice should also be taken of the fact that there is a distinct lack of communication on the part of Mr Fury with themselves and other residents, especially in relation to the question of whether suggested remedial or restorative works have been completed and whether any further preventative action or improvements are being planned with regard to on-going problems (for example, in relation to the sewerage system (see above, paragraph 59)).
- 61 At the hearing, Mr Bream said that he and his wife were resolute in their objection to the proposed increase in the pitch fee. As pointed out in their written evidence, he maintained that there has been a reduction in the maintenance carried out in the last twelve months and in the services provided by the Applicants at Three Counties Park. The amenity of the site is adversely affected by the odours coming from the sewage discharges, which are unbearable, and the safety hazards remain, especially at dusk. He stated that, undoubtedly, the involvement of the Tribunal had led the Applicants to act in relation to the concrete pad and its environs and accepted that, consequently, this area is now in a better condition than at the time when his written evidence was submitted, but this had taken over a year to come about. Mr Bream also queried how it could be said that the Klargester was well maintained if it is the Applicants' intention to replace it. He said that he did not expect the site to be perfect, but it should be safe.

Mr Bream also commented on the evidence submitted by the Applicants in Mr Fury's second Witness Statement which he believed to be unnecessarily 'bulked up', for example by the inclusion of 39 pages relating to the planned replacement for the Klargester and, generally, to be an exercise in 'smoke and mirrors'.

Applicants

Submissions

(i) Background

- 62 The Applicants prefaced their substantive submissions with a brief history of Three Counties Park and its evolution since they bought it in 2004. They stated that at the time of their purchase Three Counties Park was a mixed residential and touring caravan park with an area to its far west licensed for six months for fifty touring caravan and fifty caravans for storage. For a while, the Applicants continued to operate Three Counties Park in this manner. However, the Applicants decided, in time, to move away from the inherited user of the aforementioned area and, instead, to develop it as a site for 22 residential park homes supported by the requisite new infrastructure (water supply, sewerage pipes, electricity cables, BT, roads, concrete bases and lighting) with, as a consequence, the 'touring side of things' ceasing in 2016. The Applicants observed that this 'new' development took around 4-5 years to complete with the sale of the last of these park homes taking place in September 2021. By way of illustration, the Applicants presented several aerial images taken from Google Earth Pro showing Three Counties Park at specified different times and how it has evolved. In addition, the Applicants made available a site layout plan giving an overview of the site together with an annotated version onto which the A438, the entrance, the location of the former garages, the location of the Klargester and Nos 15, 60 and 61 Three Counties Park are superimposed.
- 63 The Applicants also made general observations about some of the matters that feature in the submissions of the Respondents, namely the site entrance, the maintenance of Three Counties Park, the maintenance of the Klargester, the site office and the demolished garage buildings.

- Site entrance: the Applicants presented a series of images taken from Google Street View showing the entrance onto the site from the A438 which, in their opinion, reveal that ‘the entrance onto the Park has not changed in years;
- Maintenance of Three Counties Park: the Applicants stated that two of their workmen, Chris and Mark, attend Three Counties Park twice a week to carry out maintenance works. This was confirmed by the former, Mr Chris Andrews, in his Witness Statement dated 21 September 2022 in which he also indicated that the maintenance work carried out by him and his cousin, Mark, included ‘cutting the grass, the hedges, the trees, sweeping the roads, weed killing, checking on the Klargest, unblocking drains, checking that the lighting on the Park is in order, disconnecting old homes from the services, moving materials and responding to any maintenance works to be carried out’. The Applicants added that there is a resident who also helps out with maintenance but he is not employed by them. Further, the Applicants opined that the roads on the site are generally in good repair and condition, and indicated that the Council has not raised any concerns about compliance with the requirements relating to roads in the site licence. The Applicants made specific reference to resurfacing work that was undertaken in March 2022 before the pitch fee review date of 1 April 2022 by Bloomers Contracting Ltd and adduced the related invoice in evidence and to repair work on road surfaces (including, the car parking area to the left of the entrance to the Park) that was carried out by this company at the same time as the resurfacing of the garage area in August/September 2022 (see further below, Garage buildings);
- Maintenance of the Klargest: the Applicants informed the Tribunal that the Klargest lies at the far end of Three Counties Park. It is situated between 55 and 55A Three Counties Park and against the boundary of the neighbouring field. The Applicants stated that the Klargest, which serves all the park homes, has always been regularly serviced and maintenance is carried out when required. They adduced in evidence copy invoices over a three year period relating to the service of the plant (from We Build IT Ltd) and copy invoices (from D.C. Merrett and Company Limited) relating to the emptying of the tank which has occurred at least five times since December 2021. The Applicants conceded that ‘from time to time there will be smells from this plant and we do receive complaints usually when the lid has been taken off ready for the tank to be emptied. We have always received some complaints about smells.’ They added, however, that since the change in the regime for emptying the tank that involves the emptying the tank every six weeks rather than every two months they believed that ‘the number of complaints about smells has reduced.’
- Replacement of the Klargest: the Applicants confirmed that they were looking into replacing the Klargest with its replacement being sited on adjoining land which they were negotiating to purchase. They were in the process of obtaining quotes and planned to proceed with the appropriate contractor. They estimated that the overall cost of the removal of the existing Klargest, the cost of new plant and its installation would be between £80,000 and £100,000. The Applicants presented in evidence information about and a specification relating to the plant that they were considering. This was provided by Kingspan Water and Energy Ltd and Europipes (UK) Ltd.
- Site office: the Applicants described the site office as a legacy of the touring side of the business. They stated that it has always been used on an ad hoc basis and it has never been permanently manned. In recent years, it was used most frequently by Susie Moxey, who is involved in sales and marketing, and few residents came into the office when she was there. The Applicants indicated that all residents have their contact details through they can be contacted. In addition, Mr Fury and Mrs Moxey are regularly at Three Counties Park with whom issues may be raised and, if preferred, face-to-face appointments are available to discuss issues.

- Garage buildings: the Applicants stated that the garage buildings were demolished in the late Spring 2021 leaving the hard standing. The Applicants adduced various photographs in evidence showing the garages prior to their demolition and some of the rubble that remained following their demolition (the rest having been taken away) to which they believed some of the Respondents had referred. They added that, initially, the area was made safe with ‘a cone and bricks and a concrete slab over a manhole cover to stop people and cars from driving over this area’ whilst the garage pit has been filled with bricks and concrete in order to provide a deterrent to pedestrians. However, further work on this area was planned to make it look more presentable. In consequence, resurfacing work on this area was undertaken in August/September 2022 by Bloomers Contracting Ltd. The Applicants presented the invoice from this company in evidence together with six photographs illustrative of the work carried out and appearance of the former garage area on completion of the work.

64 Further, the Applicants informed the Tribunal that since they acquired Three Counties Park in 2004 they have never increased the pitch fee by more than the percentage change in the RPI. With regard to the 2022 pitch fee review, 58 ‘homeowners’ had agreed to and were paying the increase. As to the Respondents, all of the Respondents, other than Mr and Mrs Bown (2 Three Counties Park) and Mr and Mrs Hawkins (57 Three Counties Park) who have not agreed a pitch fee review since 1 April 2020, have paid the pitch fee for 2021. Applications have not previously been made to the Tribunal by the Applicants.

The Applicants also alluded to a letter (undated but sent in mid-April 2022) written by them to residents which, amongst other things, said:

‘If you are in genuine dispute with us over the pitch fee increase, we invite you to write to us with your reasons by the end of the month. We appreciate that the rate of inflation is high, but the agreement you have with us under the Mobile Homes Act 1983 (as amended) allows us to change the pitch fee by taking into account the rate of inflation, unless that would be unreasonable. We have all benefitted from a low rate of inflation for decades but, unfortunately, the rough has to be taken with the smooth. If you wish to discuss any aspect of this letter with us, please do not hesitate to contact us.’

(ii) Response to issues raised by the Respondents

65 The Applicants responded to issues raised by the Respondents as follows, but stated that where they have not addressed a specific point or allegation in any of the Respondents’ evidence this should not be regarded by any of the Respondents as an acceptance or admission on their part of that point or allegation.

Respondent (1) – Mr Lousada et al

Standard of maintenance and services

Site office

66 The Applicants reiterated that there has never been a park warden nor has the site office been permanently manned. It is used on an ad hoc basis, principally, by Mr Fury and Mrs Moxey. In this respect, there has been no reduction in the level of services offered to residents.

Site maintenance

- 67 The Applicants stated that maintenance carried out at Three Counties Park is not minimal. The nature and extent of the maintenance work undertaken is evident from the Witness Statement of Chris Andrews as is the frequency of his visits to the park, with his cousin, to carry out the work.

The Applicants said that they did not know when the two photographs of the gravel area near the site office (included within those photographs identified as E by Mr Lousada) were taken, but they were not indicative of how, presently, that area looks as is evident in photographs taken by Mrs Moxey on 22 July 2022 and by Ms Apps on 12 August 2022 which they presented in evidence. As to the bush shown in the third photograph within those photographs identified as E, the Applicants denied that they were responsible for its maintenance it as it is growing on a resident's pitch.

Maintenance of the sewerage system and the Klargestester

- 68 The Applicants indicated that the sewerage system is regularly maintained and serviced as evidenced by the relevant invoices presented by the companies carrying out those services and which are adduced in evidence. They stated that there is no evidence to support any contention that the level of sewage services provided to the park homes on Three Counties Park has reduced. Further, it is a minority of residents who complain about smells, and, on occasions, these come from the adjoining agricultural land rather than the Klargestester. Mr Lousada lives on the opposite side of the Park to the Klargestester.

The Applicants added that 55 Three Counties Park, to which Mr Lousada had referred, is next to the Klargestester. They accepted there would be smells from the Klargestester in that vicinity, especially when the lid is removed to allow the waste to be emptied. However, the Applicants pointed out that they did not receive a complaint about smells from Mr and Mrs Lockyear, who occupy 55 Three Counties Park, when the tank of the Klargestester was emptied on 20 July 2022 (the most immediate emptying of the tank prior to the submission of the Applicants' response).

The Applicants confirmed that they were contacted by Malvern Hills District Council in 2020 and provided the requested information about the servicing, maintenance and emptying of the Klargestester to the Council. They have heard nothing further from the Council.

Condition of site roads, parkways and driveways

- 69 The Applicants reiterated that the roads are generally in good condition and properly repaired and maintained. In this respect, they referred to the substantial work that was carried on roads on the Park in March 2022 with further work undertaken in August/September 2022.

In their opinion, the photographs designated A by Mr Lousada do not show a 'total break-up' of surfaces. The Applicants acknowledged, however, that roads on the older part of the Park have always been uneven and bumpy in places. Nevertheless, the Applicants were not aware of any incidents of tripping. They speculated that some of the Respondents would like to see resurfacing of all the roads on this older part of the Park but they estimated that this would cost around £250,000.00.

As to the condition of some parkways/driveways, the Applicants believed that Mr Lousada was referring to the condition of the parking bays of 9A and 15 Three Counties Park and, if so, they stated that the responsibility for those parkways/driveways lies with the residents of those pitches, namely Mr and Mrs Doody and Mr Lousada respectively, under the terms of their agreements. Moreover, any alleged deterioration in those

parkways/driveways is not something that is relevant to the overall condition of Three Counties Park.

The Applicants added that there is no specific evidence of the water pooling alleged by Mr Lousada to which they can respond. Further, the Applicants acknowledged that Mr and Mrs Hawkins (57 Three Counties Park), to whom Mr Lousada referred, have complained about the block paving on their driveway to Mr Fury, but, again, there is no evidence to which they can respond in relation to this matter.

The Applicants accepted that two street lights were not working in the Winter months, but not at the same time. However, when this circumstance was brought to their attention prompt action was taken. In one instance, extensive work and the assistance of an electrician was required, whilst in the other it was a matter of replacing a bulb. They did not believe that either of these lights was out of action for three weeks.

'Old' garages

- 70 The Applicants repeated that the garages were demolished in 2021 and alluded to the work carried out and action taken by them in the aftermath of their demolition, notably the resurfacing work undertaken in August/September 2022 (summarised above, paragraph 63). They also clarified that the photograph designated C by Mr Lousada is the former pit of the garages.

Egress from Three Counties Park onto A438

- 71 The Applicants repeated that the entrance to and exit from Three Counties Park has been the same for years and referred to the Google Street View images presented in evidence. In fact, the Applicants indicated that, in their opinion, 'the aspect, looking left, while driving out of the Park has been improved with the cutting down of shrubs and bushes'. They surmised that there may be some who would suggest that roses are obscuring the view of those looking right as they exit Three Counties Park, but they didn't believe this was a serious problem.

Evidence in support of proposed increase

- 72 The Applicants stated that, as far as they are aware, they are not obliged to justify an increase in the pitch fee that is line with a percentage increase in the RPI with reference to what may have been done at Three Counties Park or to any increase in their outgoings in relation to the site, although they acknowledged their responsibilities under paragraph 22(b) of the Schedule and indicated their willingness to comply with them.

They denied that Mr Lousada in his letter of 28 May 2022 had asked them to provide documentary evidence in support of the pitch fee increase and an explanation for it. In support of that denial, they adduced in evidence a copy of that letter together with their solicitor's reply to it dated 13 June 2022. They added that, if Mr Lousada had asked for such documentary evidence in his letter of 28 May 2022, their solicitor would have referred him to the ONS website.

The Applicants also refuted the claim that Mr Fury said to residents that he increased the pitch fee 'because I can'. The Applicants intimated that when Mr Fury was approached about the increase by residents he told them that the pitch fee has not been increased by more than is allowed.

The RPI and the statutory presumption

- 73 With regard to Mr Lousada's initial observation about what he perceived to be an alignment between the statutory presumption and improvements as envisaged by paragraph 18(1), the Applicants stated that they are not relying on any improvements that fall within paragraph 18(1) and they have not sought an increase in the pitch fee that would displace the statutory presumption. Further, the Applicants added that they are not obliged to carry out improvements although that is not to say that 'works have not been carried out which improve the overall condition and pleasantness of the Park'.

As to Mr Lousada's general comments about the RPI and the appropriateness of using it to determine the level of a pitch fee, the Applicants made a number of points. First, a site owner is not obliged to justify an inflationary increase in a pitch fee with reference to any expenditure or planned expenditure on the site. Secondly, it is true that, presently, the RPI is high but this is not unprecedented. Thirdly in the absence of a change in the law, the RPI remains the relevant index for site owners. Finally, the percentage change in the index is not a guideline. The statutory presumption is that the pitch fee will increase or decrease by no more than the percentage change in the RPI.

The Applicants also denied Mr Lousada's contentions that, first, the percentage change in the RPI is itself a weighty factor that may displace the statutory presumption and, secondly, any proposed increase in the pitch fee up to and including the percentage change in the RPI should be justified with reference to actual costs.

Respondent (2) – Mr and Mrs Elliott

- 74 The Applicants indicated that to the extent there was an overlap between the issues raised by Mr and Mrs Elliott with issues by Mr Lousada the points made in their response to Mr Lousada were equally pertinent to Mr and Mrs Elliott.
- 75 Thereafter, the Applicants focused on the three reasons for refusal to pay the increase in the pitch fee identified by Mr and Mrs Elliott in their evidence, but they also commented, briefly, on the suggestion that there was either a lack of communication or ineffectual communication between Mr Fury and residents.

The Klargester and the emission of odours

- 76 The Applicants stated that the evidence provided by way of response to the matters raised by Mr Lousada about the Klargester was equally applicable to the submissions of Mr and Mrs Elliott (summarised above, paragraph 68) and also referred to their evidence relating to the level of maintenance and regularity of the emptying of the tank and the supporting invoices to which they have previously alluded (summarised above, paragraph 63). In this respect, it was incorrect to suggest that the tank has only been emptied twice this year.

The Applicants added that they had not seen the diary prepared by Mr and Mrs Elliott relating to the alleged emission of smells from the Klargester prior to these proceedings and they did not understand its purpose. Further, they reiterated that they provided the information about the Klargester requested by Malvern Hills District Council in 2020 and that they have heard nothing since.

Blocking of the sewerage system – flooding and pollution

- 77 The Applicants confirmed that Mr Fury has been called out three times by Mr Elliott since September 2021 'to deal with a blockage which has backed up and has caused sewage to spill over.' They continued that on each occasion Mr Fury attended 'straight away' with his workmen to clear the blockage which was caused by a build-up of fat.

The Applicants indicated that the last incident occurred on 29 June 2022. They presented in evidence a photograph taken by Mr Fury of the fat deposits that were dug out by his workmen on that occasion and which caused the blockage. In addition, the Applicants presented in evidence a letter dated 19 September 2022 from D.C. Merrett & Company Ltd. which confirmed that it had investigated and cleared this blockage that was located just before 60 Three Counties Park and that the blockage was caused by ‘an excess of fat which had built up’.

In light of this, the Applicants opined that the blockages have been caused by residents on the older part of Three Counties Park disposing of things which they should not be disposing into the sewerage system. The Applicants pointed out that they have made residents aware of ‘Do’s and Don’ts’ to try to prevent blockages in the Klargester and at 60 Three Counties Park. They did not blame Mr and Mrs Elliott for the blockages or believe that it would be possible for them to cause them bearing in mind that the relevant manhole is on the older part of the Park and is before their home.

The Applicants expressed their sympathy for Mr and Mrs Elliott because these blockages were not pleasant for them and observed ‘[I]t is clear that the problem is the drain becoming blocked with things which should not be there. Once those things are removed, the system works as it should’. However, they also pointed out that this situation is not something that impacts on residents of Three Counties Park as a whole.

More generally, the Applicants confirmed that all homes are connected to the Klargester and, thereafter, they denied, first, that there are two separate sewerage systems in operation at Three Counties Park, and, secondly, that the newer part of the system takes primacy and this causes the old system to back up. The Applicants also refuted the claim that when each plot was laid there was a manhole and that Mr Fury had ordered them to be closed up.

The Applicants also acknowledged that Mr Fury was called by the previous owners of this park home (Mr and Mrs Alton) about problems caused by a blockage and about the manhole in the back garden.

Maintenance and condition of the site

- 78 The Applicants maintained that maintenance takes place at Three Counties Park on a regular basis and denied that the site is in poor condition. Moreover, extensive projects require planning, costing and scheduling before work is carried out, for example, the work that was carried out on the road infrastructure by professionals in March 2022.

As to the specific matters to which Mr and Mrs Elliott referred, the Applicants commented as follows. First, the site office was repainted in 2020. Secondly, the garages were taken down to satisfy some of the residents. Initially, steps were taken to keep the resultant area clear and tidy and measures were put in place to prevent anyone walking or driving over this area. The promised further work was completed in August/September 2022 (see above, paragraph 63). Finally, the Applicants denied that roads on a privately owned residential car park were subject to highway laws and stated that, prior to the observation by Mr and Mrs Elliott, no-one had complained about the condition of the speed humps.

Communication

- 79 The Applicants denied the suggestion that Mr Fury failed to communicate with Mr and Mrs Elliott and other residents, but accepted that there is always ‘room for improvement on both sides’. They pointed out that within the context of the increase in the pitch fee it

might be more apt to say that when Mr Fury has discussed the pitch fee review with some residents, who are unhappy about it, he has found that there is little understanding on the residents' part of the pitch fee review process, and, conversation, simply, provides an avenue for disagreeing with him. The Applicants added that correspondence with Mr and Mrs Elliott and conversations between Mr Fury and Mr Elliott had not furthered the resolution of matters.

Respondent (3) – Mr and Mrs Bream

- 80 The Applicants indicated that to the extent there was an overlap in the issues raised by Mr and Mrs Bream with the issues raised by Mr Lousada the points made in their response to Mr Lousada were equally pertinent to Mr and Mrs Bream as were the points they made in response to Mr and Mrs Elliott about blockages in the sewerage system. Then, they responded, specifically, to issues raised by Mr and Mrs Bream as follows.

Evidence to support the proposed increase in the pitch fee

- 81 The Applicants referred to the correspondence between Mr Bream and their solicitor, Ms Apps, comprising an e-mail from Mr Bream to Mrs Moxey dated 23 March 2022 and their solicitor's letter dated 2 June 2022 by way of response (both of which were presented in evidence). In his e-mail, Mr Bream indicated that he intended to withhold payment of the increase in the pitch fee and set out his reasons for doing so, whilst in her letter Ms Apps explained that the justification for the increase is the statutory presumption and this could be verified by way of the link provided to the ONS website. Thereafter, Ms Apps responded to and dismissed each of the reasons given by Mr Bream for non-payment of the increase.

In light of this, the Applicants opined that there was little point in pursuing further correspondence with a view to convincing Mr and Mrs Bream of their way of thinking.

Provision of essential/routine maintenance and services

- 82 The Applicants refuted the claim that the level of maintenance and services has decreased in 2022 when compared with previous years and that the site is poorly maintained. In their opinion and to the contrary, the standard of maintenance of the site and the regularity of the visits by Mr Andrews and his cousin has increased. Maintenance has also been enhanced by the voluntary work carried out by one of the residents (Brendon).

As to the user of the site office, the Applicants relied upon their evidence relating to the purpose of that office and the visits made by Mr Fury and Mrs Moxey to the Park (summarised above, paragraph 63).

Maintenance of common areas – the site of the 'old' garages

- 83 The Applicants explained that the Model Standards to which Mr and Mrs Bream referred are the standard conditions referable to residential caravan sites in England and Wales. However, those conditions do not apply automatically to residential caravan sites. They have been 'incorporated in some way'. In any event, the Applicants took the view that this area is in a 'clean and tidy condition'.

Condition of site roads and footpaths

- 84 The Applicants reiterated their statement about the maintenance of the roads on Three Counties Park (summarised above, paragraph 63) and they emphasised that resurfacing works were carried out in March 2022 and the repair work undertaken in September 2022 by professionals. They were unaware of any of that work 'failing already'.

The Applicants stated that repairs are carried out in relation to the communal footpath referred to by Mr and Mrs Bream when they are needed. This footpath has never had lighting. They informed the Tribunal that they have not received any reports of anyone tripping on this footpath and added that no-one other than Mr Bream has complained about this area.

Provision for sewage disposal and sanitation

- 85 The Applicants reiterated their response to Mr and Mrs Elliott in relation to blockages of the sewerage system (summarised above, paragraph 77) and reaffirmed that Mr Fury has been called out to deal with blockages related to Mr and Mrs Elliott's pitch on three occasions rather than on five occasions as claimed by Mr and Mrs Bream. The Applicants also repeated their acceptance of the fact that the Klargester emits smells and this is especially the case when its lid is off and the Klargester is being emptied. However, they denied any contention that there is no satisfactory provision for foul and waste water drainage at Three Counties Park.

As to the question of whether the Applicants were in breach of the site licence to the extent that it covers drainage and sanitation, the Applicants stated that any matters relating to compliance or otherwise with the site licence were the concern only of the licensing authority, Malvern Hills District Council, and the Applicants. They are not under any obligation to residents under the 1983 Act to comply with the site licence.

Further, the Applicants indicated that the cost of emptying the tank of the Klargester, which is approximately £10,400.00 per annum, is not paid for separately by the residents. The only cost that is passed onto the residents by the Applicants is £18.00 per head each year which covers the cost of the necessary Environmental permit.

(iii) The Law – propositions and submissions

- 86 The Applicants stated that the statutory presumption provides that the pitch fee shall increase or decrease by a percentage that is no more than any percentage increase or decrease in the RPI calculated in accordance with paragraph 20(A1) unless this would be unreasonable.
- 87 As to the circumstances in which the operation of the statutory presumption would be regarded as unreasonable, the Applicants referred to the Upper Tribunal decision in *Vyse* in which the Upper Tribunal observed that the statutory presumption may be displaced by other competing factors that render an increase unreasonable in relation to which particular regard must be had to the matters set out in paragraph 18(1) and, also, to any other 'weighty matters'.
- 88 The Applicants indicated that in this case the relevant sub-paragraphs of paragraph 18(1) are 18(1)(aa) and 18(1)(ab) (see above, paragraph 20).
- 89 The Applicants also referred to the absence of any guidance from the Upper Tribunal with regard to 'what constitutes a deterioration in the condition of the protected site or a decrease in amenity or a reduction in the services' for the purposes of sub-paragraphs 18(1)(aa) and 18(1)(ab) respectively and cited for the Tribunal's attention the following persuasive comments of the First-tier Tribunal in *Sines Parks Holding Ltd v Muggerridge and others CHI/43UB/PHI/2020/0046/0047/0048/0049* ('*Sines Parks*'):

"[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 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 fee to be increased on the basis of the sum requested [lower than the agreed increase in the retail prices index].”

- 90 Further, the Applicants suggested that a rationale for the operation of the statutory presumption and for the weight of the evidence required to displace it could be found in the following observation in *Sines Parks*:

“[119] As things become more expensive, RPI allows maintenance to continue. Something particularly weighty is needed to displace the presumption.

[132] The park home [estate] is not a charitable enterprise. Monies are required for its upkeep. Increases in those monies are required to meet the ravages of inflation. Those who complain about a lack of maintenance should reflect on this.”

- 91 In the context of the present case, the Applicants observed that sub-paragraphs 18(1)(aa) and 18(1)(ab) require an assessment of any change to Three Counties Park over the relevant period and where there is deterioration in the condition of the site and decrease in its amenity/reduction in services and deterioration in the quality of those services as envisaged in those sub-paragraphs they may come into play. The Applicants indicated that this is not a matter that requires any comparison with other sites.

The Applicants stated that much of the Respondents’ evidence seems to be based on matters arising since the previous pitch fee review date (some of which were relatively minor concerns where the issue appeared to be that those concerns were not attended to quickly enough and others related to perceived risks that have not materialised), and, importantly, their evidence was not based on a comparative assessment of the site over time, thereby, precluding a judgment about whether or not, in short, the site’s condition had deteriorated and/or there had been a reduction in services. For instance, there was no evidence from the Respondents to suggest that on-going issues, such as the emission of smells from the Klargester and problems caused by the blockages of the sewerage system in close proximity to Mr and Mrs Elliott’s park home have worsened over time. In the latter respect, there was, similarly, no evidence to support a view that the blockages impacted the site as a whole and it is the site as a whole that is the focus of the sub-paragraphs.

At the hearing, Mr Mullin submitted, as the Applicants maintained in their written responses to each of the Respondents, that, in fact, Three Counties Park, whilst not perfect, is an attractive site which continues to be well maintained and well run, and this is reflected, perhaps, in the fact most residents have agreed to and paid the increase in the pitch fee. He added that there have also been some improvements to the site, for example, the resurfacing of site roads in March 2022 and the demolition of the garages in the late Spring of 2021, the costs of which are not reflected in the increase in the pitch fee for 2022. Further, Mr Mullin highlighted the prospective benefits of the planned replacement of the Klargester and the projected location of its replacement on adjoining land to be acquired by the Applicants from a neighbouring landowner.

Mr Mullin also submitted that the statutory scheme governing the determination of pitch fees is clear. It is founded on the statutory presumption and this means that, in the absence of evidence to displace it, the level of a pitch fee will fluctuate with the RPI – sometimes the RPI will be high and sometimes it will be low. This is what Parliament intended. It is a practical means of allowing for maintenance and keeping a park in a ‘steady state’. He regarded, as misplaced, Mr Lousada’s view that the high level of percentage increase in the RPI in 2022 is itself a ‘weighty factor’ that justifies the displacement of the statutory presumption.

- 92 The Applicants concluded that there was insufficient evidence submitted by the Respondents to satisfy sub-paragraphs 18(1)(aa) and/or 18(1)(ab) or to constitute a weighty factor and, therefore, to warrant a finding by the Tribunal that the statutory presumption may be displaced. Accordingly, the Applicants requested that the Tribunal ‘determines that it is reasonable to change the pitch fee payable by the Respondents and to increase it by 7.8% from 1 April 2022’.

Decision

- 93 The Tribunal considered, carefully, the evidence presented by the parties together with the evidence it gleaned from its inspection of Three Counties Park. The Tribunal is grateful to the parties for the thoroughness and diligence that is evident in the preparation of their cases.
- 94 During the 12 month period applicable to this review, the RPI rose by 7.8% and this is the increase which the Applicants say should be applied to the existing pitch fee to determine the new pitch fee. It was open to the Applicants to propose a percentage increase that is less than this percentage but they chose not to do so.
- 95 In each instance, the Respondents explained, initially, to the Applicant and then to the Tribunal, their respective reasons for not paying the increase in the pitch fee sought by the Applicant and, hence, as a consequence, their continued payment, with the exception of Mr and Mrs Bown and Mr and Mrs Hawkins, of the amount of the pitch fee agreed in 2021. However, those reasons did not include a challenge to either the formalities associated with the pitch fee review or, assuming the statutory presumption applied (which was disputed by Mr Lousada) to the correctness of the percentage change in the RPI of 7.8%. Further, the Respondents did not, individually or collectively, apply to the Tribunal to dispute the proposed pitch fee increase.
- 96 At this juncture, it is instructive to reiterate that paragraph 20(A1) of the Schedule provides that there is a presumption that the pitch fee shall increase or decrease by a percentage which is no more than the change in the RPI since the last review date, unless it is unreasonable for this to be so having regard to paragraph 18(1). Consequently, where this statutory presumption applies, there is no correlation between an increase in the pitch fee and expenditure that may have been incurred by the site owner in carrying out maintenance and/or in the provision of services.

Suffice it to say, it has been established in this instance that the RPI increased by 7.8% during the twelve months pertinent to the review and the Applicant seeks to increase the pitch fee by that percentage.

In this circumstance, the question for the Tribunal is whether there is evidence that makes it unreasonable for the pitch fee to be increased in this manner and which leads, therefore, to the conclusion that the statutory presumption may be displaced. As intimated above (see, paragraph 19), the Tribunal is required by the 1983 Act in making that determination as to ‘unreasonableness’ or otherwise to have particular regard to paragraph 18(1). For present purposes as acknowledged by the Applicants, the material

sub-paragraphs are sub-paragraphs 18(1)(aa) and 18(1)(ab). The content of these sub-paragraphs is set out earlier in paragraph 15 of this Decision. In short, these sub-paragraphs require the Tribunal to consider whether the evidence shows that there has been any **deterioration** in the condition and **decrease** in the amenity of Three Counties Park (sub-paragraph 18(1)(aa)) and/or any **reduction** in the services provided by the Applicant to Three Counties Park and any **deterioration** in the quality of those services (sub-paragraph 18(1)(ab)) in the relevant period. Case law suggests that the Tribunal may also have regard to other 'weighty factors' in assessing whether the statutory presumption may be displaced on the ground of 'unreasonableness'.

- 97 In this context, 'amenity' means the quality of being agreeable or pleasant and so the Tribunal must look at any decrease in the pleasantness of Three Counties Park or of those features of Three Counties Park that are agreeable from an occupier's perspective.
- 98 Against this backdrop, the Tribunal comments on the issues raised by the Respondents and the responses of the Applicant thereto as follows.

Maintenance and services at Three Counties Park

- 99 The Respondents raised a number of issues that may be regarded as falling under the umbrella of 'maintenance and services'. The Tribunal considers each of these issues and records its findings as follows:

Site office: it is clear from the evidence that the nature and extent of the user of the site office as a means of providing access to the Applicants and/or their employees has diminished. The reasons for that change and its consequences in terms of access were explained by the Applicants. Mr Lousada argued that this change is a reduction in services provided to residents by the Applicants and a decrease in the quality of those services. In this respect, the Tribunal finds that, whilst the avenue(s) through which residents may make contact with the Applicants and/or their employees has changed, the important point is that accessibility remains. Accordingly, the Tribunal determines that the change implemented by the Applicants does not amount to a reduction in this 'service' or in its quality.

General maintenance of Three Counties Park: each of the Respondents claimed that the time spent on and the level of general maintenance carried out at Three Counties Park by Mr Andrews and his cousin has decreased (even though it is only minimal) when compared to previous years with a consequent deterioration in the condition of the site and decrease in its amenity. The Applicants denied that the general maintenance of the site is minimal and that the work carried out has decreased whilst Mr Andrews stated in his Witness Statement and confirmed at the hearing that the routine maintenance, as described in his Witness Statement and which is undertaken at Three Counties Park by himself and his cousin, has not decreased either in terms of regularity or standard as claimed by the Respondents.

In circumstances where parties adopt diametrically opposed positions, the Tribunal is reliant upon the quality of the evidence presented to it. In this instance, the Tribunal is handicapped by the absence of time sheets and schedules of work relating to the maintenance work undertaken at Three Counties Park and also by the paucity of evidence from the Respondents relating to specific instances of things not being done that were done previously or things that were done but to a lower standard than the norm. During the inspection, the Tribunal's attention was drawn to a pile of leaves that had not been cleared away, but, otherwise, formed its own opinion as to the maintenance work that had been undertaken on Three Counties Park as a whole and the standard of it. It concluded that the site was 'clean and tidy' and maintained to a reasonable standard.

Accordingly, the Tribunal finds, on the basis of the evidence available to it, that in terms of the general maintenance of the site there is no discernible deterioration in its condition or decrease in its amenity.

Roads, footpaths, driveways and parking bays: it is apparent from the evidence that it is the practice of the Applicants to undertake repairs and other major works, such as resurfacing, on the roads at Three Counties Park on a patchwork basis not least because the cost of replacing the entire road network is disproportionately high. There is no dispute that works have been carried out, although some of those works, which the Tribunal witnessed during its inspection, were carried out after the review date. The principal differences between the parties lie in the respective and contrasting views of the overall condition of the site roads and of the standard of the work undertaken on those roads. The Applicants accepted that some of the roads on the older part of the site are ‘uneven and bumpy in places’, but indicated that this has always been the case, otherwise, the site roads are in good condition and properly repaired and maintained. On the other hand, each of the Respondents expressed their concern about what they regarded as the poor condition of the site roads some of which were in need of repair whilst Mr and Mrs Elliott and Mr and Mrs Bream also questioned the quality of some of the repairs/patchwork that had been carried out in respect of which in the words of Mr and Mrs Bream there were ‘signs of some patches failing already’.

The nature of the Applicants’ approach to the maintenance and repair of the site roads means that, from time to time, there may be parts of roads that require attention. For the site to function efficiently, there is a necessity for required works to be undertaken, and, hence, it is in the interests of the Applicants to ensure that this is done in timely fashion. With regard to the quality of the work undertaken on the site roads, it is difficult, on the evidence available, to make a conclusive finding. The photographs adduced in evidence and the evidence gleaned from the Tribunal’s inspection may show breaking up of the surfacing in a few places, but there is no supporting evidence to prove that it is attributable, specifically, to the aforementioned works. In any event, case law shows that the Tribunal is concerned not with the actual condition of those roads or with whether or not they have been maintained to a standard which the Respondents might reasonably expect, but with whether, in view of their condition, there has been any *deterioration* in the condition and any *decrease* in the amenity of the site during the relevant period. Again, in view of the evidence available which pertains to their actual condition, the Tribunal is not in a position to make definitive finding on this.

As to condition of the communal footpath which was raised by Mr and Mrs Bream, the Tribunal placed particular, but not exclusive, reliance on the evidence gleaned during its inspection. In this regard, it was clear that this footpath is not in pristine condition. However, the issue is whether, in the context of the applications, there is any evidence to support a finding that there has been any deterioration in its condition for the purposes of sub-paragraph 18(1)(aa). The Tribunal has not been presented with any such evidence and, even if, such evidence was available it is questionable whether deterioration in a sole footpath translates to deterioration of the site as a whole. Further, the evidence shows that lighting has never been provided for this footpath and it follows that something that does not exist cannot deteriorate, although that is not to say that consideration might be given to the installation of lighting. The Tribunal placed no reliance on the uncorroborated statement by Mr and Mrs Bream that an individual had fallen on this footpath and suffered an injury.

Finally, the Tribunal finds that responsibility for the maintenance of driveways/parkways on pitches at Three Counties Park is the responsibility of the residents of those pitches. Claims pertaining to the structural integrity of driveways/parkways have a narrow focus that only involves the resident making such a claim and the Applicants.

'Old' garages area: the evidence shows that the topography of this area has experienced significant change encompassing the demolition of the 'old' garages (which was welcomed), the resultant hardstanding or concrete base (the 'building footprint' as characterised by Mr and Mrs Elliott) and the resurfacing of the base in September 2022. Mr and Mrs Elliott and Mr and Mrs Bream were concerned, principally, with the condition of this area following the demolition of the 'old' garages' and referred to a failure on the part of the Applicants to remove bricks and rubble and to take what they felt were essential steps to preserve health and safety and make the area safe. The Applicants stated that following the demolition most of the rubble was removed and, in their opinion, the area was made safe. It will be apparent that the Tribunal has only been witness to the condition of this area following its resurfacing in September 2022.

In the context of this case, the remit of the Tribunal is to consider whether in these circumstances there has been any deterioration in the condition and decrease in the amenity of the site within the meaning of sub-paragraph 18(1)(aa). First, it can be said that this area is physically only a small part of the site as a whole and it may be questioned, therefore, whether the changes made to it are material to the whole site. Secondly and significantly, case law suggests that 'deterioration' requires change that is long-lasting or permanent and that affects the 'fabric' of the site rather than something that is temporary in nature. In this regard, the practical reality is that the 'building footprint' and the other matters associated with it to which the preponderance of the evidence relates was never likely to be other than temporary, temporally and physically. It was simply an intermediary stage between the demolition of the garages and any subsequent steps taken to reconstitute the area, which, in the event, comprised its resurfacing by the Applicants in September 2022.

Accordingly, the Tribunal finds that there has been no deterioration in the condition and decrease in the amenity of the site within the meaning of sub-paragraph 18(1)(aa).

Maintenance of the sewerage system

100 The maintenance of the sewerage system was raised by Mr and Mrs Elliott and Mr and Mrs Bream, specifically, in relation to blockages in the system that have occurred since Mr and Mrs Elliott acquired 60 Three Counties Park in September 2021. Such blockages have resulted in discharges of raw sewage overflows into the garden and environs of 60 Three Counties Park and onto the communal walkway behind 60 and 61 Three Counties Park; discharges that were accompanied by smells variously described by them as 'permeating' and 'pungent'. According to Mr and Mrs Elliott, three blockages have occurred since September 2021, although they were aware of two further blockages that had happened during the tenure of their predecessor in title with a total of five blockages in four years. Mr and Mrs Bream referred to five instances when blockages have occurred.

It is common ground that Mr Fury responded promptly when he was informed of these blockages and arranged for either rodding or flushing of the offending sewage pipe together with related works to be carried out by professionals with a view to clearing the blockage. However, Mr and Mrs Elliott and Mr and Mrs Bream regarded these actions as insufficient to resolve a recurring problem that, in their opinion, required further preventative action on the part of the Applicants. Consideration of the nature and extent of such preventative action is predicated on what is perceived to be the cause or causes of the blockages. The evidence shows that the Applicants believe that the blockages have been caused by residents who are living in the older part of Three Counties Park misusing the sewerage system through, for example, the disposal of fat into that system as evidenced by the photographs showing blocks of fat that removed from the system by the Applicants in order to clear a blockage. For their part, Mr and Mrs Elliott take the view, which is denied by the Applicants, that the cause of the blockages is more fundamental

and that it is derived from defects in the configuration or structure of the sewerage system which cannot cope with the demands that are made upon it; a situation that is made manifest in a collapsed pipe or pipes.

In view of the readily apparent unacceptable consequences of blockages, this evident impasse is, to say the least, unfortunate. However, in this respect and in the context of the applications, the Tribunal is constrained by and has to be satisfied that the requirements of sub-paragraph 18(1)(aa) and/or, of sub-paragraph 18(1)(ab), should it be deemed applicable, are met. In relation to the former, there is no definitive evidence to suggest that the blockages and their ensuing consequences extend beyond the immediate vicinity of 60 and 61 Three Counties Park and, hence, localised when sub-paragraph 18(1)(aa) necessitates reference to ‘any deterioration in the condition, and any decrease in the amenity, *of the site*’. Further, should reliance be placed upon the existence of ‘*deterioration*’ within the meaning of this sub-paragraph or sub-paragraph 18(1)(ab) on the basis in the latter respect that there has been ‘*deterioration*’ in the quality of sewerage services provided by the Applicants the obstacle is that, whilst the evidence shows that the blockages have recurred in that there have been five blockages over a four year period, recurrence to this degree does not necessarily equate to deterioration. In short, the Tribunal finds that neither the requirements of sub-paragraph 18(1)(aa) nor sub-paragraph 18(1)(ab) have been satisfied.

This is not to underplay the adverse impact of such blockages on Mr and Mrs Elliott and Mr and Mrs Bream, but simply an application of its jurisdiction in the consideration of this matter in the context of these applications. Mr and Mrs Bream suggest that the blockages may constitute a breach of conditions relating to drainage and sanitation in the site licence. This possibility might be pursued through a different application to the Tribunal although this Tribunal cannot comment on the likely success or otherwise of such an application. Another possibility might be the engagement of a Chartered Building Surveyor/expert, who is independent of the parties, to undertake a survey of the sewerage system at Three Counties Park with a view to establishing the cause(s) of the blockages and for the parties to agree to be bound by his/her ensuing written report.

The Klargester

- 101 All the parties agreed that smells are emitted from the Klargester, although there was disagreement about whether or not this only happens when either its lid is removed or the tank is being emptied. This proposition was supported by the Applicants and contested by the Respondents with Mr Elliott’s diary indicating, on the contrary, that during the timespan of the diary, the emissions occurred regularly and regardless of the removal of the lid or the emptying of the tank. In the course of its inspection, the Tribunal was aware of smells that were coming from the Klargester.

There is conjecture by the Respondents as to the reason(s) for the emission of these smells. Thus, Mr Lousada suggested that there has been a lack of proper maintenance of the Klargester and Mr and Mrs Elliott posited that inefficiency in the working of the Klargester (leading to the emission of smells) may be attributable to its age. Whilst, each of the Respondents supported the notion that the Klargester was overloaded by and unable to cope with the increased demands that have been placed on it following the addition to the site of the ‘new’ homes by the Applicants – the inference being that the efficiency of the Klargester had worsened since that time. In any event, Mr and Mrs Elliott concluded that the Klargester is no longer working efficiently and, hence, there has been ‘*deterioration*’ in the service provided by the Applicants.

Mr Lousada is not specific about what he means by ‘proper’ maintenance, but, be that as it may, the Applicants have presented in evidence invoices which show that the Klargester has been serviced, notwithstanding the reservations expressed by Mr Bream at the

hearing, and its tank emptied although, as intimated by Mr and Mrs Elliott, perhaps, not as frequently as it might have been. Further, it may be conceivable that the emission of smells from the Klargester is attributable to its age, but there is no evidence before the Tribunal that establishes, conclusively, this is the case. As to the collective view that the addition of the 'new' homes has had an adverse impact on the working of the Klargester, there is, again, no evidence, persuasive or otherwise, that establishes such a causal link. Indeed, this argument may be countered by reference to the fact that the area upon which the 'new' homes are situate was used, previously and for some time, by touring caravans without it would appear any impairment of the workings of the Klargester.

Thus, it is not disputed by the parties that the Klargester emits smells. However, the Respondents have relied on arguments as a means of explaining such emissions that have been discounted by the Tribunal and which, in any event, were not constructed in a way that would facilitate the relative assessment that brings sub-paragraphs 18(1)(aa) and/or 18(1)(ab) into play.

In these circumstances, the prospect of the planned replacement of the Klargester by the Applicants may provide some solace for the Respondents. In the interim, however, they may feel that, as mooted by Mr and Mrs Bream, the emission of smells from the Klargester amounts to a breach of the Applicants' material obligations in the site licence. As indicated above (see, paragraph 100), any pursuit of an alleged breach of obligations in the site licence will require a different application to the Tribunal.

Provision of evidence in support of the pitch fee increase

102 The question of the provision by the Applicants of evidence in support of the pitch fee increase, which was raised by Mr Lousada and Mr and Mrs Bream, may be answered fairly succinctly in that there is an obligation on the part of a site owner under paragraph 22(b)(i) to provide, if requested by an occupier, documentary evidence in support and explanation of a new pitch fee. This does not involve a justification of an increase in the pitch fee in accordance with the RPI with reference to any increase in costs incurred by the Applicants in relation to Three Counties Park.

The Applicants submit that Mr Lousada did not make such a request although, the Tribunal takes the view that, whilst Mr Lousada's letter of 28 May 2022 may be interpreted in this way, a more amenable approach could have led to a different conclusion, whilst they indicated that they complied with the obligation in paragraph 22(b)(i) in relation to Mr and Mrs Bream through correspondence and by making available the link to the ONS website. The Tribunal finds that, on the evidence, the Applicants' position in each instance may be sustained, but this is a matter that has wider significance in that it epitomises the importance in a broader context of good and effective communication between those who are committed to and have an interest in Three Counties Park. This is something that is fundamental to the running of Three Counties Park as a business and to its enjoyment as a home to those who reside within its boundaries. Suffice it to say, there is some evidence from which it might be inferred that communication, on occasions, may not have been as fruitful as it might have been, for example, the interchanges between Mr Fury and Mr Elliott about the blockage of the sewerage system in June 2022 and the conversations about the increase in the pitch fee between Mr Fury and Mr Callaghan and Mr Fury and Mr Haines that led to the submission of Witness Statements by Mr Callaghan and Mr Haines setting out their recollections of those conversations.

The RPI and the statutory presumption

103 Mr Lousada made a number of pertinent points about the RPI and the statutory presumption. His generic submission was that the unprecedented increase in the pitch fee in line with the percentage increase in the RPI was ‘unfair, unjust and unreasonable’.

His broadest contention was that the use of increases in the RPI is inappropriate for determining the level of a pitch fee in that few of its component elements were relevant to running costs incurred by site owners. Consequently, the RPI should be regarded as a much ‘looser guide’ and should be subject to examination alongside actual costs incurred by a site owner and viewed in the context of the existing economic climate. In response and in short, the Applicants pointed out that the percentage increase or decrease in the RPI is, whatever its perceived shortcomings, the measure chosen by Parliament and this should be followed unless it would be unreasonable to do so. This is embedded in a statutory presumption the policy for which is clear. The Applicants refuted any suggestion that this presumption should be treated as a guide whose operation should be aligned with actual costs incurred by a site owner or prevailing economic circumstances within a given period. More specifically, Mr Lousada argued that the percentage increase in the pitch fee in line with the percentage increase in the RPI was ‘unfair, unjust and unreasonable’, particularly, in view of its financial impact on residents, many of whom were elderly and reliant upon income from pensions, and in the absence of sufficient evidence from the Applicants about the effect of high inflation rates on their position. Further, he submitted that such an increase in the current ‘extraordinary economic and political circumstances’ constituted a ‘weighty factor’ that made it unreasonable to place reliance upon the statutory presumption. By way of response, the Applicants indicated that the RPI was liable to change and it would, inevitably, go ‘up and down’ and impact residents accordingly. They rejected the notion that a high percentage increase for the reasons cited by Mr Lousada must be treated as a ‘weighty factor’ that justifies a displacement of the statutory presumption.

The Tribunal has some sympathy with the sentiments expressed by Mr Lousada about the RPI and it is aware of the recent misgivings of institution and bodies, such as the Office for National Statistics and the Institute for Fiscal Studies, about the RPI as a reliable measure of inflation and the relative merits of the Consumer Price Index. Nevertheless, the Tribunal must apply the law as it stands and not look to how it might otherwise be. The 1983 Act is unambiguous. The level of pitch fee must be determined by the application of the statutory presumption whereby the pitch fee shall increase or decrease by a percentage that is no more than the percentage change in the RPI since the last review date subject to the important proviso that this presumption, not guide, may be displaced if it is unreasonable to apply it. There is no correlation between a percentage increase in the RPI and the actual costs incurred in the given period by the site owners.

Similarly, the Tribunal understands the apprehension and concern that may be felt by some residents about the relative magnitude of the percentage increase in the pitch fee for 2022 that derives from the application of the statutory presumption. But, this is sanctioned by the 1983 Act unless, as indicated, its application may be regarded as unreasonable.

It is in the nature of the RPI that it fluctuates and does so from time to time. Hence, it may increase over a given period by a percentage that is unexpectedly higher than previous percentage increases or, equally, decrease by a similarly unanticipated percentage. Alternatively, it may change in a way that is predicted. It makes no difference. Such fluctuation is the ‘nature of the beast’ and simply because the percentage increase is markedly higher than percentage increases in previous years (however many that may be, see Mr Lousada’s table above at paragraph 30) does not mean that this increase is either unsustainable or constitutes a ground for arguing that such an ‘unprecedented’ increase in the prevailing economic and political circumstances is a

‘weighty factor’ that justifies the displacement of the statutory presumption. The increase is more than expected but falls within the parameters of the statutory presumption.

Accordingly, the Tribunal rejects Mr Lousada’s contentions that the RPI is an inappropriate measure for the purpose of determining the level of a pitch fee and that an ‘unprecedented’ percentage increase in the RPI in the prevailing economic and political circumstances amounts to a ‘weighty factor’ that warrants the displacement of the statutory presumption.

Egress from Three Counties Park

- 104 Mr Lousada suggested that leaving Three Counties Park by car is dangerous because visibility on the right is impaired by vegetation within the site and the railings that mark the boundary of the site.

In light of its inspection, the Tribunal acknowledges that there is clearly a need to exercise due care and attention when exiting Three Counties Park by car. However, it is not persuaded that either the rose bushes growing within the site (vegetation) or the open wooden boundary fence adjacent to those bushes that are situated on the right as an exit is contemplated significantly affect visibility. Moreover, the Tribunal accepts that the Google Street View images presented in evidence by the Applicants establish that there has been little change over the years to the entry to and the exit from Three Counties Park onto the A438. Certainly, there is no evidence to support a view that the visibility has deteriorated.

Conclusion

- 105 The Tribunal does not find that there has been any measurable deterioration in the condition and decrease in the amenity of Three Counties Park or, similarly, any measurable reduction in the services provided by the Applicant and in the quality of those services.
- 106 The Tribunal accepts the statutory presumption that the pitch fee should change by a percentage that is no more than the percentage change in the RPI during the period under review applies. The Tribunal is not persuaded that the Respondents have provided sufficient compelling and weighty evidence to rebut that presumption.
- 107 Consequently, the Tribunal determines that the pitch fee for all of the properties that are the subject of these applications, namely 1, 2, 9A, 15, 49, 51, 55, 57, 60, 61, 62, 63, 65, and 66 Three Counties Park should increase from the review date of 1 April 2022 in accordance with the Notices dated 1 March 2022 and the consequent outstanding sums should be paid to the Applicants.
- 108 The Tribunal is unclear whether the Applicant has issued letters to any of the Respondents regarding arrears of pitch fees arising from the proposed increase. The Tribunal confirms that the Respondents are not in arrears if they have continued to pay the pitch fee due before the service of the Pitch Fee Review Notices. The difference between the current pitch fee and the reviewed pitch fee becomes payable 28 days after this decision is issued (see, paragraph 17(4)(c) of the Schedule).

Costs

- 109 No party applied for costs and, consequently, the Tribunal makes no such award.

Appeal Provisions

- 110 If any party is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such appeal must be received within 28 days after these written reasons have been sent to the parties (Rule 52 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).
- 111 If the party wishing to appeal does not comply with the 28-day time limit, the party shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
- 112 The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.