FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case references	:	**CAM/22UF/PHI/2023/0049-0053, 0132-0139**
Site	:	**Hayes Country Park, Burnham Road, Wickford, Essex SS11 7GP**
Park homes	:	**1 & 15 The Oaks** **620, 631 & 646 Howards Way** **502 & 507 Palm Court**
Parties	:	**Hayes Country Estates Limited** **-and-** **The owner/s of the park homes listed above**
Representative of Hayes Country Estates Limited	:	**Mr M. Mullin, Counsel**
Representative of the park home owners making applications	:	**Mr T. Chapman**
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	:	**Basildon Magistrates Court**
Date of hearing	:	**30 May 2024**
Date of decision	:	**18 June 2024**

DECISION AND REASONS

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 monthly pitch fees payable by the named park home owners from 1 April 2023 are as set out in the last column (headed "**Determined**") of the table below.

Park home owner/s	Park home	Proposed 1.4.23	Determined
Mr and Mrs Newman	1 The Oaks	£383.64	**£372.48**
Mr and Mrs Bowen	15 The Oaks	£383.64	**£372.48**
Mr and Mrs Lunn	631 Howards Way	£383.64	**£372.48**
Mr and Mrs McGee	646 Howards Way	£383.64	**£372.48**
Mr Etherton	502 Palm Court	£383.64	**£372.48**
Mr and Mrs Chapman	507 Palm Court	£383.64	**£372.48**
Mr Wheeler and Mrs Humberstone	620 Howards Way	£383.64	**£372.48**

REASONS

Preliminary Matters

1. Hayes Country Park in Wickford, Essex is a protected site within the meaning of the Mobile Homes Act 1983 ('the 1983 Act'). The owner and operator of the site is Hayes Country Estates Limited, who acquired the freehold interest from Leisure Parks Real Estate (Holdings) Limited on 23 March 2023.

2. The park home owners' 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 site owner, and the implied terms of the 1983 Act. There was uncertainty at the hearing over whether the Tribunal had been supplied with correct versions of the Written Statement and what had been issued to park home owners. However, it is undisputed that the pitch fee review date is 1 April of each year. For the purposes of this decision, focus is otherwise primarily upon the implied terms.

3. Where agreement has not been reached to an increase in pitch fees, the site owner must apply to this Tribunal if it is to obtain an increase. Hence, the site owner applied to the Tribunal for a determination in respect of pitch fee payable for 2023 by the occupants of seven pitches.

4. It so happened that the park home owners of six of those pitches made their own applications to the Tribunal against the site owner. The occupiers of No 620 Howards Way did not make an application and are respondents only in these proceedings. To avoid confusion, the Tribunal

does not use the terms 'Applicant' and 'Respondent' given that there are six cross applications. Instead, reference will be made to the 'site owner' and 'park homeowner/s'.

5. The applications seek a determination of the pitch fee payable by the park homeowners with effect from 1 April 2023.

6. Written notice of the proposals was served by the previous site owner on the park home owners by letter dated 24 February 2023. The notice proposes a new monthly pitch fee of £383.64, applicable from 1 April 2023. This represents a 13.4% increase on the previous monthly fee of £338.31 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 published percentage for the month of January 2023. The proposals are accompanied by a completed pitch fee review form in the prescribed format. There is no suggestion of any procedural flaw. The Tribunal is satisfied that the procedural requirements and time limits have been met.

7. A separate case reference number has been allocated for the application relating to each pitch. A single set of case management directions were issued by the Tribunal on 23 October 2023 for all the pitches where agreement had not been reached.

8. The Directions required the site owner to send to the park homeowners a statement of 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 to send to the site owner 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 1983 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. 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

11. 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.

12. 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……."*

13. 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 or any adjoining land occupied or controlled by the owner (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).

14. When considering "amenity", Kitchen J explained in *Charles Simpson Organisation Limited v Martin Redshaw and another* [2010] 2514 (Ch): "*In my judgment, the word "amenity" in the phrase "amenity of the protected site" in paragraph 18(1)(b) simply means the quality of being agreeable or pleasant. The Court must therefore have particular regard to any decrease in the pleasantness of the site or those features of the site which are agreeable from the perspective of the particular occupier in issue."*

15. 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.

16. 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 considerations 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."

17. More recently in *Wyldecrest Parks (Management) Ltd v Whiteley and others* [2024] UKUT 55 (LC), the Deputy President stated:

"*An amenity can be enjoyed without any right to its preservation, and the decrease of such an amenity would be capable of making a park a less attractive place to live. It is therefore perfectly understandable that the implied terms specify such a decrease as a factor to which consideration should be given, whether or not the decrease is an infringement of a legal right or a contravention of a site licence or* planning control. [37]

Where there is no reason to depart from the statutory presumption of an RPI /CPI increase, the increase in percentage terms for all pitches with the same review date will be the same. In that case there may be no need to distinguish between different pitches in any way, and it may be sufficient for the tribunal to state what the percentage increase is to be. But in cases where it is said that the presumption does not apply, because of a factor falling within paragraph 18(1), or where it is said it has been displaced by some other weighty factor, the tribunal will need to consider whether the factor which justifies a higher or lower increase than RPI/CPI affects all pitches equally. If it does not, then it is likely to be necessary for the tribunal to determine what is the reasonable pitch fee for each pitch, or each group of pitches affected to the same extent, rather than to adopt a blanket approach. [42]

In general, for cases where the presumption of an RPI/CPI increase has been displaced, tribunals should try to adopt a relatively simple approach, because the sums involved are modest and the material available is likely to be quite limited. Unless different pitches are affected to a materially different degree by a loss of amenity such that there is a good reason for differentiating between them in determining new pitch fees, tribunals should not feel obliged to do so. [71]"

18. Many other legal authorities are cited by the parties, not all relevant to the points of dispute. Caselaw is referenced below where pertinent to the point under consideration.

19. 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.

The inspection

20. A site inspection was conducted by the Tribunal members before the hearing opened in the presence of representatives of all parties. In attendance for the site owner were: Michael Mullin (Counsel), Kirstie Apps (Solicitor), Michelle Rider (General Manager) and Margaret Ribbon (Administrator). Attending for the park home owners were: Thomas Chapman and Mr Wheeler. No discussion took place during the site inspection on the merits of anyone's case.

21. The site is in a rural location accessed off Burnham Road via a narrow railway line tunnel. The site office is located near to the site entry point. Hayes Chase is the main road running through the site from which other roads lead. The site extends towards the banks of the River Crouch. During the inspection the Tribunal members saw various features mentioned in the documentary evidence. They included the condition of the roads, where surface water was said to accumulate, and new drainage grates fitted. Adjacent land belonging to the site owner was pointed out, along with the rear access road, infill plots, visitor parking and bin collection points.

22. After expansion, there are said to be 307 park homes within the site. There is an on-site community clubhouse for use by residents.

The Hearing

23. At the hearing, Mr Mullin appeared for the site owner. Mr Chapman spoke on behalf of the occupiers of the six pitches who had made applications to the Tribunal, assisted by Mr Lunn. Mr Wheeler represented himself and Ms Humberstone (both of 620 Howards Way), solely as respondents in the proceedings.

24. The documents before the hearing included two bundles, one of 624 pages, the other 475 pages. With the consent of the Tribunal, the park home owners had submitted further witness statements from Mrs Bowen, Mr Lunn, Mr Newman, Mr Chapman and Mr McGee and the site owner filed a further witness statement in reply from Ms Rider. Shortly before the hearing, the site owner produced Mr Mullin's 'note on the law', plus a chronology of events. Mr Wheeler spoke in objection to the late production of these documents. Given that they simply set out the law and list the sequence of events as the site owner sees it, the Tribunal accepted the documents. In doing so, the Tribunal noted that the park home owners believe that the chronology omits points relevant to their case. At the hearing, Mr Mullin did not oppose the production of further copy photographs by Mr Chapman. All these documents have

been taken into account insofar as relevant to issues falling for determination.

25. Many of the photographs supplied post-date the review date. For the avoidance of doubt, the Tribunal has assessed the position as things would have stood prior to 1 April 2023. Matters such as a "recently" dug trench off The Oaks do not fall for consideration.

26. A topic-based approach was taken, allowing each side to speak on points of dispute raised by the park home owners before moving onto the next topic. As the park home owners were not legally represented, the Tribunal put points of law to Mr Mullin, Counsel for the site owners.

27. Mr Chapman and Mr Wheeler confirmed that the park home owners do not oppose any increase in pitch fee, just the amount. However, Mr Chapman indicated that a waiver was also sought of a £37.39 amount paid since 2013. It emerged that this amount was an agreed sum when the site obtained residential status. As such, this payment does not feature in the Tribunal's considerations.

Submissions

28. The Tribunal does not attempt to capture all submissions and arguments made by the parties, it being impractical and unnecessary to do so. Some representations made by the park home owners fall outside the Tribunal's jurisdiction and cannot be taken into account, such as allegations of harassment, deception and misleading information. 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 applications.

Relevant date

29. Paragraphs 18(1)(aa) and (ab) came into force on 26 May 2013. That is the date from which consideration is to be given to whether there has been any deterioration in the condition, and any decrease in amenity, of the site or adjoining land under paragraph 18(1)(aa), or any reduction or deterioration of services under paragraph 18(1)(ab). The exception is where the deterioration etc, has previously been taken into account when determining a new pitch fee.

30. The site owner points out that 26 May 2013 cannot be the relevant date as the site was not a residential caravan park at that time to be a protected site under the Act.

31. Historically, the site operated as a holiday caravan site with a seasonal restriction of 10 months per annum. As such, the park home owners occupied their pitches under a leisure licence agreement for 10 months of the year. Planning permission was obtained authorising all year round use of one part of the site in 2013, and the remainder in 2015. The site owner acknowledges that the entire site became a protected site as defined by section 1(2) of the Caravan Sites Act 1968 from

19 August 2015 when the site licence was issued for a residential caravan site.

32. However, Mr Mullin argued that it was not until February 2019 when Written Statements were issued that those agreements were captured by the 1983 Act. To support this stance, reliance is placed upon the judgment in *Murphy v Wyatt* [2011] EWCA Civ 408 that for the Act to apply the agreement must have fallen within provisions of section 1(1) of the 1983 Act from inception.

33. Whilst acknowledging that agreements under the 1983 Act do not automatically arise from a change in planning or licensing status of the land, the Tribunal rejects the site owner's argument, which contradicts Ms Rider's first witness statement made as General Manager of the site.

34. As Mr Mullin accepted, an agreement can be oral and the Written Statements that followed expressly state that the agreements began on 19 August 2015. Indeed, Ms Rider stated: "*This is the date when it was considered that an agreement under the Mobile Homes Act was entered into.*" The site owner only now contends that date was erroneous, a position unsupported by the evidence. Not only was the site licensed for residential occupation from 2015, but the occupiers' status changed from holiday use only for 10 months per year to year round residential use with payment of £37.39 per month made to the site owner for the benefit of that change from as early as 2013.

35. Given the clear documentary evidence in the Written Statements, the Tribunal takes 19 August 2015 as the inception date from when the 1983 Act applied to the agreements.

Surface water drainage

36. With reference to photographs, the park home owners complain of water pooling on communal roads and pathways, which they attribute to serious drainage problems in The Oaks and Howards Way, particularly after the rearrangement of the one-way system at Howards Way and the infill of additional pitches on green areas.

37. The site owner relies upon a first instance decision of this Tribunal in *Sines Parks Holdings Ltd v Muggeridge and others* to maintain that for a deterioration in condition or amenity of the site to be relevant to a pitch fee review, it must be something permanent or long lasting which affects the fabric of the site rather than temporary matters. That decision is not binding upon this Tribunal.

38. In our view, simply because an issue is remediable does not take it outside the scope of paragraph 18(aa). The wording of the paragraph refers to "any deterioration" without caveat. Moreover, there will be many instances when deterioration in a site is capable of remediation. The site owner's argument proceeds along the lines that any reduction made for a deterioration would be compounded upon subsequent

reviews and so account should also be taken of remedial works undertaken since.

39. The site owner refers to the creation of a new area for surface water to drain described as 'the lagoon'. It is also acknowledged that surface water drainage issues are experienced when there is very heavy rain at The Oaks. It is further accepted that as Howards Way is on a slight incline, water drains to the bottom of the road where it sits before draining away and it "has always been like it".

40. The Tribunal notes that attempts were made to mitigate surface water pooling with the installation of an ECO drain along Howards Way in October 2023 and another the month after. On the site visit, the Tribunal members observed several grates that have been installed since the review date. They serve to confirm that an issue existed for a very long time before active measures were taken to attempt to resolve the problem.

41. Mr Mullin argued that it cannot be determined without expert evidence whether the surface water drainage problems in Howards Way have been exacerbated by the conversion of roads from 1 way to 2 way. In the view of the Tribunal identifying the precise cause here is less important than establishing whether there was any deterioration in the condition of the roads or an unacceptable problem that would rightly be regarded as some other weighty factor.

42. Plainly a problem existed with surface water drainage prior to the 2023 review date. The photographs and accounts indicate the issues to have been significant and longstanding with some problems persisting.

43. The Tribunal cannot ascertain if the issue arises from deterioration in the condition of the roads or from inadequate drainage from the outset or indeed some other later factor. Whatever the cause, the inadequacy of the surface water drainage is a weighty matter that the Tribunal considers to be of considerable importance to be taken into account in the determination of the pitch fee even if it is not a deterioration in the condition of the site under paragraph 18(1)(aa). This matter has not been accounted for in previous pitch fee reviews.

Provision of services/facilities

44. The site owner takes a narrow interpretation of 'services' for the purposes of paragraph 18(1)(ab) arguing that it applies to utilities only. No authority for this stance is produced. The word 'services' is not defined in the Schedule. Reference is made to 'gas, electricity, water, sewerage or other services' within the implied terms at paragraphs 12 and 21. It does not automatically follow that just because those utilities are services (through use of the word 'other'), that only utilities can be services under paragraph 18(1)(ab). As it is, the distinction is not critical to this case.

45. Park home owners complain of fewer site office staff and reduced opening hours. There is a full-time manager living on site who residents can contact out of hours. The occasions when some residents have needed to read their own electric meters appear to be infrequent. Any detrimental impacts from reduced staffing/office hours prior to the review date appear too minor to constitute a reduction or deterioration in services.

46. Before residents began to pay Council Tax in 2016, skips were provided for waste disposal. There is a reduction in service supplied by the owner from the viewpoint that they no longer supply skips, but the site is now served with wheelie bins provided by the Council instead. The refuse collection point in Hayes Chase may not be convenient to all residents, but the site staff will collect and return wheelie bins if requested. In the circumstances, no reduction in pitch fee is warranted on this ground.

47. There has been a reduction in grounds maintenance staff from when the site was under development. The issue arising is what the consequences there have been, if any.

48. During the site visit the Tribunal members saw moss, grass and weeds growing between the blockwork roads. The site owners deny a lack of maintenance, but the extent of growth would have accumulated over time, supporting the park home owners complaints of reduced maintenance prior to the review date. There were several places where the road edging was incomplete or finished to a poor standard. The road has also been repaired with concrete infill in a couple of places rather than blockwork as expected to achieve a satisfactory appearance. The Tribunal considers this to be a decline in maintenance amounting to a decrease in the visual amenity of the site albeit not serious. Any adjustment in pitch fee for this factor alone would be at a low level.

49. There are two large areas of open land outside the site parameters where brambles and weeds have grown over time. As the areas adjoin the site and belong to the site owner, any decrease in amenity therefrom is captured by paragraph 18(aa). The Tribunal considers that the scruffy, unmaintained appearance would have had detrimental impact upon the pleasantness of the site, which should be taken into account. Again, it is low level.

50. We gather that areas of grass between park homes have not been cut as before, but there is insufficient evidence to demonstrate this is more than minimal for account to be taken.

51. The site owner claims never to have gritted the park roads. Grit is provided in a bin at the site entrance for use by residents on the roads. No depreciation in service is found in this regard.

52. Power outages can occur at any site. They do not appear to have been frequent at this park. Most notably, power was cut for around 24 hours after a severe storm in February 2022 affecting many homes nationally. It does not demonstrate a reduction in services.

53. A play park existed on the site until 2015. Whether or not it was removed prior to 19 August of that year when the agreements became regulated by the 1983 Act is unclear. There was an outdoor swimming pool until 2016. The site owner says the pool was closed after a drunken resident suffered serious injury. There was no lifeguard, and it was a health and safety risk.

54. Until 2017 there was a shop on the site. It then became a hairdressing salon before closure in 2020/21. Whilst Mr Mullin accepted that the shop/hairdressers were an 'amenity', it was not accepted evidentially that their closure were matters of substance. The site owners say that neither was viable and suggested they cannot have been well supported. There is no statement from the hairdresser to confirm reasons for closure. Nevertheless, the pool and shop/hairdressers clearly were on-site facilities for the benefit of occupants. They no longer exist resulting in a loss of amenity to residents. Even if residents did not formally complain at the time, the Tribunal considers that in a rural location lacking in facilities, the loss was not inconsequential. It should be taken into account.

Roads within the park

55. A track/access road extends behind park homes along the southerly edge of the site. Photographs show the grassed track replaced with hard surfacing located closer to the rear of pitches in Palm Court. From the evidence heard, there has been some raising in levels from construction of the track although the amount of increase is unclear. The fact remains that use of the track in closer proximity to park homes will invariably impact upon privacy of those occupiers and affect their outlook. The depreciation in pleasantness for affected park home owners may be regarded as a decrease in amenity of part of the site. Even if it does not fall within paragraph 18(aa), it is still a weighty matter of such importance that the Tribunal would take the impacts into account.

56. Attention was drawn during the site visit to the narrowness of the site roads. When the site office was moved in 2021, the road narrowed a little in consequence. Parking outside the site office is very restricted, although visitor parking is provided further into the site. More notably, where the one-way road become two-way in Howards Way in 2021, it will have reduced ease of safe passage for all road users causing a decrease in pleasantness. The road will have been originally laid out as one-way for a reason. The Tribunal finds this to be a decrease in amenity of the site. Areas of the park have been redeveloped and park homes placed on infill plots, some of which have resulted in reduced visibility and narrowed the road at the junction of Elm Way and The Chase thereby also reducing amenity.

Rate of inflation

57. The park home owners consider the 13.4% increase is neither fair nor reasonable. Mr Mullin submitted that residents must take the rough

with the smooth and pointed out that there were no complaints at the time of low inflation. Costs had also increased for the site owner. The rate of RPI had not been at its peak. Mr Lunn responded that the fee should reflect the change in circumstances at the site.

58. The Tribunal notes 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:

    "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." [64]

59. The review coincided with a high period of inflation that had 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 January 2023. 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. Nonetheless, 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 January 2023 was 10.1%. This is addressed further below.

Other matters

60. Mr Wheeler spoke of the removal of the ramp into the site office making it less accessible to those less mobile. The Tribunal heard of reasonable adjustments made to accommodate those residents with difficulty in accessing the office, including home visits from office staff. Given those measures, the Tribunal finds no cause to make a reduction in pitch fee for this reason. The missing lock to the outside meter cupboard of Mr Wheeler's park home may well be a source of irritation but it is not a weighty matter.

61. The site owner argues that the park home owners are only complaining now because of the amount of increase. That may well be so, but failing to apply to the Tribunal earlier does not exempt issues being raised now, if not been considered before. That is made plain in *Whiteley* where the site owner's argument failed that residents' acquiescence in pitch fee reviews after relevant reductions in amenities had used up their opportunity to have the changes taken into account on a subsequent pitch fee review. The only exception was where there has been a

previous pitch fee review since the relevant deterioration or decrease which has involved a determination by a tribunal and such matter has been taken into account.

62. The parties disagree on whether the sum of £150 offered to residents to agree the pitch fee was an 'inducement' or financial aid to assist those finding it difficult to pay. Whether that impacted on 300 of the park home owners agreeing to pay the revised pitch fee cannot be known. In any event, the fact so many agreed to pay does not of itself mean that those residents do not share the concerns raised by others in these proceedings or that the increase must be reasonable.

63. All sites differ and each case must be considered on its individual merits. Therefore, the Tribunal is not concerned with how the pitch fee compares to other sites in the locality or whether site owners have applied lower percentage increases. As per *Stroud v Weir Associates* [1987] 1 EGLR 190, the Court of Appeal held that pitch fees on other sites were not a relevant factor to be taken into account when reviewing the pitch fee.

64. There is no substantive evidence that the park homes became unsellable by reason of any of the matters arising. Indeed, the site owners list several park homes that have been sold since the review date.

Conclusions

65. The Tribunal is required to have regard to paragraphs 18, 19 and 20 of Part 1 of Schedule 1 of the 1983 Act when determining a new pitch fee.

66. 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.

67. In considering whether a change in the pitch fee is reasonable, the Tribunal has paid particular regard to the factors in paragraph 18(1).

68. No improvements in the site are claimed by the owners since the date of the previous review.

69. There are factors in paragraph 18(1) that have been demonstrated by park home owners and other 'weighty matters' to displace the statutory presumption. In line with *Whiteley*, the Tribunal has considered whether different pitches are affected to any materially different degree by a loss of amenity to warrant differentiation in the pitch fee for groups of pitches. Whereas some pitches are affected more by repositioning of the track, others are affected more by other factors, such as the 2-way road system and surface water drainage. All those involved in the proceedings have been affected in some way. There is no good reason to differentiate, and it would risk injustice if we attempted to do so.

70. Taking the matters identified collectively, and adopting a simple approach, the Tribunal finds that it would be reasonable to reduce the RPI figure from 13.4% to 10.1% to properly reflect the changed circumstances. This would also bring the percentage increase in line with CPI as it stood at the relevant time. In arriving at this conclusion, the Tribunal has borne in mind that the purpose of disapplying the statutory presumption is not to punish the site owner.

71. Accordingly, the Tribunal determines that it is reasonable for the pitch fee to be changed and the amount of increase should be set at 10.1%.

72. 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).

Name: Judge K. Saward **Dated: 18 June 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

Mobile Homes Act 1983

1. Particulars of agreements

1(1) This Act applies to any agreement under which a person ("the occupier") is entitled—

(a) to station a mobile home on land forming part of a protected site;

and

(b) to occupy the mobile home as his only or main residence.

5. Interpretation

"protected site" does not include any land occupied by a local authority as a caravan site providing accommodation for gipsies ... but, subject to that,**]** has the same meaning as in Part I of the Caravan Sites Act 1968.

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).

Part 1 of the Caravan Sites Act 1968

Paragraph 1(b)- For the purposes of this Part of this Act a protected site is any land in England in respect of which a site licence is required under Part I of the Caravan Sites and Control of Development Act 1960 or would be so required if [paragraph 11 [or 11A of Schedule 1 to that Act (exemption of gypsy and other [of Schedule 1 to that Act (exemption of]] local authority sites)] were omitted, not being land in respect of which the relevant planning permission or site licence—

(a) is expressed to be granted for holiday use only; or
(b) is otherwise so expressed or subject to such conditions that there are times of the year when no caravan may be stationed on the land for human habitation.