FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case references	**:**	**CAM/33UB/PHI/2023/0129, 0146, 0147, 0149, 0151**
Site	**:**	**Oak Tree Residential Park, Norwich Road, Attleborough, Norwich**
Park homes	**:**	**2,3,8,21 & 39 Appletree Close, Oak Tree Residential Park**
Applicants	**:**	**Tingdene Parks Limited**
Representative	**:**	**SP Law**
Respondents	**:**	**The owners of the park homes listed above**
Representative	**:**	**Mrs Caroline Gibbs**
Type of application	**:**	**Applications under the Mobile Homes Act 1983 to determine pitch fees**
Tribunal members	**:**	**Judge K. Saward** **Mr G.F. Smith MRICS FAAV**
Hearing venue	**:**	**Park Farm Hotel, Hethersett, Norfolk**
Date of hearing	**:**	**27 March 2024**
Date of decision	**:**	**17 April 2024**

DECISION AND REASONS

Corrected decision

The original Decision was issued on 4 April 2024. This is a corrected Decision issued under the Tribunal's powers within Rule 50 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. Corrected text to paragraphs 43-45 below is under-lined.

Decisions of the Tribunal

(1) In accordance with Rule 6(3)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal directed that the proceedings be consolidated and heard together.

(2) The Tribunal considers it reasonable for the relevant pitch fees to be changed and orders that the amounts of the new annual pitch fees payable by the Respondents from 1 April 2023 are as set out in the last column (headed "**Determined**") of the table below.

Respondents	Park home	Pitch fee at 1.4.22	Proposed	Determined
Mrs Shepherd	2 Appletree Close	£2,006.52	£2,275.32	**£2,221.22**
Mr Wyatt & Mrs Jenkins	3 Appletree Close	£2,780.52	£3,153.00	**£3,078.04**
Mrs Jarrett	8 Appletree Close	£2,006.52	£2,275.32	**£2,221.22**
Mr & Mrs Rogers	21 Appletree Close	£2,006.52	£2,275.32	**£2,221.22**
Mr & Mrs England	39 Appletree Close	£2,006.52	£2,275.32	**£2,221.22**

REASONS

The background

1. The Applicants are the site owners and operators of Oak Tree Residential Park, a protected site within the meaning of the Mobile Homes Act 1983 ('the 1983 Act'). The Respondents' right to station their mobile homes on their pitches at the site is governed by the terms of a Written Statement (i.e., an agreement) with the Applicant, and the implied terms of the 1983 Act.

2. As the Respondents have not agreed to an increase in pitch fees for 2023, the site owner must apply to this Tribunal if it is to obtain an increase.

3. By application dated 16 June 2023, the Applicant seeks a determination of the pitch fee payable by the Respondents with effect from

1 April 2023. The application is made under paragraph 16 of the implied terms in the relevant pitch agreements by Chapter 2 of Part I of Schedule 1 to the 1983 Act.

4. Written notice of the proposals was served on the Respondents by letter dated 28 January 2023. The notice proposes a new annual pitch fee of £2,275.32 for Nos. 2,8,21 and 39 Appletree Close and £3,153.00 for No. 3 Appletree Close, applicable from 1 April 2023. This represents a 13.4% increase on the previous annual fee that took effect upon the last review on 1 April 2022. The adjustment sought is made with reference to the change in the Retail Price Index ('RPI') taking the figure of 13.4% for the month of December 2022. The proposals are accompanied by a completed pitch fee review form in the prescribed format.

5. There is no suggestion of any procedural flaw. The Tribunal is satisfied that the procedural requirements and time limits have been met.

6. When the application was made, it originally included the park homes at 17 and 37 Appletree Close and 10 and 15 Bramble Close. The Applicant confirmed at the hearing that the pitch fees have since been agreed for those addresses and the application withdrawn against the relevant park home owners. There remain 5 pitches for which agreement has not been reached with the park home owners.

7. The Respondents for each pitch have been allocated a separate case reference number. A single set of case management directions were issued by the Tribunal on 20 November 2023 for all the pitches where agreement had not been reached at the time.

8. The Directions required the Applicant site owners to send to each relevant occupier, a statement of the Applicant's case, including the RPI/CPI data used in the calculations of the proposed new pitch fees and, if the proposed increase was based on RPI, any submissions and evidence of costs relied upon in contending that RPI was a better measure of relevant inflation than CPI over the relevant period or that there were other considerations in favour of the increase sought.

9. The park home owners were directed to complete and return a reply form and send to the Applicants a full statement of why they opposed the pitch fee increase; if they wished to rely on any of the matters set out in paragraph 18(1) of Chapter 2 of Part 1 of Schedule 1 to the act (or any other weighty factors) to say it would be unreasonable to increase the pitch fee, full details and evidence of such matters together any witness statements of fact and any photographs and other documents relied on by the park home owner.

10. The Respondents were encouraged to liaise with each other and seek to produce a combined submission/response through one representative.

11. The Tribunal received 5 separate paginated and indexed bundles, one for each Respondent. It emerged at the hearing that the supporting statement from Mrs Shepherd of 2 Appletree Close, was incomplete, it

ending abruptly on page 63 of the bundle. After checking, the Tribunal clerk confirmed that the copy received by the Tribunal, and sent to the Applicant, was the incomplete version. The Tribunal declined to accept the late re-submission of the document with new issues to which the Applicant would not have had opportunity to investigate and respond.

12. In her response, Mrs Shepherd had stated that she wanted her case to be heard separately, and that was apparently the expectation of others. However, those present at the hearing, including Mrs Shepherd, acknowledged that it would be in the interests of expediency to consolidate the proceedings given the common issues raised and amount of repetition. Having established there were no objections, the Tribunal directed under Rule 6(3)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 that the proceedings be consolidated and heard together.

The law

13. The law applicable to a change in pitch fee is contained within the 1983 Act. Provisions within Chapter 2 of Part 1 of Schedule 1 to the 1983 Act set out the implied terms that govern the process and means of calculation.

14. The definition of 'pitch fee' at paragraph 29 is "*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........*"

15. When determining the amount of a new pitch fee, particular regard shall be had to the matters set out in paragraph 18(1) of the implied terms These include sums spent on particular types of improvement (a), any relevant deterioration in the condition, and any relevant decrease in the amenity, of the site (aa), any relevant reduction in the services that the owner supplies to the site, pitch or mobile home, and any relevant deterioration in the quality of those services (ab).

16. Paragraphs 18 to 20 of the implied terms are reproduced in the Schedule to this Decision. Paragraph 20(A1) sets out a presumption that the pitch fee shall increase or decrease by a percentage which is no more than any percentage change in the RPI since the last review date, unless this would be unreasonable having regard to paragraph 18(1). The RPI is calculated by reference to the latest index, being the last index published before the day on which notice is served.

17. In *Wyldecrest Parks (Management) Ltd v Kenyon & Ors* [2017] UKUT 28 (LC), the Deputy President reviewed earlier decisions and observed [at paragraph 47] that the effect of the implied terms for pitch fee review can be "*summarised in the following propositions*":

> "*(1) The direction in paragraph 16(b) that in the absence of agreement the pitch fee may be changed only "if the appropriate judicial body ... considers it reasonable" for there to be a change*

> *is more than just a pre-condition; it imports a standard of reasonableness, to be applied in the context of the other statutory provisions, which should guide the tribunal when it is asked to determine the amount of a new pitch fee.*
>
> *(2) In every case "particular regard" must be had to the factors in paragraph 18(1), but these are not the only factors which may influence the amount by which it is reasonable for a pitch fee to change.*
>
> *(3) No weight may be given in any case to the factors identified in paragraphs 18(1A) and 19.*
>
> *(4) With those mandatory consideration well in mind the starting point is then the presumption in paragraph 20(A1) of an annual increase or reduction by no more than the change in RPI. This is a strong presumption, but it is neither an entitlement nor a maximum.*
>
> *(5) The effect of the presumption is that an increase (or decrease) "no more than" the change in RPI will be justified, unless one of the factors mentioned in paragraph 18(1) makes that limit unreasonable, in which case the presumption will not apply.*
>
> *(6) Even if none of the factors in paragraph 18(1) applies, some other important factor may nevertheless rebut the presumption and make it reasonable that a pitch fee should increase by a greater amount than the change in RPI."*

18. For pitch fee review notices given from 2 July 2023, the relevant provisions were amended by the Mobile Homes (Pitch Fees) Act 2023. The amendments changed the presumption to refer to the Consumer Prices Index ('CPI') instead of RPI, but it does not apply to the review under consideration here.

<u>The hearing</u>

19. The hearing was attended by Mr Pearson, Director of the Applicant company Tingdene Parks Limited, who was legally represented by Mr Stephen Wood, Solicitor. Several of the Respondents attended. They had nominated Mrs Caroline Gibbs, another resident not involved in the proceedings, to speak on their behalf. As the hearing unfolded, most of those attending made contributions.

20. A topic-based approach was taken, allowing each side to speak on each point of dispute raised by the Respondents before moving onto the next topic. Both sides were afforded opportunity to put questions to the other and answered the Tribunal's questions. As the Respondents were not legally represented, the Tribunal posed points of law to the Applicant's legal representative.

21. At the start of the hearing, Mr Wood produced a decision of the First-tier Tribunal on a pitch fee review at Ashwood Park in Cheshire dated 5 December 2023. Opportunity was given to the Respondents to read the decision during an adjournment in proceedings.

22. The Tribunal Directions of 20 November 2023 had indicated that an inspection was likely to be required. Following submission of the hearing bundles, the Tribunal members reviewed the position. During opening announcements, the Tribunal explained that a site inspection had not been conducted as the nature of complaints raised by residents did not indicate one was necessary. However, the position would be kept under review and an inspection made at the end of the hearing, if appropriate. No inspection was conducted as it would not have assisted the Tribunal's determination or been proportionate and no request was made.

Submissions

23. A range of submissions and arguments have been made by the Respondents. The Tribunal does not attempt to capture them all. For the avoidance of doubt, it should not be assumed that the Tribunal has ignored any submissions not referenced herein or that it has left them out of account. This Decision seeks to focus on the key issues. Not all matters mentioned in the bundles or at the hearing require findings to be made for the purpose of deciding the main issues in this application.

Surface water drainage

24. The Respondents maintain that the site entrance floods every time it rains. Even light rain overnight causes flooding. It has been ongoing since 2014 when the site was built. The road is constructed of tarmac and when it freezes, the surface is so icy that residents have been unable to get off the park. The conditions have been of particular concern for elderly residents attempting to walk through the water or over ice. The site is for residents aged over 45 years with most being of pension age up to 94 years.

25. The Respondents emphasised how hazardous the access is at times of flooding with reference to photographs in the bundles of pooled water across the site entrance, said to have been taken in March 2023.

26. In answer to the Tribunal's questions, Mr Pearson explained that the site sits on a natural aquifer with the surface water draining into a soakaway. After rainfall, there is a period of flooding, which dissipates after 8 hours. There is a gulley on one side of the entrance only due to the public highway abutting the other side with a footpath by the 'T' junction. Mr Pearce accepted that there is an issue with surface water drainage that has existed since 2014. He stated that an engineering solution could be investigated if the residents wanted but it would be at cost that would need to be reflected in future pitch fees, and there is no guarantee it would work. Salt is provided to be spread on ice.

27. In closing, Mr Wood submitted that there is a soakaway at the front of the site. There has been ongoing water cumulation since 2014 and so there has not been a 'deterioration' in the site. Water soaks away within 8 hours, salt is supplied and there is no evidence of the depth of water shown in photographs or how ice was present. There is the possibility of improvements, but they would be at cost.

28. From what the Tribunal heard, there is a manifest fault with surface water drainage at the site entrance. By the Applicant's own admission there is an issue, and it has existed since 2014. The depth of pooled water cannot be determined from the photographs. Nevertheless, not much water is needed for ice to form in freezing conditions and to create a hazard for vehicular and pedestrian use alike. The issue is particularly problematic for the demographic of residents, many of whom are elderly. The provision of salt is unlikely to suffice to address the more fundamental issue of inadequate surface water drainage. The presence of pooled water for 8 hours at a time equates to a working day. It is not a reasonable period of time for accumulated water to be routinely endured by residents.

29. In this Tribunal's view, there has not been a 'deterioration' in the condition of the site for the purposes of paragraph 18(1)(aa) from the viewpoint that the position has not worsened or degraded over time. On the evidence, the surface water drainage has never been adequate. This is a weighty matter that the Tribunal considers to be of such importance that it should be taken into account in the determination of the pitch fee outside the express provisions in paragraph 18(1). There is no evidence this matter has been accounted for in previous pitch fee reviews.

Fencing

30. Photographs are produced of a section of fallen fencing. The photographs are said by the Respondents to have been taken on 19 October 2023. Mrs Gibbs accepted for the Respondents that the fence had been repaired, but only 2 weeks before the hearing. It was also accepted that further fence works had been undertaken.

31. The bundle includes other photographs that Mrs Gibbs said showed that the base of the fence was rotten and bowing over in August 2022. It was submitted that Mrs Shepherd had reported the condition of the fence to a representative of the Applicant on numerous occasions.

32. The Applicant's response was that there is no evidence of when problems with the fence were reported. It sounded like the fence came down after the review date and should not be considered. Repairs were undertaken and it is conceded that other parts of the fence were repaired.

33. From the photographic evidence, the fence fell down after the relevant review date of 1 April 2023. Accordingly, the Tribunal finds that this matter cannot be taken into account.

Health and safety in drain cleaning

34. The Respondents produced 4 photographs showing a worker kneeling in the road within the site with their hand down the drain. There was some confusion over when the photographs were taken. After some discussion, Mrs Gibbs gave the dates of October 2022, 2023, and March 2023. Concern was expressed by Mrs Gibbs over compliance with health and safety requirements and the risk of the worker being hit by fast moving traffic not adhering to the 10mph site speed limit.

35. The Applicant pointed out that the worker is wearing a high visibility waistcoat or coat in the photographs. They had received health and safety training. The key point is that a drain cleaning service is being provided for which the worker is paid and is prepared to undertake.

36. The Tribunal finds that this matter neither falls within any of the categories to which particular regard must be had in paragraph 18(1), nor does it raise issues of weight that could properly influence the amount of pitch fee.

Railway sleepers

37. Concerns are raised by the Respondents over the condition of railway sleepers being used as a retaining wall and the possible risk of collapse. It was conceded by Mrs Gibbs that the railway sleepers are within the plot concerned. They are not within an area of the site for which the Applicants are responsible. As such, the Tribunal disregards this matter.

Foul drainage

38. Reference is made by some Applicants to recurring 'effluent' issues. It was established at the hearing that the complaint concerned foul drainage. This was specifically raised by Mr and Mrs England (No 39) and Mr and Mrs Rogers (No 21). Mr and Mrs England say that ever since they moved to the site in 2015, they have constantly had to put drain cleaners down sinks to eliminate smells. Mrs Gibbs said that the drains back up and the pipework is inadequate.

39. Mr Pearce said that when drains had been unblocked, fat had been found as the cause of blockage. It had necessitated the site owner writing to all residents advising what could be put down drains.

40. No evidence has been submitted by the Respondents to demonstrate that there is a problem with foul drainage for which the Applicant is liable. As such, the Tribunal disregards this matter.

Builders' rubble beneath park home

41. Mr and Mrs Rogers at No 21 say that builders' rubble has been left beneath their park home which the Applicant should remove. The Applicant says this is not a matter the Tribunal should take into account.

42. There is no evidence before the Tribunal to support the ground of complaint or to demonstrate that it is matter to which the Tribunal can have regard in its determination.

Disparity in pitch fees

43. The pitch fee for No 3 is higher than other pitches. The named Respondents are Mr Wyatt and Mrs Jenkins. Mr Wyatt attended the hearing and spoke. They find it unfair and feel penalised due to a high fee being agreed by a predecessor owner in order to secure a lower purchase price for the park home.

44. The Applicant stated that Mr Wyatt and Mrs Jenkins are the third owners. It is up to a willing buyer and seller to agree the terms.

45. Although sympathetic to their situation, the Tribunal is not determining whether the level of their pitch fee is reasonable. That is outside our jurisdiction. The role of the Tribunal is to decide whether it is reasonable for the pitch fee to be changed and, if so, the amount of pitch fee. It cannot interfere in a private contractual matter.

Rate of inflation

46. The Respondents consider that a 13.4% increase is neither fair nor reasonable at a time when energy, food and food costs were at an all-time high. At the hearing, Mrs Gibbs spoke of hardships suffered by residents from the increased cost of living. Some had been unable to afford to heat their homes.

47. The Applicant replied that RPI was the appropriate measure in place when notices were sent out and the rate applicable in December 2022 was 13.4%. It was unfortunate that RPI was that high, but it reflects the high price for a basket of goods. It cuts both ways. Costs had increased for the Applicant too with increased costs for labour, materials including wood, and contractors not being able to use red diesel.

48. The Applicant further submitted that Parliament could have chosen a different method, but it had not. There should not be a forensic approach in the same way as service charges. There is no need to look at individual finances. The purpose of inflation is to keep things level. There was no reason for the Applicant to look into the future and guess what might happen. The Applicant avers that it was correct to apply RPI, it was not unreasonable, and it should be upheld.

49. The Tribunal notes that this line of argument reflects the decision of the Upper Tribunal (Lands Chamber) in *Vyse v Wyldecrest Parks Management Ltd* [2017] UKUT 24 (LC) where the Judge carefully set out why RPI was used, rather than seeking to consider every element of costs individually and said:

> "*64. The pitch fee is a composite 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, Britanniacrest (2016) paragraph 24. ………………. Not all of the site owner's costs will increase or decrease every year, nor will they necessarily increase or decrease in line with RPI. The whole point of the legislative framework is to avoid examination of individual costs to the owner and instead to apply the broadbrush of RPI. Parliament has regarded the certainty and consistency of RPI as outweighing the potential unfairness to either party of, often modest, changes in costs."

50. The Tribunal has carefully considered the *Vyse* case and other submissions including the Decision at Ashwood Park where the Tribunal found no reason to depart from an increase in line with RPI. As another First-tier Tribunal, it is not binding on this Tribunal. Each case must be considered on its individual merits.

51. The Tribunal notes that the time of review in the cases to be determined coincided with a particularly high period of inflation that peaked in October 2022. The amount of pitch fee can be increased by 'no more than' the rate of RPI last published before the day the notice was served, being 13.4% in December 2022. The 2023 Act which replaced RPI with CPI does not have retrospective effect. Accordingly, for reviews that were proposed prior to 2 July 2023 the statutory presumption in favour of RPI remains. As Mr Wood accepted, the high rate of inflation is capable of being a 'weighty matter' that may give sufficient reason to disapply the statutory presumption. It is noted that the published figure for CPI for December 2022 was 10.5%. This is addressed further below.

Conclusions

52. In considering whether a change in the pitch fee is reasonable, the Tribunal has paid particular regard to the factors in paragraph 18(1). In summary, the Tribunal does not find any site-specific factors concerning the physical state of the site of sufficient weight, either individually or collectively to constitute a deterioration in the condition. Nor is there any decrease in the amenity or any reduction in services. No improvements in the site are claimed by the Applicants.

53. There is no suggestion that the pitch fee includes costs and fees incurred by the site owner which are to be disregarded by paragraph 19.

54. Paragraph 20(1) does not say that the pitch fee will be automatically adjusted in accordance with the RPI. However, the Tribunal is mindful that is the starting point. It is intended to be a simple procedure for reviewing pitch fees for each year.

55. In this instance, none of the factors in paragraph 18(1) have been demonstrated to justify any reduction. Nevertheless, the Tribunal considers that the issue of unsatisfactory surface water drainage at the site entrance is a weighty matter of such importance to displace the statutory presumption. The Tribunal finds that it would be reasonable to change the pitch fee by reducing the RPI figure by 20% i.e., from 13.4%

to 10.7%. This would also bring the percentage increase more in line with CPI, which stood at 10.5% at the relevant time.

56. Accordingly, the Tribunal determines that it is reasonable for the pitch fee to be changed and the amount of increase should be at 10.7%.

57. The new pitch fees are payable with effect from 1 April 2023, but an occupier shall not be treated as being in arrears until the 28th day after the date of this Decision (paragraph 17 of the implied terms).

58. The Applicant confirmed that no application was being made for an order for the Respondents to reimburse the Applicant for the Tribunal fees paid for the application and/or hearing, and no such order is made.

Name: Judge K. Saward Dated: 17 April 2024

Rights of appeal

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

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

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

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

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

Schedule – paragraphs 18-20 of the implied terms

18(1) When determining the amount of the new pitch fee particular regard shall be had to—

(a) any sums expended by the owner since the last review date on improvements—

(i) which are for the benefit of the occupiers of mobile homes on the protected site;

(ii) which were the subject of consultation in accordance with paragraph 22(e) and (f) below; and

(iii) to which a majority of the occupiers have not disagreed in writing or which, in the case of such disagreement, the [tribunal], on the application of the owner, has ordered should be taken into account when determining the amount of the new pitch fee;

(aa) ... any deterioration in the condition, and any decrease in the amenity, of the site or any adjoining land which is occupied or controlled by the owner since the date on which this paragraph came into force (in so far as regard has not previously been had to that deterioration or decrease for the purposes of this sub-paragraph);

(ab) ... any reduction in the services that the owner supplies to the site, pitch or mobile home, and any deterioration in the quality of those services, since the date on which this paragraph came into force (in so far as regard has not previously been had to that reduction or deterioration for the purposes of this sub-paragraph); ...

(ba) ... any direct effect on the costs payable by the owner in relation to the maintenance or management of the site of an enactment which has come into force since the last review date; and ...

(1A) But ... no regard shall be had, when determining the amount of the new pitch fee, to any costs incurred by the owner since the last review date for the purpose of compliance with the amendments made to this Act by the Mobile Homes Act 2013.

(2) When calculating what constitutes a majority of the occupiers for the purposes of sub-paragraph (1)(b)(iii) each mobile home is to be taken to have only one occupier and, in the event of there being more than one occupier of a mobile home, its occupier is to be taken to be the occupier whose name first appears on the agreement.

(3) In a case where the pitch fee has not been previously reviewed, references in this paragraph to the last review date are to be read as references to the date when the agreement commenced.

19(1) When determining the amount of the new pitch fee, any costs incurred by the owner in connection with expanding the protected site shall not be taken into account.

(2) ... When determining the amount of the new pitch fee, no regard may be had to any costs incurred by the owner in relation to the conduct of proceedings under this Act or the agreement.

(3) When determining the amount of the new pitch fee, no regard may be had to any fee required to be paid by the owner by virtue of—

(a) section 8(1B) of the Caravan Sites and Control of Development Act 1960 (fee for application for site licence conditions to be altered);

(b) section 10(1A) of that Act (fee for application for consent to transfer site licence).

(4) When determining the amount of the new pitch fee, no regard may be had to any costs incurred by the owner in connection with—

(a) any action taken by a local authority under sections 9A to 9I of the Caravan Sites and Control of Development Act 1960 (breach of licence condition, emergency action etc.);

(b) the owner being convicted of an offence under section 9B of that Act (failure to comply with compliance notice).

20 (A1) Unless this would be unreasonable having regard to paragraph 18(1), there is a presumption that the pitch fee shall increase or decrease by a percentage which is no more than any percentage increase or decrease in the retail prices index calculated by reference only to—

(a) the latest index, and

(b) the index published for the month which was 12 months before that to which the latest index relates.

(A2) In sub-paragraph (A1), “the latest index”—

(a) in a case where the owner serves a notice under paragraph 17(2), means the last index published before the day on which that notice is served;

(b) in a case where the owner serves a notice under paragraph 17(6), means the last index published before the day by which the owner was required to serve a notice under paragraph 17(2).