FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	:	**CHI/24UC/PHI/2023/0632** **CHI/24UC/PHI/2023/0633** **CHI/24UC/PHI/2023/0634** **CHI/24UC/PHI/2023/0635** **CHI/24UC/PHI/2023/0636** **CHI/24UC/PHI/2023/0638**
Property	:	**Nos 5, 6, 7, 9, 11 and 21 Firs Park, Durford Road, Petersfield, Hampshire GU31 4HH**
Applicant	:	**General Estates Company Ltd**
Representative	:	**Mr J Percy, Director**
Respondent	:	**Mr K and Mrs P Longyear (No 5)** **Mrs P Hammond (No 6)** **Mrs S Boulton (No 7)** **Ms L Rogers (No 9)** **Mrs P Elliott (No 11)** **Ms S Field (No 21)**
Representative	:	**N/A**
Type of Application	:	**Application for determination of pitch fee under Mobile Homes Act 1983 (as amended)**
Tribunal Members	:	**Judge R Cooper** **Mr C Davies FRICS** **Ms T Wong**
Date and venue of Consideration	:	**04/06/2024** **Havant Justice Centre**
Date of Decision	:	**16/07/2024**

DECISION

Summary

The Pitch Fee for numbers 5, 6, 7, 9, 11 and 21 Firs Park, Durford Road, Petersfield GU31 4HH are to increase from £181.70 per month to £198.96 per month from 1/06/2023.

(References in this decision to page numbers in the appeal bundle appear as '[ ]')

Background to the application

1. On 18/08/2023 the Tribunal received applications from the Applicant for a determination of new pitch fees for numbers 5, 6, 7, 9, 11, 15 and 21 Firs Park, Durford Road, Petersfield GU31 4HH ('Firs Park') under paragraph 16(b) of Chapter 2 of Part 1 of Schedule 1 to the Mobile Homes Act 1983.

2. The Applicant seeks an increase of the pitch fee for each of the properties from £183.04 to £208.29 (an increase of 13.8%) from 1/06/2023 in line with the RPI published in February 2023.

3. Directions were issued to the parties on 14/03/2024, including (a) a direction for the Applicant to send evidence regarding the RPI increase to the Respondents and the Tribunal and (b) the Respondents to send notice of any objection to the application. Objections were received from Mr and Mrs Longyear, Mrs Hammond, Mrs Boulter, Ms Rogers, Mrs Elliott and Ms Field. No response was received from the owner of 15 Firs Place. The owners of numbers 5 and 6 requested a hearing.

4. An inspection of Firs Park took place on the morning of 4/06/2024. Mr Percy and all the Respondents were present at the start of the inspection. However, the Tribunal was accompanied around the site only by Mr Percy for the Applicant and Mrs Boulter, Ms Rogers and Mrs Elliot for the Respondents (all of whom were due to attend the hearing after the inspection). The parties were advised to point out any particular items they wished the Tribunal to note, but no evidence was taken, although some questions were asked for clarification of our observations, for example ownership of boundaries and what constituted common parts of the site.

5. The hearing convened at Havant Justice Centre after the site inspection. The Tribunal heard evidence and submissions from Mr Percy, Mrs Boulter, Ms Rogers and Mrs Elliot. The hearing was recorded, and that stands as the record of proceedings.

The Documents

6. The Tribunal considered the documents in a bundle comprising 345 pages together with the additional statement sent by Ms Field and the email from Mr and Mrs Longyear on 3/05/2024. As Mrs Boulter, Ms Rogers and Mrs Elliot had not received a copy of that statement and email before the

hearing, the proceedings were halted briefly to enable them to consider them before the hearing re-commenced.

The law

7. The relevant legal provisions governing the review of pitch fees are contained in paragraphs 16 to 20 and 25A of Chapter 2 to Schedule 1 to the Mobile Homes Act 1983 ('the 1983 Act') and the Mobile Homes (Pitch Review) (Prescribed Form) (England) Regulations 2013. In this decision all references to 'paragraphs' are the relevant paragraphs of Chapter 2 to Schedule 1 of the 1983 Act. Copies of the relevant provisions are set out in the Appendix to this deision.

Discussion and conclusions

The Applicant's pitch fee review process

8. Firs Park, Durford Road, Petersfield GU31 4HH ('Firs Park') is a protected site within the meaning of the Mobile Homes Act 1983 (as amended) (the 1983 Act). On 1/03/2017 East Hampshire District Council granted an indefinite site licence for Firs Park to General Estates Company Ltd under s3 of the Caravan Sites and Control of Development Act 1960 subject to conditions [82]. At the time of the Tribunal's inspection, 21 mobile homes were stationed on the site (numbered 1 to 22 (with no 13)).

9. Mr and Mrs Longyear's right to station their mobile home on pitch 5 of Firs Park is governed by the terms of a Written Agreement under the provisions of the 1983 Act dated 1/01/1976 [92]. The pitch was assigned to them by sale on 31/01/2020.

10. Mrs Hammond's right to station her mobile home on pitch 6 of Firs Park is governed by the terms of her Written Agreement dated 29/10/1998 [105].

11. Mrs Boulton's right to station her mobile home on pitch 7 of Firs Park is said to be governed by the terms of a Written Agreement under the provisions of the 1983 Act dated 15/04/1994 [21]. However, no copy of the agreement could be produced by the Applicant [114]. The pitch was assigned to her by sale on 23/06/2017.

12. Ms Roger's right to station her mobile home on pitch 9 of Firs Park is governed by the terms of a Written Agreement dated 1/01/1976 [147]. It was assigned to her by sale on 31/03/2016.

13. Mrs Elliot's right to station her mobile home on pitch 11 of Firs Park is governed by the terms of a Written Agreement dated 26/10/2000 [161] and the provisions of the 1983 Act. The pitch was assigned to her by sale on 22/07/2011.

14. Ms Field's right to station her mobile home on pitch 21 of Firs Park is governed by the terms of the Written Agreement dated 6/12/1982 [180]

and the provisions of the 1983 Act. The pitch was assigned to her by sale on 19/04/2022.

15. Copies of the original agreements were provided by the Applicant for all Respondents save for that of number 7 (Mrs Boulton). Her written agreement was said to be in the same terms as the other agreements, and a draft agreement was provided [116]. This was not disputed.

16. The review date provided for in all the written agreements that were produced by the Applicant is given as 1st May each year (for example [109]). However, the Notice of Assignment for pitch number 7 (Mrs Boulton) referred to the next review being due in June 2018 [133]. The Respondents confirmed in evidence that pitch fees had generally increased in June each year. On balance, the Tribunal was satisfied that 1st May is the review date for the purposes of paragraph 17(1) for all of the Respondents.

17. The Applicant has produced copies of a 'Pitch Fee Review Notice' dated 25/04/2023 for each of the Respondents [196, 206, 216, 226, 236, 246 and 256]. They were said to have been posted by first class post on the 25/04/2023 giving a deemed date of service of 27/04/2024. Although no proof of service has been provided, the date has not been disputed by the Respondent.

18. The notice provides for an increase from the existing pitch fee of £183.04 to a proposed fee of £208.29 as detailed in an attached form. The accompanying form is a Pitch Fee Review Form which the Tribunal is satisfied is in the form prescribed by paragraph 25A and complies with Schedule 1 of the Mobile Homes (Pitch Review) (Prescribed Form) (England) Regulations 2013 which was then in force. The Review Form explains that the increase to £208.29 is based on an increase in line with the RPI published in February 2023 of 13.8% [198] and would take effect on 1/06/2023 [197].

19. The Tribunal is satisfied the Pitch Fee Review Notice and Form were served more than 28 days before the proposed increase would take effect. However, as the 1/06/2023 was later than the review date provided in the Written Agreements, the Tribunal was satisfied that any proposed increase was a late review, and is, therefore, governed by the provisions of paragraph 17(6) to (10).

20. The Tribunal was satisfied the Applicant's application for determination of the pitch fee by the Tribunal was made on 18/08/2023, and was, therefore, made in accordance with paragraph 17(9) at least 56 days but not more than 4 months after 27/04/2023.

21. The Applicant had provided no explanation for the late review, but the Tribunal was satisfied from the evidence given by the Respondents that in recent years the pitch fee review had taken place in June each year, and this was consistent with Mrs Boulton's notice of assignment [133].

22. Having regard to the findings set out in paragraphs 8 to 21 above, the Tribunal is satisfied that the Applicant had complied with the procedural requirements of paragraph 17 to support a late application for an increase in pitch fee from 1/06/2023 for the pitches occupied by the Respondents in Firs Park.

The issues in dispute between the parties regarding the new pitch fee

23. A number of the residents of Firs Park, including the Respondents, sent a letter opposing the increase to the Applicant on 11/05/2023. In summary, they objected on the grounds that the increase was too high (as evidenced by the offer of a months' credit), the lack of services provided and the fact that the law was due to change allowing an increase in line with the CPI rather than RPI [296]. In oral evidence Mrs Elliott said the Applicant did not respond to this letter before proceeding with their application to the Tribunal.

24. In their reasons given to the Tribunal for opposing the application, all the Respondents referred to the increase in line with RPI being excessive given the economic climate and the financial hardship that would result, particularly for those on a fixed income. A number referred to the RPI being unreasonable given the forthcoming amendment to paragraph 20 as a consequence of the Mobile Homes (Pitch Fee) Act 2023 ('the 2023 Act') replacing the RPI with the CPI as the measure of inflation. A number also objected to the increase on the grounds of lack of maintenance of the site. Ms Field and Mr and Mrs Longyear, in particular, provided more detailed responses (and some photographic evidence).

25. Mr Percy filed witness statements in response dealing with each Respondents objections. In summary, he says the Applicant relies on the presumption in paragraph 20(A1) of the 1983 Act, and asserts it is entitled to rely on the RPI rather than the CPI because the 2023 Act did not come into force until 2/07/2023, after the review notice was served. The Applicant's own costs have increased in line with inflation. The average wage for grounds workers had increased from £25,000 to £30,000 p.a. between 2020 and 2022. In addition, the costs of building materials such as tarmac, ballast, and concrete had also increased. In relation to the empty property at number 4, the Applicant was not required to carry out maintenance but did so as a matter of goodwill. The allegations regarding the condition of the park were not justified as it was well maintained and a pleasant place to live. The Respondents had not, therefore, established any ground to rebut the RPI presumption.

Is it reasonable for the pitch fee to be changed?

26. Because the Respondents had not agreed to the increase, the first consideration for the Tribunal is whether it is reasonable for the pitch fees for Firs Park to be changed (paragraph 16(b)). The Tribunal was satisfied that it was reasonable for the pitch fees to be changed. The Tribunal accepts in general terms that costs for the Applicant would have increased in the intervening year. Whilst Mr Percy had provided no documentary

evidence supporting his assertions, the Tribunal saw no reason to doubt his evidence that wages of grounds workers had increased, and we accepted there would have been inflationary increases in costs of building materials as this is a matter of public knowledge.

27. Having reached that conclusion, the Tribunal, therefore, is required to reach a determination of the new pitch fee from the effective date (i.e. 1/06/2023), and in doing so we reminded ourselves we

    (a) must have particular regard to the factors set out in paragraph 18(1),

    (b) must not take into account any costs incurred by the owner listed in paragraph 19, and

    (c) must apply the presumption in paragraph 20(A1) that there should be an increase or decrease no greater than the increase in RPI since the last review date unless to do so would be unreasonable having regard to the matters in paragraph 18(1) and any other weighty factor.

    <u>The RPI figure</u>

28. For convenience we deal first with the RPI figure of 13.8% used by the Applicant.

29. Ms Field in her objection to the Application identified that the wrong RPI figure had been used by the Applicant in the previous pitch review effective from 1/06/2022. She produced evidence showing the RPI increase in February 2022 was 8.2% whereas General Estates Company Ltd had used the March 2022 RPI increase figure of 9% [313].

30. Mr Percy accepted this was correct and conceded that the figure used by General Estates in the June 2022 review was erroneous. In response to direct questions from the Tribunal that he conceded the Respondents' 2022 pitch fee should have been lower by 0.8%. He accepted this would, therefore, impact on any increase in the pitch fee in 2023. The Tribunal accepts that was a concession quite properly made based on the documentary evidence produced by Ms Field [313].

31. In relation to the current pitch fee figure of £183.04 used by the Applicant as the baseline from 2022, there was no documentary evidence before the Tribunal showing the correct figure had been given in section 2 of each of the Pitch Fee Review Forms. The documents produced by the Applicant included the relevant pitch fees in the original written agreements and at any relevant assignment, but nothing to demonstrate that their pitch fees had increased to £183.04. However, none of the Respondents had disputed that figure. Each of the Respondents who gave evidence to the Tribunal confirmed their pitch fees from the review in 2022 were £183.04 per month. However, they also confirmed that not all the properties on Firs Park had the same pitch fee.

32. The Tribunal finds on balance that in relation to these Respondents, the baseline fee from 2022 was £183.04. The evidence produced by Ms Field indicates the previous pitch fee from 2021 was £167.93 [312] which is 9% lower than £183.04.

33. The Tribunal therefore concludes that had the correct RPI figure of 8.2% been used, the resulting pitch fee of £181.70 per month should have been paid by the Respondents from the effective date of the review in 2022 rather than £183.04. This figure also should have been the starting point for the Applicant's application.

34. The Tribunal considered the RPI figure for 2023 of 13.8% relied on by the Applicant. The presumption in paragraph 20(A1) is that the increase should be no more that the '*latest index*'. This is defined in paragraph 20(A2). In relation to late applications for review paragraph 20(A2)(b) provides that *'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).'*

35. As the review date in relation to these Respondents is 1st May, the Tribunal is satisfied that the RPI figure should be the last index published before 3/04/2023. The Applicant used the RPI figure from February 2023. The Applicant has produced no evidence demonstrating that February was the last index published before 3/04/2023 (despite the directions of 14/03/2024). However, the Tribunal finds from publicly available information on the ONS website that the March 2023 figure (13.5%) was not released until 19/04/2023, and therefore the Applicant was correct to use the figure from February 2023 which was published on 22/03/2023.

<u>The condition of the site</u>

36. Whilst not stated expressly in these terms, the Tribunal has treated the Respondents' complaints regarding maintenance of the site as submissions under paragraph 18(1)(aa) and (ab) namely that there had been a deterioration in condition of the site or a decrease in the amenity which had not previously been taken into account, or a reduction (or decrease in quality) of services provided.

37. A number of the Respondents referred to the lack of maintenance at the site, with operatives only attending every 4 to 6 months to trim the hedges and clean the roadways. Specific additional issues were raised by Ms Field [305]. In summary;

    (a) The red fire box outside number 21 containing fire fighting equipment was in poor condition with a broken handle,
    (b) The noticeboard was marked and was missing information such as the most recent fire risk assessment, and documents (such as the site licence and insurance) were out of date,
    (c) There was insufficient information or warning about what to residents were to do in the case of fire,

(d) There was no information about the latest electrical inspection, and the meters (and the structure housing them) were in poor condition,
(e) Leaves and mud continually blocked the drain outside her house resulting in a puddle in wet weather, and the tarmac was cracked and broken.

38. Mrs and Mrs Longyear also complained about the poor state of the cupboard housing the electric meters and the poor condition of number 4, their neighbour's home, which had been empty since she went into a nursing home in October 2021.

39. During the inspection the Tribunal noted that the hedges that were the responsibility of the Applicant were generally well maintained and appeared trimmed. Although there was some weed growth it was not excessive and the roads on site appeared in good condition. There was a small area of pooled water in the central car park which the parties agreed had been present for some months.

40. The fire box outside number 21 was clearly very newly installed (consistent with the invoice at [328] from 24/04/2023). The notice board was clean, and the documents it contained were up to date. We inspected the brick structure to the rear of number 3 housing the electric meters for some of the park homes, the wooden door to which was deteriorating with rot in places. The meters themselves appeared slightly rusty and the cupboard contained dead leaves. Our attention was drawn to the salt boxes on site, which were completely solid and had clearly not been maintained.

41. The Tribunal was mindful that the condition of the site at the time of the inspection in June 2024 post-dated the period the Tribunal was required to consider by almost a year. However, we could derive some benefit from the inspection, and were able to compare what we saw with the photographs provided by Ms Field.

42. Having considered the totality of the documentary and oral evidence, and our observations at the inspection (with the caveat in paragraph 41 above), the Tribunal concluded that there had been an increase in the attention that was being paid to maintenance on the site by the Applicant since the Respondents objected to the pitch fee in April or May 2023 for the following reasons.

43. All the Respondents who gave evidence to the Tribunal confirmed there had been a significant increase in the level of maintenance on site since they objected to the increased fee.

44. This was supported by the documents before us. Ms Field had complained to the Applicant about a number of issues on the site on 11/04/2023 prior to notice of the pitch fee increase being served on 25/04/2023 [305]. In that letter she made reference to previous

correspondence in September 2022 regarding the site (although this was not produced).

45. The photographs provided by Ms Field with her objections [313] showed that the documents provided by the Applicant in the noticeboard were out of date. Despite the Applicant having had the site licence from 1/03/2017 [82], the licence displayed was for the previous site owners (dating from 1997). There was no information about public liability insurance [314], as the insurance documents displayed related to employers' liability from 2017/18. As Ms Field only purchased her home in April 2022 and had written to the Applicants in September 2022 and April 2023, the Tribunal found these matters to be evidence of a lack of care and regular checks at the relevant time. By the time of our inspection the documents had been updated, and evidence showed the red fire box containing fire extinguishers had been replaced in April 2024.

46. We did not accept Mr Percy's evidence that there had been regular monthly checks on the site. No documentary evidence has been produced supporting that claim. Nor was there any other documentary evidence indicating a regular cycle for maintenance on the site. The evidence of the two salt boxes being completely solid, the decay to the doors of the meter cupboard (and presence of autumn leaves in June) and the out of date information in the noticeboard were all indicative of a lack of regular checks. We accepted the Respondents' oral evidence that there had been an increase in the number of visits by grounds workers to the site. Indeed, there were a number of operatives on site on the day of our inspection, and it was clear that the grass had only very recently been cut in the garden of number 4, consistent with Mr and Mrs Longyear's statement of 3/05/2023.

47. However, the Tribunal was satisfied the Applicant company did appear to have liaised with the Council regarding the home of the occupant of number 4 who had gone into a nursing home and subsequently died which had led to that pitch becoming untended.

48. The Tribunal also found the roads were generally in a good state of repair. Whilst Ms Field complained of broken tarmac, we found this not to be of any substance. There was some weed growth at the time of the inspection, but nothing substantial. In relation to the drain outside number 21, there was no documentary or photographic evidence suggestive of a significant or ongoing problem. The grating over the drain appeared adequate and could easily be cleared of any leaves.

49. Whilst there was evidence of pooling water in the central car parking area on the day of our inspection, Mr Percy said this was being actively investigated and monitored, and checks on the water usage over time did not indicate a leak. It had not been an issue raised by any of the Respondents in their objections, which we found consistent with Mr Percy's evidence that it was a problem that had only developed since the

winter of 2023. There was no other evidence of significant problems with drainage on site.

50. The Tribunal also found there was no clear documentary evidence of hedges being significantly overgrown at the time the pitch fee notice was served in April 2023. Nor was there clear evidence that the condition of the site had deteriorated or that there was a resulting loss of amenity. Whilst the notice of insurance had only been updated recently, there was nothing in the evidence before us to indicate that the Applicant would not have provided a copy for inspection if requested (as required by clause 4(d) of the written agreement).

51. The Tribunal accepted that the Applicant had not been as diligent as it might in carrying out maintenance tasks. However, the Tribunal found there was no compelling evidence before it of a significant deterioration in the condition or decrease in amenity of the site. Whilst we accept that there has been updating of the noticeboard, the provision of a new fire box and more frequent attendance by grounds workers, there were no photographs or other evidence indicating that substantial works of improvement had been carried out since April 2023. We were satisfied that there had been a fire-risk assessment in July 2022 well before the pitch fee review. This indicated that the Applicant company did have some system in place for safety auditing. The Tribunal accepted Mr Percy's evidence that the electric meters themselves would be the responsibility of the supplying company rather than the Applicant. He conceded the unit housing them was the responsibility of the Applicant and did require attention.

52. On balance, whilst we accepted the site may well have been lacking in attention at the material time, and therefore communal areas would have been less well maintained in April 2023 than on the day of our inspection, in general the Tribunal found the condition of the site would have been adequate and the reduced level of maintenance would not have interfered substantially with residents' enjoyment of the site.

53. There was no evidence before the Tribunal indicating there had been a reduction in the services to the site or a deterioration in quality of such services (under paragraph 18(1)(ab)). The Applicant confirmed there had been no improvements following consultation (paragraph 18(1)(a)) or any additional costs relating to management of the site arising from any enactment (paragraph 18(1)(ba)).

54. The Tribunal concluded, therefore, that the complaints regarding the condition of Firs Park were not sufficient that the presumption in paragraph 20(A1) should not apply at all.

55. Whilst we had some sympathy with the frustrations of the Respondents over the lack of attention, there was only one resident who had produced evidence of making a complaint to the Applicant prior to the pitch fee review, indicating that the lack of attention was very significant. On balance we concluded that the reduced level of attention to maintenance

prior to the pitch fee review was not of sufficient substance to rebut the presumption that the RPI should be used when having regard to the factors in paragraph 18(1).

56. Whilst the matters complained of indicated the site may have made it at times a bit scruffy in places, the Tribunal was not satisfied that they sufficiently impacted on the amenity of the site as a whole. In general terms, we accepted Mr Percy's evidence that Firs Park is a pleasant site. We considered the level of care to have been adequate, although we accept that more attention could have been paid to it at the relevant time.

The excessive increase in pitch fee and financial hardship

57. The principal objection of all Respondents to the pitch fee review was what they saw as an excessive increase at a time when the cost of living was also very high and when some were on limited or fixed incomes. We note that the written agreements relied on included an amendment from 1997 which confirmed the park was designed for retired or semi-retired individuals and indicated an age restriction preventing any resident from being aged under 50. Mr Percy acknowledged that most residents were reliant on pension income [110].

58. Whilst the Tribunal accepts that some of the Respondents may be of limited means, the 1983 Act does not require or permit the Tribunal to consider the individual financial circumstances of park home occupiers. Nor does it permit the Tribunal when determining a pitch fee to compare more generally the fees charged on other comparable sites or indeed between pitches on the same site. This is because the original fee agreed is a matter of contractual negotiation between the parties to the agreement.

59. The Tribunal is therefore only concerned with determining what should be the relevant percentage increase (or decrease) of the pitch fee at the material time when considering an application under paragraph 16(b).

60. No documentary evidence regarding changes in the RPI was provided by the Respondents, save by Ms Field for 2022. However, the Tribunal is satisfied from its own knowledge and from publicly available information on the ONS website that after many years of minimal increase, the RPI increased significantly after 2021.

61. The Tribunal is also satisfied that there was a very substantial spike in the RPI between September 2022 and March 2023, the period relevant to this application. In the 10 years prior to 2022 the annual RPI increase had varied between 1 and 4.1%, but by October 2022 the RPI had risen to a peak of 14.2% (increasing from 12.6% the previous month). However, the overall annual RPI increase for 2022 was 11.6% and for 2023, 9.7%.

62. In making our determination, we gave particular weight to the fact the Applicant, at the time of serving notice of the pitch fee revise, sent a

separate letter to the Respondents on 25/04/2023 offering them a 'goodwill gesture' of a credit of one months' pitch fee if they confirmed their agreement to the increase [205, 215, 225, 235, 245 and 255]. This was said by the Applicant to be in recognition that the increase was high. Mr Percy confirmed that to the best of his knowledge such goodwill gestures were also made by the company to the residents of the other 18 residential parks it owned or managed.

63. In essence, the Tribunal finds this offer indicated the Applicant was prepared to accept from the Respondents a yearly pitch fee of £2,291.19 (or £190.93 per month) for 2022/23 rather than the £2,499.48 (£208.29).

64. The Tribunal is satisfied this equates to an increase of 4.31% from the June 2022 pitch fee (£190.93 - £183.04 = £7.89/£183.04 x 100 = 4.31%), rather than the proposed 13.8% the Respondents were being asked to accept.

65. The Tribunal found that in offering that goodwill gesture, the Applicant company must have been satisfied that from a commercial point of view a rate of increase of 4.31% in the pitch fee was a reasonable one, notwithstanding the presumption in paragraph 20(A1).

66. Whilst the Tribunal accepts that the Applicant's costs will have been increasing with inflation at the relevant time, it found it notable that the Applicant provided no documentary evidence to support its rather general assertions regarding the increases in costs and overheads. In relation to this site, the Tribunal found that the communal areas were not extensive and maintenance requirements would not be substantial. However, the Tribunal accepts Mr Percy's submission that when extensive works (such as the resurfacing of the roads) are required in future the Applicant must have built up sufficient reserves.

67. The Tribunal's clear impression from Mr Percy's witness statements is that the Applicant applied an increase of the RPI of 13.8% simply because it could. As he says in paragraph 4 of his statement in response to Ms Field, the 1983 Act *'allows'* it [317]. Mr Percy refers to the presumption as an '*entitlement'*. For example in answer to Ms Field's submission that the CPI should be used, Mr Percy states, *'[a]t the time the review was served, the Act entitled the Applicant to use the RPI as the measure for inflation….the proposal is therefore a valid one'*.

68. However, as was made clear in Britanniacrest v Bamburgh [2016] UKUT 0144 (LC) [at 31] *'an increase or decrease by reference to the RPI is only a presumption; it is neither an entitlement nor a maximum and in some cases will only be the starting point of the determination'*.

69. The Upper Tribunal Deputy President Martin Rodger KC in Wyldecrest Parks Management Limited v Kenyon and others [2017] UKUT 28 (LC) having carried out a review of decisions regarding terms implied by the 1983 Act, summarised the principles as follows (at paragraph 47):

'(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."

70. The Tribunal has borne in mind that the presumption that the RPI should be used is a strong one. However, having considered all matters in the round, the Tribunal finds the very significant spike in the RPI from September 2022 until about April 2023 to be so substantial and out of line with the general inflation increase that it amounts to an important and weighty factor which does rebut the presumption in paragraph 20(A1).

71. The Applicant's goodwill gesture is also a weighty factor the Tribunal takes into account in reaching this conclusion, because it strengthens the Tribunal's view that the Applicant recognised that a 13.8% increase was not a reasonable one.

72. In all the circumstances the Tribunal finds the Respondents have rebutted the presumption in paragraph 20(A1) that the 13.8% increase should be used.

What then should the pitch fee increase be?

73. As to what would be a reasonable pitch fee increase as at 1/06/2023, the Tribunal notes that neither party has provided any cogent documentary evidence supporting what they say.

74. The Applicant has not provided evidence justifying an increase of 13.8% (such as documents supporting its general and somewhat vague assertion that its own costs and overheads had increased). The Tribunal notes that the increase in salary for a grounds worker cited by Mr Percy would equate to an increase of 10% per year.

75. Mr and Mrs Longyear in their objections have cited an inflation rate of 4.6% [261] but no documentary evidence has been provided supporting this, and the Tribunal finds it is not supported by ONS data.

76. As set out above, the Tribunal finds in effect an increase of 4.31% was offered to the Respondents in the goodwill offer. Whilst this figure is similar to the inflation figure cited by Mr and Mrs Longyear, on balance the Tribunal finds an increase of this amount would not be reasonable. That is because the £208.29 credit was only offered in exchange for an acceptance by the Respondents of the substantial percentage increase being carried forward in subsequent years. In addition, the Tribunal found it would be out of line with the general inflationary trends as set out below.

77. The Tribunal has considered the publicly available information from the ONS. This shows that when looking at the annual rather than monthly data the RPI increase for 2022 was 11.6% and for 2023 it was 9.7%.

78. The Tribunal also considered the CPI. The ONS shows the CPI figure in February 2023 was 10.4%, and the annual CPI increases for 2022 and 2023 were 9.1% and 7.3% respectively.

79. The statutory presumption of the CPI being used as a measure of inflation only came into force on 2/07/2023 with the Mobile Homes (Pitch Fees) Act 2023 ('the 2023 Act') a month after the effective date in this application. However, the Bill which finally led to the 2023 Act was first laid before Parliament in 2020, and again in 2021 but there was insufficient Parliamentary time for it to be considered until 2023. As the CPI has generally been accepted as a more accurate measure of inflation for many years in other areas, the Tribunal therefore finds it is a relevant consideration.

80. When considering all of these factors in the round, the Tribunal concluded that an increase of the pitch fee by 9.5% from 1/06/2023 was reasonable in all the circumstances. It is midway between the published February 2023 RPI figure and the 4.31% reduced increase offered by the Applicant. It is also broadly in line with an average of the RPI and CPI measures of inflationary increase taken over the whole of 2022 and 2023.

Decision

81. In the light of the concession made by the Applicant regarding the pitch fee increase from 2022 (and the calculation set out above at [32]) the

Tribunal finds that it is reasonable for the Respondents' pitch fees to increase by 9.5% from £181.70 to £198.96 per month.

82. No application was made by the Applicant for the application fee to be paid by the Respondents. In any event, as the Respondents have been successful in as much as the increase proposed by the Applicant has not been accepted, the Tribunal concludes it would not be reasonable for the Respondents to reimburse the fee to the Applicant.

Judge R Cooper
Date 16/07/2024

Note: Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office that has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision. The application must be sent by email to rpsouthern@justice.gov.uk and should include the case number and address of the property to which it relates.

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

APPENDIX

The following are relevant excerpts from the legislation referred to in this decision

16.
The pitch fee can only be changed in accordance with paragraph 17, either—
(a) with the agreement of the occupier, or

(b) if the appropriate judicial body, on the application of the owner or the occupier, considers it reasonable for the pitch fee to be changed and makes an order determining the amount of the new pitch fee.

17.

(1) The pitch fee shall be reviewed annually as at the review date.

(2) At least 28 clear days before the review date the owner shall serve on the occupier a written notice setting out his proposals in respect of the new pitch fee.

(2A) In the case of a protected site in England, a notice under subparagraph (2) which proposes an increase in the 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 or (in the case of a protected site in England) the occupier may apply to the appropriate judicial body 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 appropriate judicial body under paragraph 16(b); and

(c) the new pitch fee shall be payable as from the review date but the occupier shall not be treated as being in arrears until the 28th day after the date on which the new pitch fee is agreed or, as the case may be, the 28th day after the date of the [appropriate judicial body][3] order determining the amount of the new pitch fee.

(5) An 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, in the case of an application in relation to a protected site in England, no later than three months after the review date.

(6) Sub-paragraphs (7) to (10) apply 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) In the case of a protected site in England, a notice under subparagraph (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 or (in the case of a protected site in England) the occupier may apply to the appropriate judicial body 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 appropriate judicial body under paragraph 16(b); and

(c) if the appropriate judicial body makes such an order, the new pitch fee shall be payable as from the 28 th 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 date on which the owner serves the notice under sub-paragraph (6)(b) but, in the case of an application in relation to a protected site in England, 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) in relation to a protected site in England to be made to it outside the time limit specified in sub-paragraph (5) (in the case of an application under sub-paragraph (4)(a)) or in sub-paragraph (9) (in the case of an application under sub-paragraph (8)(a)) 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.

(10) The occupier shall not be treated as being in arrears—

(a) where sub-paragraph (7) applies, until the 28th day after the date on which the new pitch fee is agreed; or

(b) where sub-paragraph (8)(b) applies, until the 28th day after the date on which the new pitch fee is agreed or, as the case may be, the 28th day after the date of the appropriate judicial body order determining the amount of the new pitch fee.

(11) Sub-paragraph (12) applies if a tribunal, on the application of the occupier of a pitch in England, is satisfied that—

(a) a notice under sub-paragraph (2) or (6)(b) was of no effect as a result of sub-paragraph (2A) or (6A), but

(b) the occupier nonetheless paid the owner the pitch fee proposed in the notice.

(12) The tribunal may order the owner to pay the occupier, within the period of 21 days beginning with the date of the order, the difference between—

(a) the amount which the occupier was required to pay the owner for the period in question, and

(b) the amount which the occupier has paid the owner for that period.

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;

(iii) 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 appropriate judicial body, on the application of the owner, has ordered should be taken into account when determining the amount of the new pitch fee;

(aa) in the case of a protected site in England, 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 subparagraph);

(ab) in the case of a protected site in England, 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 subparagraph);

(b) ....

(ba) in the case of a protected site in England, 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

(c)...

(1A) But, in the case of a pitch in England, 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) In the case of a protected site in England, 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) In the case of a protected site in England, 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) In the case of a protected site in England, 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) In the case of a protected site in England, 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).