FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference :

(1) LON/00AC/PHI/2023/0008
LON/00AC/PHI/2023/0025
LON/00AC/PHI/2023/0001
LON/00AC/PHI/2023/0002
LON/00AC/PHI/2023/0004
LON/00AC/PHI/2023/0005
LON/00AC/PHI/2023/0011
LON/00AC/PHI/2023/0012
LON/00AC/PHI/2023/0014
LON/00AC/PHI/2023/0015
LON/00AC/PHI/2023/0016
LON/00AC/PHI/2023/0018
LON/00AC/PHI/2023/0019
LON/00AC/PHI/2023/0020
LON/00AC/PHI/2023/0021
LON/00AC/PHI/2023/0024
LON/00AC/PHI/2023/0026
LON/00AC/PHI/2023/0028
LON/00AC/PHI/2023/0034
LON/00AC/PHI/2023/0036
LON/00AC/PHI/2023/0037
LON/00AC/PHI/2023/0039
LON/00AC/PHI/2023/0041
LON/00AC/PHI/2023/0042
LON/00AC/PHI/2023/0044
LON/00AC/PHI/2023/0045
LON/00AC/PHI/2023/0046
LON/00AC/PHI/2023/0049
LON/00AC/PHI/2023/0050
LON/00AC/PHI/2023/0051
(2) LON/00AC/PHI/2023/0007
LON/00AC/PHI/2023/0009
LON/00AC/PHI/2023/0013
LON/00AC/PHI/2023/0029
LON/00AC/PHI/2023/0053
LON/00AC/PHI/2023/0035
LON/00AC/PHI/2023/0038
LON/00AC/PHI/2023/0043
LON/00AC/PHI/2023/0047
(3) LON/00AC/PHI/2023/0040

Site	**:**	**Arkley Park, Barnet Road, Barnet EN5 3JQ:** **(1) Pitch 2, Pitch 5, Pitch 10, Pitch 11, Pitch 15, Pitch 16, Pitch 27, Pitch 28, Pitch 30, Pitch 32, Pitch 33, Pitch 36, Pitch 37, Pitch 38, Pitch 40, Pitch 47, Pitch 50, Pitch 54, Pitch 70, Pitch 72, Pitch 73, Pitch 76, Pitch 78, Pitch 79, Pitch 81, Pitch 82, Pitch 84, Pitch 87, Pitch 89, Pitch 91** **(2) Pitch 19, Pitch 24, Pitch 29, Pitch 55, Pitch 68, Pitch 71, Pitch 74, Pitch 80, Pitch 85** **(3) Pitch 77**
Applicant	**:**	**Arkley Estates Limited**
Representative	**:**	**Mr Michael Mullin (counsel) instructed by Ms Kirstie Apps (Apps Legal)**
Respondent	**:**	**(1) Mrs Gaye Hargrove, Mr Raymund Czechowski, Mr Daniel Woodbyrne, Mrs M M Bates, Mr Joan C Gonsalves, Mrs Eileen Sheppard, Mr John Smith, Mr James Aird, Mr James Harding, Mrs Barbara Wootten, Mrs Jean Greenaway, Mrs Eileen D Wilson, Mr David Grant, Mrs Marian Hardman, Mrs Deborah Burniston, Mr Paul Venables and Ms M Smyth, Mr David Adams, Ms June Rapacioli, Mr Malcolm Leach, Ms Linda Woodford, Ms Janice Badman, Mr P Edwards, Mr Nicholas Panayi, Mr Steve Keaney, Mr Christopher Horsfield, Mr Matthew and Mrs Miriam Dinan, Miss Jeanette Hudson, Mr Barry Mason, Mr Malcolm Clifton, Mrs Helen Krampoutsa** **(2) Ms Kathleen Madigan, Mr R and Mrs S West, Ms Shirley Levine, Mr Terry Stewart, Mr Raymond Baldock, Ms Gillian Griffiths, Mrs Reeve, Mr Sean Gallagher, Mr Mario Mancini** **(3) Mr Ray Poulton (deceased)**
Representative	**:**	**(1) For all those listed in (1), Mr Malcom Clifton** **(2) For all those listed in (2), in person** **(3) No representatives**

identified for Mr Poulton in accordance with direction from Tribunal 15 January 2024

Type of application	:	**Applications under paragraphs 16 - 20 of schedule 1 of the Mobile Homes Act 1983 to determine pitch fees**
Tribunal members	:	**Deputy Regional Judge Nikki Carr** **Regional Surveyor Helen Bowers MRICS**
Venue	:	**10 Alfred Place, London WC1E 7LR**
Date of decision	:	**6 June 2024** **Corrected 9 July 2024**

DECISION

Corrected under rule 50 of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013

Decision

(1) The Tribunal determines that the following new pitch fees apply to the following pitches as from 1 July 2023:

Pitch No.	Name	Old Pitch Fee	%age Increase	New Pitch Fee
2	Mrs Hargrove	£699.98	8.5	£759.48
5	Mr Czechowski	£699.98	8.5	£759.48
10	Mr Woodbyrne	£699.98	8.5	£759.48
11	Mrs Bates	£648.73	8.5	£703.87
15	Ms Gonsalves	£784.26	8.5	£850.92
16	Mrs Sheppard	£699.98	8.5	£759.48
19	Ms Madigan	£699.98	8.5	£759.48
24	Mr & Mrs West	£275.68	8.5	£299.11
27	Mr Smith	£784.26	8.5	£850.92
28	Mr Aird	£784.26	8.5	£850.92
29	Ms Levene	£699.98	8.5	£759.48
30	Mr Harding	£253.82	8.5	£275.39
32	Ms Wootten	£699.98	7.5	£752.48
33	Ms Greenaway	£784.26	7.5	£843.08
36	Mrs Wilson	£784.26	8.5	£850.92
37	Mr Grant	£784.26	8.5	£850.92
38	Mrs Hardman	£726.84	8.5	£788.62
40	Mrs Burniston	£784.26	8.5	£850.92
47	Mr Venables & Ms Smyth	£634.77	8.5	£688.73
50	Mr Adams	£784.26	8.5	£850.92

54	Ms Rapacilio	£784.26	8.5	£850.92
55	Mr Stewart	£699.98	8.5	£759.48
68	Mr Baldock	£784.26	8.5	£850.92
70	Mr Leach	£699.98	8.5	£759.48
71	Ms Grffiths	£699.98	8.5	£759.48
72	Ms Woodford	£648.73	8.5	£703.87
73	Ms Badman	£242.28	8.5	£262.87
74	Mrs Reeve	£699.98	8.5	£759.48
76	Mr Edwards	£699.98	8.5	£759.48
78	Mr Panayi	£233.32	7.5	£250.82
79	Mr Keaney	£699.98	7.5	£752.48
80	Mr Gallagher	£699.98	7.5	£752.48
81	Mr Horsfield	£699.98	7.5	£752.48
82	Mr & Mrs Dinan	£784.26	8.5	£850.92
84	Miss Hudson	£648.73	8.5	£703.87
85	Mr Mancini	£233.32	8.5	£253.15
87	Mr Mason	£648.73	8.5	£703.87
89	Mr Clifton	£697.67	8.5	£756.97
91	Ms Krampousta	£784.26	8.5	£850.92

(2) The application in respect of pitch 77 is dismissed.

Reasons

1. By notices dated 25 May 2023, the Applicant in this case gave notice to an unknown number of the residents of Arkley Park, Barnet Road, Barnet EN5 3JQ that their quarterly pitch fees would be increased from 1 July 2023. The notices sought an increase of 11.4%, in line with RPI.

2. From 2 July 2023, of course, site owners were confined to CPI at a much lower rate. For that, and a large number of other reasons as identified further below, a large number of the park home owners disputed the Applicant's entitlement to the increase.

3. In light of that opposition, by applications dated 23 August 2023 and received by the Tribunal, and delivered by hand to the pitches identified above on or around 30 August 2023, the Applicant site operator applied under paragraph 16 of schedule 1 of the Mobile Homes Act 1983 ('the Act') for the Tribunal's determination of the pitch fees payable for 52 park homes.

4. During the course of proceedings, the CPI argument has been abandoned, and a number of the applications have been withdrawn due to park home owners' agreements to the pitch fee review. The park home addresses identified above in the heading continue to either actively oppose the applications, or have failed to respond or otherwise agree the new pitch fee.

5. In respect of numbers 37, 68, 74, 76 and 79, incomplete agreements accompanied the applications. By letters of 2 November 2023 I provided

directions for the missing information (namely the missing parts of agreements containing the contractual review clauses for these pitches) to be supplied. The Applicant provided some materials on 7 November 2023 for the Tribunal (and informs me that the additional materials were sent to the relevant park home owners by post on the same day), and submissions regarding missing documentation.

6. Also on 2 November 2024, I caused to be sent to the Park Home Owners a letter to which was attached a document in which the owners concerned could notify the Tribunal if they intended to object to the Applicant's applications, and if so whether they wished to attend at a hearing and/or appoint a representative. It should be said that it has been extremely difficult in this case to obtain any party's cooperation in following directions and providing information, but by the time of the hearing the persons identified in the title of this decision designated (1) had either themselves returned or caused Mr Malcolm Clifton to return those forms, in which each appointed Mr Clifton as their representative.

7. Nothing has been heard from the persons designated in (2) in the title. The Tribunal was notified in January that Mr Raymond Poulton, identified in (3) in the title, had passed away, and wrote to the Applicant on 16 January 2024 to require that it indicate whether the application in respect of pitch 77 was pursued, and if so to provide the names and addresses of Mr Poulton's executors or personal representatives. The Applicant has not done so.

8. By directions dated 12 December 2023, the parties were respectively directed to provide their statement of case in opposition to the pitch fee increase, and reply. The Applicant was also notified that, contrary to the contents of its applications, the review date in the agreements in respect of pitches 24, 70, and 73 is January 1st (unlike all other pitches for which the agreements were provided, in which it is 23 or 24 June). The Applicant was notified it would need to address the effect of that on its applications, in addition to the question relating to missing or incomplete agreements.

9. The Tribunal has done its best to deal with piecemeal correspondence and the failure to comply with directions by both parties in this case, and I had cause to write a peculiarly stern letter to both Ms Apps and Mr Clifton on 16 January 2024. I had hoped that would instil in each of them cooperation with the Tribunal and directions.

10. Sadly, that was not to be. On the Applicant's side, the bundle in this case was prepared on 4 March 2024. It contained only the application in respect of Mr Clifton and no other of the Respondents set out in (1), contrary to paragraph 5(a) of the directions, and none of the key matters as regards terms or dates of review identified in the directions. Separate bundles were provided for each of those Respondents set out in (2), except for Mr Mancini whom it appears Ms Apps simply forgot (and whose bundle was therefore served late, after the Tribunal identified it was missing on 19 March 2024). Bundles for 68 and 74 did not include the key correspondence in respect of the applicable agreement

terms (and of course these were completely absent in respect of the other pitches in which it is an issue). I had to direct that a supplemental bundle containing the applications and information be provided to the Tribunal by letter of 19 March 2024.

11. Mr Clifton had also decided to treat the directions more as guidelines than requirements and, on 12 March 2024, after the bundle had been prepared, provided a 'reply' not permitted by the directions. There had been no attempt to agree permission for any such reply, either with the Applicant or with the Tribunal, despite my repeated invocations to the parties to cooperate. It includes more photographs, more statements from other owners, and a 23-page document called '*Observations on the Applicant's Reply to Respondents' Statements of Response*'. Mr Clifton appeared offended that he should be made to apply for any such late evidence to be admitted, despite having had the directions since December 2023 which made it clear that the Respondents' statement of case should contain all evidence on which they relied. Ms Apps failed to respond at all to this late evidence, which we are told she was provided by first class post on or around 12 March 2024, meaning that I had to chase for confirmation of whether the Applicant intended to object to the inclusion of it, which she confirmed less than 24 hours before the hearing. In the event, we admitted the late evidence, the Applicant plainly having had at least two weeks to consider how to deal with it, and there being no new issues raised by it (although new documents with signatures from residents were supplied).

12. At the hearing the Applicant was represented by Mr Michael Mullin of counsel. The Respondents in (1) in the title above were represented by Mr Clifton. No-one appeared on behalf of the Respondents in (2). In light of having failed to identify executors or personal representatives for Mr Poulton (3), the Applicant did not pursue that application and it is therefore dismissed.

The Applicable Law

13. The Mobile Homes Act 1983 ('the 1983 Act') as amended by the Mobile Homes Act 2013 applies to all written agreements for occupation of mobile homes not excepted by paragraph 1 of Part 1 of Schedule 1 of the 1983 Act. It implies into all such agreements the terms set out in chapter 2 of schedule 1 of the 1983 Act.

14. Paragraph 29 of chapter 2 of schedule 1 defines a pitch fee as "*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 or other such services, unless the agreement expressly provides that the pitch fee includes any such amounts*."

15. Paragraph 16 of chapter 2 of schedule 1 sets out that a pitch fee can only be changed by the owner in accordance with paragraph 17 if either: (i) an

occupier agrees; or (ii) the Tribunal considers that it is reasonable for the pitch fee to be changed and makes an order determining the amount of the new pitch fee.

16. Paragraph 17 sets out the mechanism for review:

(2) At least 28 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.
(2A) A notice under sub-paragraph 2 which proposes an increase in the new pitch fee is of no effect unless it is accompanied by a document which complies with paragraph 25A.
(3) If the occupier agrees to the proposed new pitch fee, it shall be payable as from the review date.
(4) If the occupier does not agree to the proposed new pitch fee –
(a) the owner... may apply to [the Tribunal] for an order under paragraph 16(b) determining the amount of the new pitch fee;
(b) the occupier shall continue to pay the current pitch fee to the owner until such a time as the new pitch fee is agreed by the occupier or an order determining the amount of the new pitch fee is made by [the Tribunal] under paragraph 16(b); and
(c) the new pitch fee shall be payable from the review date but the occupier shall not be treated as being in arrears until the 28th day after the new pitch fee is agreed or, as the case may be, the 28th day after the date of [the Tribunal's] order determining the amount of the new pitch fee.
(5) Any application under sub-paragraph (4)(a) may be made at any time after the end of the period of 28 days beginning with the review date but no later than three months after the review date.
(6) Sub-paragraphs (7) – (10) apply only if the owner –
(a) has not served the notice required by sub-paragraph (2) by the time by which it was required to be served, but
(b) at any time thereafter serves on the occupier a written notice setting out his proposals in respect of a new pitch fee.
(6A) A notice under sub-paragraph (6)(b) which proposes an increase in the pitch fee is of no effect unless it is accompanied by a document which complies with paragraph 25A.
(7) If (at any time) the occupier agrees to the proposed pitch fee, it shall be payable as from the 28th day after the date on which the owner serves the notice under sub-paragraph (6)(b).
(8) If the occupier has not agreed to the proposed pitch fee –
(a) the owner... may apply to [the Tribunal] for an order under paragraph 16(b) determining the amount of the new pitch fee;
(b) the occupier shall continue to pay the current pitch fee to the owner until such time as the new pitch fee is agreed by the occupier or an order determining the amount of the new pitch fee is made by [the Tribunal] under paragraph 16(b); and
(c) if [the Tribunal] makes such an order, the new pitch fee shall be payable as from the 28th day after the date on which the owner serves the notice under sub-paragraph (6)(b).

(9) An application under sub-paragraph (8) may be made at any time after the end of the period of 56 days beginning with the date on which the owner serves the notice under sub-paragraph 6(b) but… no later than four months after the date on which the owner serves that notice.

(9A) A tribunal may permit an application under sub-paragraph (4)(a) or (8)(a) … to be made to it outside the time limit specified in sub-paragraph (5) (or … (9) [as applicable]) if it is satisfied that, in all the circumstances, there are good reasons for the failure to apply within the applicable time limit and for any delay since then in applying for permission to make the application out of time.

17. 'Review date' is defined in paragraph 16 as "the date specified in the written statement as the date on which the pitch fee will be reviewed in each year, or if no such date is specified, each anniversary of the date the agreement commenced." 'Written statement' means the statement of terms of occupation of the site in accordance with section 1(2) of the 1983 Act.

18. By paragraph 25A(1), the notice of the new pitch fee must be in the prescribed form (as found in the Mobile Homes (Pitch Fees) (Prescribed Form) (England) Regulations 2013), specify the percentage increase or decrease in RPI, explain the effect of paragraph 17, specify the matters to which the amount proposed for the new pitch fee is attributable, refer to the owners obligations in paragraphs 21(c) – (e) and 22(c) and (d), and refer to the owner's obligations in paragraph 22(e) and (f).

19. Provided that the formalities have been complied with, paragraph 20A(1) provides that "unless it 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" (hereafter 'RPI') "calculated only by reference 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." Paragraph 20A(2) makes clear that 'the latest index' is that which was published last before the notice was served.

20. That presumption is therefore displaced, so far as is relevant, by satisfactory evidence of any of the following matters in paragraph 18 (although it is not an exhaustive list of the factors that the Tribunal may take into account - *Vyse v Wyldecrest Parks Management Limited* [2017] UKUT 24 (LC)):

(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 any improvements -

(i) which are for the benefit of the occupiers of the 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 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 purpose of this sub-paragraph);

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

21. Paragraph 19 sets out that costs incurred by the owner in connection with expansion of the site, conduct of proceedings under the Act, applications for licence condition alterations, consent to transfer site licence, or compliance with local authority notices (breach of licence condition, emergency action) etc shall not be taken into account, and neither shall sums incurred by an owner being convicted of a criminal offence.

22. In *Sayer RE: 48 Woodland View* [2014] UKUT 0283, the Upper Tribunal (Deputy President Martin Rodger KC) identified the following starting point in relation to applications for a change in pitch fee:

"*22. The effect of these provisions as a whole is that, unless a change in the pitch fee is agreed between the owner of the site and the occupier, the pitch fee will remain at the same level unless the RPT considers it reasonable for the fee to be changed. If the RPT decides that it is reasonable for the fee to be changed, then the amount of the change is in its discretion, provided that it must have "particular regard" to the factors in paragraph 18(1), and that it must not take into account of the costs referred to in paragraph 19 incurred by the owner in connection with expanding the site. It must also apply the presumption in paragraph 20(1) that there shall be an increase (or decrease) no greater than the percentage change in the RPI since the last review date unless that would be unreasonable having regard to the factors in paragraph 18(1). .....*

23. ...There is no invariable entitlement to such an increase, even where none of the factors referred to in paragraph 18(1) is present to render such an increase unreasonable. The overarching consideration is whether the RPT considers it reasonable for the pitch fee to be changed; it is that condition, specified in paragraph 16(b), which must be satisfied before any increase may be made (other than one which is agreed). It follows that if there are weighty factors not referred to in paragraph 18(1) which nonetheless cause the RPT to consider it reasonable for the pitch fee to be changed, the presumption in paragraph 20(1) that any variation will be limited by

reference to the change in the RPI since the last review date may be displaced."

23. In *Britanniacrest Limited v Bamborough* [2016] UKUT 0144 (LC), the His Honour Judge Rodger KC and Mr Peter McCrea FRICS said this about the presumption:

"*23. Although annual RPI increases are usually uncontroversial, it should be noted that the effect of paragraph 20(1) is to create a limit, by reference to RPI, on the increase or decrease in the pitch fee. There is no invariable entitlement to such an increase, even where none of the factors referred to in paragraph 18(1) is present to render such an increase unreasonable. The overarching consideration is whether the RPT [the Tribunal] considers it reasonable for the pitch fee to be changed; it is that condition, specified in paragraph 16(b), which must be satisfied before any increase may be made (other than one which is agreed). It follows that if there are weighty factors not referred to in paragraph 18(1) which nonetheless cause the RPT to consider it reasonable for the pitch fee to be changed, the presumption in paragraph 20(1) that any variation will be limited by reference to the change in the RPI since the last review date may be displaced.*

24. … paragraph 18(1)(ab) requires the FTT to have regard to any reduction in services which the owner supplies to the site, the pitch or the 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).

…

31. …The fundamental point to be noted is that an increase or decrease by reference to RPI is only a presumption; it is neither an entitlement nor a maximum, and in some cases it will only be a starting point of the determination. If there are factors which mean that a pitch fee increased only be RPI would nonetheless not be a reasonable pitch fee as contemplated by paragraph 16(b), the presumption of only an RPI increase may be rebutted…

32. … If there are no such improvements the presumption remains a presumption rather than an entitlement or an inevitability.

33. … the FTT has a wide discretion to vary the pitch fee to a level of a reasonable pitch fee taking into account all of the relevant circumstances, and that the increase in RPI in the previous 12 months is important, but it is not the only factor which may be taken into account."

24. Deterioration in the condition and amenity of the site was referred to in *Wickland (Holdings) Limited v Amelia Esterhuyse* [2023] UKUT 147 (LC) (Her Honour Elizabeth Cooke). The displacement of the presumption of a rise in the pitch fee in line with RPI was because of another 'weighty' factor outside of section 18(1), loss of amenity. The decision affirmed that deterioration is that since 2014 when the provision came into force and not only that which has occurred since the last pitch fee review (paragraph 23).

25. In *Charles Simpson Organisation Ltd v Redshaw* (2010) 2514 (CH), Kitchin J (as he then was) provided the meaning of the term 'amenity' in this context: "*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*."

26. In *Wildcrest Parks (Management) Limited v Whitely and Alves* [2024] UKUT 55 (LC), Judge Rodger KC summarised the previous chain of cases as follows:

"*24. In summary, where none of the factors in paragraph 18(1) is present, and no other factor of sufficient (considerable) weight can be identified to displace the presumption of an RPI increase, the task of the tribunal is to apply the presumption and to increase the pitch fee in line with inflation. Where one of the factors in paragraph 18(1) is present, or where some other sufficiently weighty factor applies, the presumption does not operate or is displaced. Then the task of the tribunal is more difficult, because of the absence of any clear instruction on how the pitch fee is to be adjusted to take account of all relevant factors. The only standard which is mentioned in the implied terms, and which may be used as a guide by tribunals when they determine a new pitch fee, is what they consider to be reasonable. Paragraph 16 provides that, if the parties cannot agree, the pitch fee may only be changed by the FTT if it "considers it reasonable for the pitch fee to be changed and makes an order determining the amount of the new pitch fee." The obvious inference from paragraph 16 is that the new pitch fee is to be the fee which the tribunal considers to be reasonable*."

27. At paragraphs 35 and 36, Judge Rodger KC held that there is no express requirement that amenity arise through a contractual right in the agreement between the owner and occupier or a condition in the owner's licence. An amenity may be enjoyed without the right to its preservation. At paragraphs 43 – 46, he further held that the Tribunal must consider whether, and if so to what degree, a change in amenity affected different occupiers differently.

28. In paragraphs 49 - 63, Judge Rodger KC considered the effect of the change to the implied terms since 26 May 2013 as reflected in paragraph 18(ab):

"*55. The change in the wording of the implied term has made a real difference to the treatment of adverse changes. Previously the only type of change which was within the paragraph was a "decrease in the amenity of*

the protected site". Now particular regard must also be had to a "deterioration in the condition" of the site. Additionally, and for the first time, other land must also be taken into account: a deterioration in the condition of adjoining land occupied or controlled by the owner, or a decrease in the amenity of such adjoining land, have been added as factors to which particular regard must be had.

56. Of relevance to the issue now being considered, there has also been a change in the time when the relevant deterioration in amenity may have taken place. The point of reference is no longer the last review date but has become "the date on which this paragraph came into force" (25 May 2013 in England and 1 October 2014 in Wales). Any deterioration or decrease since that date must be taken into account, unless the exception in brackets applies. The exception is expressed in convoluted language: "(in so far as regard has not previously been had to that deterioration or decrease for the purposes of this subparagraph)". It means: unless that deterioration or decrease has previously been taken into account when determining a new pitch fee.

57. The correct answer to issue 3 depends on the meaning of that exception.

58. I am satisfied that the exception applies only if there has been a previous pitch fee review since the relevant deterioration or decrease which has involved a determination by a tribunal, and in which the deterioration or decrease has been taken into account. In my judgment the exception does not apply where the owner has obtained an increase since the deterioration or decrease simply by making a proposal under paragraph 17 which the occupier has agreed to or acquiesced in without the involvement of the tribunal.

…

61. …the exception applies where the deterioration or decrease has been taken into account "for the purposes of this sub-paragraph". The sub-paragraph is sub-paragraph 18(1) which provides instructions "when determining the amount of the new pitch fee"; the purpose of the sub-paragraph is therefore the determination of a new pitch fee. Paragraph 17(1) provides that the pitch fee can only be changed in one of two ways; either "with the agreement of the occupier" or "if a tribunal … makes an order determining the amount of the new pitch fee". There is a distinction between a new pitch fee which is agreed and one which is determined by a tribunal, and the purpose of paragraph 18(1) is solely in connection with the latter. It follows that an agreement between a site owner and the occupier of a pitch over a new pitch fee is not a determination; whatever they may have taken into account when reaching their agreement will not have been taken into account for the purposes of sub-paragraph 18(1) and will not fall within the exception."

29. Finally, in relation to the approach the Tribunal is to take to how to come to a 'reasonable new figure' if persuaded that the presumption is rebutted, Judge Rodger KC concluded:

"*70. ...It is for the tribunal which is tasked with determining the new pitch fee to decide what it considers to be a reasonable new figure. Parliament has chosen to adopt a relatively crude standard for pitch fee determinations and to give very little guidance on how that standard should be applied. It is not for this Tribunal to lay down a rule where Parliament had chosen not to do so.*

71. 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. They should determine what in their view is a reasonable increase or a reasonable pitch fee having regard to the owner's expenditure on improvements, and to the loss of any amenity at the park or deterioration in its condition and having regard to the change in the general level of prices measured by RPI or CPI, and such other factors as they consider relevant. They should use whatever method of assessment they consider will best achieve that objective."

30. Thus the approach we must take is in two stages: (i) is it reasonable for the pitch fee to be changed at all considering all the factors in paragraph 18(1) and such other weighty factors as the Tribunal, in its discretion, identifies; and (ii) if so, is the presumption of RPI rebutted, and what should be the change.

The Site

31. The Tribunal inspected the property in the morning of 27 March 2024 in advance of the hearing.

32. Arkley Park is situated at the Stirling Corner roundabout between the A1 Barnet Way, leading to the A1(M) and the A411 Barnet Road. The site is situated behind the Miller and Carter public house. Whilst in a semi-rural location, the site has significant traffic noise from the main roads.

33. The entrance to the site is from Barnet Road, which is a busy road, and it is situated behind the Miller and Carter public house. In front of the park entrance is public land and there is a new brick culvert. We noted a bus stop and a post box. The entrance gate to the site is on poor condition with evidence of rot. We saw a dummy camera, hung to a lamppost close to the entrance.

34. The site has a total of 92 pitches. Eight pitches are currently vacant (plots 3, 7, 12, 22, 31, 46, 57 and 88). The pitches are accessed by a small system of inner circulation roads, which in general provide a one-way system. The inner roads are a mix of brick, tarmac and concrete. There is some evidence of patch repairs to these roads. There are various car parking areas, with faded, painted numbers on the curb areas/space. Those painted numbers seem to align with the plots numbers. We observed that the park home situated on plot 73 extended onto the parking space that seems to be allocated to plot 23. Whilst the general condition at the time of our inspection was fair, there was weed growth on the parking areas.

35. There are various lamp posts around the site, together with fire points and electrical meter cupboards. In a central area of the site is a small amenity area with a bench.

36. The vacant pitches were observed to be in a general tidy condition, but there was some evidence of debris that has been flattened from the removal of the various park homes from those pitches. Some of the services had been capped and at the date of inspection, there did not seem to be any particular problem to the capped services.

37. There is a short boundary between the site and the A1 and plots 29-34 back onto this boundary. We noted that behind homes 29- 31 there are tall conifer trees. However, the conifers on the boundary behind plots 32-34 have been removed. The tree stumps remain and the ground is uneven and has not been managed so is covered in weeds. There is a visitors' car parking area also on this A1(M) boundary. This area is covered in tarmac/fine gravel and provides parking for maybe 20 vehicles. We saw a 4" pipe culvert feeding into a ditch outside of the site. There was a broken fence at this point.

38. We noticed some electrical wiring that appeared to be draped around the boundary fencing in the visitors' parking area and other boundary fences. Some of the other boundary fences did not follow the boundary lines as set out on the site plan.

39. Between pitches 49 and 50, an area of alleged water leaks, the land appeared to be fine and was grassed over. We saw a storm drain running at the rear boundary to pitches 23, 24 and 25. There is a hatch to the brick base to the home on pitch 73. The ground around the pitch to 74 seemed wet underfoot.

Legal issues

40. The Applicants raised a number of legal issues which it is convenient to deal with at the outset.

41. First, for the park home owners who had not responded to the applications, the Applicant argued that the Tribunal is not permitted to take into account any evidence it has seen or heard from others who have participated, or

indeed its own site visit. The Tribunal must approve the RPI increase proposed without interference.

42. We disagree. It is quite clear to us that, where a park home owner has not agreed the pitch fee review, the site owner is required to make an application to the Tribunal. On such an application, the Tribunal must be satisfied that the proposed increase is reasonable. Its own observations might well displace the presumption. Its own observations might be informed by the evidence it has heard from other park home owners. The Tribunal is not a rubber-stamp; it has to be satisfied that the presumption should be given effect. We are satisfied that accords with Judge Rodger KC's observations in *Sayer*. We do not consider that is a question of 'descending into the arena', but rather a proper exercise of our jurisdiction as enacted.

43. Secondly, the Applicant suggests that when considering the paragraph 18 factors, we are considering the site as it is currently, rather than at the date of the notice of increase. The cases cited in favour of this argument – *Greenwood v PR Hardman & Partners* [2017] EWCA Civ 52 (CA) and *Brittania Crest v Bamborough* – do not appear to us to be directly on point.

44. We reject with the Applicant's submission. The entitlement to the increase is dependent on the condition of the site at the date it is to take effect, not some later date. There is a good policy reason for the date of the increase being the date of the assessment of the section 18 factors; on each occasion a site owner proposes an increase, it should itself consider the condition of its site prior to making a decision over whether there has been an increase or decrease in amenity, in order to decide the sum it proposes by way of increase. On each occasion a Tribunal must consider a pitch fee increase, it must have certainty over the condition of the site at the date of the previous increase, so as to ensure it does not take into account matters that have been previously taken into account by a Tribunal.

45. To allow consideration of factors all the way to the hearing or indeed the decision date to be taken into account would be an unfair exercise on two counts: firstly, the next review, a year after the one in question, might nevertheless be confined to matters of much shorter duration when it comes to a park home owner challenge. Secondly, to take the condition of the site at a later date than the date on which the pitch fee review would take effect would be to inappropriately allow a site owner the benefit of only taking steps to address issues on the site after the date he says he is entitled to the increase, and only carried out for the purposes of persuading a Tribunal that a site is in better condition or better served than it was in fact at the time. The relevant date must be the date at which the increase is to take effect. To find otherwise would encourage site owners to do nothing until forced to apply to the Tribunal to validate the increased pitch fee.

46. Thirdly, the Applicant submits that 'services', for the purposes of section 18(ab), should be interpreted as 'Services', ie. water, electricity, gas, sewerage etc, and not a service that the site owner has or does provide to the site, eg.

CCTV. Mr Mullin called in aid of the argument the definition of services from the implied terms, and the decision of the Court of Appeal in *Greenwood*.

47. We are inclined to agree. We consider that, in the end, and as acknowledged to Mr Mullin at the hearing, perhaps the question was as angels on pinheads, in the context that such other matters could in any event fall to be considered as part of the question of 'amenity' in any event.

48. Fourthly, the issue arose that the review clause for pitches 24, 70, and 73 showed that the review date is 1 January in each year, not the 24 June as stated in each application. The Applicants were directed that the Tribunal would need to determine what impact (if any) that had on the pitch fee reviews for those pitches. In his witness statement, Mr Annis exhibited a document for number 24 that he says appears to have changed the review date to 24 June subsequently. The 1994 agreement that he exhibits and **[318]** does indeed change the review date to 24 June 2024. The same applies to pitch 70 **[385]**. There is no explanation why these documents were not provided with or relied on in the application.

49. In relation to pitch 73, Mr Annis acknowledges the review date is 1 January, but says the park home owner, Ms Badman, has taken no issue with it through her representative Mr Clifton. The attitude taken by the Applicant is that they could therefore ignore this issue, despite the Tribunal's clear directions. Mr Mullin apologised to the Tribunal that he had not apprehended the point.

50. We are satisfied that the scheme of the Act is such that, lacking any evidence that there has been a duplication of review because of an overlapping year, the fact that the Applicant's review in this year was undertaken late, the fact the contractual review date is in fact more than six months earlier than that stated on the application (and seven months before the reviewed pitch fee is to take effect) is not material.

51. The final legal issue is the fact that incomplete agreements were provided for pitches 37, 68, 74, 76 and 79. The park-home owners of 68 (Mr Baldock) and 74 (Mrs Reeve) are not represented by Mr Clifton; the others are. This is another matter that Mr Mullin does not appear to have been instructed in respect of, despite the clear indication in paragraph (2) of the directions that the Tribunal would be required to determine whether, on the balance of probabilities, the pitch fee was reviewable on 24 June as asserted by Ms Apps in her correspondence dated 7 November 2023.

52. On balance, we consider that it more likely that not that a pitch fee review was incorporated into the agreements. We accept Ms Apps' contention that the documentation appears to show reviews on or about 24 of June of the years in question. We are therefore satisfied that the applications are properly brought. We reject her contention that Mr Clifton's failure to take issue with the review date is either here or there. It is for the Tribunal to be satisfied of its jurisdiction, not Mr Clifton. It was for the Applicant to do this work. We were

unimpressed generally with the attitude taken by Mr Annis and his Solicitor Ms Apps, to this and the review date aspects of the case.

Factual Findings

53. Having heard evidence and submissions from the parties and considered all of the documents provided, the Tribunal has made determinations on the various matters raised as follows.

54. As a preliminary point, the Applicant raised the burden of proof, and generally made the assertion that there was little to no evidence of a previous better condition on most of the matters complained of. The Tribunal was therefore duty bound, it said, to reject the evidence of Mr Clifton.

55. We consider that takes the position too far. Mr Clifton was, of course, giving evidence. To the extent that there were no photographs or other materials one might call 'independent' to back-up that evidence, the question of whether Mr Clifton's evidence was plausible and convincing is our assessment to make. It should be noted that Mr Annis also provided barely any 'independent evidence' of that nature, including records of maintenance, instructions to whoever undertook works, and so forth. It is a matter for us to determine what weight we put on such evidence on each issue, where there is no 'independent' evidence provided.

56. The Applicant also took issue with the way in which Mr Clifton presented 'evidence' from various other park home owners. He had put together their statements and obtained their signatures, or collected signatures on a 'mass' basis. It was suggested that there was some pressganging and therefore that the signatures could not be relied on, but that in any event as the documents were Mr Clifton's own creation, they had no weight. The Applicant submitted that the issues raised were Mr Clifton's issues, and no-one else's.

57. There is no evidence of pressganging. Certainly Mr Clifton and his colleagues are passionate, as observed at the inspection. It was clear that they feel very keenly that Montecarlo Parks in their guise as Arkley Estates Limited has not provided them with the level of care, communication and maintenance they say they formerly enjoyed. Though it is entirely implausible that Mr Clifton was an 'unwilling martyr to the cause' pushed reluctantly to the fore for the purpose of improving the position, given the extent of his involvement, it goes too far to suggest that there has been any undue pressure exerted by him or others. What weight to give to materials before us is a matter for us, in light of all of the materials we have read and the evidence we have heard.

58. We group the complaints below as we find convenient.

(i) Removal of six mature conifer trees

59. In April 2022, the Applicant was served with a Compliance Notice ('CN') in respect of the Park. No copy of that CN was disclosed by the Applicant. We are told that Condition 7.4 was in the following terms:

"*The trees along the boundary with the A1 motorway require maintenance/culling to ensure that they are at a manageable height to reduce the risk of damage to park homes caused by falling debris*".

60. That was in respect of six mature (60-odd foot) conifer tress offering some visibility- and noise-screening, directly behind pitches 32, 33 and 34.

61. Mr Clifton's evidence was that 'two eastern European men' came to fell the trees, and that the chips had remained on site for an unreasonable period, becoming a fire risk in the summer. He suggested that the fire brigade had issued a Notification of Fire Risk to Paul MacGuire at the LHA. The chips had not been removed (although the trunks and branches, it appears he conceded, had) but had been dug into the earth around the old stumps 'in places 18 inches thick'. That had now all been left to weeds and brambles. We were shown some chippings at the inspection that did appear to remain in situ. The removal of the trees affected particularly sites 32 – 35 and 77 – 81. Of those, pitches 31, 34, 35 and 77 are not involved in these proceedings. The noise, line of sight and pollution from the A1 now suffered was a significant loss of amenity. There were two further plots, 30 and 31, which were also on the alignment with the A1 as plots 32 to 35. However, the trees behind those plots have been retained and are slightly closer to the A1.

62. It should be said that Mr Annis's evidence of what happened after the CN is far from clear. He says that the trees were felled in May 2022. In his witness statement, he says this was on the advice of a tree surgeon, but no such advice is exhibited. In oral evidence, he made no mention of a tree surgeon despite being pushed to identify why he had decided the trees should be felled rather than just cut back; he said that he had decided they were a danger to the homes. In September 2022 he remained in correspondence with the Local Authority purporting not to understand what the LHA wanted. In about March 2023, he took a picture of the chip mounds that remained on site, 'ready for removal'. Large mounds of chips were left on site for a period, but now had been removed and there remain only the six large tree stumps. The ground has been left to wilding.

63. Importantly however, Mr Annis conceded that regardless of the CN, new trees could have been planted and had not. Absent any planting of replacement trees, he conceded that the removal of the trees could represent a loss of amenity, in terms of noise and sight protection, regardless of the reasons for removing them.

64. Mr Annis said he had had no contact from the fire brigade. He denied that the chippings had been dug in as claimed.

Decision

65. We need not make a finding on the rights and wrongs of what the Applicant did in view of the CN. The main question for us is whether the removal of the trees is or is not a decrease in the amenity of the site.

66. The removal of the trees themselves, so that immediately adjoining park home owners have less noise- and visibility-screening from the A1, is plainly a decrease in amenity of the site to those owners. That was observable at our site visit. We have no evidence regarding the effect of the trees on pollution on which we could rely, and we are not scientific experts. We therefore cannot make a finding in that regard. We consider that pitches (insofar as they are the participants in these proceedings) at 32, 33, 78, 79, 80 and 81 are particularly affected.

67. It was observable that some chips had indeed been dug in at the sites of the stumps. The extent of that is not obvious. The ground, it appeared to us, was already uneven in locations away from the felled trees (e.g. around the remaining trees). It is clear that the area is not 'maintained' and has been left for weeds and brambles to take over.

68. We do not have any independent evidence from the fire brigade. However, it is clear that the summer of 2022 was a particularly hot and dry one, with the occurrence of significant and unusual wildfires in the UK. That might well have caused residents concern over the large wood and chip piles. What we don't have is independent evidence of a specific fire risk. What we do have, though, is the presence of large mounds of chips and debris, and no explanation why it took nearly a year for them to be removed.

69. Those latter two points appear to us to be in the class of 'management issues', to which we will come later in this decision.

(ii) Issues surrounding removal and replacement of homes and parking issues

70. It was Mr Clifton's evidence that the pitches at 3, 7, 13, 22, 45 and 57 had been removed and left in a visually unpleasant state for very lengthy periods of time. Photographs were provided showing that pitches were left to get overgrown, and that significant amounts of rubble and detritus were left on the hard-standing. It made the site unattractive – residents had to drive around a one-way system and were faced with the lack of care taken over these areas every day.

71. Mr Clifton was equally critical of the failure by the Applicant to properly remove the home at pitch 31. The home had been partly demolished, and in particular its skirt had been removed and weeds and grass left to become overgrown. It was unsightly and made the park unpleasant to live in.

72. Mr Clifton complained that when old homes were removed, the gas supply had not been properly capped off. This applied to four of the pitches. Letters had been obtained from the park home owners about what had happened. Mr Kenny (21) said that Eon attended to cap the gas at 22 after the pipe was not properly disconnected. A resident (Hare) at 45 had observed workmen clearing 46 call in Cadent when they smelled gas after removing a home, who had attended and resolved the issue approximately 4 hours later. James Harding (30) and Mr Keaney (79) had noticed a smell of gas when the home at pitch 31 was removed. Mr Harding describes contacting Cadent (and exhibits a phone call log showing what appears to be that call, with a duration of 4 minutes) to get them to attend on 23 November 2024. The attending engineer made it safe.

73. Mr Clifton further drew to our attention photos of debris piled in the visitors' carpark. He said this was from the removal of the homes and dumped there by Mr Annis's contractors. He said it had only been removed recently. He stated it had blocked the drainage channel out from the car park causing significant surface water (more on which below).

74. Mr Clifton complained that where old homes had been removed, the Applicant was replacing singe units with double or triple units, taking up more of the pitch plots. In particular at 73, the new home was so significantly larger that it had jutted out over a parking space belonging to Mr Askande (23).

75. Mr Clifton further complained that no soakaways/hatches were being installed for new homes which would impinge on neighbouring properties in wet weather – he relied on the new home at 73, which he said would affect him.

76. By the time of our inspection, the rubble and detritus had been removed and overgrown area made to look presentable. Mr Annis stated that he took photos of the empty pitches in February 2024. He did not say when the work to clear them had in fact been carried out. He did not address the previous state of the detritus on the hard-standings, save that he asserted that the pitches only looked like the photographs provided by Mr Clifton and the park home owners for a 'matter of days'. He did not provide the source of that knowledge, given he is not on site and there was, for a lengthy period no site manager, nor; there was only a 'hotline' to an office elsewhere in the country. No formal process was revealed in evidence as to what would happen when something was reported on the hotline, nor any note from the person taking the calls.

77. He suggested that it was uneconomic to replace park homes one by one, and so hard standing were just a part of life on a site, particularly because of the effects of the pandemic on manufacturers. Orders were taking 4 years to produce. It would be uneconomic for one new home to go up at a time; it was sensible to do a few at a time.

78. Mr Annis accepted that the home at pitch 31 had only been partly demolished. He stated that the contractor had attended and realised that the mains gas

needed disconnecting, and so an engineer was needed. He said it didn't take a year. It had taken perhaps six to nine months waiting for a gas engineer.

79. As to the gas capping, Mr Annis said there was no proof of attendance on the companies concerned. Anyway, gas was capped from the supply side. The cap is not visible. The pipe is visible. If there had been any damage caused by his contractors, he would have expected to hear from Cadent, a supplier, or the LHA. If the residents had contacted them about the smell of gas they would have acted accordingly. He told us he plans to implement a process whereby a gas engineer always attends to a site that has been cleared to check the work that has been done at disconnection.

80. Mr Annis was convinced that the debris in the car park was either from the residents themselves, or from fly-tipping. When it was drawn to his attention where it was said that the debris was (ie. over the pipe proving drainage to the car park), and that it appeared unlikely that it was possible to fly-tip at that location given it's distance from the road, he simply refused to look at the plan provided in his own documents and was adamant he knew nothing about it.

81. Mr Annis made clear that there was no restriction on replacing single units with double or triple units. He stated there was no allocated parking in any event, and Mrs Askande's neighbours had suggested that she had been able to find a parking space without difficulty.

Decision

82. We accept that there is a process of destruction/removal and renewal at any park homes site, and that is part of park living. We do not accept that cleared sites awaiting new homes can just be left in any state until the owner is ready to instal a new home. There is a difference between a vacant site that is clear of rubbish and debris, and maintained pending the new home's addition (whenever that might be), and one left in a state of debris, disorder and no maintenance, which is an impact over and above that to be expected.

83. It was unclear to us what Mr Annis did to monitor what happened on site when a home was removed, or to hold his contractors to account for keeping the site tidy, so that he could say authoritatively that the detritus etc from removed homes was only there for a 'matter of days'. No records were provided. The photographs provided by the park home owners presented a very different picture that raised a prima facie case. That prima facie case was not met. We are satisfied that there existed unattractive detritus on those pitches for some period, and that they were unkept and unkempt. That accords with the diggers and other site vehicles showing up at about the time Mr Clifton was due to file the Respondents' statement of case. We are also satisfied that work was started on number 31 and abandoned, leaving the pitch to fall into further disarray. We cannot place any weight on Mr Annis' 'between 6 – 9 months'. It was vague, and it is not credible that a gas engineer could not be located for such a long period of time. We consider it more likely

that it was not convenient to carry out the works unless instructing someone to do so as a 'job lot'. We prefer Mr Clinton's evidence.

84. In terms of the capping of gas pipes, we have no reason to disbelieve that Cadent or Eon attended. The lack of onsite manager, and the observations we make above, apply equally here. However, there is no evidence that it is the Applicant's contractors who have done anything to cause these incidents, and no evidence from a professional about what ought to have been done instead (if anything). We are not in a position to say anything other than 'there was a smell of gas, and someone then came to 'fix' it'. The incidents were relatively quickly resolved. It is the fact that there was no site manager to turn to in order to address the issues that is the cause of concern.

85. It is a repeated feature of the letters sent by Mr Clifton to Mr Annis that the debris complained of was in the location of the pipe that was to provide drainage to the car park, and that it had blocked or crushed that pipe. It is implausible that Mr Annis knew nothing about this allegation, and his simple unwillingness to even engage in the question of the location of the debris persuaded us that this was not fly tipping as asserted, and nor was he telling us the truth when he said he knew nothing about it. Mr Annis's evidence was belied by his letter of 5 October 2022 **[146]** in which he states that "*The car park areas has been cleared of rubbish as has the tree debris. We shall also inspect the drainage pipe for blockage*". On balance, we believe Mr Clifton when he says that what was dumped was material that had been removed in the course of removing old homes. There is no evidence to suggest this was the residents dumping things in the car park as asserted. We conclude that was an excuse because, as we observe above, Mr Annis simply did not know, or have a record of, what was happening at the park and when.

86. We are satisfied that there is allocated parking, for the following reasons. The numbering of the parking spaces does not run sequentially from 1 around the site. As observed on the site visit, for example, bays numbered 41, 19, and 58 were next to each other, as were (elsewhere) 10, 15, and 54. That accorded with the numbers of the nearby homes.

87. Looking at the site rules provided by the Applicant accompanying the agreement for number 73 on 1 January 1976, and assigned in 1983 **[408]**, the Rule 8 provides that "*No vehicle of any description shall be brought into the Park without the Landlord's express permission and such vehicle must not be parked otherwise than in an authorised parking space as directed by the Landlord.*" In 2007 **[387]**, the park rules stated at 26 "*All vehicles, when stationary, shall be parked on the Parking area(s) allocated… Occupiers must register allowable vehicles with the owner or his agent… Each home may park a maximum of one car unless they have prior written permission.*" Those rules accord with allocation of parking, for one car, per park home owner which is consistent with the non-sequential numbering that relates to the nearest homes stationed nearby.

88. The park rules provided by Mr Annis and exhibited to his witness statement are undated and their provenance is unknown. However, at paragraph 31 they state that "*Parking is not permitted except in* ***spaces designated by the owner***." Later at paragraph 37 on the continued question of parking (emphasis added): "*Each household is permitted to keep one vehicle on the Park. These rules do not have retrospective effect. Any occupier who was permitted to keep an additional vehicle on the Park under the previous rules by occupying an unused parking space* ***belonging to another occupier*** *on the Park will not be treated as being in breach when these rules take effect…*". That phrase in particular confirms that each park home owner has a designated space for their particular use.

89. In his letter of 5 October 2022 to Mr Clifton, Mr Annis cited rule 31 above, and stated as follows: "*I am happy to provide Mrs Akande at plot 23 with a designated parking space and we will contact her in this regard*."

90. Finally, the Express Terms of the Agreement (e.g. **[159]**) contain, at paragraph 4, an undertaking not to change the park rules except by notice given as set out in that paragraph. There is no evidence of any such notice or any amendment to the Park Rules as set out above.

91. All of this evidence is consistent with Mr Clifton's evidence that there is allocated parking at the site. Mr Annis's assertion that there 'is no allocated parking' is in the face of the evidence.

92. We would therefore have been inclined to consider whether a relevant reduction ought to have been made in Mrs Askande's pitch fee review. However, she is not in fact a Respondent in these proceedings. No other Respondent complains about the apparent failure by the Applicant to abide by the practice or suggest that their parking spaces have been removed.

93. As to soakaways/hatches, given that the construction is not yet (as we understand it) complete, and there has been no incident involved (any such being speculation at this stage), that is not a matter we can take into account in this review. We are not in the business of speculation.

(iii) Surface water and leaks

94. Mr Clifton made various complaints about surface water and leaks at the site.

95. He raised the matter of the leak at number 50, which had been subject to the decision of this Tribunal in case LON/00AC/PHV/2022/0001 & 0002. He made a large number of complaints and comments that had already been considered in the previous case. However, the main complaint was the length of time it had taken for the leak to be identified, and then to be resolved, impacting on residents. He stated he did not pursue any argument over the water/sewerage charges that had been the subject of the earlier litigation.

96. In particular, Mr Clifton set out that Mr Adams' pitch had not been fully restored following the leak. He provided photographs of the pitch, accompanied by a letter from Mr Adams dated 4 November 2022. In that letter, Mr Adams sets out that the leak had resulted in flooding of his pitch from August 2021. He states that he was promised by Mr M James (who he described as a site manager) that the clay would be dug out from his pitch and top soil put in its place, but that Mr Jefford (whom Mr Annis says is only in sales/marketing and not a site manager) had dis-instructed this approach and the clay had just been flattened and grass laid on top. Mr James had then been summarily dismissed by Mr Jefford. Over the winter, the surface water emanating from the area had cause another resident to slip when the water had frozen.

97. The other individual referred to appears to be Mr Czechowski of number 5. In a letter dated 11 January 2024 he recounts that he slipped on the ice formed from the flood on 28 November 2021, when on the way to his granddaughter's christening. He was knocked unconscious, broke his nose, his two front teeth were knocked out and his right shoulder dislocated. The accident report he provides is signed by Mr James, and supports this account. Mr Czechowski then states he was visited by Mr Annis and Gareth Pressley on 21 November 2022, and suggests he was made various promises for his agreement not to bring personal injury proceedings. The leak had only been resolved in March 2022.

98. In the additional evidence pack provided by Mr Clifton was a further letter, again apparently drafted by Mr Clifton, in which Maggie Bates and Manish Karia complain about a further leak at pitch 11. Emergency phone calls were apparently made to the Applicant's number on 28th and 30th May and 1 June 2023. No-one answered. On 5th May, it is said that they approached a team working on pitch 7, who had said they would next come to pitch 11. They still had not attended on 12th June. They had spoken to Mr Annis on that date and he had said that he'd get the team to attend. They had not attended until 21 June 2023, but had not had the right pump, and returned on 23 June to instal a temporary stopcock. The pitch was left in a state. They had not returned until 6th September 2023 to finally restore the pitch.

99. Mr Clifton complained of surface water in the visitor's car park. He stated that there had been a drainpipe fitted in the corner to alleviate the issue, but that the dumping of building materials on that are had blocked or crushed the pipe. He stated that it was the previous owners who had fitted the pipe. He provided a photograph dated January 2024, showing a large pool of water in the corner in question.

100. Mr Clifton complained of surface flooding at numbers 30 and 33. Again, this was not raised in the Respondents' original statement of case, only in the unauthorised reply. The evidence could have been provided in the original statement of case, and there was no explanation by Mr Clifton why it had not been.

101. Mr Annis regarded Mr Clifton's argument about the water leak at 50 as Mr Clifton's attempt to have a second bite at the cherry. He stated all had been resolved by the Tribunal's previous decision. At paragraph 39 of the decision the inconvenience to Mr Clifton and Mrs Rapicillo was recognised and Ms Hamilton-Farey considered that the 25% reduction in the sum charged for the water as a separate service to them was adequate compensation.

102. Mr Annis accepted that the leak should have been found more quickly, and probably would have been discovered a number of months earlier had there been a site manager. He accepted that this would have caused inconvenience to some residents, but maintained that they had the opportunity to join Mr Clifton and Mrs Rapicillo in the previous proceedings. There was no evidence that anyone other than Mr Clifton was taking this issue.

103. In respect of Mr Adams' pitch, Mr Annis denied that anyone had told him that it had been anything other than fully restored. He also provided photographs of the pitch seeming to show an ordinary lawn. He states that he met with Mr Adams on 18 November 2022 and offered to write off half his pitch fee arrears and accept the second half in instalments, provided Mr Adams accepted the pitch fee review and brought his account up to date. Apparently Mr Adams did not do so.

104. In respect of Mr Czechowski, Mr Annis stated that the Applicant did not accept liability, and that he had attempted to settle the matter. In the hearing he suggested that there were some terms, but they did not appear in his letter to Mr Czechowki. In the end, he told us, he'd decided to see whether Mr Czechowki would follow through on his threat to bring personal injury proceedings. He had not made the offers to Mr Czechowski that Mr Czechowski alleges. Mr Czechowski had never brought proceedings.

105. The new letter from Ms Bates and Mr Karia was not put to Mr Annis to address.

106. Mr Annis stated that there had always been surface water at the car park, and that drainage channels had been created to try to accelerate the drainage of water. He did not say when. He cited the very wet weather over the past year, the implication being that the photograph taken by Mr Clifton was in extraordinary rather than ordinary circumstances. Mr Annis remained adamant he knew nothing about the debris over the pipe.

107. Surface flooding at numbers 30 and 33 was not put to Mr Annis during questioning. He therefore had no opportunity to address it.

Decision

108. In respect of the water leak at pitch number 50, we are content that we have no evidence other than Mr Clifton's as to a general affect of the leak on any resident other than him, Mr Adams, and Mr Czechowski. Mr Clifton and Mrs

Rapicillo's specific inconvenience has been dealt with in the previous proceedings. We will come to the question of lack of onsite warden, and the impact of that more generally, below.

109. Regarding Mr Adams' pitch, we have viewed the photograph taken by Mr Annis showing that the pitch has been restored. We have no evidence from Mr Adams disputing that, and only a general assertion from Mr Clifton that it has not been. If that matter relates to seeding the clay rather than removing it and replacing it with topsoil, that is not a something that is a matter for our consideration as part of these applications. We note that in the additional evidence bundle, the focus of the document prepared by Mr Clifton and signed by Mr Clifton, Mr Adams and Mr Czechowski is the time it took to resolve the leak. Assertions are made that email correspondence exists between Mr Adams and Gareth Pressley, but it is not provided. It is for Mr Adams to demonstrate that the pitch has not been restored. While we note that a deal was brokered in the nature of 'compensation', we have no evidence to suggest that Mr Adams disagrees with Mr Annis's assessment of why the deal fell over. We therefore find that we cannot be satisfied that there has been a permanent deterioration in the condition of his pitch.

110. As for Mr Czechowski, this must have indeed been a very unpleasant incident. We found Mr Annis's attitude surprising given it was his own former employee who recorded the accident. However, the complaint is indeed more in the nature of a complain for personal injury. This Tribunal has no jurisdiction over such things. The key matter for us is the period of time that Mr Annis accepts that it took, and should not have taken, for the leak to be controlled and repaired.

111. Regarding the leak at pitch 11, and the surface water at 30 and 33, there was no explanation from Mr Clifton why this had not been provided at the outset when the Respondents were to provide the case on which they relied. The new evidence was not put to Mr Annis to give him an opportunity to respond. We can therefore make no safe finding whether it was true or not. We cannot take it into account.

112. Regarding surface water on the car park, Mr Annis's evidence was belied by his letter of 5 October 2022 **[146]** in which he states that "*The car park areas has been cleared of rubbish as has the tree debris. We shall also inspect the drainage pipe for blockage*". On the site inspection we observed that it was evident there had been very recent activity to create a culvert at that corner, cutting through the fence to drain the ground into the highway verges running parallel to the fence. The pipe was still *in situ*, and there was no sign that it was crushed or blocked. We consider that, other than the matters above in relation to the debris, there is no evidence that there has been any breach or blockage of the pipe or other deterioration of such drainage that already existed in that corner prior o the notice of pitch fee increase.

(iii) General Maintenance of the Grounds/Gardens/Entrance to the Park

113. Mr Clifton complained of overgrown vegetation, weeds to the parking and pathway areas, a lack of mowing in communal green spaces, and a failure to address a tree at pitch 35 posing a risk to the home there. Photographs of the general condition of the park said to be in Autumn 2023 were provided.

114. Mr Clifton also noted that there were four street lamps that had not been working for a very considerable period of time. He asserted that the residents were told that the Applicant would not send anyone 'just to fix a couple of lights'.

115. He also raised the issue that parking spaces were not being refreshed, so that the line demarcations between bays, and the bay numbers, were peeling away to nothing.

116. Additionally, he stated that the gates to the park had been in a deteriorated state for a lengthy period, at least 4 years, and that the former owners had maintained the verge outside the site entrance to make it look welcoming and well-kempt. The Applicant had refused to do so since taking over.

117. Mr Annis provided photographs of the park dating to February 2024, showing its condition at that date, and drone shots that he says were taken by Gareth Pressley in September and October 2022. Mr Annis's evidence was that he met with the park home owner of 35 and her daughter in November 2022. The tree had been removed sometime after April 2023.

118. Mr Annis accepted that there were four non-working street lamps. He denied that the residents were told that they would not be fixed. They were planning to replace the lamps with newer models 'promptly'. He did not know how long they had been out of operation.

119. Mr Annis made no comment on painting of the parking and bay demarcations for residents' parking.

120. Mr Annis accepted that the gates required work. However, he was of the view this was aesthetic not functional. In oral evidence he suggested that the Applicant was looking into wholesale replacement of the gates with aluminium ones. This had not been communicated to the park home owners. In relation to the verge outside, put simply, the highways agency was responsible for it, not the Applicant. He would not send anyone onto the verge as they would be at risk from the traffic from the A road.

Decision

121. It is entirely possible that sets of photos provide on both sides represent the reality of what was happening on any particular day. On balance, given the height of the grass etc in the pictures provided from Autumn 2023, though, it is clear that there had not been gardening/grounds maintenance for some time. This was borne out by our inspection, at which it was clear recent efforts

had been made regarding most grass verges but one area of green space had clearly been missed, and weeds were evident between the bricks in the car parking areas and paved parts of roads, lending truth to Mr Clifton's contention that matters had been taken into hand but recently.

122. There is no evidence to gainsay that the streetlamps in question have been out of action for years. It seemed to us that Mr Annis still has no firm plan in place about their imminent replacement, and that it had only recently occurred to him that there should be such a plan.

123. It is clear that Mr Annis accepts that the front gate has been deteriorated for some time. Again, the revelation of a plan to replace the gates was a complete surprise at the hearing, not raised in Mr Annis's written evidence, leading us to conclude this is a decision but recently made. However, whilst Mr Annis claims to have plans to do work to the street lights and the front gate, those issues still remain outstanding.

124. There is no evidence to challenge Mr Clifton's assertion that the car parking bays' numbering and demarcation was renewed every two years under the former owner's tenure. We observed at the inspection that it is likely a significant period longer than 2 years since they were last renewed, given how far the numbers in particular (over which there is no traffic, and so which are not influenced by any other factors) have degraded.

125. As to the entrance, it is clear that the area outside the gates was indeed maintained by the former site manager (Mr Parrott, who has now sadly passed away). It is frankly not plausible that it could be considered a risk to maintain the plants that he planted at the edge of the boundary fence due to the traffic – there is a culvert, then a grass verge of at least six feet, and then a pavement for pedestrian traffic before you get to the road, as we observed on our inspection and which can be seen in the aerial photograph at **[485]**.

(iv) CCTV

126. Mr Clifton complains that there used to be CCTV at the site, providing the residents both with the feeling of security and the means of monitoring any suspect activity. He had himself viewed the CCTV on occasions with Mr Parrott, when he had been the site manager. Since the Applicant took over the site, the CCTV had been removed with a dummy camera on a lamp post, which was hanging down and providing no such facility.

127. Mr Annis's evidence was that he had 'checked the position' and that there had 'never been CCTV'. He described the dummy camera as a 'joke' and stated 'we did not put it up'.

Decision

128. We did indeed observe a dummy camera, hung a considerable way up a lamppost using plastic ties, one of which had come loose so that the dummy was no longer pointing out over the gate but rather down towards the ground. Mr Annis did not tell us what he had checked or present evidence of the what he said proved to him there had not been CCTV previously. We consider it quite the ruse, if that is what is being alleged, for the elderly residents to get the dummy camera up the lamppost at great height unnoticed. We further noted that on the gate, there is a large CCTV sign stating that the premises are monitored. We do not consider it likely that is part of a 'joke' or an attempt to pull the wool over our eyes (such signs, and indeed dummy cameras, cost money). There is no reason we should disbelieve Mr Clifton when he says that there was CCTV, and that he viewed it with Mr Parrott – that would be consistent with the sign. We therefore find that there was formerly CCTV at the site, and that is has been removed by the Applicant.

(v) Harassment and sale blocking

129. There is an incident set out by Mr Clifton involving one of the residents, in which on 20 December 2023 workmen arrived unannounced to the overflow carpark where the resident concerned is required to park her car, and told to move her vehicle. She began to film their equipment, after which she was threatened by them twice. Mr Annis makes some observations regarding why they might have reacted in such a way, but there is no excusing such behaviour. The contractors are Mr Annis's contractors, and it is important he makes no such excuses for them. It is unpalatable to read such excuses when part of the Applicant simultaneously relies on there being no photographic evidence of, for example, one period to another for the car park flooding.

130. However, the incident in question has no bearing on the amenity of the site, and so is not one that is relevant to our determination.

131. There is an even more serious account, of a former resident who has now moved away from the site, in which she recounts that while she was trying to sell, Mr Jefford and another man were seen entering her home without permission on a number of occasions. On the last occasion, on returning home she found that water had been left on and pipes had been tampered with so that the home was left to flood, the bathroom floor had been urinated on, and wallpaper on the bedroom ceiling had been torn down. She wrote to Mr Annis on 20 February 2021 inviting his comments. Mr Clifton provided a statement describing the state he found the resident and her property in, and what she described to him as the constant pressure that Mr Jefford had put on her to sell her home to the Applicant at an undervalue. Mr Clifford states that Mr Annis never replied to the former resident's letter, but that Mr Jefford did disappear from the site for around nine months thereafter.

132. Mr Annis claimed in oral evidence that he knew nothing about this, did not receive the resident's letter, and had no contact from the police about the allegations.

133. There are other accounts of Mr Jefford calling himself 'the new part time manager', accosting other residents about repairs to their park homes or the presence of their grandchildren on site, or 'inviting' residents to move so that new homes can be installed in green spaces, which present a very poor picture of that employee's conduct (and which appear to be far beyond the scope of his sales and marketing role).

134. However, while we have sympathy with the residents and understand how they feel about these incidents, even if we were in a position to make a determination about them, what we are concerned with is the amenity of the site. We therefore cannot take those incidents into account.

(vi) Park warden

135. Mr Clifton made complaint that there had previously been an on-site park warden, to whom any issues at the site could be reported and who would take the matter up with owner and/or take such action as was necessary to either deal with the problem or ensure it was dealt with in a reasonable period. That had previously been Mr Parrott. Once Mr Parrot could no longer do the role, Mr James had taken over.

136. Mr James had been sacked in or around August 2021, and no site manager put in place. The residents had instead been provided with an 'emergency phone line'. That phone line had been ineffective, even if someone answered at all.

137. The Applicant had only recently (January 2024) announced that Mr Terry Eagle, another site resident, was to be the park warden. Mr Clifton firmly contested that this was an appropriate appointment, due to Mr Eagle's mobility issues and general issues with his character. The residents had been left for a very considerable period with no park warden, a consequent refusal or inability to deal with issues that arose in anything but the slowest terms (if at all), and now were no better off.

138. Mr Annis stated that Mr James had left the park warden role in July 2022. Between July 2022 and May 2023, there had been an emergency phone number manned by Gareth Pressley. Mr Pressley left in May 2023 but residents were still able to contact the office. Mr Annis could not remember when it was that Mr Eagle was appointed as the new park warden. It was '*difficult to say for sure. It was difficult to recruit*'.

139. Mr Annis accepted that the absence of a park warden could result in the decrease of the amenity of the site.

Decision

140. We are satisfied in light of this evidence that there was a period of a minimum of 18 months, and possibly a longer period, during which the park,

which had formerly had a warden, had no warden. We are also satisfied that the provision of an emergency phone line did not serve the same function nor provide the same level of service as an onsite warden.

141. It is not our role to decide who is appropriate for the park warden job. It is a matter for the Applicant to decide who to appoint, and a matter for them to deal with the consequences if that person is not appropriate.

(vii) Provision of a skip for residents

142. In short, Mr Clifton says Mr Annis agreed to provide a skip for residents.

143. We have considered the evidence and all Mr Annis promised to do was to provide the details for the Barnet free skip service. He did so in his letter of 18 November 2022.

144. Since there is no evidence that a skip was previously provided for residents by the previous owner or the Applicant, this is not a matter we can take into account.

(viii) Matters not pursued

145. Mr Clifton did not pursue matters relating to the electrical cupboards and safety certificates, holes in fences now repaired, and compliance with a compliance notice. We consider those were sensible concessions.

Is it reasonable for the pitch fee to increase?

146. We consider that the following matters represent a deterioration in condition of the site or a loss of amenity, or other weighty matter that should be taken into account (we observe that to some degree those concepts cross over):

Culling of the six conifer trees
Removal of CCTV
Absence of a Park Warden for at least 18 months

147. We have carefully considered the other matters above that we have concluded in favour of the Respondents, being:

Debris on and around cleared pitches
Failure to maintain cleared pitches
Half clearance of a pitch with subsequent failure to maintain or revisit to complete removal
Debris in the carpark
Tree branches and chips left and not removed for close to a year
Delay in fixing the leak at 50

Lax maintenance of green areas and pathways, including leaving cleared confer area to weeds and brambles and refusal to maintain area formerly maintained outside the main gate
Lack of maintenance to car parking demarcation
Failure to fix or to replace streetlamps
Broken front gate.

148. We consider that each of those matters on its own is de minimis. However, looking at them as a collection of issues, we consider that those other matters are all aspects of 'management' that, had a Park Warden been in place would have either not have occurred at all or been dealt with far more quickly and properly. We consider that they are properly reflected in that item rather than separately.

149. We consider that the matters identified in paragraph 146, taken on an individual or collective basis, are not sufficient to displace the presumption that the Applicant is entitled to an increase in the pitch fee.

Is the presumption of RPI rebutted, and if so, to what degree?

150. We consider that the absence of a Park Warden is the most significant reduction in amenity or other weighty matter in context of what we have said above and the effect on the site that reduced/removed service had. There has been a consequent deterioration or decrease in the amenity of the park for the reasons given above. In the circumstances, we consider that alone results in the presumption of RPI being displaced.

151. The removal of CCTV might be said to be an additional aspect of a want of proper management of the site alike that of the absence of any park manager. We consider that there is a minor additional amenity to the park provided by CCTV that has been removed, being the safety and security of the park from would-be outside actors.

152. We consider that these matters affect all of the park home owners equally. We consider that therefore, viewed in the round, and acknowledging that the deterioration/decrease in condition or amenity is on the lower end of the scale, taking a broad-brush view we consider that the pitch fee increase should be reduced from the RPI (11.4%) to 8.5%, representing a 2.9% decrease in the new pitch fee for all Respondents.

153. We consider that the removal of the conifers has led to a deterioration/decrease in the amenity of the site for those most closely neighbouring the area in which the trees were removed. The site is bound on two sides by A roads, and cannot escape noise. There was a minor increase in the noise as we rounded the corner at pitch 30, increasing again slightly as we made our way towards the corner at pitch 34. On balance, we consider that for pitches 32, 33, 78, 79, 80 and 81 are marginally affected by an increase in noise, and should have a consequent additional 1% reduction in their reviewed pitch fee.

154. We confirm that in coming to this decision, we have considered the totality of the evidence and submissions that were presented to us, together with our own observations from attending at the site. Where any particular issue has been left out of this account, it is because we consider that it was not relevant to the question of the pitch fee review.

Name: Judge Nikki Carr **Date:** 6 June 2024
Corrected 9 July 2024

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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).