



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

<b>Case References</b>	<b>:</b>	<b>MAN/ 16UB/PHI/2023/0312, 0313, 0314, 0315, 0316, 0317, 0318, 0319, 0320 &amp; 321</b>
<b>Properties</b>	<b>:</b>	<b>Pitches 2, 4, 12, 15, 16, 24 and 26 Nepgill, Nepgill Park, Bridgefoot, Workington, CA14 1YG and 18, 20 and 22 Millbanks Court, Nepgill Park, Bridgefoot, Workington, CA14 1WB</b>
<b>Applicant</b>	<b>:</b>	<b>Acrebind Limited</b>
<b>Respondents the</b>	<b>:</b>	<b>As more particularly referred to in Schedule hereto</b>
<b>Type of Applications</b>	<b>:</b>	<b>For the determination of various pitch fees under the Mobile Homes Act 1983 – Schedule 1 Chapter 2 paragraphs 16-20</b>
<b>Tribunal Members</b>	<b>:</b>	<b>Judge J.M.Going K. Kasambara MRICS</b>
<b>Date of Inspection and Decision</b>	<b>:</b>	<b>27 February 2024</b>
<b>Date of these Reasons</b>	<b>:</b>	<b>4 March 2024</b>

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**REASONS FOR THE DECISION**

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## **The Decision and Order**

**The Tribunal orders that the calendar monthly pitch fees for each of the properties shall be increased in accordance with the Schedule hereto and with effect from 1 April 2023.**

### **Preliminary**

1. By 10 individual Applications (“the Applications”), 9 of which were dated 7 June 2023 and the 10<sup>th</sup> dated 14 June 2023, the Applicant (“Acrebind”) applied to the First Tier Tribunal Property Chamber-(Residential Property) (“the Tribunal”) for orders to be made under paragraph 16(b) of Schedule 1 of the Mobile Homes Act 1983 (“the 1983 Act”) determining the amounts of new pitch fees to be paid by each of the Respondents should the Tribunal consider it reasonable for the pitch fees to be changed.
2. Because all the Applications relate to the same site and raise various common and related issues it was decided that they should be considered together and at the same time.
3. The Tribunal issued Directions in respect of each of the Applications, detailing a timetable for documents to be submitted, confirming that it considered it appropriate for the matter be determined on the papers, unless any of the parties requested an oral hearing. None have done so.
4. The Tribunal visited and inspected Nepgill Park (“the Site”) on 27 February 2024.

### **Background**

5. The following matters are evident from the papers or are of public record and have not been disputed unless specifically referred to.
6. The Site is a protected site within the meaning of the 1983 Act. Acrebind is its owner and operator and the Respondents are all owners and occupiers of a mobile home stationed on the Site.
7. The Site is licensed under the Caravan Sites and Control of Development Act 1960 for use as a residential caravan site with up to 56 units. The Site is and has been family run for over 30 years by Mr and Mrs Morgan, and latterly with their daughter. Mr and Mrs Morgan are Directors of Acrebind.
8. On 28 February 2023 they delivered a Pitch Fee Review Notice and a duly completed Pitch Fee Review Form as prescribed under the Mobile Homes (Pitch Fees) (Prescribed Form) (England) Regulations SI 2013/1505 (which are together referred to as “the Notices”) to each of the Respondents

proposing a new pitch fee in place of their existing one with effect from 1 April 2023.

9. The increases were not agreed, and Acrebind applied, in each case, to the Tribunal to determine the matter.

### **Inspection**

10. The Site is set in the countryside on the outskirts of Nepgill village and located some 4 to 5 miles from Workington to the west and Cockermouth to the east. It is entered from the highway via a tree-lined access road, which leads into both the original part of the Site, Nepgill Park, and the later developed Millbanks Court. The park homes within Nepgill Park are predominantly single units, whereas those adjoining Millbanks Court are all twin-units with garages and generous stone-sett driveways. It is understood that in total approximately 50 Park homes are presently occupied and there are 3 vacant pitches. There are various garage blocks, other areas used by residents for parking, and an area signed as and specifically allocated for visitor parking. A converted barn, within the estate, contains letting units with a laundry room on the ground floor. This contains a copy of the Site licence and the recent electrical installation report. The Site includes various woodland, wildflower and wildlife areas and a site office next to a pond and sitting out area. There are various certificates displayed in the site office attesting to different conservation awards, including a David Bellamy Gold award made in 2019. There is ample evidence of programmed maintenance including ongoing works to trees. The older roadways within Nepgill Park, whilst patched in parts, appear to be generally even, and adequately maintained and with past potholes filled. There is evidence of the introduction of additional drainage where previously there was none and of a programme of upgrading surfaces. Millbanks Court including its pavements have been surfaced with well-maintained brick setts.

11. The Tribunal members walked the full extent of the Site with Mrs Morgan, Mr and Mrs Cank, and Mr Moore all in close attendance throughout. Mr Morgan was also present for part of the time.

12. The Tribunal's overall impression was of a pleasant, well-kept site and with the individual park homeowners clearly taking a pride in maintaining their individual plots to a high standard, and with the site owners having invested in and continuing to invest in long term improvements.

13. It was confirmed at the Inspection that the adjoining field and woodland to the north-east of Nepgill Park is in common ownership and occupied and controlled by Mr and Mrs Morgan. The Tribunal members walked along the trackway partway through that field to view various matters which had been referred to in the parties' submissions.

### **Evidence and submissions**

14. The papers presented to the Tribunal included copies of the Applications, the Notices, including those for the previous year, individual written

statements under the 1983 Act, photographs, correspondence, statements of case, submissions and responses.

15. Because of the extent of the paperwork, which is on record and which the individual parties have access to, it would be superfluous and, in the Tribunal's opinion, counter-productive to attempt to set out its full detail or each and every submission and response in this decision.

16. The Tribunal has instead highlighted those issues which it found particularly relevant to, or that help explain, its decision-making.

17. Acrebind explained in its statement of case that "A total of 40 of the 50 park homeowners on the Site have paid the new pitch fee following the review on 1 April 2023. The remaining 10 park homeowners have not paid the newly calculated pitch fee, with only two residents advising that the reason for this was because they thought 13.4% RPI was too high and hoped Acrebind Ltd would...use the CPI figure instead. These residents were advised that we would welcome the change to CPI but until the change in legislation from RPI to CPI had been passed, then we would apply the RPI % as per the legislation at that time....

There have been no additional charges made to residents through the pitch fee review process for improvements although there have been substantial associated costs across the park in the last 12 months, including but not limited to, the cost for installation of piped LPG and gas meters now available to all homes across the park, new and improved drainage and continued works to improve the original road surfaces across the park, the installation of new electric meters and upgrade of the original park electrics....

Although the January RPI % is much higher than previous years, Acrebind Ltd does not accept this as a justifiable reason for non-payment of the pitch fee increase as there has been no decrease in amenities across the park, instead there has been considerable investment to improve amenities across the park as mentioned previously.

Whilst Acrebind Ltd appreciates that many people have experienced considerable cost increases due to the high rate of inflation, so too have businesses like Acrebind Ltd".

18. Various submissions were made by the different Respondents objecting to the proposed increases and pointing to various issues and reasons why they considered there had been a loss of amenity and a deterioration of the park. Nearly all, for the most part, adopted very similar or identical forms of wording and referred to the same evidence and exhibits. Each confirmed that "we are not disputing the pitch fee review process that the Applicant followed, which appears to be correct. We are rejecting that any proposed increase in pitch fee is justified, due to the deterioration in the condition of the park, and lack of maintenance by the Applicant, during the period 1 April 2022 to 1 April 2023

19. The Respondents' main submissions as to why they aver that the proposed increases are unreasonable, were grouped under the headings of: –

1) the Local Authority site inspection report in March 2023

- 2) deterioration of the road surfaces
- 3) drainage
- 4) deterioration in aesthetics/appearance of the park due to accumulation of building materials on unused park home bases
- 5) communal footpaths/areas in the park
- 6) deterioration in the adjoining land owned and controlled by Acrebind
- 7) deterioration in the visitors' car park
- 8) reduction in the car parking area
- 9) reduction/deterioration in services
- 10) piped LPG
- 11) installation of "new" electric meters and upgrade of the park electrics

In each case Acrebind offered a detailed reply. It also made various general points about the need to spread various major works over periods of time and its policy decisions not to seek increases in the pitch fees over and above RPI in respect of such improvements. It submitted that the Site is well-maintained and there is nothing that would warrant a departure from the principles set out in decided cases and a "strong" presumption of an increase in line with the RPI.

20. Referring to each set of issues in turn.

21. *The Local Authority's site inspection report in March 2023*

The Respondents exhibited a redacted copy of the report stating that it had been obtained under the Freedom of Information Act and that it highlighted several breaches of the site licence conditions and the Health and Safety at Work Act.

Each (apart from Ms Roscamp) also separately made a statement within their respective statements of case, submitted in December 2023, that "the Applicant has now received a Compliance notice from Cumberland Council enforcing improvement of the road surfaces in the Nepgill area of the park. We can find no record of a Compliance Notice issued to the Applicant in the year prior to 1 April 2022, hence, by default the road surfaces must have deteriorated significantly in the pitch fee review for this Compliance Notice to have been issued..." In the appendices to their statements of case they exhibited a copy of a redacted, unsigned Notice dated 1 November 2023 under the heading of "Allerdale Borough Council".

Acrebind in its responses referred to being told by council officers during an unannounced site visit on 22 November 2023 that "they had no further concerns and that they would confirm this in writing". Acrebind also confirmed the document referred to by the Respondents as the Compliance Notice had never been received, nor yet been issued or served. It had first learned of its existence from the Respondents' submissions to the Tribunal, and thereafter immediately contacted Cumberland Council. The Council's emailed response on 21 December 2023 confirmed "a notice was drafted but never served. We are investigating as to why this occurred and apologise for any distress this has caused". A fuller explanation appeared in a redacted email sent by the Council later on the same day to a Respondent where it was said "...It appears one of the documents which has been sent – "Draft Compliance Notice Nepgill" has been redacted in such a way that it is not clear that it is a draft document and to NOT an active/served notice.... It was

included with some of the files on our system but it was not signed to make it binding nor was it issued or served... It may be that yourself and the other residents are already aware of this due to the lack of dates and signatures however we wanted to be certain to avoid any doubt in case this was used as evidence for the tribunal..." The Respondents emailed the Tribunal case officer the next day stating "... we received notification from our local authority stating that one of the documents used in our evidence bundle was only a draft.... We understand that the Compliance Notice has not yet been issued to the Applicant. Please find attached a copy of the redacted email received from our local authority for your attention confirming their error in issuing this. We apologise for any inconvenience this may cause to the Tribunal..."

## *22. Deterioration of road surfaces*

The Respondents stated that the road surfaces in the Nepgill area of the park had deteriorated markedly in the pitch review period. Photographs were exhibited and references made to poor patching, and potholes which were said to have increased in size. The Respondents referred to paragraphs within the local authority site inspection report referring to the need for improvement. The Applicants refuted the assertion that there had been deterioration stating "the existing road surface has been in situ since the 1950s and is being replaced by a Acrebind Ltd over time with a new block sett roadway, gullies and supporting drainage. Other areas will receive a new tarmac road surface once the drainage is installed on all road surfaces across Nepgill." It was also said "it must be noted that the existing roads on Nepgill Park have never been a load bearing surface but only spray pitch and chippings..."

## *23. Drainage*

The Respondents stated that "Due to the lack of maintenance across the park since the last pitch review date (1 April 2022), many drains in communal areas became blocked with leaf debris from autumn/winter 2022. These were not cleared by the Applicant as part of the Owner's obligations to maintain the park in a clean and tidy condition. The result of this deterioration in drainage was pooling of large amounts of water in front of residents' rented garages, and around the main entrance to Nepgill Park after rainfall".

Acrebind stated in its responses "new drainage has been installed across the park over the past 12 months as historically there has never been any drainage installed around the roads". It was also stated that the Respondent's exhibited photograph "was taken following a very heavy downpour and that the drain was cleared shortly after the image was taken."

## *24. Deterioration in aesthetics/appearance of the park due to accumulation of building materials on unused park home bases*

The Respondents complained about the use of empty park home bases in the Nepgill area for the deposit of building materials and of the noise and dirt disruption. Acrebind responded that the base in question was owned by it and closest in proximity to the planned roadworks.

## *25. Communal footpaths/areas of the park*

were said by the Respondents to have deteriorated during the pitch fee review "due to the exponential growth of weeds, moss and grass in this period. Footpaths became slippery when wet and communal areas became unsightly".

Acrebind stated that the exhibited photograph “only shows the stretch of footpaths awaiting their scheduled pressure washing” not “the many other pathways on park which had already been pressure washed.” and that “... the images provided by the Respondent do not show a true and fair reflection of the park throughout the year”. It exhibited further photographs of its own.

*26. Deterioration in the adjoining land owned and controlled by Acrebind*

The Respondents complained of adjoining land being used to “dump soil, building rubble, scrap metal grass and hedge cuttings, plastic piping, building materials. This became markedly worse during the pitch fee review period when the applicant removed two old park home bases and dumped the rubble on the adjoining land.... In addition, rubbish was, and is being burnt on adjoining land on a regular basis creating a very unpleasant environment for residents.”

Acrebind said that some of the stored material “cannot be seen from the external perimeter of the field and that 2 of the exhibited photographs had been taken from private land clearly signed as such and over which there were no public rights of way.

Responding to the comments made about burning it stated “full permission has been given for burning of wood, hedgerow and tree cuttings and garden brash. As can be seen from the photographs, this area is well away from Residents homes and great consideration is taken to choose days when wind direction will carry smoke away from residents’ homes”.

*27. Deterioration in the visitors’ car park*

The Respondents stated that the surface “is continually washed away leaving large areas of standing water and a muddy surface.”

*28. Reduction in car parking area*

The Respondents stated that an area used by Mr and Mrs Morgan at the side of their house had been lost since 2022 and is now being used for storage of wheelie bins and building materials. It was also said “due to an increase in the number of residents who have cars, it is often difficult to find space when returning to the park...” They referred to section 28 of the Site licence conditions confirming “suitably surfaced parking spaces should be provided where necessary to meet the additional requirements of the occupants and their visitors”.

In response to the first point, Acrebind stated that “this area has never been a parking area and is being created to provide two additional parking spaces for the rental properties on park”.

It also stated “it must be noted there was never a visitors car park on the site as the car park was created in 2006 when the treatment plant was installed. Previously this land was used for storage of materials for the new development (Millbanks Court) and since the completion of works to Millbanks Court, the size of the car park has only increased as the materials have been used.”

*29. Reduction and deterioration in services*

*a.in respect of refuse collections and disruption during works to the surface of the one-way access road to the Nepgill area of the park.*

It was stated that “during the .... 6-month period of road surfacing, some residents’ refuse was unable to be collected from its normal collection point,

and residents had to take their heavy wheelie bins a distance of approximately 80 metres to a collection point at the entrance to the park. Some residents are over 80 years of age and infirm, so other residents had to present their bins for collection up to 3 times per week over this 6-month period". There were also complaints as to restrictions of delivery vehicles because of works to the roadway.

Acrebind responded "this point is completely invalid as there was only one elderly resident who required support from Acrebind Ltd and Mrs Morgan always ensured her refuse bins were taken care of until the resident of no. 2 Nepgill took over this responsibility at his own wish. The Respondent seems to be trying to make point of an issue that was never the case. At no point was the park entrance ever closed off for deliveries and access was maintained by using the one-way alternative route onto park. There was never any loss of main access road for any road users and therefore the mentioned points are noted as inaccurate and therefore invalid".

*b. In respect of an LPG gas leak* described by Respondents as "a major gas leak on the park in December 2022 resulting in the gas supplies to homes having to be turned off and homes evacuated. In response, Acrebind said it "was in fact only a minor leak which was quickly resolved the same day".

### 30. *Piped LPG*

The Respondents stated that the installation of the piped LPG was completed, to the existing park homes prior to the pitch review period of April 2022 – April 2023, so is not applicable. Acrebind stated "piped LPG was completed to existing homes by February 2023."

### 31. *Installation of "new" electric meters and upgrade the park electrics*

The Respondents stated that Acrebind installed the "new" meters in 2019 prior to the pitch fee review period, and that the installation has brought its own problems for some residents being at some distance and locked and "cannot be accessed by residents to enable them to read their own meter (which they could do with their old meter) or reset the trip switch when the park owners are not available to do so, which has happened on several occasions".

Acrebind stated "Improvement to the site electrics have been taking place over the past 5 years and the upgrade has brought the existing site electrics up to current standards and old meter boxes have been made obsolete and supply transferred over to all new meters by the end of 2022.... Each resident has been advised to have an electrical safety check on electrics within their homes, as the new meter boxes will only trip if the safety cutout in a resident's home does not trip or activate in the required time..."

## **The Law**

32. The provisions relating to the review of a pitch fee are contained in paragraphs 16 to 20 of Chapter 2 of Part 1 of Schedule 1 to the 1983 Act.

33. In the terms of the 1983 Act and in the context of the pitch each Respondent is referred to as an "occupier" and the Applicant as the "owner".



34. Paragraph 29 defines the 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 the 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 services, unless the agreement expressly provides that the pitch fee includes such amounts.”

35. The pitch fee can only be changed in accordance with paragraph 17, either with the agreement of the occupier, or by the Tribunal, on the application of the site owner or the occupier (Para 16). The pitch fee shall be reviewed annually as at the review date (Para 17(1)). The owner serves on the occupier a written notice setting out the proposed new pitch fee (Para 17(2)). If it is agreed, the new pitch fee is payable from the review date (Para 17(3)). If it is not agreed, the owner (or an occupier on a protected site) may make an application to the Tribunal to determine the new pitch fee (Para 17(4)). Once decided, the new pitch fee is payable from the review date (Para 17(4)(c)). When determining the amount of the new pitch fee, particular regard shall be had to any sums expended by the site owner since the last review date on certain improvements provided after consultation (Para 18(1)(a)) and any reduction in services supplied by the site owner or decrease in the condition or amenity of the site, or any adjoining land occupied or controlled by the site owner, which has not been taken into account in a previous pitch fee review (Para 18(1)(aa)&(ab)). 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 (Para 20(A1)). (It should be noted that the law is as stated when the Notices were served. It has subsequently been changed and for future applications the reference index has been changed from the retail prices index to the consumer prices index).

36. The written notice proposing the new pitch fee will be of no effect if it is not in the prescribed form (Paras 17(2A) and 25A). It should be served at least 28 days before the review date (Para 17(2)) or, if late, with 28 days’ notice (Para 17(7)). An application to the Tribunal 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 (Para 17(5)) unless the written notice was late in which case an application may be made after the end of period of 56 days beginning with the date on which the owner serves the notice, but not later than four months after the notice. (Para 17(9)).

37. The Upper Tribunal has provided helpful advice as to how the statutory provisions should be interpreted in a number of cases including in *Wyldecrest v Kenyon* [2017] UKUT 28(LC) where it as said “Based on this review of the Tribunal’s decisions in this area..... the effect of the implied terms for pitch fee review can therefore be summarised in the following propositions:  
(1) The direction in paragraph 16(b) that in the absence of agreement the pitch fee may be changed only “if the appropriate judicial body ... considers it reasonable” for there to be a change is more than just a precondition; 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.

38. In *Vyse v Wyldecrest Ltd [2017] UKUT 24 (LC)* HHJ Alice Robinson noted that: “...the factors which may displace the presumption are not limited to those set out in paragraph 18(1) but may include other factors...” and said that: “...By definition, this must be a factor to which considerable weight attaches ... it is not possible to be prescriptive ... this must be a matter for the FTT in any particular case. What is required is that the decision maker recognises that the “other factor” must have sufficient weight to outweigh the presumption in the context of the statutory scheme as a whole.”

### **The Tribunal’s Reasons**

39. The Tribunal had first to determine whether the Notices were valid.
40. Each Notice was in the prescribed form and found to be valid and to have been served more than 28 days before the review date. Each Notice correctly calculated the change in RPI over the specified period at 13.4%.
41. There was no assertion that the statutory procedures had not been properly followed, and the Tribunal found that the Applications were made within the specified time limits.
42. Having been satisfied that Acrebind had complied with the necessary procedural requirements the Tribunal then went on to consider the various Applications and if it is reasonable for the pitch fees to be changed.
43. The Tribunal carefully considered the evidence from the parties. It also had regard to its own inspection of the Site.
44. Having carefully considered all the evidence and all the issues, both individually and in the round, the Tribunal found that it was reasonable for the pitch fees to be changed and increased from the levels set for the year ending on 31 March 2023.

45. Its next task was therefore to determine the amount of the new fees within the parameters set out in the legislation as interpreted by the relevant case law.

46. The statutory provisions which are particularly relevant to this task are those set out in the following paragraphs of Part 1, Chapter 2 of Schedule 1 to the 1983 Act:

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

....

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

(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 subparagraph);

....

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”.

47. The Tribunal’s focus has to be on whether, since the pitch fee was last agreed, there have any been material adverse changes in the condition or amenity of the Site or any adjoining land occupied or controlled by Acrebind or the services that it supplies to the Site.

48. The meaning of “amenity” was considered by in *Charles Simpson Organisation Ltd v Redshaw* [2010] 2514 (Ch)(CH/AP/391) where Kitchen J said “In my judgement, the word “amenity” in the phrase “amenity of the protected site” .... 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.”

49. Acrebind aver that there had been no overall deterioration since the level of the pitch fee had last been agreed. The Respondents say otherwise, although acknowledge various works undertaken in 2022/23.

50. The Tribunal next carefully considered each set of the issues that had been raised by the Respondents.

51. *The Local Authority annual site inspection report and subsequent correspondence*

A careful reading of the Council's letter to Acrebind dated 31 March 2023 shows that the Council when referring to foot paths and pavements and maintenance of common areas stated that "the roads and pavements on .... are to a good standard of construction. You have confirmed for several years during our site inspections that it is your aim to bring the remaining areas the site up to this standard and work continues to achieve this. Further progress was noted in this year's residential caravan licence inspection." The letter then went on to identify certain hazards such as unstable brick kerbs, uneven road surfaces potential trip hazards, and housekeeping issues and under the heading of "uneven road surfaces" it was stated the condition of the road (and paths) have been an existing issue for some time on this site...

The Tribunal reminded itself that when considering a pitch fee increase the issue is not whether a park meets a particular standard, set by the local authority or otherwise, rather it is whether there has been a material changes and in particular any deterioration in the condition or decrease in the amenity of the Park over the relevant review period. The Tribunal found that the letter, whilst highlighting certain issues, acknowledged ongoing progress (rather than overall changes for the worse) albeit at a slower pace than the local authority wished.

The statements that a Compliance Notice had been issued were both misleading and subsequently proved to be wrong. The Tribunal has understandably found an unsigned draft with no supporting explanation or evidence as to exactly when and on what basis it was prepared cannot be relied upon and has deliberately ignored its contents.

It reflects badly on the local authority if a document disclosed in response to a Freedom of Information Act request was not properly flagged up on the document itself as being a draft, albeit Cumberland Council inferred in their email that it was sent labelled as a draft.

Nevertheless, the responsibility for stating as a fact something that did not happen rests squarely with each of the Respondents, other than Ms Roscamp, who chose to do so. It is a matter of public record, which should have been well known to the majority, if not all, who presumably now pay council tax to the new unitary authority, that Cumberland Council took over the functions of Allerdale Borough Council at the beginning of April 2023. An unsigned document under the letterhead of a council that had ceased to exist more than seven months beforehand should surely have alerted at least some as to its dubious evidential value. Instead of bolstering their case, it demonstrated an enthusiasm to overstate it.

52. *Deterioration of the road surfaces*

The question that the Tribunal has to address is not whether the surfaces are to a particular standard, but rather whether they have got materially worse during the review period. The Tribunal did not find any compelling evidence to be able to draw that conclusion.

*53. Drainage*

The Tribunal accepts the evidence that there has been, and will probably continue to be, ongoing problems on occasions of rainwater pooling, puddling or not draining away immediately. However, the legislation mandates the Tribunal to particularly focus on any material deterioration since the pitch fees were last reviewed and changed, and the Tribunal was not convinced that there had been any. The Tribunal accepts Acrebind's submission that "the situation with water retention on site is not a matter that has deteriorated, but rather works have been undertaken to try and improve matters. The problem has been long-standing and is not pertinent to the review of the pitch fee". The Tribunal is also fully aware that there have in recent years been increases in the number of extreme weather events which are outside the control of the parties. Sadly, it is well known that Cockermouth has made national headlines more than once in recent years due to flooding. The Tribunal agrees that more improvements will be required to permanently cure the problem. It also acknowledges, as Acrebind has alluded to, that a scheme of improvements, which, after consultation, a majority of homeowners do not object to, would be a reason for a general increase in pitch fees over and beyond changes linked to the relevant index of inflation.

*54. Deterioration in aesthetics/appearance of the park due to accumulation of building materials on unused park home bases*

It is part and parcel of life on a residential caravan park that there is and will be a turnover of mobile homes as new replace old. Some disturbance whilst changes take place are inevitable. Nevertheless, it is also true that such changes can over time enhance the general value and amenity of a site. It is also noted that the statutory definition confirms that the payment of a pitch fee is "for the right to station the mobile home on the pitch and for the use of the common areas of the protected site and their maintenance". Payment of the pitch fee does not confer any rights over the other pitches, albeit how they are used could affect the amenity of the Site. In this instance the Tribunal did not consider that there was sufficient evidence to make a finding of any material deterioration in amenity sufficient to affect the calculation of the new fee.

*55. Deterioration in communal footpaths and other communal areas in the Site including the visitor's car park*

The Respondents photographs of a mossy footpath, some road surfaces and the visitor's car park did not persuade the Tribunal that there had been overall material deterioration over the review period. The Tribunal accepts that some surfaces had been patched and/or filled but did not find compelling evidence that they were materially worse than the year before. The Tribunal did see evidence at the inspection of the site owners taking steps to regularly maintain and, over time, improve surfaces.

*56. Deterioration in the adjoining land owned and controlled by Acrebind*

The Tribunal did find that there had been an increase in the amount of rubble, hard-core, scrap and building materials dumped or stored on its adjoining land during the review period. It was not disputed that when 2 previously occupied pitches became vacant, the homes that had been stationed on the

were broken up, and hard-core was created which, no doubt for good reason, Acrebind wish to keep for future works. Nevertheless, as evidenced in the Respondents' photographs the mounds are unsightly and in close proximity to the Site. Acrebind make the point that the land in question is private and there are no public footpaths across the same. However, it is also clear that it actively encourages some homeowners to access the land for various purposes including beekeeping. The Tribunal concluded, aided by its inspection, that this increased use of the land in question did decrease the amenity /pleasantness of the site from an occupier's perspective during the relevant period, and should therefore be factored into the determination of the amount of the new fee.

*57. Reduction in the car parking area*

The Tribunal did find that there had probably been some (albeit, difficult to quantify) reduction of capacity and thereby amenity during the review period, and in particular the extended times when the new brick setts were being laid in Nepgill. It was evident at the inspection that part of what was signed as a space for visitor's parking was being used for storage of materials. It was also understood that the now fenced off area over the sewage treatment plant may in times past also been used for parking. It also accepts the submission that to change the use of an area within the estate, even if outside the site, which had been used for parking can have a knock-on effect of reducing the capacity within it.

*58. Reduction/deterioration in services*

*a. Disturbance during development*

Acrebind has not disputed the Respondent's submission that when new brick setts were being laid in Nepgill the route was restricted for a period of approximately six months. The Tribunal finds that notwithstanding that the end result is an improvement, the time taken coupled with the inevitable local disturbance of the works themselves did constitute a material loss of amenity which should be factored in when determining the amount of the revised pitch fee.

*b. The intermittent burning of material on the adjoining land*

The Tribunal was not persuaded that the Respondents had provided any compelling evidence that the burning was materially worse than in past years. It was also noted that the location, which was readily apparent at the inspection, was at a considerable distance from the perimeter of the Site, and that the prevailing winds (which in coastal West Cumbria are mostly from the west) would normally direct any smoke away from the park. Any burning would have had a very temporary transient effect and the Tribunal concluded that it was not a significant or material consideration in the present context.

*c. The gas leak in December 2022*

The Tribunal accepted the evidence that the leak, whilst concerning, was dealt with in a timely and appropriate fashion, and concluded that it was not material to the present consideration.

*59. Piped LPG*

The Tribunal agreed with the Respondents' submissions that such works as were completed and commissioned before 1 April 2022 are not to be taken into account in the calculation of the new fee.

*60. Installation of "new" electric meters and upgrade of the park electrics*

The evidence was that the change over to the new phase electrical upgrade was completed in July 2022. The Tribunal is unimpressed by the Respondents' assertion that the upgrade in the park's electrics period should be regarded as a material deterioration in amenity. A safer facility, particularly if it gives early indications of potential problems within an individual home's electrical installations is to be welcomed as an improvement. It also found that whilst locks on the boxes may be regarded by some as an inconvenience, they also serve to provide additional security.

The Tribunal did not find that the temporary planned outage at the time of installing a new smart meter should be regarded as a material deterioration in amenity and noted that letters had been sent to residents warning of temporary disruption in the weeks beforehand.

## **Conclusions and Determination**

61. As has been explained, the Tribunal found that most of the issues raised by the Respondents were not such as to displace the statutory presumption set out in paragraph 20(A1) in Chapter 2 of Schedule 1 of the 1983 Act.

62. Nonetheless, it did find that there had been some, albeit in some cases a temporary, reduction in amenity during the review period (principally in relation to the extended period of disturbance from works and the increased dumping and storage of materials on the adjoining land) which individually and when taken together were material and displaced the presumption of a full RPI increase.

63. That is not to say that the Tribunal ignored or did not then consider the effects of inflation when returning to the central question of the amount of a new fee and its reasonableness. The point made by Acrebind that inflation affects businesses as well as individuals was well made. The Tribunal, as with everyone else, is fully aware of the impact of the recent substantial increases in inflation because it affects everyone and the whole economy. It was also aware that the statutory scheme for pitch fee reviews dictates that that should take place annually and that one year's figure provides the base for the next. A further factor which the Tribunal considered to be of sufficient weight for due consideration were the improvements that had been achieved by Acrebind during the review period.

64. Having therefore carefully considered and balanced all the relevant considerations, and using its own expertise, the Tribunal determined firstly, that each pitch fee should increase from that which had been set the year before and, secondly, that the figure proposed by Acrebind should in respect of each Respondent's particular pitch be reduced by 3%. The Tribunal did not find a good reason for differentiating between the different pitches.

65. When reflecting on that decision, it was noted that the net result was a 10% increase on the level set for the previous year and within 0.1% of the change in the CPI over the same 12-month period which further endorsed the Tribunal's view that this decision was reasonable in all the circumstances.

66. The amounts of the new pitch fees that have been determined are detailed in the final column of the Schedule hereto.

### The Schedule hereinbefore referred to

Case Reference	Respondent	Address	Pitch Fee to 31 March 2023	Fee proposed by Acrebind	Monthly Pitch fee determined by the Tribunal with effect from 1 April 2023
MAN/16UB/PHI/2023			£	£	£
/0312	Graham & Louise Cank	2 Nepgill	147.11	166.82	<b>161.82</b>
/0313	Robert Hayler & Rebecca Havill	4 Nepgill	138.89	157.50	<b>152.78</b>
/0314	Malcolm & Alicia Briggs	12 Nepgill	124.07	140.70	<b>136.48</b>
/0315	Patricia Vile	15 Nepgill	124.07	140.70	<b>136.48</b>
/0316	Nick Lancaster & Alison Barr	16 Nepgill	124.07	140.70	<b>136.48</b>
/0317	John Minter	24 Nepgill	124.07	140.70	<b>136.48</b>
/0318	Sylvia Luckett	18 Millbanks Court	169.31	192.00	<b>186.24</b>
/0319	Kenneth & Susan Miller	20 Millbanks Court	184.31	209.01	<b>202.74</b>
/0320	Allan Moore	22 Millbanks	202.72	229.88	<b>222.98</b>



		Court			
/0321	Louise Roscamp	26 Nepgill	124.07	140.70	<b>136.48</b>