



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

Case Reference : BIR/47UE/PHI/2023/0039-42, 44, 46-52, 100

Site : Oak Tree Farm, Juggins Lane, Solihull, B94 5LL

Applicant : Mr A Hartley (T/A Hartley Park Homes)

Representative : Mr J Fuller of Counsel

Respondent (1) : 7 Oak Tree Farm, Mr & Mrs Coles  
8A Oak Tree Farm, Mr Hands  
8B Oak Tree Farm, Mrs Jones and Mr Neale  
21 Oak Tree Farm, Mr Pemberton & Ms Hornby  
25 Oak Tree Farm, Reverend Andrews & Mrs Andrews  
42 Oak Tree Farm, Mr & Mrs Kite  
44 Oak Tree Farm, Mr & Mrs Crumpton  
50 Oak Tree Farm, Mr & Mrs Webb  
60 Oak Tree Farm, Mr & Mrs Cooksey

Representative (1) : Mr Crumpton and Reverend Andrews

Respondent (2) : 46 Oak Tree Farm, Mr & Mrs Grice

Respondent (3) : 47 Oak Tree Farm, Mrs Byrne

Type of Application : Pitch Fee Review (2023)

Tribunal Members : Judge David R. Salter  
Mr R P Cammidge FRICS

Date of Hearing : 18 and 19 October 2023

**Date of Decision : 19 February 2024**

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**DECISION**

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## Decision

**The Tribunal determines that the pitch fee for the Properties should increase from the review date of 1 January 2023 in accordance with the Notice dated 28 November 2022 in the amounts detailed below:**

- 7 Oak Tree Farm from £1,605.64 per year to £1,833.64 per year**
- 8A Oak Tree Farm from £1,605.64 per year to £1,833.64 per year**
- 8B Oak Tree Farm from £1,605.64 per year to £1,833.64 per year**
- 21 Oak Tree Farm from £1,605.64 per year to £1,833.64 per year**
- 25 Oak Tree Farm from £1,605.64 per year to £1,833.64 per year**
- 42 Oak Tree Farm from £2,157.80 per year to £2,464.21 per year**
- 44 Oak Tree Farm from £1,605.64 per year to £1,833.64 per year**
- 46 Oak Tree Farm from £1,605.64 per year to £1,833.64 per year**
- 47 Oak Tree Farm from £1,605.64 per year to £1,833.64 per year**
- 50 Oak Tree Farm from £1,605.64 per year to £1,833.64 per year**
- 60 Oak Tree Farm from £2,439.03 per year to £2,785.37 per year**

## Reasons for the Decision

### Introduction

- 1 The Applicant, who trades as Hartley Park Homes, is the owner of Oak Tree Farm Caravan Site, Juggins Lane, Earlswood, Solihull, B94 5LL ('Oak Tree Farm'). 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 pitches known as 7, 8A, 8B, 21, 25, 42, 44, 46, 47, 50 and 60 Oak Tree Farm respectively under the terms of agreements each of which include the written statement required by the provisions in the 1983 Act relating to pitch fee reviews. The Respondents are also subject to the Park Rules that apply to Oak Tree Farm.

- 2 In each instance, the annual review date of the pitch fee is 1 January. The pitch fee for each of the properties was last reviewed on 1 January 2022. The current pitch fees for the properties are variable and dependent upon when the aforementioned agreements with the Applicant (or his predecessors in title) were entered into.
- 3 By Pitch Fee Review Notices dated 28 November 2022 ('the Notices'), the Applicant gave notice to each of the Respondents that he proposed to review their pitch fees from the review date of 1 January 2023 and, thereby, to increase such pitch fees in accordance with the percentage increase in the Retail Prices Index ('RPI') over the twelve-month period pertinent to this review, namely 14.2%.

- 4 The Respondents did not agree to the proposed increase in the pitch fee, but they did not make consequential applications to the Tribunal by way of a challenge to that proposed increase. Consequently, the Applicant made applications to the Tribunal dated 20 March 2023 in respect of each of the properties for a determination of a new level of pitch fee for those properties. Each of the applications was accompanied by a letter from the Applicant dated 20 March 2023, a statement by the Applicant supportive of the applications, a copy of the pertinent pitch fee notice, a copy of the relevant written statement under the 1983 Act and evidence relating to the calculation of the increase in the RPI.
- 5 Initial Directions were issued by the Regional Judge on 15 May 2023 and amended, subsequently, on 18 May 2023. Principally, the Directions provided that the applications should be consolidated and heard together under Rule 6(3)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ('the Tribunal Rules'). In addition, the Directions made provision for 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 Applicant's 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 to which, in turn, the Applicant might file statements in reply. Further, the Directions encouraged the Respondents, if possible, to appoint a single representative and to submit a joint statement in response.
- 6 In the course of time and notwithstanding the behest in the Directions to contemplate the appointment of a single representative and the submission of a joint statement in response, the Respondents did not respond in this way. Some Respondents opted to submit a written statement in response to which the Applicant commented by way of reply in a detailed witness statement. The Respondents designated as Respondent (1) chose to be represented by Mr Crumpton and Reverend Andrews.

### **Inspection**

- 7 The Tribunal inspected Oak Tree Farm and woodland situate in adjoining land owned by the Applicant on 18 October 2023. The Tribunal was joined by the Applicant, Ms J Whittingham (the Applicant's assistant), Mr A Hartley Jnr and the following Respondents, Reverend Andrews, Mr Crumpton and, initially, Mrs Grice.
- 8 Oak Tree Farm is situated approximately seven miles to the southwest of Solihull town centre and occupies a semi-rural location. It is accessed from a made up but (the Tribunal is advised) unadopted road known as Juggins Lane. The Applicant confirmed to the Tribunal that this access road does not form part of Oak Tree Farm nor is it under his ownership.
- 9 Oak Tree Farm is licensed to accommodate 65 mobile homes. It is a reasonably regular rectangular shape with a corresponding shaped perimeter road. Pitches are organised around the perimeter with an additional central block of pitches. Some parking is available on certain pitches and there is a relatively large additional parking area near the entrance. The mobile homes are of a mixed age and nature and the sizes of the pitches vary. Presently, there are 58 mobile homes on the site.
- 10 The Tribunal undertook a general inspection, walking around the site road and along the paths running through the centre of the site taking note of the common areas, parking facilities, the main car park and the access to the site from Juggins Lane. In the course of its inspection, the Tribunal also, in so far as it was possible to do so, had regard to any material features that had been referred to in the parties' written submissions.

## Hearing – October 18 and 19 2023

- 11 The individuals who had attended the inspection were also present at the hearing. Mrs Byrne, Mr and Mrs Coles and Mrs Grice attended on 18 October whilst Mr and Mrs Cooksey were present on both days. Mr Fuller attended throughout in his capacity as the Applicant’s representative.

Mr Fuller presented the Applicant’s case, Reverend Andrews and Mr Crumpton spoke on behalf the Respondents for whom they had been appointed to act and Mrs Grice and Mrs Byrne set out their respective cases. There were also occasional oral contributions from Mrs Coles and Mr and Mrs Cooksey.

## Reconvene – 30 October 2023

- 12 The Tribunal reconvened on 30 October 2023 to consider its determination.

### Relevant Law

- 13 The relevant law is contained within Part I Chapter 2 of Schedule 1 to the 1983 Act (“the Schedule”) and the 2013 Regulations.

- 14 ‘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.

- 15 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’. Paragraphs 17(2A) and (6A) specify that this notice is of no effect unless it is accompanied by a document that complies with paragraph 25A.

- 16 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 calculated in accordance with paragraph 20(A1) (see below, paragraph 17), explain the effect of paragraph 17 of the Schedule, 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.

- 17 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).

- 18 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

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(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; ...

19 Sub-paragraphs 18(1)(aa) and 18(1)(ab) came into force on 26 May 2013.

20 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 for it 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.

21 However, the Upper Tribunal has not given 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 or a decrease in the amenity or a reduction in services supplied and a 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 or 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 or amenity of the site during the relevant period.

22 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)”.

23 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

- 24 The Applicant indicated that the Respondents had not agreed to the increases in the pitch fees, which reflect the increase in the RPI during the relevant period, proposed in the Notices. Consequently, he seeks a determination by the Tribunal of a level of pitch fee for each of the properties that reflects that increase in the RPI. In this respect, the Applicant relies upon the statutory presumption in paragraph 20(A1). In relation to the application, or otherwise, of that presumption he cited, without substantive comment, the following observations of Her Honour Judge Robinson in *Vyse*:

“[48] The starting point is that there is a presumption of change in line with RPI ‘unless this would be unreasonable having regard to paragraph 18(1)’, paragraph 20(A1). If, having regard to a factor to which paragraph 18(1) applies, it would be unreasonable to apply the presumption then the presumption does not arise...

[50] If there is no matter to which any of paragraph 18(1) in terms applies, then the presumption applies and it is necessary to consider whether any ‘other factor’ displaces it. By definition, this must be a factor to which considerable weight attaches. If it were a consideration of equal weight to RPI, then, applying the presumption, the scales would tip the balance in favour of RPI. Of course, it is not possible to be prescriptive as to precisely how much weight must be attached to any ‘other factor’ before it outweighs the presumption in favour of RPI. This must be a matter for the FTT in any particular case. What is required is that the decision maker recognises that the ‘other factor’ must have significant weight to outweigh the presumption in the context of the statutory scheme as a whole”.

- 25 For their part, the Respondents accepted, individually and collectively, that, in principle, the Applicant has the right to review the pitch fee annually, and they did not challenge the legitimacy of the Notices or question that the RPI increased by 14.2% during the relevant period. Nevertheless, the Respondents raised issues for the attention of the Tribunal that they regarded as pertinent to the pitch fee review for 2023 and which, in their opinion, provided reasons for refusing to pay the increase in the pitch fee proposed by the Applicant.

In this respect, the Applicant contends that, broadly, the Respondents’ ‘complaints’, as he described them, relate to the following key areas –

- a. The site has not been maintained and improvements have not been made to the site;
- b. The Applicant does not maintain vacant plots;
- c. The Applicant has breached the conditions of the site licence; and
- d. The proposed increase is unreasonable having regard to the current financial climate and other contractual issues.

The Applicant denies each of these generic ‘complaints’. Further, he states that, even if they are justified, they do not warrant, in his opinion, the displacement of the statutory presumption.

However, notwithstanding the adoption of this position, the Applicant, nonetheless, provided, as will be evident, detailed rebuttals in his witness statement of each of the specific issues raised by the Respondents within the above key areas and these rebuttals were confirmed by him at the hearing.

- 26 In the absence of a joint response from the Respondents and for ease of reference, the specific issues raised by Respondents and identified in the paragraphs that follow (28-114) are set out, sequentially, beginning with the issues raised, individually or severally, by those Respondents falling within the designation Respondent (1) and followed by the

issues raised by Mr and Mrs Grice (Respondent 2) and Mrs Byrne (Respondent 3) respectively with due note taken of the extent to which there is any overlap between the submissions. The Applicant's response to each of the issues raised follows the Respondents' submissions in relation to those issues. References are to the parties' written evidence unless otherwise stated.

- 27 References to the Tribunal's previous determination relate to the determination by the Tribunal of the pitch fee for 2022 (BIR/44UE/PHI/2022/001-003).

***Respondent (1) – Mr and Mrs Coles et al***

- 28 The characterisation Respondent (1) includes within its ambit all Respondents, other than Mr and Mrs Grice (Respondent (2)) and Mrs Byrne (Respondent (3)). More particularly, this group of individuals comprises Mr Crumpton and Reverend Andrews and those Respondents who agreed to be represented by them in matters pertaining to the proposed increase in the pitch fee and, especially, at the inspection and during the hearing. In their capacity as pitch owners, Mr Crumpton and Reverend Andrews submitted individual written statements to the Tribunal in which they articulated the issues upon which they wished to rely in challenging the proposed increase in the pitch fee. Some of the Respondents whom they were appointed to represent adopted a similar course of action. Others did not and, therefore, relied upon Mr Crumpton and Reverend Andrews to make a case on their behalf.

Excessive and/or unacceptable proposed increase in the pitch fee

- 29 In their written submissions, several Respondents stated, explicitly, that they refused to pay the proposed increase in the pitch fee because they regarded such an increase to be excessive and/or unacceptable. As the following statements show, the particular reasons for the adoption of this stance varied, but a perceived lack of maintenance of Oak Tree Farm by the Applicant is prevalent (as to which, see further below, General standard of maintenance at Oak Tree Farm, paragraphs 44-48):

Mr and Mrs Coles (7 Oak Tree Farm)

In their letter to the Tribunal, Mr and Mrs Coles wrote:

'Now we get onto the pitch fee increase. As you know the majority of us who live on these parks are of retirement age average age being 70 plus not with loads of money just a pension.

Hartley decided that the new pitch fee will be increased by 14.2% what a hike taking our monthly fee from 2022 prices £1,605.64 to a huge £1,833.64 an increase of £228 per year an extra £19 per month. This is a huge increase...

I would appreciate that he does not have to put up the pitch fee up to the maximum amount and think of the elderly people here who pay over £170 a month to live on Oak Tree Farm. Then come next year 2024 the pitch fee will rise once more so it is just one vicious circle – why can't the pitch fee be a smaller percentage so that we are all happy...'

Mr Hands (8A Oak Tree Farm)

In his letter to the Tribunal, Mr Hands wrote:

'The 14.2% increase is excessive taking into account that there has been little maintenance since 2021 and I would have expected a figure closer to 9.0% to be in line with the increase in the residents' pensions and the way the park is being operated.'

Reverend and Mrs Andrews (25 Oak Tree Farm)

In his statement to the Tribunal dated 15 June 2023, Reverend Andrews wrote:

‘We can confirm that we are withholding the 14.2% increase in the pitch fee in relation to both deterioration and deterioration by site in relation to lack of maintenance to Oak Tree Farm its adjoining land owned by Hartley Park Homes.’

Mr and Mrs Kite (42 Oak Tree Farm)

In their letter to the Tribunal dated 12 June 2023, Mr and Mrs Kite wrote:

‘...we will be withholding the rent increase which we find in the present financial climate extortionate and pure greed on the applicant’s part. There is no possible reason for him to increase the rent by 14.2% when he has not spent money on the maintenance of the deteriorating facilities of the park...To expect us as pensioners to pay a 14.2% increase when as pensioners we do not receive that in our pension increase is just plain greed on his part...[w]ith his lack of maintenance since at least 2020 then it would be more in line if he gave residents a rebate for the money, he has charged for maintenance in his pitch fee.’

Mr and Mrs Crumpton (44 Oak Tree Farm)

In his statement to the Tribunal dated 11 June 2023, Mr Crumpton wrote:

‘With his lack of maintenance since 2019, he should not increase by 14.2% but more in line with 5.00%-9.00%. In my opinion, the park is not being adequately maintained and has not been over the last few years and as a result the park is looking very unkept and tired and the services supplied by the applicant are becoming unfit for purpose...taking all things into account with us appearing before the tribunal last year and no maintenance being performed since 2019 and our standard of living on the park decreasing and the amenities deteriorating month by month, I cannot possibly see how the applicant can justify such a huge increase in the pitch fee review with the obvious deterioration of the site, the amenities, and the general visual appearance.’

Mr and Mrs Webb (50 Oak Tree Farm)

In their letter to the Tribunal, Mr and Mrs Webb wrote:

‘We have declined to pay this increase as Hartley Park Homes have not carried out maintenance since January 2022 which warrants such an increase.’

Mr and Mrs Cooksey (60 Oak Tree Farm)

In his letter to the Tribunal dated 29 May 2023, Mr Cooksey wrote:

‘The RPI of 14.2% is a guide line it doesn’t mean that’s the amount you have to increase the pitch fees by. Mr Hartley could have gone for a lower increase. As I definitely do not agree with the amount of increase Mr Hartley is proposing, I am withholding the 14.2% increase. Mr Hartley has also not taken into account any relevant deductions due to no improvements or poor maintenance which has resulted in general deterioration in the park.’

30 For the views of Mr and Mrs Grice and Mrs Byrne on this issue, see paragraphs 89 and 106 respectively.



31 At the hearing, Mr Crumpton indicated that in the context of the services provided by the Applicant, the deficiencies in the infrastructure and the loss of amenity at Oak Tree Farm the proposed increase in the pitch fee is unacceptable. He also alluded to the prospect of any increase in the pitch fee being used not for maintenance but to fund the cost of building materials associated with the development by the Applicant of 'new' homes on the site. Reverend Andrews referred to the inequity created for residents by the difference between the proposed increase in the pitch fee and the lesser increase in pensions.

32 The Applicant stated that the proposed increase in the pitch fee of 14.2% corresponded to the percentage increase in the RPI since the last review date and that the statutory presumption applied.

At the hearing, Mr Fuller said that the same process is followed each year in determining the level of pitch fee and that the RPI may change annually by a percentage increase or decrease. Mr Hartley accepted that it was open to him to seek a percentage increase in the pitch fee that was lower than the percentage increase in the RPI but he had chosen not to do this.

#### Disparity in pitch fees

33 In a written submission, Mr Cooksey (60 Oak Tree Farm) explained that on reading the decision of the Tribunal relating to the determination of the pitch fee for 2022 ('the previous determination') he became aware for the first time of the disparity between the pitch fees paid for pitches on Oak Tree Farm. He had not been informed of such disparity when he purchased his home.

Mr Cooksey highlighted 'a large substantial difference' between the pitch fees for 'older homes' and the pitch fee payable for his own 'newer' home. He cited the comparative fees for 'older homes' and those payable for 60 Oak Tree Farm for 2022 and 2023 and concluded that he paid £833.39 (£70.00 per month) more in 2022 and, prospectively, will pay £951.73 (£79.73 per month) more in 2023. Mr Cooksey added that the projected monthly increase in pitch fees for 'older' homes in 2023 is £19,00 per month whilst the projected monthly increase for 60 Oak Tree Farm is £28.86. He queried how this disparity is fair not least because the 'pitch fee gap between old and new homes is going to get wider and wider every year'. Further, Mr Cooksey intimated that he has also discovered that 'I pay the same pitch fee as the newer 46 foot long homes, my home is only 38 foot long. A larger number of the older homes are 40 foot long...' He questioned the logic of the diversity that is evident in this situation.

In these circumstances, Mr Cooksey stated:

'It would benefit me greatly if my pitch fee was reduced to the same amount as the other homes. If this is not possible then freezing my pitch fee until the others catch up would make a huge difference. So I can pay the same and be treated the same as the others making us all equal.'

Mr and Mrs Cooksey reiterated these points at the hearing.

34 At the hearing, Mr Crumpton supported the imposition of either a freeze or a cap on the pitch fee for 60 Oak Tree Farm. Reverend Andrews opined that it was difficult to fathom the disparity in pitch fees especially when other charges are uniform and when those disparities have their origin in opaque market prices.

35 The Applicant stated that the Tribunal does not have jurisdiction to determine the reasonableness, or otherwise, of a pitch fee. Moreover, there is no implied duty imposed

on a park owner to set a uniform pitch fee and the amount of the pitch fee often reflects the age of the park home.

In the context of the points raised by Mr Cooksey, the Applicant commented as follows:

‘a. In terms of a new home, the amount of the pitch fee is agreed prior to the completion of the sale and is recorded in the occupier’s agreement, called a Written Statement of Terms. The amount of the pitch fee is an express term and not an implied term so is separately negotiated and taken to have been agreed between the parties. It is not open to the occupier to re-visit the amount they previously agreed to pay.  
b. In the case of Mr Cooksey, I can confirm that he agreed the amount recorded in his agreement.’

At the hearing, Mr Fuller emphasised that the amount of pitch fee was agreed between the parties as a matter of contract, and stated that, in view of the absence of any provision for the payment of a uniform pitch fee, it was inevitable that the terms agreed between parties as to the amount of a pitch fee will be reflective of different times and different circumstances.

### Trees on Oak Tree Farm and on adjoining land owned by the Applicant

#### *Responsibility for trees on Oak Tree Farm*

36 Reverend Andrews stated that the Applicant is responsible for the maintenance of those trees growing on Oak Tree Farm that are not the responsibility of occupiers. In this respect, Reverend Andrews observed that the Applicant denies responsibility for those trees planted on pitches by occupiers. However, Reverend Andrews said that there was no clarity as to which trees were growing on Oak Tree Farm when the Applicant inherited Oak Tree Farm from his father and for which, therefore, he must be responsible regardless of whether they are situated, presently, within the boundaries of a pitch or on common parts of the site. Equally, the Applicant had failed to provide a plan or photographs showing the distribution of trees on the site at the time of its acquisition. In his opinion, such information would provide some evidence of the likely longevity of trees on the site and allow an attribution of responsibility for their maintenance/management.

Further, Reverend Andrews observed that in circumstances where an occupier accepts responsibility for the maintenance/management of a tree located on his/her pitch there is commonly a lack of understanding on his/her part of the parameters of Rule 4 of the Park Rules to the extent that it applies to such maintenance/management and little appreciation of its purpose. Consequently, Reverend Andrews sought guidance from the Applicant on the meaning of the operative words in Rule 4 that invoked its operation, other than in cases of emergency, namely ‘planting, felling, lopping and topping of any trees’ and, hence, an indication of what occupiers ‘can do and what they cannot do’ in relation to the management of their trees. In this respect, Reverend Andrews queried the requirement in Rule 4 for occupiers in any of those specified circumstances, to seek the advice of a qualified tree surgeon or horticulturalist and, thereafter, to have any works carried by such an individual following receipt of written approval from the site owner (the Applicant). Reverend Andrews wondered to what extent, if at all, the Applicant, in view of his workers’ actions in felling, lopping and topping trees growing on Oak Tree Farm, especially in relation to the installation of ‘new homes’, feels obliged to follow Rule 4 and does so.

At the hearing, Mr Crumpton said that there was no conclusive proof relating to either the distribution of trees on Oak Tree Farm at the time of its acquisition or pertaining to how that distribution was affected by the development of the site. Further, it could not be established with any certainty who, over the years, planted the trees growing, presently,

on Oak Tree Farm. Nevertheless, he opined that the critical concern is that the trees growing on Oak Tree Farm are properly managed and maintained. In his view, there is an overriding obligation on the site owner (the Applicant) to ensure that this happens, especially in circumstances where occupiers are unable to afford the costs associated with managing trees on their pitches in accordance with Rule 4. Mr Crumpton indicated that, over the years, there has been no maintenance undertaken by the Applicant of the trees growing on his pitch. He also stressed the importance of the site owner (the Applicant) liaising with occupiers on matters germane to the maintenance/management of trees on Oak Tree Farm. In this regard, Mr Crumpton referred to the pollarding by the Applicant of the trees on his pitch and he adduced in evidence an undated photograph (4H) showing the consequent condition of the trees. He informed the Tribunal that he was not consulted by the Applicant before this pollarding was undertaken.

- 37 The Applicant stated that this matter was raised in the previous determination and was considered by the Tribunal in paragraph 72 of that determination which he quoted.

The Applicant informed the Tribunal that Oak Tree Farm was developed around 1960/1970 and most of the trees on the site at that time were removed to accommodate pitches and roads. The odd native tree was left on pitches, and the Applicant accepted that he was responsible for the maintenance of those trees. The Applicant also accepted responsibility for all trees on Oak Tree Farm that are not located on an individual pitch whilst he indicated that the responsibility for trees that grow on individual pitches, which are often non-native trees and conifers, lies with occupiers. The Applicant indicated that the Park Rules, notably Rule 4, govern the maintenance of trees growing on pitches and those rules are intended to ensure that safety standards are met, and the visual amenity of Oak Tree Farm is preserved.

The Applicant added that he instructs Rob Keyzor, a qualified tree surgeon and arboriculture consultant, to inspect and report on trees on the common areas of the site. The Applicant said that he follows the advice that he is given by Mr Keyzor whatever its nature. Thus, if maintenance is recommended, the necessary works are included in the maintenance programme for Oak Tree Farm. He added that all works to trees carried out by his own team are undertaken in accordance with the advice of a tree surgeon.

He also informed the Tribunal that the latest report from Rob Keyzor is dated January 2023 (*Keyzor Report*). This includes two recommended works, namely the removal of a dead stem in woodland next to the site and behind 58 Oak Tree Farm and the removal of a dead tree located on the park boundary between 6 and 7 Oak Tree Farm (see further below, paragraph 39). In addition, the Applicant told the Tribunal that he followed Mr Keyzor's further advice to pollard trees on the road edge between 35 and 45 Oak Tree Farm. He adduced in evidence the *Keyzor report* together with ten photographs dated May 2023 that show the pollarded trees.

At the hearing, the Applicant returned to the theme that Rule 4 is intended to safeguard the safety of Oak Tree Farm and added in response to the queries raised by the Respondents that where it applies its wording is prescriptive. Further, the Applicant stated that works covered by Rule 4, such as lopping, must be carried out safely and, in this respect, professional input is essential whether the required work relates to trees growing on common parts of the site or on individual pitches. The Applicant accepted that 'minor' management of trees such as trimming, strimming and clipping did not fall within Rule 4.

Mr Fuller reiterated the respective responsibilities of the Applicant and occupiers for trees growing on Oak Tree Farm as posited by the Applicant and observed that under the implied terms imposed by the 1983 Act occupiers are obliged to maintain the mobile home and pitch in a clean and tidy condition and that this obligation must apply to any

garden area within the pitch and trees growing in that area. However, where significant management of trees, such as lopping or felling is required, occupiers must act in accordance with Rule 4. In terms of the Applicant's fulfillment of his obligations in respect of the maintenance/management of trees, Mr Fuller also drew the Tribunal's attention to the Applicant's compliance with the recommendations for work to be undertaken in the *Keyzor Report*.

Further, there was some discussion about the reasons for Rule 4 and the meaning of the operative words in that Rule.

#### *Trees in the vicinity of 7 Oak Tree Farm*

- 38 In their written statement, Mr and Mrs Coles (7 Oak Tree Farm), alluded, initially and briefly, to the Tribunal's previous determination to the extent that it concerned a conifer tree growing in the nearby 8 Oak Tree Farm. This tree had been lopped by Mr Coles last year because it interfered with their television reception and their internet connection. They reported that the tree continues to cause pixelation on their television and, in their view, should be cut down, but this is something they cannot afford to do. Mr and Mrs Coles added that the Applicant has shown no interest in the tree since the previous determination. Accordingly, there is a stalemate, and nothing further has been done. Mr and Mrs Coles presented in evidence an undated photograph of that tree which they intimated is indicative of its condition in the period that post-dates the Tribunal's previous determination.

Thereafter, Mr and Mrs Coles referred to another tree located in the garden of 6 Oak Tree Farm and in respect of which they said, 'the tree branches have died and [it] is leaning over our shed and part of our home.' They indicated that the Applicant had agreed in May 2023 to cut it down, but he then discovered that it is subject to a tree preservation order and that permission is required before it can be cut down.

In light of the above, Mr and Mrs Coles observed that there is one tree that makes their television pixelated, as has been the case for at least 3 years, and another that is hanging dangerously close to their home.

Reverend Andrews expressed the view that action is needed to reduce the size of the large conifer trees between 7 and 8 Oak Tree Farm and that the large leaning tree on the edge of the boundary of 6 Oak Tree Farm should be removed as it is dangerous. Mr Crumpton said that the trees behind 6 Oak Tree Farm are in danger of falling onto homes.

- 39 The Applicant stated that the position regarding the conifer tree on 8 Oak Tree Farm was raised by Mr and Mrs Coles in the previous determination proceedings and that this matter was resolved by the Tribunal on the grounds set out in paragraph 71 of that determination which he quoted. He added that since that determination Mr and Mrs Coles have taken no steps to arrange for works to be carried out to this tree which is their responsibility. Moreover, the Applicant opined that the condition of this conifer tree, which is an eyesore, is an example of a failure by occupiers to comply with the Park Rules relating to the maintenance of trees on pitches.

The Applicant explained the position relating to the tree behind 6 Oak Tree Farm as follows:

'The work to the tree behind pitch 6...was scheduled to be carried out by our tree surgeon at the beginning of May 2023, however, during the pre-works visit, I was advised that the works to the tree may require permission from the local authority due to their [*sic*] proximity to the boundary of Oak Tree Farm and the adjacent woodland which contains trees subject to a number of Tree Preservation Orders.'

The Applicant informed the Tribunal that the necessary work relating to this tree was duly completed on 30 June 2023, and he adduced in evidence a photograph dated 3 July 2023 showing that the tree has been removed.

*Responsibility for maintenance of trees on adjoining land*

- 40 Reverend Andrews stated that the Applicant is responsible for the maintenance/management of trees growing on the adjoining land which he owns and for the access ways on that land. Reverend Andrews submitted that the Applicant had failed to meet his obligations in these respects. He presented in evidence four undated photographs (A, B, C, and F) which he contended were illustrative of ‘the non-maintenance for many years to all these boundary trees’ together with two undated photographs (D and E) which provided evidence of detritus on access ways in the wooded areas of the adjoining land owned by the Applicant. Reverend Andrews opined that the non-maintenance to these areas has created a light pollution issue brought about by the height and size of the trees together with health and safety issues for occupiers who live along the boundaries between Oak Tree Farm and the Applicant’s adjoining land.

Mr Crumpton informed the Tribunal that the Applicant will not maintain the trees on the adjoining land which he owns and that trees behind 6 Oak Tree Farm are ‘in danger of falling onto homes.’ He added that the woodland behind 58 Oak Tree Farm and stretching down to 8A Oak Tree Farm is overgrown, strewn with rubbish and the public path running through this woodland is impassable because of fallen trees and rubbish.

At the hearing, Reverend Andrews re-emphasised the deleterious effect which the lack of light caused by the trees (light pollution) has on occupiers’ enjoyment of their pitches and the safety concerns caused by branches from the trees falling into gardens. In his opinion, there should be a legal limit on the height to which trees may grow. Reverend Andrews added that the situation was not helped by the slowness of the Applicant’s response to obvious concerns, such as the large leaning tree behind 6 Oak Tree Farm (see above, paragraphs 38 and 39).

- 41 The Applicant accepted that he is responsible for the maintenance/management of the trees growing on the land adjoining Oak Tree Farm which he owns. He indicated that he follows the advice given by a qualified tree surgeon in meeting this responsibility and that he had carried out the works recommended in the *Keyzor Report* (see above, paragraph 37), including the removal of a dead stem in the woodland adjacent to Oak Tree Farm and located behind 58 Oak Tree Farm. The Applicant added that some of the trees in the woodland area are subject to tree preservation orders and, therefore, permission may have to be sought before works can be undertaken.

At the hearing, Mr Fuller said that the works carried out by the Applicant in compliance with the recommendations in the *Keyzor Report* were evidence of maintenance by the Applicant. Therefore, he refuted the submissions by Reverend Andrews and Mr Crumpton about the lack of maintenance of the trees on the adjoining land. He added that no expert evidence had been introduced to support either of these submissions or the statement that the height and size of the trees gave rise to light pollution and/or health and safety concerns for those occupiers whose pitches are proximate to the trees.

Building works associated with ‘new’ homes

- 42 Reverend Andrews informed the Tribunal that the Applicant has been engaged in a building programme at Oak Tree Farm for the last 2.5 years that has involved the removal and installation of several new park homes. Reverend Andrews contended that work has

not been completed on any of these new homes and he adduced in evidence several undated photographs depicting deposits of building materials such as gravel, sand and bricks, protective guard rails and a portable toilet on various pitches falling within the building programme all of which he regarded as indicative of incomplete works. In relation to these works, Reverend Andrews observed that '[the] residents have put up with quite enough with these building contracts with the blocking of roads, mess to the roads, dust, noise, and dust pollution' and with workmen working at weekends. Reverend Andrews added that the Applicant was planning to start another project of works in June 2023.

Mr Crumpton concluded the substantive comments in his written statement with the following observation:

'The only actions that the residents would like is that the applicant adheres to his obligations to allow the residents to live a quiet and peaceful existence which I believe they have earned and deserve at their time of life,

This is all the residents want instead of the continual NOISE from living on a building site. Residents are regularly awoken between 7 am – 8 am Sun-Mon with heavy goods vehicles delivering materials and his contractors not abiding by Stratford council's rules for start and finish times for contractors. Complaints have been made to Stratford council with Kirstie Flynn from environmental health having to explain the rules. But after being contacted by Kirstie he has still ignored the council's rules and continued to send contractors on site breaking the rules and disturbing the tranquility of Oak Tree Farm.'

Mr Crumpton presented in evidence several undated photographs (5A-5G) of 43 Oak Tree Farm (the location of one of the new homes belonging to the Applicant and adjacent to his pitch). He submitted that these photographs were indicative of the condition of that pitch over a 3-year period during which it was a 'dumping ground and building site' and show clear evidence of 'visual depreciation'.

- 43 The Applicant stated that he did not undertake work before 8.00 am or at weekends if it can be avoided, although, on occasions, urgency of works may dictate otherwise. At the hearing, he pointed out that he instructs contractors not to begin work early and that he monitors the observance, or otherwise, of this instruction, but he conceded that there was no contractual commitment on the part of contractors not to start work before 8.00 am. Mr Fuller added that the Respondents had not provided any specific instances of the commencement of works before 8.00 am and opined that work associated with the development and improvement of Oak Tree Farm through, for example, the removal of 'old' homes and the installation of 'new' homes, inevitably involved some disruption and inconvenience but this was temporary, and the installation of 'new' homes, undoubtedly, constituted a general improvement, rather than a deterioration, in the site.

In his written statement, the Applicant stated that following the Tribunal's previous determination he had improved the condition of 38 and 43 Oak Tree Farm, and in respect of the latter recorded, without comment, the Tribunal's observations about that pitch in paragraph 74 of that decision. He described the respective improvements as follows:

**'Pitch 38**

[57] The old mobile home situated on pitch 38 has been removed and demolished. In preparation for the delivery and siting of a new home, works have been undertaken to the pitch including a new water pipe, foul drain connection, storm water and pitch drainage and a concrete base. Upon delivery and siting of the new mobile home, brick skirting and

steps were installed along with hard and soft landscaping which included a new perimeter slabbed footpath and patio area and block paved spaces for 2 cars...

### **Pitch 43**

[59] As part of the re-development works undertaken at pitch 43 Oak Tree Farm, a new water pipe, foul drain connection, storm water and pitch drainage and a concrete base have been installed. Upon delivery and siting of the new mobile home, brick skirting and steps were installed along with hard and soft landscaping which included new perimeter slabbed footpath and patio area, block paved car parking space for 2 cars, and fencing. In addition, I decided whilst I was re-developing this pitch that I would replace a significant length (approximately 30 meters) of new sewage pipe, which runs underneath pitch 43.'

At the hearing, the Applicant informed the Tribunal that work on 38 and 43 Oak Tree Farm has been completed and that the homes are ready.

#### General standard of maintenance at Oak Tree Farm

- 44 As seen above in paragraph 29, several Respondents referred, expressly, and in the context of their refusal to pay the proposed increase in the pitch fee to what they regarded as the lack of maintenance or poor standard of maintenance carried out by the Applicant at Oak Tree Farm that has led to a consequent deterioration in its condition. In this respect, see the statements of Mr Hands (8A Oak Tree Farm), Reverend Andrews (25 Oak Tree Farm), Mr and Mrs Kite (42 Oak Tree Farm), Mr Crumpton (44 Oak Tree Farm), Mr and Mrs Webb (50 Oak Tree Farm) and Mr Cooksey (60 Oak Tree Farm).
- 45 Mr and Mrs Grice (46 Oak Tree Farm) and Mrs Byrne (47 Oak Tree Farm) expressed similar sentiments about the deterioration of Oak Tree Farm due to the lack of maintenance or the poor quality of any maintenance undertaken by the Applicant (see below, paragraphs 89 and 106 respectively).
- 46 Reverend Andrews also drew the Tribunal's attention to the Applicant's projected three stage maintenance programme/schedule for 2023 which was relayed to him and his wife by the Applicant in a letter dated 17 April 2023. Reverend Andrews adduced this letter in evidence. He opined that, in view of the time taken by the Applicant, previously, to complete maintenance works, for example road maintenance, he doubted that the planned works would be completed by the scheduled deadlines and believed that they will lead, in view of the nature of the planned works, to a recurrence of the 'evil' experienced by occupiers during the Applicant's earlier drawn out projects, namely 'blocking of roads, mess to the roads, dust, noise and noise pollution'.
- 47 The Applicant said that there is 'overwhelming physical evidence' to rebut any assumption that no money has been spent on maintenance at Oak Tree Farm as is clear from the evidence he has submitted in this case. Be that as it may, the Applicant averred that the amount expended on maintaining Oak Tree Farm is irrelevant both as a measure of how well he fulfils his implied obligations and in relation to the determination that is sought, presently, from the Tribunal. The Applicant continued as follows:

'The pitch fee is payable in part for the cost of maintaining the park, but a proportion is a charge for the benefit of siting the home on the pitch. The increase in the pitch fee is to take account of the rising costs of maintaining the park, which is reflected in the Retail Price Index. The question therefore is whether there is evidence pointing to any measurable deterioration in the condition or decrease in amenity of Oak Tree Farm.'

In this context, the Applicant observed that whatever the aspirations of the Respondents it is not reasonable to expect that Oak Tree Farm is maintained in a 'constant state of perfection'.

- 48 The Applicant stated that he strives for high standards of maintenance at Oak Tree Farm. He employs three permanent members of staff and instructs specialist contractors to carry out maintenance which includes 'the maintenance of the trees, grass cutting, drainage maintenance, pump station maintenance, grounds works, building repairs, road maintenance, streetlighting and electrical and plumbing repairs'. The Applicant added that the use of these contractors on a regular basis means that they are familiar with the infrastructure of the site.

The Applicant also informed the Tribunal that he undertakes regular inspections of Oak Tree Farm. Any additional works discovered during those inspections are either integrated into his routine maintenance programme or dealt with 'there and then'.

In addition, the Applicant alluded to several specific instances relating to maintenance at Oak Tree Farm, namely resurfacing of a significant portion of the roadways in previous years coupled with the monitoring of the roads on an on-going basis (especially, in October and March), the identification of areas of the car park requiring maintenance and the completion of the necessary works on 1 June 2023, and the regularity of grass cutting on the site (particularly during the Spring and Summer) undertaken by a sub-contractor or an employee. The Applicant indicated that the resurfacing in the areas where it has been undertaken has improved the road surface and, that, generally, the roads are in good condition throughout. He also expressed the view that the car park is in good condition and does not pose a risk to individuals walking around Oak Tree Farm.

More generally, the Applicant stated that, on occasions, it is necessary to give priority to the most pressing issues that affect the use and enjoyment of Oak Tree Farm by the community of occupiers, such as road maintenance. This does not mean that other matters raised by occupiers are not addressed simply that they are attended to once the pressing issues have been resolved. The Applicant intimated that, in his opinion, this is the 'most sensible approach to maintenance'.

At the hearing, Mr Fuller said that there was no evidence to support the contention that maintenance has not been carried out by the Applicant at Oak Tree Farm. In fact, the Applicant has provided ample evidence to the Tribunal of maintenance that has been undertaken, often with the aid of external professionals. Mr Fuller also stated that such maintenance should not be viewed as minimal and temporary. The Applicant approaches maintenance at Oak Tree Farm diligently and responsibly and addresses maintenance issues in an organised way, principally, through his maintenance programme.

#### Electricity meter housing (green boxes)

- 49 Reverend Andrews stated that the Tribunal is aware of the condition of the green electricity housing on the site in view of its inspections of Oak Tree Farm in 2022 and this year. In his opinion, this housing comprising several green boxes has deteriorated further through the absence of any maintenance and, consequently, these boxes are visibly in a worse condition than they were at the time of last year's inspection by the Tribunal. Residents have resorted on a regular basis to taping the various green boxes together. Reverend Andrews presented in evidence an undated photograph (AB) showing the pertinent green boxes and an indication of the taping.

Reverend Andrews said that he understood these boxes are owned by Western Power and that whilst it is unwilling to replace them it is willing to contribute towards the cost of



replacing them. Reverend Andrews suggested that the Applicant might improve the amenity of Oak Tree Farm by assuming responsibility for replacing these boxes.

- 50 The Applicant submitted that the question of the responsibility for the maintenance and/or replacement of this electricity housing, which is situate close to 51 Oak Tree Farm, was resolved in the Tribunal's previous determination in that such responsibility does not lie with him. He quoted paragraph 76 of that determination in support of his submission.

#### Sewerage system and wastewater disposal

- 51 Mr Crumpton stated that the water, sewerage and drainage systems at Oak Tree Farm are 'outdated' and 'continually failing' whilst the Applicant persists in putting new homes on the site.

At the hearing, Mr Crumpton submitted that the inadequacies of the sewerage system were exhibited by the evidence of Mr and Mrs Grice (46 Oak Tree Farm), who had experienced a blockage to the pipework serving their pitch and needed to engage the professional services of *DrainDoctor* to clear it (see further below, paragraph 94) and the comments of Mr Hands (8A Oak Tree Farm), who complained in his written statement to the Tribunal about, amongst other things, a foul smell caused by overflows and discharges of contaminated water into a ditch behind 8 Oak Tree Farm.

In his statement, Mr Hands said that contaminated water should not be discharged into ditch and, thereafter, into a stream and pond behind Oak Tree Farm. There are many overflows. In his opinion, the sewerage system is not able to cope with the number of new homes being built on Oak Tree Farm. The foul smell emanating from the contaminated water led to residents in the vicinity staying in their homes and not sitting in their gardens until it dispersed. In this respect, Mr Crumpton added that a warning light on a nearby sewage tank should alert residents to an impending overflow, but that the light on this sewage tank has not worked for several years. As far as he was aware, no maintenance has been undertaken by the Applicant other than the replacement of a pump which had failed.

Reverend Andrews pointed out that under Rule 17 of the Site Licence the Applicant was obliged to provide an 'adequate system of drains for foul water drainage' approved in writing by Stratford-upon-Avon District Council ('the District Council'). In this respect, Reverend Andrews called on the Applicant to provide plans of all wastewater drainage pipes on Oak Tree Farm to enable the source of the foul smells to be traced; a source that appeared to be in the vicinity of the pumping station near to Mr Hands' pitch and those of his neighbours.

- 52 During the inspection, Mr Crumpton raised the manhole cover on 52 Oak Tree Farm to reveal pebbles and gravel in the bottom of the pipe below which he suggested would impede the flow in this foul drain.

- 53 The Applicant stated that the underground sewerage pipes are maintained as part of the routine maintenance programme. When blockages occur a maintenance employee is instructed to attend and resolve the issue. However, if this is not possible, a specialist contractor is engaged to attend the site and to clear blockages using specialist equipment. The Applicant told the Tribunal that he received notice of only one issue relating to the sewerage system in the last two years which was found to be caused by a build-up of domestic materials, such as wet wipes, which should not be put into the foul water system.

The Applicant also informed the Tribunal that he received e-mails in February and March 2023 from the occupier of 4 Oak Tree Farm (Mr Tevlin) in which it was suggested by Mr

Tevlin that a pungent smell was coming from the pumping station. Following a period of monitoring and investigation, the Applicant indicated in an e-mail on 23 May 2023 to the occupier that he had not experienced a strong or pungent smell in the environs of 4 Oak Tree Farm or anywhere else on the site. The Applicant adduced these e-mails in evidence.

The Applicant added that during his investigations he had consulted his specialist contractor, *Pump & Plant Services Ltd* (*'Pump & Plant'*) about the possibility of discharges of foul water from the pumping station located near 8A Oak Tree Farm. He presented in evidence a letter to him written by the Managing Director of *Pump & Plant* dated 9 May 2023 in which it was stated:

'You asked me if it is possible that any foul waste is escaping from the pumping station. I can confirm that none of the foul waste is escaping into the water course behind the pumping station. The waste is pumped through the non-return valve into the rising main which is connected to the Severn Trent mains system.

You have advised that some residents at Oak Tree Farm have reported unpleasant smells. Whilst my engineers were on site, they did not notice any unusually strong smells, by their very nature pump stations can emit unpleasant smells. This is not unusual and is to be expected. The smell will not be overpowering nor will it be constant'.

More generally, the Applicant explained that there are two pumping stations on Oak Tree Farm one of which (a sub-station) is located behind 1 Oak Tree Farm and the other (the main pumping station) is adjacent to 9 Oak Tree Farm. He informed the Tribunal that both are routinely serviced by specialist contractors and inspected regularly. The most recent service of the pumping stations was undertaken by *Pump & Plant* on 19 January 2023 which gave rise to a recommendation that one of the pumps should be replaced. This was done on 9 May 2023. The Applicant adduced in evidence the work schedules and invoice relating to the services and an invoice for the work involved in replacing the pump.

Finally, the Applicant indicated that he would continue to monitor the pumps on the site and be guided by his contractor. However, he observed that an occasional smell is natural and is not an indication, in his opinion, of any deterioration in the condition or reduction in amenity of the site.

The Applicant concluded that the pumping stations are well maintained.

At the hearing, Mr Fuller reiterated that the pumping stations are serviced regularly. He added that the pumping station near to 8A Oak Tree Farm has been improved because of the replacement of the pump in May 2023 by the Applicant in furtherance of expert advice. Moreover, any smells emanating from this pumping station are consistent with what might be reasonably expected.

- 54 The Applicant informed the Tribunal on the second day of the hearing that the pebbles and gravel had been cleared from the foul drain. This was not challenged.

#### Surface water drainage

- 55 Mr Crumpton stated that since he and his wife moved onto Oak Tree Farm in 2006 they have endured, like many other residents, the continual flooding of driveways and pathways and the 'nightmare' of trying to leave pitches whilst paths are under water. In support of this statement, Mr Crumpton presented in evidence a series of undated photographs (2A – 2L) which he described as 'photos of flooding' on Oak Tree Farm.

Mr Crumpton informed the Tribunal that the ‘offer on the table’ by the Applicant to install a French drain on 44 Oak Tree Farm and to which reference is made in the previous determination has not, subsequent to that determination, been converted into an agreement. Mr Crumpton explained that he did not accept the offer because, first, the Applicant made it clear that he did not believe that the installation of the French drain, which he proposed, would address the issue of surface water drainage at 44 Oak Tree Farm and, secondly, because the Applicant expected, if the offer was accepted, that the matter would not be raised again as a maintenance issue by himself or his wife. In these respects, Mr Crumpton said that he could not be expected to endorse a drainage system that would not work and one that clearly fell short of his reasonable expectations and that he could not agree to what he perceived to be an unwarranted restriction that would prevent him from complaining again about drainage issues and coming to the Tribunal. Mr Crumpton said that, in the event, the Applicant has not, as yet, installed a French drain on 44 Oak Tree Farm, which he believes is in disregard of the Tribunal’s previous determination.

56 Mr Crumpton also highlighted what he regarded as inconsistencies in the Applicant’s position regarding the existence or otherwise of a French drain at 44 Oak Tree Farm. Mr Crumpton pointed out that the Applicant wrote a letter to him on 9 March 2022 in which the Applicant ‘categorically states that he installed a French drain system adjacent to pitch 44 to deal with the surface water from the road’. Mr Crumpton adduced an extract from that letter in evidence. Mr Crumpton said that this conflicts with the finding by the Tribunal in the previous determination (paragraph 84) that on the totality of the evidence there is no drainage system in place to serve 44 Oak Tree Farm.

Further, Mr Crumpton asked ‘if the French drain is already in situ, why did he offer to install another French drain at No 44 when he put on paper that a drain was already in place’. Mr Crumpton referred to the following occasions when the Applicant offered to install a French drain at 44 Oak Tree Farm, namely in advance of works relating to the perimeter road in 2019, in an email to Mr Reid of the District Council dated 8 October 2021, which he adduced in evidence, and prior to the proceedings relating to the previous determination. Mr Crumpton observed ‘so far 3 French drains have been installed or promised when I would be happy with one that was installed properly’. He also suggested that these inconsistencies raised questions about the veracity of the Applicant’s statements.

In addition, Mr Crumpton questioned the efficacy of the French drain that the Applicant installed for 26-30 Oak Tree Farm which he believed to be ‘ineffectual as the drainage he [*the Applicant*] states is installed does not drain anywhere and ends where the pipe stops at the end of the run, with no sump to collect the water or connection into the water system’. In this context, Mr Crumpton sought disclosure of the topographical survey referred to by the Applicant in a letter dated 14 June 2019 addressed to himself and Mr Spiegel together with Building Control signoffs for any groundworks undertaken.

57 Several other Respondents, who were represented by Mr Crumpton and Reverend Andrews, expressed their particular concerns about surface water drainage at Oak Tree Farm in their letters to the Tribunal. Mr and Mrs Kite stated, simply, that the road drainage is causing all residents to live in misery during prolonged rainfall whilst Mr Hands and Mr and Mrs Webb were more explicit in identifying what they perceived to be inadequacies in the surface water system and their consequences.

Hence, Mr Hands wrote:

‘The surface water drainage system is non-existent or installed incorrectly in certain parts of the park leading to the flooding of pathways and residents’ driveways during heavy rainfall.’

Mr and Mrs Webb observed in similar vein:

‘There remain issues with a significantly pot holed car park and poor drainage. The car park is a safety hazard for those walking to and from this area. The added deterioration to cars because of the potholes remains an issue.

The paths to and from our home, which is in the centre of the site, floods during periods of rain. Ours and neighbouring gardens flood and remain sodden for weeks during Winter and Spring rains.

The promised addition of drains across the centre pitches did not materialise when drainage was laid around the perimeter road’.

- 58 At the hearing, Mr Crumpton said that, in his opinion, the conditions attached to the ‘offer on the table’ meant that it was an empty offer. He added that there had been no further dialogue between himself and the Applicant about the installation of a French drain at 44 Oak Tree Farm. Mr Crumpton informed the Tribunal that he felt that the problems with surface water have increased since the creation of the ‘new’ pitch on 43 Oak Tree Farm with water running from that pitch down to the car park.

Reverend Andrews stated that the present provision for the drainage of surface water at Oak Tree Farm is inadequate with water running down to the car park and giving rise to health and safety issues such as the slippery deposits of mud that remain after the water has drained away.

- 59 Initially, the Applicant considered the complaint made by Mr Crumpton in his written statement about what he regarded as the lack of surface water drainage on or around his pitch, 44 Oak Tree Farm. The Applicant said that a similar complaint had been present in the evidence submitted by Mr Crumpton to the Tribunal in 2022 and that the previous determination (paragraphs 51-58) shows that this complaint focused on the collection of surface water on 44 Oak Tree Farm following heavy sustained rainfall, surface water on the pitch causing paving slabs to become uneven and unstable, his (the Applicant’s) alleged offer to install a French drain outside 44 Oak Tree Farm, and the denial by Mr Crumpton of an existing French drainage system adjacent to 44 Oak Tree Farm.

By way of response, the Applicant directed the Tribunal to paragraph 84 of the previous determination which, in his opinion, revealed that the Tribunal in that instance reached two conclusions, first, that, in the absence of any drainage at 44 Oak Tree Farm, there is nothing that can deteriorate within the meaning of paragraph 18(1)(aa), and, secondly, that there is insufficient evidence that he agreed to install a French drain at 44 Oak Tree Farm although there was an offer to install a French drain.

- 60 The Applicant also referred to what he perceived to be the series of ‘further’ concerns raised by Mr Crumpton before the Tribunal, namely the absence of a drainage system to serve 44 Oak Tree Farm with the consequence that he (the Applicant) made a false statement during the previous determination proceedings, three offers made by him (the Applicant) to install three French drains, the lack of a French drain adjacent to 44 Oak Tree Farm, and the ineffectiveness French drains outside 26-30 Oak Tree Farm due to their lack of connection to the main water system.

The Applicant commented on these ‘further’ concerns as follows:

‘It is not correct to say I made a false statement in connection with the installation of a French drain at 44 Oak Tree Farm in the course of the previous determination proceedings...I would suggest that the reason this issue is repeating itself is because Mr

Crumpton has a different idea about what a French drain should entail. The general definition of a French drain is *“a trench filled with gravel or rock, or both, with or without, a perforated pipe that redirects surface water and groundwater away from an area.”* I place emphasis on the lack of any requirement to install a perforated pipe and the absence of any requirement that it can be connected to the surface water drainage, which Mr Crumpton believes is a requirement for it to be described as a French drain. In the case of Oak Tree Farm, my contractors advised the installation of a system of natural soakaways comprising of a trench filled with gravel which allows the water to naturally soakaway, by definition this is a French drain and is what was installed in 2012 with the new kerbs.’

The Applicant continued:

‘The Applicant’s offer considered in the previous determination was to re-install a French drain, to the same specification in order to satisfy Mr Crumpton of its existence. The offer was not an admission that a drain did not exist nor was I offering to install three drains.’

61 Finally, the Applicant expressed the view that the issues faced by Mr Crumpton are the result of factors that prolong the presence of surface water on his pitch and these factors do not include an inadequate surface water drainage system.

62 More broadly, the Applicant accepted that he is required to meet the conditions of the site licence when carrying out development works at Oak Tree Farm, including works associated with the provision of adequate drainage. In the latter respect, the Applicant informed the Tribunal that Mr Reid of the District Council affirmed his need to satisfy this condition at a meeting held at Oak Tree Farm with Mr Reid and others in December 2021. The Applicant presented the notes relating to that meeting in evidence.

The Applicant made the following observations about drainage works undertaken by him at Oak Tree Farm. First, there is no requirement for such works to be signed off by Building Control as they fall within permitted development. Secondly, competent contractors were employed to install French drains at the site and there is no evidence to support the contrary view put forward by Mr Crumpton. Thirdly, the development works at 38 and 43 Oak Tree Farm included the installation of new water pipe, foul drainage connection, storm water and pitch drainage. Fourthly, 1-4a, 12, 38, 43 and 53-60 Oak Tree Farm have been redeveloped with the provision of new services and drainage. Further, the Applicant added that drainage for 8a-27 Oak Tree Farm ‘feeds into a ditch at the rear of the pitch at the west and south boundary of the park’.

63 In furtherance of his position, the Applicant asserted, first, that adequate drainage is installed at Oak Tree Farm and that this meets the conditions of the site licence, and, secondly, that the drainage system ‘has not deteriorated, but, only improved, this is evident from the fact that French drain systems and other drainage was installed/replaced at various points on the park during the installation of new kerbs as well as in the course of pitch development works’.

As to Mr Crumpton’s pitch, the Applicant stated that the photographs presented in evidence by Mr Crumpton, which are outdated and not reflective of Oak Tree Farm recently, show that his pitch is not flat and, consequently, water will gravitate, naturally, to and collect in sunken areas, such as his driveway which is uneven and in need of repair or replacement. The Applicant intimated that he wrote to Mrs Crumpton about surface drainage at Oak Tree Farm and the condition of the driveway on 44 Oak Tree Farm on 6 March 2019. He adduced that letter in evidence. The Applicant also alluded to the summary of his evidence in paragraph 56 of the previous determination.

- 64 Further, the Applicant observed that it is widely understood that events in which there is a 20mm of rainfall per hour in the UK have increased. In support of this observation, he adduced in evidence a press release from the Meteorological Office dated 7 March 2023 entitled ‘New Research shows increasing frequency of extreme rain’.

In this context, the Applicant opined that the current condition of the soil at Oak Tree Farm, which was identified by Mr Paul Reid of the District Council in an e-mail to Mr Crumpton dated 8 October 2021 as mainly clay, is ‘unlikely to cope with heavy rain and as such some surface water is to be expected for short periods of time’; an opinion which he supplemented with a series of photographs of different locations on the site (including Mr Crumpton’s pitch) taken on 20 June 2023 following a period of heavy rainfall on that day and showing very little evidence of surface water remaining either on Mr Crumpton’s pitch or on any other part of the site.

- 65 The Applicant maintained that the extent of any surface water at the site is determined by location and commented as follows:

‘The park is not flat and consequently the highest point of the park is the southern boundary behind pitches 17-26 which will likely experience the least surface water. The lowest point would be on the common area adjacent to pitch 1. Equally, any areas located on a slope, such as Mr Crumpton’s pitch will experience some additional surface water in periods of heavy rainfall, to the extent that any additional French drainage system will not cope with a deluge of water when it gathers momentum downhill.’

To illustrate the topography of Oak Tree Farm and to satisfy Mr Crumpton’s request, the Applicant presented in evidence a copy of the topographical survey of Oak Tree Farm undertaken in June 2019 by Sutton and Wilkinson, Chartered Architects.

The Applicant added that the effect of heavy rain and related surface water at Oak Tree Farm, which is influenced by the unchanging topography and condition of the soil at Oak Tree Farm, has been evident for many years and cannot be attributed, as suggested by the Respondents, to any deterioration in the condition of the surface water system.

- 66 At the hearing, Mr Fuller indicated that the terms of any offer made to Mr Crumpton to install a French drain are for the Applicant to decide and that the Applicant in making the ‘offer on the table’ was looking for closure with Mr Crumpton on this matter. It was Mr Crumpton who decided that the offer was not acceptable. Otherwise, Mr Fuller pointed out that there is a drain on 43 Oak Tree Farm which dispenses with surface water on that pitch and, added, that the Applicant has alerted the Tribunal to the various works he has undertaken to ensure that the surface water drainage on the site is adequate. Moreover, this is a matter upon which the Tribunal has already adjudicated, and the Respondents have failed to adduce any new evidence to show that there has been any deterioration in the surface drainage system since that determination.

- 67 Subsequent to the hearing and in compliance with a request from the Tribunal, the Applicant provided an indication of the drainage pipes on Oak Tree Farm in the form of an extract from UK Planning Maps (‘the drainage pipes map’) portraying the site and upon which he had inserted by hand the number of each pitch and depicted the line taken by each drainage pipe.

#### Water supply and water pressure

##### *Water supply*

- 68 Mr Crumpton stated that the deterioration of Oak Tree Farm is difficult to prove because most of the problems are underground. In this regard and as with the sewage and surface

water drainage systems (see above, paragraphs 51-54 and 55-58 respectively), the outdated and continually failing water system is incapable of taking the increase in load brought about by the new homes put on the site by the Applicant. Mr Crumpton challenged the Applicant to present to the Tribunal his plans to improve the inadequate 'freshwater underground system' which connects the water supply to Severn Trent's incoming pipework. He added that for some homes on Oak Tree Farm 'the supply to residents is now unfit for purpose because of lack of flow from the taps and residents are obliged to endure a low flow rate from the taps because the Applicant will not maintain the system'.

Reverend Andrews intimated that there is a history of water leaks on Oak Tree Farm going back to 2006. In his view, the underground water supply system is old, dilapidated, and liable to fail. He suggested that this view was supported by observations of the District Council in an e-mail dated 22 March 2019 that Reverend Andrews described as the 2019 Report and in which reference is made to an interruption to the water supply at Oak Tree Farm resulting from a leak and to a water supply system that is elderly and seems liable to failure. Reverend Andrews adduced extracts from this Report in evidence. Reverend Andrews also drew the Tribunal's attention to the Applicant's Water Leak Investigation Policy that was made available on 12 June 2023 by the Applicant to Mr Crumpton in his capacity as chair of the Oak Tree Farm Residents' Association ('OTFRA') and to correspondence between the Applicant and occupiers and between the Applicant and OTFRA relating to water consumption at Oak Tree Farm together with associated water bills from Severn Trent Water. Reverend Andrews adduced the investigation policy and the correspondence in evidence. He submitted that over-consumption of water at Oak Tree Farm is caused by recurring leaks which occur because of the 'dilapidated underground water system'.

- 69 The Applicant refuted any suggestion that the 'water infrastructure' at Oak Tree Farm is not maintained. By way of a counter to any such suggestion, the Applicant drew the Tribunal's attention to the recent installation of new water pipes and related works between 9 Oak Tree Farm and 16 Oak Tree Farm. He presented his personal note of the work that was undertaken, twenty-two photographs showing aspects of the invasive work relating to the installation of the new pipes. In addition, he submitted in evidence an extract from UK Planning Maps ('the water pipes map') portraying Oak Tree Farm and upon which he had superimposed by hand the number of each pitch and a depiction of the line taken by pre-existing and new water pipes on the site.

The Applicant added that he carries out regular water leak investigations which may reveal, for example, physical signs of a leak and monitors water consumption at Oak Tree Farm in order that he may be alerted, promptly, to a possible leak when water consumption rises for no other obvious reason. In his opinion, such investigations, notwithstanding any temporary inconvenience they may cause to occupiers, are a necessary aspect of water maintenance.

- 70 The Applicant explained that the water supply to Oak Tree Farm is delivered by 32mm plastic piping and when repairs are carried out it is almost always found that fittings have deteriorated rather than the pipes. These fittings are replaced with fusion weld fittings which are 'less likely to fail over time'.

- 71 Apropos the maintenance of 'water infrastructure' in general, the Applicant observed:

'It is unreasonable to expect that underground infrastructure can be maintained in the same way as any overground service supplied by the park owner. The nature of its location would give rise to unreasonable amounts of interference to the occupiers' quiet enjoyment. Additionally, the damage that would be caused by such invasive investigative work, for example, to the surface of roads, pavements and gardens would not be accepted

as a reasonable approach to maintenance. Maintenance of underground services therefore must be to the greater extent reactive rather than proactive, in other words, as issues arise, they are addressed.’

72 In light of the above, the Applicant submitted that his approach to maintaining the ‘water infrastructure’ at Oak Tree Farm is entirely consistent with the approach adopted by water authorities, and is, therefore, reasonable.

73 Finally, the Applicant remarked that he was unable to find any evidence in support of the Respondents’ expressed concern that the ‘water infrastructure’ at Oak Tree Farm has deteriorated.

#### *Water pressure*

74 Mr Crumpton stated that occupiers have complained many times about the lack of water pressure and poor flow rate in their homes, but the Applicant will not entertain these issues or maintain the water supply system. Consequently, occupiers ‘must endure constant low flow rate from taps and electric showers that do not work correctly’. In furtherance of these statements, Mr Crumpton adduced in evidence copies of an e-mail exchange between the Applicant and Mr Lane (the occupier of 49 Oak Tree Farm) relating to the water pressure (and surface water drainage) at Oak Tree Farm.

Mr Crumpton informed the Tribunal that he acquired a kit to test the flow rate and drew its attention to the flow rate readings he had taken and, thereafter, collated in a report which he presented in evidence. He explained that this report sets out measurements of the flow rate (litres per minute) from taps on his pitch on the dates specified in the report between 20 December 2021 and 7 June 2023. He submitted that the report shows that the flow rate is insufficient to provide a satisfactory supply of water. In this context, Mr Crumpton also alluded, particularly, to the minimum flow rate required for electric showers to operate correctly. In this respect, Mr Crumpton relied upon a statement by Triton, which he adduced in evidence, showing the required litres per minute to operate an electric shower. He submitted that the measurements that he had taken for the flow rate and set out in his report regularly fell below the minimum litres per minute for the requisite flow rate for electric showers cited in that statement.

Reverend Andrews claimed that the poor water infrastructure and leaks contribute to low water pressure at Oak Tree Farm. He endorsed Mr Crumpton’s flow rate report and included within his evidence copies of the above-mentioned e-mail exchange between the Applicant and Mr Lane.

75 In their letter to the Tribunal, Mr and Mrs Kite informed the Tribunal that there is a lack of water pressure at Oak Tree Farm which the Applicant does not acknowledge.

76 At the hearing, Mr Crumpton said that the position relating to the low water pressure and poor flow rate faced by occupiers at Oak Tree Farm is unacceptable. Both are constant problems. At the Applicant’s suggestion, some occupiers have checked the filter on their showers with a view to improving flow rates, but this has not resulted in any change.

77 At the outset, the Applicant stated that the water pressure at Oak Tree Farm is another matter that was raised in the previous determination proceedings. In this instance and as before, the Applicant identified Mr Crumpton as the principal proponent of the view that the water pressure at Oak Tree Farm is unacceptably low.

The Applicant pointed out that the water pressure at Oak Tree Farm is determined by the pressure of the supply delivered to the site by Severn Trent Water, and, therefore, he is



not able to influence the pressure of the water supply to individual pitches. However, this does not mean that this supply is unsatisfactory and/or that it has deteriorated.

The Applicant explained that the water supply to Oak Tree Farm connects to the Severn Trent supply at Juggins Lane.

- 78 The Applicant told the Tribunal that concerns about the water pressure were raised, initially, by Mr Crumpton in 2021. By way of response, the Applicant stated that tests on the water pressure at pitches on Oak Tree Farm (including 44 Oak Tree Farm) were carried out by a Severn Trent engineer and that, independently, he tested the flow rate and water pressure at various pitches (again, including 44 Oak Tree Farm). Each of the tests of the water pressure showed that at that time it was above the required minimum of 1 Bar. The Applicant indicated that he wrote, accordingly, to Mr Crumpton on 29 November 2021 and sent a copy of that letter to Mr Paul Reid of the District Council and the Honourable Nadim Zahawi MP.

The Applicant said that Mr Crumpton raised the issue of the water pressure at Oak Tree Farm again in the context of these proceedings, and, therefore, he carried out on 23 June 2023 further water flow and water pressure tests on the site in June 2023 with the assistance of Mr Dave Shipton, a plumbing contractor.

The Applicant adduced in evidence the witness statement of Mr Shipton dated 6 July 2023 and directed the Tribunal to the measurements recorded in that statement. In the Applicant's opinion, these measurements show that the water supply at Oak Tree Farm meets the standards set by Severn Trent and satisfy the conditions of the site licence. The Applicant added that the water pipes map shows the pitches where the testing took place on 23 June 2023 and that these were chosen in order to achieve 'a fair result'. He observed that the 'most favourable results were obtained from pitch 23 which is fed by the pre-existing pipe and is located on the Western section of the park where one might expect gravity to affect the supply.'

As to the measurements provided by Mr Crumpton, the Applicant made two comments. First, Mr Crumpton does not explain his method of assessment or describe how he measured the water pressure at his pitch, and, secondly, Mr Crumpton's measurements do not match the results of the above-mentioned tests undertaken in 2021 and 2023 the latter of which included a measurement taken from 43 Oak Tree Farm which is next to his pitch.

Finally, the Applicant informed the Tribunal that there may also be external factors that affect the water pressure, namely Severn Trent may reduce the water pressure when demand is at its lowest and multiple users demanding water at the same time may lead to a temporary drop in pressure.

- 79 In light of the above, the Applicant concluded that the Respondents have failed to provide evidence in support of their respective contentions that the water supply to Oak Tree Farm and to individual pitches fails to meet the national minimum standard and that the water supply to the site has deteriorated.
- 80 At the hearing, Mr Fuller reiterated that Mr Shipton undertook tests relating to the water supply at Oak Tree Farm on two occasions, namely on 29 November 2021 and 23 June 2023 with the latter involving tests of the water pressure and flow rates. He invited the Tribunal to have particular regard to the results of the latter and to the statements made about those results by Mr Shipton in his witness statement. Mr Fuller suggested that limited weight should be attached to Mr Crumpton's measurements of the flow rate as they could not be regarded as independently verified.

Adjoining field owned by the Applicant – fire hazard

- 81 Reverend Andrews cited condition 29 of the caravan site licence granted by the District Council for Oak Tree Farm ('site licence'). This provides:

'Long grass and vegetation shall be cut at frequent and regular intervals where necessary to prevent it becoming a fire hazard to caravans, buildings or other installations on the site. Any such cuttings shall be removed from the vicinity of caravans. The space beneath caravans shall not be used for the storage of combustible materials.'

Reverend Andrews explained that his main concern lay with the number of oil and gas tanks situate in the back gardens of pitch homes that are proximate to the adjoining field owned by the Applicant. He contended that the Applicant has failed to maintain that field for over three years resulting in grass that is far too long and the water channel on the perimeter of the field, which acts as a fire break, being overgrown. In his view, there is a risk that any of the tanks might explode causing serious damage that would be exacerbated by the unmaintained field and water channel. Further, emergency service vehicles would be unable to deal with such an incendiary incident because the access to the field through a gate is blocked by waste materials dumped by the Applicant on the track leading to that gate. Reverend Andrews presented in evidence two undated photographs showing, respectively, the length of the grass in the field and vegetation growing in the water channels together with a further undated photograph illustrative of waste material on the track leading to the gate. He submitted that this scenario gives rise to serious health and safety issues.

In similar vein, Mr Crumpton said that the Applicant has failed to maintain this field which lies to the rear of 18-26 Oak Tree Farm. He observed that the field 'has not been cut for at least 18 months and [it] is a fire hazard for the residents of these numbered homes.'

During the inspection, Reverend Andrews invited the Tribunal onto his pitch (25 Oak Tree Farm) with a view to securing an unimpeded view of the field and water channel from the rear of that pitch.

At the hearing, Reverend Andrews reiterated the above points. Mr Crumpton queried whether it is possible to maintain the field and the water channel if it is impossible to gain access to the field.

- 82 The Applicant confirmed that he owned the field and that it did not form part of Oak Tree Farm. In response to the suggestion that the grass in the field is a fire hazard, the Applicant made the following points. A fire risk assessment for the field was undertaken in October 2015 and made available to OTFRA. Further, the local fire authority has confirmed that the field is deemed to be a low fire risk. As to the fire break, which runs between 16-26 Oak Tree Farm, the Applicant informed the Tribunal that this was cut by his contractor on 22 May 2022 and would be cut again in late June 2023 in accordance with his maintenance programme. At the inspection, the Applicant stated that matters pertaining to access to the field were not for the Tribunal to determine.

Letter dated 12 January 2023 – alleged intimidation by the Applicant

- 83 In the conclusion to his statement of case, Reverend Andrews referred to the letter written by the Applicant to residents of Oak Tree Farm dated 12 January 2023 in which, amongst other things, the Applicant made residents aware of the Tribunal's previous determination. Reverend Andrews made the following observations about this aspect of the letter:

‘Conclusion as to why 14.2% is not acceptable

Mr Hartley has referenced in his letter dated on 12<sup>th</sup> of January 2023. A shortened, invented, version delivered to all residents, his version and report of the tribunal’s decision psychologically persuading elderly residents to pay the 14.2% pitch fee increase. A form of intimidation saying the tribunal’s decision on the 16<sup>th</sup> December 2022 and an outcome that was part truth. That it will be the same verdict as last time in relation to the pitch fee increase for this year... And I am sorry to say this is a form of persuasion and intimidation on Mr H behalf.’

Subsequently, Reverend Andrews further observed:

‘Mr H also goes on to mention if he doesn’t get the 14.2% increase he refers to companies not surviving. Mr H owns seven park homes. The tribunal can say Mr H is just a good businessman and who wouldn’t agree but...[he] cannot add this to his letter to residents fabricating the need for this 14.2% increase saying it’s the only way he can survive as Hartley Park homes. Making them feel obliged to pay this increase.’

At the hearing, Mr Crumpton indicated that some residents had been troubled by this letter and stated that, in his opinion, the letter had the effect of placing pressure on residents to pay the 14.2% increase. This sentiment was also shared by Mrs Byrne (see below, paragraph 106).

Further, several Respondents, namely Mr Crumpton, Mr and Mrs Coles and Mr Cooksey, expressed concern about the following statement in the letter:

‘...the additional income to the business generated by the pitch fee increase this year, is likely to only cover the costs of operating and maintaining the site. By way of example, the average increase in the cost of building materials over the last twelve months is around 20% which will apply to all maintenance work.’

From this statement, they inferred, broadly, that funds generated by the pitch fee increase would be used by the Applicant to pay for building materials to be utilised in connection with the installation of new homes rather than for the general maintenance of the site. In the words of Mr Cooksey, ‘the only building materials that have been used on the park are those associated with the removal of old homes and replacing with new homes’.

- 84 The Applicant explained that the reason behind this letter in which he summarised the findings of the previous determination was that, following the Tribunal’s decision, it was brought to his attention that an occupier, who was a party to the 2022 proceedings, had given, misleadingly, the impression that the Respondents in those proceedings had been successful in their objection to the proposed increase in the pitch fee. In the Applicant’s opinion, several occupiers, consequently, did not pay the proposed 2023 increase. Hence, the Applicant felt it necessary to explain the Tribunal’s decision to the occupiers. Further, the Applicant sought to clarify the reference to the cost of building materials in the letter as follows:

‘My explanation in the letter concerning building materials is not a reference to cost associated with developing new homes but in respect of the cost of materials used in the course of maintaining the site which is cost increase affecting many businesses with responsibilities for maintaining premises.’

He refuted any suggestion that any of the contents of the letter or the letter in its entirety amounted to intimidation or harassment.

At the hearing, Mr Fuller reiterated the Applicant's position regarding the purpose of the letter and stated that any allegations of intimidation/harassment were unfounded.

***Respondent (2) – Mr and Mrs Grice***

85 Mr and Mrs Grice raised the following issues in their letter to the Tribunal which was received on 6 June 2023.

Excessive proposed increase in the pitch fee

86 Mr and Mrs Grice expressed the view that the proposed increase in the pitch fee for 2023 is excessive. They informed the Tribunal that they had offered to pay 9.4% by way of an increase, which was the average RPI for 2022, but this was rejected by the Applicant. There should be a fair and realistic increase. Mr and Mrs Grice also felt that there had been 'a definite deterioration in the upkeep of Oaktree Farm' which was attributable to the Applicant's failure to maintain the site.

87 As with similar assertions made by some of the Respondents within the Respondent (1) designation about the excessiveness/unacceptability of the proposed increase in the pitch fee (see above, paragraph 32), the Applicant did not respond, directly, Mr and Mrs Grice's submission. The Applicant stated, simply, that the proposed percentage increase in the pitch fee corresponded with the percentage increase in the RPI since the last review date.

Minimal general maintenance

88 Mr and Mrs Grice stated that there is a general lack of maintenance on Oak Tree Farm. It was their view that a minimum of maintenance is carried out by the Applicant and only when it is 'absolutely necessary'.

89 The Applicant did not address this statement *per se*. However, as seen above in paragraphs 47-48, the Applicant refuted the suggestions made by Respondents within the designation Respondent (1) that either no maintenance has been carried out at Oak Tree Farm or that any maintenance undertaken has been of a poor standard leading to a deterioration in the condition of the site.

Flooding on Oak Tree Farm and the condition of the car park

90 Mr and Mrs Grice stated that flooding of the site is now 'an awful lot worse than when we arrived', and that when it rains 'we have to paddle through several inches of water using the shared path leading from no. 45-50.' Further, the site car park also floods regularly, often, leaving sitting water in puddles and, thereafter, compacted mud. This affects, significantly, their use of the car park and the user of their designated car parking space for 46 Oak Tree Farm with access particularly difficult to negotiate for Mr Grice who uses a mobility scooter. Mr and Mrs Grice adduced in evidence a photograph dated 31 March 2023 showing Mr Grice's mobility scooter in their parking space and in standing water together with a further illustrative photograph dated 25 May 2023 revealing an accumulation of mud adjacent to and within a parking space.

Mr and Mrs Grice added that such flooding and its aftermath (standing water and mud) also mask the general deterioration in the condition of the site car park, made manifest, notably, in unevenness, that this deterioration is attributable in their view to lack of maintenance of the site car park over the years and the recent building works on the site. Mr and Mrs Grice also intimated that in the past they sought to keep their parking space clear of water and/or mud by sweeping it regularly, but they were now unable to do so because of ill health and their advancement in years. They opined that the car park was only swept by the Applicant ahead of a visit to Oak Tree Farm by the District Council.

During the inspection, Mrs Grice drew the attention of the Tribunal to the general condition of the site car park and identified the location of the designated car parking space for 46 Oak Tree Farm.

At the hearing, Mrs Grice informed the Tribunal that the car park continues to flood when there is heavy rain leaving residual mud over which it is difficult to walk safely. Further, any remedial works carried out by the Applicant have been inadequate. In her opinion, the whole car park should be resurfaced.

- 91 For the Applicant's submissions in response to matters raised by Respondents within the designation Respondent (1) relating to the surface water drainage at Oak Tree Farm and its adequacy, see above, paragraphs 59-67.
- 92 For the Applicant's observations about the condition of the car park when this was raised by Respondents within the designation Respondent (1), see above, paragraphs 47-48, in which he referred to works that had been carried out on the car park and expressed his opinion that the car park is in good condition.
- 93 Further, at the hearing, Mr Fuller addressed issues relating, specifically, to the flooding of the car park as raised by Mr and Mrs Grice. He said that, generally, works on the car park are carried out by the Applicant in accordance with his programme of works for the maintenance of Oak Tree Farm. Maintenance of the car park includes the in-filling of potholes. In addition, Mr Fuller said that after heavy rain the Applicant allows time for standing water to drain away before taking steps to clear any mud that remains on the surface of the car park. Consequently, the car park is cleared of mud by the Applicant as and when necessary; a circumstance that is dictated by the weather and, therefore, not within his control.

#### Issues with the water and sewerage systems

- 94 Mr and Mrs Grice referred to the 'new' pitches added, recently, by the Applicant to Oak Tree Farm. These additions were not accompanied by any improvements to either the water or sewerage systems on the site, notwithstanding existing faults within each of these systems. Mr and Mrs Grice stated that water is regularly turned off to enable the faulty system to be repaired and low water pressure necessitates taking showers either in the early morning or in the evening.
- 95 The Applicant did not respond, directly, to these points made by Mr and Mrs Grice. For his response to claims about perceived deficiencies in the water system raised by Respondents within the designation Respondent (1), see above, paragraph 69-73, and for his response to submissions suggestive of low water pressure at Oak Tree Farm made by Respondents within the designation Respondent (1), see above, paragraph 77-80.
- 96 As to the sewerage system, Mr and Mrs Grice drew the Tribunal's attention to a blockage that occurred in May 2021 in the section of the sewerage system that serves 46 Oak Tree Farm. In light of this, Mr and Mrs Grice engaged the services of *DrainDoctor*, principally, to investigate the blockage and to clear it. They adduced in evidence an invoice for £354.00 dated 21 May 2021 presented by *DrainDoctor* and placed reliance on the following description in the invoice of the work carried out and further work that might be undertaken:

'Work Carried Out:

Carried out investigation into problem with pipework under mobile home. Found pipes are blocked, 2 man jet required.

‘Work Carried Out:

Carried out high pressure water jetting from the stack to clear the blockage and restore the flow. Flow tested and all flowing fine. Cctv shows pitch fibre pipe that has blisters and deformations. Requires trace and locate with excavation onto the branch. From there we would need to re-round the pipe from excavation to the manhole. It would then need to be relined to strengthen. Backfill and reinstate.’

Mr and Mrs Grice submitted that the responsibility for the work required in respect of the ‘damaged’ pipe specified in the latter paragraph is the responsibility of the Applicant. They reported the findings of *DrainDoctor* to the Applicant and by way of response received a letter dated 2 July 2021 from the Applicant, which they presented in evidence, in which he stated the following:

‘I can confirm that Hartley Park Homes are responsible for the underground sewage pipework at Oak Tree Farm. However, the homeowner is responsible for any blockage in the mobile home, above ground.’

Mr and Mrs Grice informed the Tribunal that to their knowledge the Applicant has not carried out, subsequently, any works relating to the ‘damaged’ pipe.

At the hearing and in the absence of Mrs Grice, Mr Crumpton stated that, as far as he was aware, Mr and Mrs Grice had not suffered any further blockages.

- 97 The Applicant said that the blockage was raised with him by Mr and Mrs Grice in a letter dated 16 June 2021 that was accompanied by ‘what appeared to be the bottom half of an invoice from Drain Doctor’. The Applicant indicated that he replied to Mr and Mrs Grice in the above-mentioned letter of 2 July 2021 and set out the respective responsibilities of the site owner and occupiers in relation to sewage pipework. The Applicant added that since that date Mr and Mrs Grice have not reported any further blockage or related issues to him.

‘Overgrown’ Leylandii trees on 46 Oak Tree Farm

- 98 Mr and Mrs Grice related the circumstances pertaining to the removal in August 2022 of five ‘overgrown’ Leylandii trees that were growing on 46 Oak Tree Farm. The trees blocked the light into their home and garden and, in their opinion, were unsafe. They believed that these trees were planted by the original owner as part of the landscaping of Oak Tree Farm but could not substantiate this.

Mr and Mrs Grice explained that, as required by the Park Rules, they sought permission from the Applicant to remove the trees. This was granted. Accordingly, they engaged a tree surgeon to remove the trees at a cost of £510.00. Mr and Mrs Grice stated that the removal of the trees was also to the advantage of the Applicant because such removal benefited 43 Oak Tree Farm that is situated to the rear of 46 Oak Tree Farm and which the Applicant owns. Nevertheless, Mr and Mrs Grice said that the Applicant made no contribution to the cost incurred. Mr and Mrs Grice contend that the Applicant should have contributed to the cost because the condition of the trees and their removal was a matter pertaining to the maintenance of Oak Tree Farm.

- 99 In his evidence pertaining to responsibility for trees growing on Oak Tree Farm (see above, paragraph 37), the Applicant made no express reference to these trees, but stated, nevertheless, that, with exception of certain native trees growing on pitches, the responsibility for trees growing pitches (including their maintenance and management) lies with the occupiers.

## Other matters

100 Mr and Mrs Grice also referred to the following matters:

- disruption caused by building works associated with the five ‘new pitches’ involving ‘continual’ noise from 7.00 a.m. daily, never ending dirt, mess and disruption. At the hearing, Mrs Grice said that she was particularly concerned about the works carried out on 38 and 43 Oak Tree Farm which were close to 46 Oak Tree Farm. She added that deliveries of building materials often took place early in the morning and those building materials were simply left on the site, especially in the site car park;
- the installation by the Applicant some years ago of low lighting along the above-mentioned footpath, and the failure, thereafter, of the Applicant to remove the old lamp which, in their opinion, constituted a lack of maintenance; and
- the refusal by the Applicant in disregard of health and safety concerns to install a defibrillator on Oak Tree Farm. At the hearing, Mrs Grice stated that a defibrillator had been installed on 52 Oak Tree Farm by the residents of that pitch who had paid for that installation.

101 The Applicant responded to each of these matters as follows.

### *Disruption caused by building works*

102 The Applicant did not single out Mr and Mrs Grice’s evidence for comment. For his denial of the complaints made by Respondents within the designation Respondent (1), which broadly mirrored those made by Mr and Mrs Grice, relating to the carrying out of building works associated with the removal of ‘old’ homes and the installation of ‘new’ homes, including the timing of the commencement of works in the morning, see above paragraph 43.

### *Installation of streetlighting*

103 The Applicant informed the Tribunal that an LED streetlight system was installed on the site in 2019 and that it is regularly maintained and inspected. In the latter respect, the Applicant adduced in evidence an electrical installation certificate issued by Eon Highways Lighting following an inspection on 11 November 2021.

At the hearing, Mr Fuller stated that the ‘new’ LED lighting system was recommended to the Applicant by a contractor. In Mr Fuller’s opinion, its installation was clearly an improvement to the site. He said that there were plans to remove any infrastructure relating to the redundant lighting system, such as the old lamp referred to by Mrs Grice. However, the old lamp was not a hazard and did not impact on the amenity of the site. Consequently, it was a relatively low priority for the Applicant.

### *Defibrillator*

104 The Applicant stated that there is no formal requirement for a site owner to install a defibrillator on a mobile home park. Moreover, he said that the installation of any such equipment on the common parts of Oak Tree Farm would give rise to a liability on his part which would be difficult to manage bearing in mind that neither he nor his staff were on site every day. Accordingly, it had been arranged with the occupiers of 52 Oak Tree Farm that a defibrillator be installed on that pitch.

- 105 The Applicant submitted that the absence of a defibrillator on Oak Tree Farm for which he was responsible meant that, in this respect, there could be no ‘deterioration in condition or reduction in amenity’ within the meaning of the 1983 Act.

***Respondent (3) – Mrs Byrne***

- 106 Mrs Byrne opened her statement of case dated 5 June 2023 by stating ‘I am withholding the demanded 14.2% increase in pitch fee because I do not believe the Park is being adequately maintained and as a result is looking worn and shabby’ and concluded that ‘[g]iven the economies of scale and current financial economy and since maintenance has been non-existent during 2021’ a 14.2% increase is wholly unjustified. Mrs Byrne said that she had offered to pay a lesser, but in her view fairer, increase of 9%; an offer that was rejected by the Applicant. In her view, the Applicant notified occupiers of the outcome of the previous determination with his letter of 12 January 2023 to persuade occupiers to pay the pitch increase for 2023.

In furtherance of the first proposition, Mrs Byrne called in aid and adduced in evidence copies of correspondence (an e-mail and letters) between the Oak Tree Farm Residents’ Association Committee (‘OTFRAC’) and Mr Hartley spanning the period 12 May 2021 to 12 October 2021 together with a letter from OTFRAC to Mr Hartley dated 1 May 2022. In this correspondence, OTFRAC identified and raised concerns about maintenance issues on Oak Tree Farm that required the Applicant’s attention. Mrs Bryne noted that some of these issues have still not been attended to, for example, the resurfacing of the site car park, and observed that ‘[s]adly, the only time maintenance takes preference over new properties is when there is a dispute over pitch fee increases’.

At the hearing, Mrs Bryne said that, in her opinion, the Applicant does not have a robust, documented programme of maintenance for Oak Tree Farm.

Apropos her inclusion of copies of the above-mentioned correspondence, Mrs Byrne stated:

‘The purpose of sending you these items of correspondence is to demonstrate that over a significant period of time HPH [Hartley Park Homes] needs to be reminded that maintenance work is required. In accordance with legally implied terms, the site owner has a duty to maintain in a “clean and tidy” condition all those areas of the park which are not the responsibility of any occupier, this has not and is still not being complied with. Any responsible conscientious landowner would have in place a regular, robust and documented inspection plan, taking into consideration not only general repairs and maintenance but also the use of the land, in this particular case the age and vulnerability of some of the residents. If regular inspection was taking place, then there would be no need for photographs to be taken by residents or maintenance issues to be constantly raised by OTFRAC. It occurs to me that most of the maintenance work is only ever carried out prior to a tribunal!’

- 107 As with similar assertions by Respondents within the designation Respondent (1) that the proposed increase in the pitch fee is excessive or unacceptable (see above, paragraph 32) the Applicant did not respond, directly, to Mrs Bryne’s submission. The Applicant stated, simply, that the proposed in the pitch fee corresponded with the percentage increase in the RPI since the last review date. For his explanation for writing the letter of 12 January 2023 and alerting occupiers to the outcome of the previous determination, see above paragraph 84.

For the Applicant’s refutation of suggestions by Respondents within the Respondent (1) designation that either no maintenance has been carried out at Oak Tree Farm or that any maintenance undertaken has been of a poor standard, see above paragraphs 47-48.



By way of specific response to Mrs Byrne's view on the maintenance of Oak Tree Farm, the Applicant stated, without more, that, in his view, Mrs Byrne 'does not always give a full picture of the action that I have taken in response to the matters being raised' and that she has only adduced in evidence a portion of the relevant correspondence.

- 108 Further, Mrs Byrne highlighted the following specific matters which she regarded as evidence of shortcomings on the part of the Applicant in the maintenance of Oak Tree Farm and in the preservation of its amenity:

Serious deterioration in the condition of the site car park

- 109 Mrs Byrne informed the Tribunal that the site car park has not been maintained satisfactorily for some considerable time and there are many areas of 'serious deterioration'. Mrs Byrne also referred to the pathway from the car park to those pitches that do not have their own 'in front of home' parking facilities (see, the pitches referred to above by Mr and Mrs Grice in paragraph 90). She stated that this pathway has developed several large cracks and is also subject to flooding because of a lack of drainage.

In support of these statements, Mrs Byrne presented in evidence a coloured photograph, which she described as a map or plan, identifying through the use of the letters A-H on that 'map' the locations of 'the worst of the deterioration and tripping hazards' on the pathway and site car park. Mrs Byrne complemented this 'map' with a series of colour photographs that were taken on various days in the period covering February to May 2023 and that focused, respectively, on the appearance and condition of each of the areas identified by the letters A-H on the 'map'. In relation to these photographs, Mrs Bryne, whilst commenting on the photographs for each location and, thereby, drawing attention to matters revealed in those photographs such as serious cracks in the pathway and blocked drainage grids, extreme deterioration (notably, potholes), and lack of satisfactory maintenance in the site car park, reserved her most extensive comment for the designated parking area in the site car park for those pitch owners without 'in front of home' parking facilities. She said:

"H" on the plan is a designated area allocated to home owners without front of house parking facilities. The area is unkempt and is subject to flooding due to lack of drainage because of a build up of moss, weeds and general debris means that residents are obliged to trawl through mud to access their vehicles. In addition, most of the road markings, including numbering, have long since disappeared which means that potentially these **designated** spaces are free for visitors etc.'

Further, Mrs Byrne commented that 'should you [the Tribunal] wish to inspect Oak Tree Park after May 2023 you will see that a significant number of potholes as shown on the enclosed photographs have now been filled in.'

- 110 The Applicant did not address the evidence submitted by Mrs Byrne directly. For his observations about the condition of the car park, see above paragraphs 47-48 in which he referred to the works that had been carried out on the car park and expressed his opinion that the car park is in a good condition and, further, for the steps taken by the Applicant in relation to the car park following heavy rainfall, as portrayed by Mr Fuller, see above paragraph 93.

Failure to protect trees on Oak Tree Farm

- 111 Mrs Byrne alerted the Tribunal to the conditions imposed by the Applicant and with which pitch owners on Oak Tree Farm must comply should they wish to remove trees on their pitches that are causing a nuisance, and, particularly, the need to obtain the Applicant's permission to do this; permission that, in her opinion, was 'rarely granted'.

She suggested that, on the other hand, the Applicant, as site owner, was prepared to diminish the visual amenity of the site by removing trees regardless of their condition. In this respect, Mrs Byrne referred to actions of the Applicant during the last month (May 2023) when ‘a number of perfectly good trees were hacked down in order to provide room for new homes.’

- 112 For the Applicant’s evidence regarding the responsibility for trees on Oak Tree Farm and for their maintenance and management (including removal), see above, paragraph 37. The Applicant did not respond, expressly, to Mrs Byrne’s claim that he had cut down ‘perfectly good trees.’ However, he stated that whilst the removal of trees at Oak Tree Farm is not taken lightly in view of their visual enhancement of the site but there are occasions when removal is necessary, for example, where the health of a tree is a risk to safety or where it is otherwise impossible to undertake works on the site. In the latter respect, the Applicant referred to the removal of a small tree growing on 38 Oak Tree Farm which was necessary to allow for the siting of a new park home on that pitch.

#### Inadequate provision for traffic calming on Oak Tree Farm

- 113 Mrs Byrne informed the Tribunal that prior to the resurfacing of the site road there was provision for traffic calming by way of ‘sleeping policemen’. These ‘sleeping policemen’ have never been replaced despite requests from OTFRAC for their reinstatement and Mrs Byrne’s concern that, presently, ‘delivery people speed around the site which has no pedestrian facilities’. Mrs Byrne added that the signage on Oak Tree Farm is inadequate as ‘quite often visitors travel the travel the wrong way round the single lane road’.

At the hearing, Mrs Byrne stated that the signage that comprises several 15 mph signs and a no entry sign are not tall enough and, consequently, they are not sufficiently visible to drivers. In her opinion, the ‘sleeping policemen’ should not have been removed.

- 114 The Applicant informed the Tribunal that the ‘sleeping policemen’ were removed in 2012 when various works to the roads were undertaken. He said that they were replaced with ‘adequate speed signage’.

The Applicant regarded ‘sleeping policemen’ as a ‘divisive traffic calming tool’ in that, historically, occupiers complained about them for various reasons including their limited effect in relation to delivery drivers who ‘would slow down but then speed up and in doing so created additional noise’. He added that occupiers have been asked to provide the registration numbers of any vehicles speeding on the site.

At the hearing, the Applicant indicated that a further reason for not reinstating the ‘sleeping policemen’ was that there were complaints about the ‘bottoming out’ of cars as they went over the bumps. He informed the Tribunal that there are three 15 mph signs around the perimeter of the site and one at the entrance. In any event, he opined that, whatever system is in place to control the speed of traffic on the site, it is something that is difficult to manage. Mrs Byrne reiterated her view that the signs were inadequate, repeated her call for the reinstatement of the ‘sleeping policemen’ and remarked that asking residents to take registration numbers of speeding vehicles is impractical.

Mr Fuller intimated that the ‘sleeping policemen’ were removed by the Applicant for good reasons. On their removal, there had simply been a change in the management of traffic using the site and such a change could not be viewed as a deterioration within the meaning of the 1983 Act.

## Decision

- 115 The Tribunal considered, carefully, the evidence, written and oral, presented by the parties, the supporting documents (including photographs) and the evidence it gleaned from its inspection of Oak Tree Farm.
- 116 For the avoidance of doubt, the Tribunal looked afresh at those issues raised by the Respondents, which were considered in the previous determination, whilst having due regard, as and when appropriate, to the findings on those issues in that previous determination.
- 117 During the twelve-month period applicable to this review, the RPI rose by 14.2% and this is the increase which the Applicant says should be applied to the existing pitch fees to determine the new pitch fee.
- 118 The Respondents explained their respective reasons for not paying the proposed increase in the pitch fee sought by the Applicant and, consequently, their continued payment of the amount of the pitch fee that was determined by the Tribunal in 2022. However, those reasons did not include a challenge to either the formalities associated with the pitch fee review or, assuming that the statutory presumption applies, to the correctness of the percentage change in the RPI of 14.2%. Further, the Respondents did not, individually or collectively, apply to the Tribunal to dispute the proposed increase in the pitch fee.
- 119 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 or less than the change in the RPI since the last review date unless it is unreasonable for this to be so having particular regard to paragraph 18(1). Accordingly, where this statutory presumption applies, there is no correlation between an increase in the pitch fee and expenditure or costs that may have been incurred by the site owner in carrying works on the site and/or in the provision of services.

Suffice it to say, it has been established in this instance that the RPI increased by 14.2% during twelve months pertinent to the review and the Applicant, as intimated above, 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 to the conclusion that the statutory presumption may be displaced. As shown above, the Tribunal is required by the 1983 Act in making that determination to have particular regard to paragraph 18(1). For present purposes, the material sub-paragraphs are sub-paragraphs 18(1)(aa) and 18(1)(ab). The contents of these sub-paragraphs are set out in paragraph 17 of this Decision. Here, the issue is not the actual condition of Oak Tree Farm, nor, indeed, the actual amenity of Oak Tree Farm, but rather, in short, whether the evidence shows that there has been any **deterioration** in the condition or **decrease** in the amenity of Oak Tree Farm (sub-paragraph 18(1)(aa)) and/or any **reduction** in services supplied by the Applicant to Oak Tree Farm and any **deterioration** in the quality of those services (sub-paragraph 18(1)(ab)) in the relevant period. Further, case law suggests that the Tribunal may also have regard to ‘other factors’ in assessing whether the statutory presumption may be displaced on the ground of ‘unreasonableness’, but that considerable and sufficient weight must attach to such factors if the statutory presumption is to be rebutted or displaced.

- 120 In this context, ‘amenity’ means, literally, the quality of being agreeable or pleasant and so the Tribunal must look at any decrease in the pleasantness of Oak Tree Farm or in those features of Oak Tree Farm that are agreeable from an occupier’s perspective.

- 121 With this background in mind, the Tribunal comments on the issues raised by the Respondents and the Applicant's responses thereto as follows:

Proposed increase in the pitch fee

- 122 Several Respondents regard the proposed percentage increase in the pitch fee as excessive or unacceptable on the grounds that the Applicant has not maintained Oak Tree Farm or has carried out maintenance to a poor standard.

The Tribunal understands the apprehension and concern that may be felt by some Respondents about the relative magnitude of the percentage increase in the pitch fee for 2023 that derives from the application of the statutory presumption. But this increase is sanctioned by the 1983 Act unless 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 might be expected or, equally, decrease by a similarly unanticipated percentage. Such fluctuation is in 'the nature of the beast' and simply because the percentage increase is markedly higher than percentage increases in previous years does not mean that this increase is unsustainable or to be treated as excessive as argued by the Respondents. The percentage increase in the RPI over the relevant period is an objective determinant, and where it applies there is no correlation between a percentage increase in the RPI and the actual maintenance costs incurred by the site owner (the Applicant). Consequently, where the statutory presumption *prima facie* applies, the onus, in the absence of a willingness on the part of the site owner to accept a lesser percentage increase (which the Applicant has not shown in this instance), is on the Respondents to establish that there is evidence to support the displacement of the statutory presumption in the manner envisaged by the 1983 Act.

Disparity in pitch fees

- 123 Mr and Mrs Cooksey raised the disparity between the higher pitch fee paid by them and the pitch fee paid by other occupiers which they believe to be unfair and lacking in logic. They cited comparative pitch fees on Oak Tree Farm with a view to showing the extent of this disparity. The Applicant adopted the position that, in the absence of an obligation on his part to charge a uniform pitch fee, the amount of pitch fee payable in each instance is entered into the contract between himself and individual occupiers at the time of acquisition and is representative of negotiations between himself and those occupiers which, in turn, are influenced by circumstances prevailing at a given time.

The Tribunal acknowledges that there is a disparity between the pitch fees payable by some occupiers and others at Oak Tree Farm. However, it does not have the power to determine whether a particular pitch fee, such as that paid by Mr and Mrs Cooksey, is equitable or reasonable. Suffice it to say, the settlement of a particular pitch fee may owe much to what the market, however opaque, dictates at any given time.

Responsibility for trees on Oak Tree Farm and on adjoining land owned by the Applicant

*Responsibility for trees on Oak Tree Farm*

- 124 It is not contested that the Applicant is responsible for the maintenance and management of trees growing in the common areas of Oak Tree Farm and, indeed, this was established in the previous determination. The Applicant also concedes that he is responsible for the few native trees that remain on pitches following the acquisition and development of Oak Tree Farm many years ago. Whilst there does not appear to be any documentary means of identifying these trees, their distinctiveness in terms of age and corresponding growth

facilitates their visual identification. The Tribunal acknowledges that the pollarding of trees between 35 and 45 Oak Tree Farm that was undertaken by the Applicant is an example of maintenance and management carried out in accordance with professional advice. The contention by Mr Crumpton that a tree growing on his pitch was pollarded by the Applicant without his consent is a matter of dispute between them and for resolution by them rather than by the Tribunal in the present case.

Otherwise, the responsibility for the maintenance and management of trees growing on pitches lies with occupiers, but this responsibility must in certain circumstances be exercised in line with the requirements of Rule 4. 'Minor' works required to keep the trees in good order lie solely within the province of occupiers. However, acts of 'planting, felling, lopping and topping' bring the requirements of Rule 4 into play. Broadly, any acts falling within the meaning of any of these operative words require the approval in writing of the Applicant (and sometimes the District Council). At first sight, the inclusion of 'planting' may be regarded as something of an outlier, but on closer examination it appears that it is included with a view to enabling the Applicant to retain control over the species of tree that is planted which would be in keeping with the Applicant's expressed preference for native trees. In any case where written approval has been granted, Rule 4 further requires that, save in the case of an emergency, advice be sought from a qualified tree surgeon or horticulturist and that any required work should be carried out by a person so designated. Some Respondents questioned the rationale for this Rule and bemoaned the costs incurred in complying with the requirement to engage a tree surgeon. Park Rules do not include, generally, an explanation of the purpose behind each of those Rules, such as Rule 4, as is the case in this instance. But it is fair to say, in the context of Rule 4, that the involvement of specialist professionals in felling, lopping or topping of trees owes much to concerns about the potentially hazardous nature of such works and the consequent threat to health and safety that they pose. The Applicant is obliged, similarly, on health and safety grounds to engage specialist professionals to undertake any of these types of work on trees in common areas. In such circumstances, health and safety must be the primary consideration. Be that as it may, the focus of the Tribunal is on the Applicant's maintenance and management of trees for which he is responsible and, notwithstanding the observations of Mrs Byrne about the Applicant's removal of unspecified trees, it finds that, in this regard, there is insufficient compelling evidence to support a finding that there has been a deterioration in the condition of Oak Tree Farm and a decrease in its amenity.

#### *Trees in the vicinity of 7 Oak Tree Farm*

- 125 The pertinent trees are those alluded to, particularly, by Mr and Mrs Coles, namely a conifer tree growing on 8 Oak Tree Farm and a dead tree located on the boundary of Oak Tree Farm between 6 and 7 Oak Tree Farm. In the former respect, Mr and Mrs Coles, who raised in evidence the impact of this tree on the enjoyment of their home, 7 Oak Tree Farm, during the previous proceedings, have not introduced any new evidence that questions either the Tribunal's finding in the previous determination that responsibility for this tree and for its condition does not lie with the Applicant, and its observation that, consequently, this is not a matter that falls within its remit bearing in mind its focus on the Applicant's actions. Further, the Tribunal finds that concerns expressed by the Respondents about the dead tree have been answered by the removal of that tree by the Applicant; a fact established by the Tribunal during its inspection and one supportive of evidence that maintenance is being carried out to the trees.

#### *Responsibility for the maintenance of trees on adjoining land*

- 126 The Applicant acknowledges his responsibility for the maintenance and management of trees growing on the adjoining land owned by him, that is, the woodland area situate beyond the boundary of Oak Tree Farm running from 58 Oak Tree Farm to 8A Oak Tree

Farm. Reverend Andrews and Mr Crumpton submitted, without supporting expert evidence, that trees in this area are not maintained or properly managed by the Applicant with the height and size of some trees cutting out light and constituting a source of health and safety issues for occupiers living near these trees. During its inspection, the Tribunal noted that some trees in this area, particularly behind 58 Oak Tree Farm and 8 Oak Tree Farm, are of considerable stature and close to some pitches. The Tribunal also found that the accessways to which Reverend Andrews and Mr Cumpton also referred were in places not as easy to traverse as they might have been because of fallen branches. However, the suggestion that the Applicant has not maintained or managed trees in the woodland area may be dispelled by the Applicant's implementation of the recommendations in the *Keyzor Report* (see above, paragraph 41). Moreover, the *Keyzor Report* contains a detailed analysis of the condition of the trees inspected, including those noted by the Tribunal, and states, clearly, that 'no trees have been identified as necessitating urgent/immediate attention'. Accordingly, the Tribunal is guided by this expert evidence, finds it persuasive, and treats it as determinative of the issues raised by the Respondents.

#### Building works associated with 'new' homes

127 In its previous determination, the Tribunal considered evidence relating to the condition of 43 Oak Tree Farm from which an 'old' mobile home had been removed by the Applicant and preparatory works undertaken with a view to readying the site for the installation of a 'new' mobile home. The Tribunal made a finding that, if this matter was regarded as other than an inter-occupier dispute thereby bringing the Tribunal's jurisdiction into play, the resulting 'intermediate position between 'old' and 'new' that subsists on this pitch cannot be regarded as permanent or long lasting in its impact on the 'fabric' of Oak Tree Farm, and, thereby, amount to a deterioration in the condition or a decrease in the amenity of the site'.

The evidence in this case shows that, in the meantime, the Applicant carried out building works on 38 Oak Tree Farm and 43 Oak Tree Farm culminating in the installation of a 'new' home on each of these pitches. The Respondents object to the time at which some of these works were undertaken, that is, before 8.00 am, and to their deleterious impact on occupiers' enjoyment of Oak Tree Farm caused, notably, by early deliveries of building materials, blocked roads, noise, dust, and what Reverend Andrews referred to as 'dust pollution'. The Applicant indicated that he did not undertake work before 8.00 am and instructed workers not to do so unless there was an urgent need for this to be done, and noted that the Respondents had not given any specific instances when work began before 8.00 am. He accepted that the nature of the works involved, inevitably, some degree of disruption and inconvenience, but he believed the resulting 'new' homes, which are ready for occupation, constitute an improvement to the site.

As with the preparatory works considered by the Tribunal in the previous determination, the building works were by their nature a partial fulfilment of the Applicant's goal of installing 'new' homes on 38 Oak Tree Farm and 43 Oak Tree Farm. As such, they were temporary and redundant once the goal had been achieved with no lasting effect on the amenity of the site. Consequently, if the Tribunal proceeds on the same basis as the previous determination and assumes that it has jurisdiction in respect of these works, it finds that these works do not have a long-lasting impact on the 'fabric' of Oak Tree Farm and, therefore, do not constitute a deterioration in the condition of the site and decrease in its amenity. However, that is not to say that the concerns raised by the Respondents are without substance or insignificant. The degree of dissatisfaction expressed by the Respondents, even if it is not fully supported by tangible evidence, is a reminder that such works must be conducted with sensitivity and with a view to causing the least inconvenience to those affected by them; matters that may be addressed, in part, in future through the deployment of definitive contractual terms, notably in relation to hours of work, with those engaged to carry out such works.

### General maintenance at Oak Tree Farm

128 Those Respondents who expressed an opinion about general maintenance at Oak Tree Farm maintained that the physical appearance of Oak Tree Farm has deteriorated, and some attributed this to lack of maintenance by the Applicant or to the poor standard of maintenance undertaken by him, but without, generally, citing specific examples. The Applicant denied that there was a lack of maintenance on the site and referred to the examples of work he had undertaken (on occasions with or by employing professional contractors) which he had provided for the Tribunal, and showed, in his opinion, there was 'overwhelming evidence' of maintenance at Oak Tree Farm. Suffice it to say, there is sufficient evidence of maintenance before the Tribunal for it to find that the notion that there is a lack of maintenance cannot be sustained.

In their evidence, Mr and Mrs Grice and Mrs Byrne expressed their respective specific concerns about what they regarded as the serious deterioration in the condition of the site car park. The Tribunal is grateful, particularly, to Mrs Byrne for the map identifying those areas of the car park which she regarded as showing the worst of the deterioration and related hazards and for the supporting photographs that were taken in the early months of 2023. However, it also takes cognisance of Mrs Byrne's observation that any inspection that takes place after May 2023 will reveal that a significant number of the potholes shown in the photographs have been filled in. Indeed, it was evident to the Tribunal during its inspection that some remedial work had been undertaken with the result that its visual perception of the car park did not tally with Mrs Byrne's photographs. The Applicant's evidence confirms that works were carried out in June 2023. Further, he believes that the car park is in good condition.

Consequent upon its inspection the Tribunal finds that whilst the car park may be functional its patched-up appearance (with in-filled potholes and its sporadic patches) is indicative of a high degree of wear and tear. However, whatever the actual condition of the car park, the Tribunal is concerned for the purposes of this case with whether its condition has worsened. In this respect, it finds that the car park is not in a markedly different condition to the condition which the Tribunal came across during its inspection in 2022. It might be added that bearing in mind that, on entry to the site, the car park is a focal point, it is not a particularly welcoming or attractive feature.

### Electricity meter housing (green boxes)

129 The Tribunal found in its previous determination that the Applicant is not responsible for the maintenance of this electricity meter housing. No evidence has been presented to persuade the Tribunal to depart from that finding or the conclusion to which it led, namely, that the maintenance of this housing is not a matter that is relevant to the issue that the Tribunal is required to determine.

Nevertheless, the Tribunal accepts, as pointed out by Reverend Andrews, that this housing has deteriorated and is in a worse condition than it was at the time of the Tribunal's inspection in 2022. It is to be hoped, therefore, that interested parties liaise with a view to restoring/replacing these boxes and, thereby, remedy what is, undoubtedly, an unsightly feature of the site.

### Sewerage system and wastewater disposal

130 The evidence shows that the issues for the Tribunal to investigate are the blockage to the underground sewage pipework serving 46 Oak Tree Farm that occurred in 2021 and which Mr Crumpton adjudges to be an example of the 'continual failings' of the wider sewerage system at Oak Tree Farm, together with, first, the submission relating to the

discharge of contaminated water into the ditch behind 8 Oak Tree Farm and the accompanying foul smell made, principally asserted, by Mr Hands, and, secondly, the claim pertaining to the emission of similarly pungent smells from the pumping station next to 8A Oak Tree Farm activated by an occupier who is not a party to this case and covered by the Applicant in his evidence.

- 131 It is not contested that the blockage occurred or that *DrainDoctor* cleared it. *DrainDoctors'* invoice, upon which Mr and Mrs Grice rely, shows that the blockage was cleared by high pressure water jetting. However, the invoice is, otherwise, somewhat ambiguous in that whilst it references blisters and deformations in the sewage pipe that were detected by CCTV and indicates these could be located through excavation it does not recommend immediate excavation which might be expected if there were major concerns. In fact, no excavation has taken place. Further, there is no evidence relating to blockages elsewhere on Oak Tree Farm and, therefore, it is not possible to cite the blockage experienced by Mr and Mrs Grice and, which Mr Crumpton believed had not recurred, as an example of 'continual failings' nor, indeed, to conclude, without persuasive evidence to the contrary, that there are widespread problems with the sewerage system that serves the site.

As to the submission made by Mr Hands, the Tribunal spent some time during its inspection in the area behind 8 Oak Tree Farm. It found that there are two pipes that discharge water into the channel. The discharge from the uncapped brown pipe was cloudy but not effluent. There was no pungent smell and no evidence of effluent in the channel leading to the pond or, in so far as this could be ascertained, in the pond. In its expert evidence, *Pump & Plant* makes it clear that if there is a discharge of foul water the pumping station is not the source. Similarly, the Tribunal attended the pumping station. There was a slightly unpleasant smell, but it was localised and certainly not one that was likely to pervade the whole site. This is consistent with the outcome of the visit to the site by engineers from *Pump & Plant* and the observation in its expert evidence that whilst a pumping station may emit unpleasant smells, they are not overpowering, nor will they be constant.

The outcome of the Tribunal's inspection does not mean that the evidence relating to the discharge of effluent and/or the presence of pungent smells is without credence, but rather emphasises the need for the Applicant to monitor these matters regularly and for occupiers to record any recurrences and to report them to the Applicant in order that appropriate investigations may be carried out.

#### Surface water drainage

- 132 The Tribunal acknowledges the failure of Mr Crumpton and the Applicant to proceed with and to act upon the extant offer made by the Applicant to put in a French drain in the vicinity of 44 Oak Tree Farm that was in place at the time of the previous determination. This appears to be indicative of the fundamental and apparently irreconcilable differences that remain between them in respect of surface water drainage at 44 Oak Tree Farm. In view of this, it is, perhaps, not surprising that the Tribunal has not found the further evidence submitted in this case particularly enlightening and, certainly, there is no sign in that evidence that the argument between them has moved on or that there is anything to be gained by the Tribunal revisiting its finding in the previous determination that, on the basis of the evidence presented to it at that time, it was unlikely that there was a French drain in place. It may be that, ultimately, nothing short of excavation will satisfy either party. An excavation that should determine, conclusively, whether, presently, there is a French drain serving 44 Oak Tree Farm.

A matter of wider importance is the frequency of heavy rainfall (for which the Applicant is not responsible) and its impact on the whole of the site. This is a matter, as shown in



the evidence, that has exercised many Respondents who have recorded in their evidence their dissatisfaction with the incidence of standing water with some commenting, particularly, on the tendency for water to collect in the car park; a circumstance that the Tribunal can understand because of the gradient/topography of the site. Mr and Mrs Grice provided the clearest exposition of the problems to which heavy rain can give rise. They explained that the consequences are hazardous to them, especially to Mr Grice who uses a mobility scooter, and those consequences arise not only from standing water, wherever it is found, but also from the residual mud that is left behind, notably on the car park, once it has dissipated. The Tribunal accepts that the Applicant recognises that these are legitimate concerns, which, of course, are pertinent to occupiers and to those visiting the site. It is highly likely that bouts of heavy rain are now a recurring natural phenomenon. Consequently, it is incumbent on the Applicant to be ever vigilant and to act, promptly and possibly through the agency of his employee who is on site regularly, in clearing areas of standing water and removing any residual mud following heavy rain.

### Water supply and water pressure

#### *Water supply*

- 133 The Respondents submitted that the water supply to Oak Tree Farm is affected, adversely, by leaks, which according to Reverend Andrews date back to 2006, and that they recur because the water pipes are ‘old, dilapidated and liable to fail’; a situation which, according to Mr Crumpton, has been exacerbated by the additional demands placed on the infrastructure by the new homes. Mr and Mrs Grice also referred to what they regarded as a faulty system which has not been updated to accommodate the new homes. Further, it is claimed that the leaks cause over-consumption of water on the site. However, the proponents of these views did not pursue them in greater depth.

First, they did not elaborate on the leaks that have occurred, for example, as to their regularity, where they were located, their consequences on each occasion and, importantly, for this case whether they have increased in frequency. Secondly, the burden of proof that must be discharged if the Respondents’ description of the infrastructure is to hold sway requires, as conceded by Mr Crumpton, a high degree of certainty. This must be sufficient to dispel the notion that, *au contraire*, the water pipes, particularly the older ones shown on the water pipes map, are ageing in a way that might reasonably be expected with anticipated attendant problems, such as leaks from time to time. Thirdly, the evidence presented by the Respondents in relation to the alleged enhanced consumption of water caused by leaks, and, arguably, related bills from Severn Trent Water is sketchy and inconclusive. Finally, no evidence is advanced to support the claim that the demands of the new homes have worsened the perceived weaknesses of the infrastructure.

For his part, the Applicant contended that the infrastructure is regularly maintained and monitored. In the latter respect, he carries out investigations for possible leaks and where leaks are discovered appropriate action is taken. He denied that the infrastructure is unfit for purpose, as suggested by the Respondents, and pointed out that where pipes need to be replaced this is done. In this respect, he highlighted the installation of new water pipes between 9 Oak Tree Farm and 16 Oak Tree Farm following professional advice.

It is self-evident that leaks in water pipes are not unique to Oak Tree Farm. Moreover, it does not follow that the occurrence of leaks must be attributable, as the Respondents contend, to the infrastructure being ‘old, dilapidated, and liable to fail’ (rather than indicative of a likely occurrence where infrastructure is ageing), and this is something that the Respondents have singularly failed to establish. It is also a contention that pays no heed to factors such as the above-mentioned installation of new water pipes by the Applicant. Further for present purposes, there is no evidence to suggest that the number

of leaks has progressively increased (which might be expected if the infrastructure were to be in the condition advocated by the Respondents) and, correspondingly, impacted the water supply to occupiers.

### *Water pressure*

- 134 Matters relating to the water pressure at Oak Tree Farm were considered by the Tribunal in its previous determination, but there was insufficient evidence to enable the Tribunal to make a definitive finding on the matters raised. In this case, the Tribunal has the benefit of the witness statement of Mr Shipton, an experienced plumbing contractor, that recounts the outcome of water pressure and flow rate tests undertaken on specified pitches (13, 38, 43, 31 and 23) on Oak Tree Farm on 23 June 2023, and a report prepared by Mr Crumpton setting out the measurements of the flow rates from the taps on his pitch on specified dates between 20 December 2021 and 7 June 2023.

It is clear from Mr Shipton's witness statement that apart from being carried out on a single day, the tests that were conducted at non-peak times and, necessarily, because of the time available, restricted to the above-mentioned pitches which are representative of inner and outer pitches on the site. Mr Shipton states that he carried out the tests in accordance with guidance issued by Severn Trent. Looking at the results of those tests it is not possible to establish a pattern and it is, perhaps, surprising that some pitches served by 'old' pipes achieved better results than others served by 'new' pipes. Nevertheless, Mr Shipton concludes that 'the readings show that the pressure and the flow rates are well within the guidelines set by Severn Trent'. This is consistent with the favourable results of tests conducted by Mr Shipton in 2021 to which the Applicant refers in his evidence.

Mr Crumpton's report on flow rates covers a significant period, and the Tribunal is grateful to him for the time he has invested in compiling it. However, the report is not without its difficulties in that there is no record of the time when readings were taken on a particular day (peak or non-peak), of the methodology used (which is outlined by Mr Shipton in his witness statement), or of the reason for the absence of readings for some of the days in the given period. It might also be questioned how representative results from tests conducted at one pitch can be. Be that as it may, the results are sufficiently erratic for the Tribunal to draw any reliable conclusions, save that those results do not show over the period covered any discernible deterioration in the flow rates and pressure at 44 Oak Tree Farm.

In these circumstances, the Tribunal is wary of giving other than very limited weight to findings emanating from a single day of testing or to findings where there is uncertainty about the ways in which the data was collected.

Further, the Tribunal observes that the 'new' homes are, in fact, replacement homes. No rationale or evidence has been provided by the Respondents in support of their alleged negative impact.

### Adjoining field owned by the Applicant

- 135 This field lies beyond the outer boundary of Oak Tree Farm and borders the rear gardens of 16-26 Oak Tree Farm. Reverend Andrews maintained, with the support of Mr Crumpton, that the Applicant has failed to maintain this field. He submitted that the grass is far too long and the water channel on the perimeter of the field, which acts as a firebreak, is overgrown as illustrated by his photographic evidence. Consequently, the field is a fire hazard; a risk that is compounded by the proximity of oil and gas tanks in the gardens of the adjacent pitches and by the waste materials that impede access to the field. The Applicant said that the fire break was cut by a contractor in May 2022 with a

further cutting scheduled for May 2023. He also referred to a fire risk assessment he had undertaken the outcome of which was communicated to OTFRA and to advice he had received from the local fire authority that the field is regarded as a low fire risk.

At the inspection, the Tribunal noted that there was little to suggest that the grass had been cut recently and that the water channel was overgrown and required attention. The Respondents claimed, variously, that the Applicant had not carried out maintenance for some time ranging between 18 months and three years. These are claims that it is not possible for the Tribunal to substantiate. The length of the grass that was evident at the inspection is likely to be attributable to the time of year when the inspection took place, but this does not diminish the need for the grass to be cut by the Applicant as and when required and for which provision is made by the Applicant in his maintenance programme for Oak Tree Farm. However, the Tribunal's inspection also led it to conclude that the overgrown condition of the water channel, notwithstanding any works carried out in 2022, is sufficiently longstanding to preclude it from making a finding that there has been a deterioration in or worsening of its condition for the purposes of this case.

As to the question of whether the field constitutes a fire hazard, the Tribunal, in the absence of any independent evidence to support the Respondent's claim that it is a fire hazard, is guided by the advice proffered by the local fire authority put forward by the Applicant that it is a low risk. In this latter respect and without a sight of that advice, the Tribunal relies on the Applicant's statement of truth in his witness statement.

Finally, the rights of the occupiers of Oak Tree Farm do not include access to the field and, consequently, matters relating to that access lie outside the remit of the Tribunal. However, the Tribunal noted the Respondents' concerns that the accessway was blocked and that contractors had not been able to gain access for maintenance works. The Applicant showed the accessway to the Tribunal during its inspection and it was apparent that clearance of the accessway was underway.

#### Letter written by the Applicant to occupiers dated 12 January 2023

- 136 This letter notifies occupiers of the outcome of the previous determination and covers what may be described as 'frequently asked questions' about that determination. The timing of this letter is proximate to the date, 1 January 2023, on which the increase in the pitch fee for 2023 took effect.

The Applicant stated that the letter was written because he believed that some occupiers were mistaken as to the outcome of the previous determination. Mr Crumpton and Reverend Andrews took the view that the letter, including the reference to the additional costs that the Applicant was facing, was a means of putting pressure on occupiers to pay the 2023 increase and, in their opinion, constituted harassment and intimidation by the Applicant. Mrs Byrne surmised that the Applicant's letter and notification of the outcome of the previous determination were intended to persuade occupiers not to contest the 2023 increase in the pitch fee.

Neither the stated intent of the letter nor its perceived pressurising effect on some occupiers are substantiated in that the Applicant provided only a rudimentary explanation for his decision to write the letter without making known those occupiers whose mistaken belief he had established through conversations whilst Mr Crumpton and Reverend Andrews did not present in evidence witness statements from any occupiers who felt that they were pressured by the contents of the letter into paying the 2023 increase, whilst Mrs Byrne did not pursue this matter beyond her above-cited opinion.

Consequently, it is not possible, without more, for the Tribunal to assess to what extent, if any, the letter influenced the decisions of those occupiers who were undecided about whether to pay or not to pay the 2023 increase. Moreover, whilst the timing of the letter and the inclusion of information relating to the Applicant's prospective costs that might lead some to conflate distinct considerations might be questioned, there is no compelling evidence to support a finding that the letter amounts to an instrument of harassment or intimidation.

Further, there is no evidence to support the supposition that monies garnered from the increase in the pitch fee could be used to finance the building of 'new' homes rather than expended on maintenance of the site.

In any event, it is not easy to appreciate what bearing this matter has on the remit of the Tribunal in this case.

#### Installation of street lighting

- 137 It was not contested that LED lighting introduced by the Applicant in the vicinity of the footpath traversing the central area of the site in 2019 is a betterment. However, Mr and Mrs Grice argue that steps should have been taken by the Applicant to remove an old lamp that is a relic of the previous lighting infrastructure and that the failure to do so amounts to a lack of maintenance. The Applicant indicated whilst there are plans to remove the lamp this is a low priority because it is not a hazard and has no impact on the amenity of Oak Tree Farm. The Tribunal finds that, although Mr and Mrs Grice may find the continued presence of this lamp disconcerting, there is no reason to believe that its condition has deteriorated or, if it had deteriorated, that this would affect the general amenity of the site so as to engage the Tribunal's jurisdiction.

#### Defibrillator

- 138 It is common ground that there is a defibrillator on 52 Oak Tree Farm which was installed by the occupiers of that pitch and for which they are responsible. The question whether the Applicant should install a defibrillator on the site in addition to that defibrillator or in substitution for it is a matter for him and not one for the Tribunal to entertain.

#### Traffic calming on Oak Tree Farm

- 139 The evidence shows that there is a clear disagreement between the Applicant and Mrs Byrne about the provision of traffic calming on Oak Tree Farm with Mrs Byrne favouring the reinstatement of sleeping policemen which were removed when the Applicant carried out resurfacing on the perimeter road, and the Applicant, who relies, presently, on speed signage at various strategic points on the site and on occupiers reporting instances of speeding to him so that appropriate action can be taken those who are responsible. He explained his reasons for not reverting to sleeping policemen in his evidence, particularly, the 'bottoming out' of cars as they were driven over the sleeping policemen.

The Tribunal finds that the measures taken to bring about traffic calming on the site is a matter for the Applicant. It is not for the Tribunal to adjudicate upon the merits or otherwise of alternative ways of achieving this purpose. Moreover, the change in the approach to traffic calming adopted by the Applicant does not constitute a deterioration in the condition of Oak Tree Farm and a decrease its amenity.

## **Conclusion**

- 140 To the extent that the issues raised fall within its remit, the Tribunal finds that there has not been any measurable deterioration in the condition and decrease in the amenity of Oak Tree Farm or, similarly, any measurable reduction in the services provided by the Applicant or the quality of those services.
- 141 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 evidence to rebut that presumption.
- 142 Consequently, the Tribunal determines that the pitch fee for all of the properties that are the subject of these applications, namely 7, 8A, 8B, 21, 25, 42, 44, 46, 47, 50 and 60 Oak Tree Farm, should increase from the review date of 1 January 2023 in accordance with the Notices dated 28 November 2022 and the consequent outstanding sums be paid to the Applicant.
- 143 The Tribunal is unclear whether the Applicant has issued letters to any of the Respondents regarding arrears of pitch fees arising from the non-payment of the proposed increase. In this respect, 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 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**

- 144 The Applicant reserved his right to make an application for costs under Rule 13 of the Tribunal Rules.

Judge David R Salter

Date: 19 February 2024

## **Appeal Provisions**

- 145 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).
- 146 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.
- 147 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.