FIRST - TIER TRIBUNAL
PROPERTY CHAMBER -
(RESIDENTIAL PROPERTY)

Case References	**:**	**MAN/30UM/PHI/2023/0436, 0437, 0439-0046, 0448, 0449, 0451-0458, 0460, 0461, 0463, 0465-0472**
Properties	**:**	**1, 6, 9, 10, 11, 11a, 22, 23,25, 27, 31, 33, 36, 37, 40, 45, 46, 51, 57, 52, 42, 44, 7, 19, 15a, 49, 3, 34, 53 and 56, Carter Hall Park, Blackburn Road, Rossendale, BB4 5BQ**
Applicant	**:**	**AR (Home Estates) Ltd Limited**
Applicant's Representative	**:**	**IBB Law LLP**
Respondents	**:**	**As more particularly referred to in the Schedule hereto**
Type of Applications	**:**	**For the determination of various pitch fees under the Mobile Homes Act 1983 – Schedule 1 Chapter 2 paragraphs 16-20**
Tribunal Members	**:**	**Judge J.M.Going** **J.Gallagher MRICS**
Date of Inspection	**:**	**28 October 2024**
Date of Hearing	**:**	**3 December 2024**
Date of these Reasons	**:**	**17 December 2024**

REASONS FOR THE DECISION

The Decision

The Tribunal found that Notices were not properly served on the owners of Nos 1, 27 and 57 Carter Hall Park and that consequently the pitch fees for those 3 properties cannot now be changed in respect of the year which began on 1 September 2023.

The Tribunal also determined that the calendar monthly pitch fees for each of the remaining properties referred to in the Schedule hereto (other than Nos 1, 27 and 57 Carter Hall Park) be increased by 3% (rather than 7.3%) with effect from 1 September 2023.

Preliminary

1. By an Application ("the Application") dated 30 November 2023 the original Applicant, Royale Park Home Estates Ltd ("Royale") 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 original 37 Respondents should the Tribunal consider it reasonable for their pitch fees to be changed.

2. Because all the pitches were on the same site it was decided that they should be considered together and at the same time.

3. The Tribunal issued initial Directions dated 30 April 2024 detailing a timetable for documents to be submitted, and how the parties should prepare for the hearing.

4. The Tribunal visited and inspected Carter Hall Park ("the park" or the "the Site") on 28 October 2024.

5. Further Directions were issued the next day for the provision of further documentation.

Background, facts and chronology

6. The following matters are evident from the papers or are of public record and have not been disputed unless specifically referred to.

7. The Site is a protected site within the meaning of the 1983 Act. AR (Home Estates) Ltd, which trades under the name of Regency, is now its owner and operator and the Respondents are all owners and occupiers of a mobile home stationed on the Site.

8. The Site is licensed by Rossendale Borough Council ("the Council") under the Caravan Sites and Control of Development Act 1960 for use as a residential caravan site with up to 57 units.

9. By a Consent Order, made on 7 January 2009 and issued on 14 January 2009, Bury County Court confirmed that the Residents' Association is a qualifying residents' association under the 1983 Act. Its secretary was noted as being Mrs Thomas and the Defendant as Starglade Park Developments ("Starglade").

10. The Head of Health, Housing and Regeneration at the Council wrote to Starglade on 10 November 2014 stating "I have previously written to you on a number of occasions raising concerns expressed to me by the residents committee of Carter Hall Park. I attended a meeting of their Committee Members on 8 October and following this toured the site with the group's secretary on the 30 October.
The residents feel that the general maintenance of the site is being neglected particularly in respect to the pathways, walls and access roads highlighted in the enclosed photographs…. I would be grateful if you could let me know your intentions in relation to the maintenance of the site both to address the issues highlighted in this letter and in the longer term".

11. By a letter dated 15 December 2015 the residents of the Site were informed that Royale Parks Ltd had become its new owner on 7 December 2015.

12. By a letter dated 6 October 2017 a director of Royale Parks Ltd wrote to Mr and Mrs Thomas stating "I write to inform you that the Hall Park will shortly be having the parks roadways resurfaced before Christmas…"

13. By a letter dated 24 June 2019 the then chairperson of the Residents' Association wrote to Royale with various complaints stating (inter alia) "I write on behalf of the Residents' Association members, to request an update on the road repairs situation. Filling in potholes with concrete has proved to be unacceptable. Residents are reporting increased damage to their vehicles, and pedestrians (residents who are aged and infirm) are in danger of falling. The situation is now so poor that residents are, contrary to the one-way system, driving into the park along the "out" road….There are many difficulties on the park concerning the infrastructure, and the electricity supply, which is erratic, often results in a resident having to access the supply meter to reinstate the power following an outage."

14. By a memo dated 26 August 2021 from Royale to all residents it was stated "It is with great delight that I can inform you the roads are being completed and the contractors have been given the go ahead to do the repairs on the whole of the park. This work will be carried out round about the middle of October this year and it will probably take about two weeks to complete the works, as yet I do not have a definite date, but as soon as I have I will let you know".

15. On 25 July 2023 Paul Wenman Electrical, registered with NAPIT, issued an Electrical Installation Condition Report ("the original EICR") referring (inter alia) to the estimated age of the wiring system as being 50 years old and the date of the last inspection as being in 2009, and in which the "overall assessment of the installation in terms of its suitability for continued use" was stated to be "unsatisfactory". 52 separate items were identified as needing remedial action of which over 30 were classified as "C2 – Potentially dangerous – urgent remedial action required" and 8 as "C1 – Danger present. Risk of injury". Immediate remedial action required". Its estimate of the costs for the works needed to overhaul the system was £12,080.

16. On 3 August 2023 individual Pitch Fee Review Notices and Pitch Fee Review Forms as prescribed under the Mobile Homes (Pitch Fees) (Prescribed Form) (England) Regulations SI 2023/620 (together referred to as "the Notices") were said to have been posted by Royale to each of the Respondents proposing an increased pitch fee to take effect from 1 September 2023. The proposed increase was calculated by reference to a 7.3% annual increase in the Consumer Prices Index ("CPI"). 3 of the Respondents said that they did not receive a Notice.

17. Joint Administrators to Royale were appointed by a charge holder in the High Court on 15 August 2023.

18. On 9 September 2023, Royale's administrators gave notice of their proposals, after having noted the large deficiency to creditors but having concluded (inter alia) "that continued trading is imperative to maintaining the value of the assets and affords the best opportunity return to creditors". The proposals included but were not limited to
"Liaising with site residents and freeholders….
Regularly communicating with the residents Association….
Liaising daily with site staff….and having periodic meetings.
Liaising with head office staff who have managed the site previously and gathering information pertinent to the site.
Communicating with the managing agent regarding day-to-day issues arising
Putting in place systems and processes for accounting, purchase orders, and site maintenance…".

19. On 30 November 2023, by an email timed at 16.47, IBB Law submitted the Application to the Tribunal on behalf of Royale.

20. On 16 January 2024 the site was purchased by AR (Home Estates) Limited. From subsequent correspondence it appears to trade under the umbrella and logo of Regency Living.

21. On 14 March 2024 Paul Wenman Electrical provided a Remedial Report referring to the original EICR and certifying compliance with BS 7671 (as amended).

22. In March 2024, Regency Living commissioned AWA Tree consultants to undertake a tree survey and risk report ("the tree survey report"). That referred to advice that "many of the trees at the site are covered by a Tree

Preservation Order". 29 of the trees were identified as requiring some level of the management, including 9 "found to have an unacceptable level of risk and requires felling to ground level as a moderate priority". It was also (inter alia) noted "many of the Ash trees at the site show symptoms consistent with the fungal disease – Ash Dieback"

23. On 25 April 2024 a project was prepared identifying 5 issues relating to separate parts of the Site roadways.

24. On 8 May 2024 the Council confirmed the transfer of the Site Licence to AR (Home Estates) Ltd.

25. The Tribunal issued further Directions and an Order on 24 May 2024 which (inter alia) confirmed its substitution of AR (Home Estates) Ltd as the applicant in place of Royale.

26. On or around 28 May 2024 AR (Home Estates) Ltd /Regency wrote to a number of the site residents stating inter alia "…l.
We are aware of an ongoing pitch fee review taking place in relation to the 2023 proposed pitch fee increase, which is due for hearing.
Whilst we were not responsible for the operation of Carter Hall during 2023, we understand there have been ongoing issues with regards to the site in recent years, and we are currently reviewing the Park itself with a commitment to ensure we work with residents to move forward on a positive note. In particular, we are aware that there have been complaints about potholes, and tree works, at Carter Hall, and in recent months we have been looking into the infrastructure and discussing with our experts what works may be required, and it is our intention to address this in the coming months; we will continue to keep residents informed as to progress.
In the meantime. we would like to see whether the current pitch fee dispute can be settled without the inconvenience and expense of a Tribunal hearing. With that in mind, we would like to make a settlement offer to you as follows:
1. If you agree to accept the proposed pitch fee increase of 7.3% from 1 September 2023, we will cover the increase in your pitch fees for the 12-month period between 1 September 2023 and 31 August 2024…..;
2. This offer, if accepted, would conclude the proposed pitch fee review for 2023 and we would ask the Tribunal to withdraw the current proceedings; and
3. By accepting this offer, you would agree not to raise the same issues again in relation to any future pitch fee review.
4. This offer will only come into effect if all residents currently going through the 2023 pitch fee dispute agree to accept it…
If you wish to accept the offer, please let us know by signing and returning the enclosed copy of this letter to us at the address shown, or by email to.. by no later than 31 May 2024…".

27. On 30 September 2024 the Council gave consent to the felling of 20 trees (15 Ash, 2 Horse Chestnut and 3 Sycamore) within 2 years subject to an agreed replanting scheme ("the TPO consent"). It confirmed that 8 of the trees could be felled immediately.

Written submissions

28. 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.

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

30. Mr Gillbanks (from No 31 and the present chairperson of the Residents' Association) referred to the letter signed by 30 of the Respondents in August 2023 following the issue of the Notices confirming why the proposed pitch fee was not agreed referring particularly to "minimal maintenance" to the site and access roads, and a lack of communication.

31. He later stated "The roads have not been resurfaced and have continued to deteriorate drastically yearly since 2017." "Additionally, the designated road leading into Hall Park is in such bad repair that most residents feel compelled to use the designated 'out' road, as many cars have been damaged. (All roads within Hall Park are single-lane and one-way, except for a small section; the roads are also the only footpaths within the protected site). Residents must also walk in and out of Hall Park using this designated 'out' road for fear of falling, as the 'in' road surface is treacherous and on a blind bend in the adjoining main road. Using the 'out' road to leave Hall Park is unsafe because residents must walk with their backs to traffic when leaving it on foot. This can be especially dangerous for residents who need to use a walking aid, as this road is narrow, with high kerb stones and grass verges; residents need to move off the road when unseen traffic approaches…".

32. Whilst emphasising that the roads were always the residents' primary reason for objecting to the proposed pitch fee increase, he also referenced "years of neglect of the electrical supply, which desperately needed remedial work to make the system safe to meet mandatory regulatory standards".

33. The applicant's solicitors submitted that the burden of proof falls on the Respondents to persuade the Tribunal that it should depart from the statutory presumption of an inflation linked increase when determining the new pitch fee for the year in question".

34. The solicitors in responding to "various grounds of alleged deterioration" submitted, inter alia: –

- *"Condition of the Roads –*….. the Applicant became site owners of the park on 31 January 2024 and since then have taken an active approach in identifying and addressing issues on the Park. The Applicant obtained a survey dated 25 April 2024 which is annexed herewith for ease of reference. The Applicant takes notice of the issues outlined in the survey and is addressing the issues.
  Additionally, the Applicant avers that it was not responsible for sending out the letters on 6 October 2017 and on 26 August 2021 to the

Respondents regarding scheduled works as the Applicant purchased the Site on 31 January 2024. Additionally, the Applicant avers that no admission of deterioration is made by the letters. The Applicant contends that the purpose of the two letters were to keep the residents informed of any upcoming and disruptive works that may interfere with the Residents' enjoyment of the Site. The letters did not describe the conditions of the roads and the purpose of them were purely informative….
Additionally, the Applicant contends that the condition of the roads has not deteriorated in the relevant review period or since 26 May 2013 and any issues in relation to condition of the roads fall outside the relevant period.
Furthermore, the Applicant avers that the Residents have failed to adduce any evidence of sufficient weight to show the deterioration of the condition of the roads over the years.
Therefore, this issue, as outlined by the Respondents, is not of sufficient weight to depart from the statutory presumption. Additionally, the Applicant avers that they are not in breach of any site licence conditions and no notice of breach has been issued by the Council in relation to the condition of the roads….

- Rodents Infestation – …. The Applicant avers that the park is located in the countryside and that a risk of rodents is not a surprising risk. However, the Applicant confirms that it instructs a pest control company to visit the site on a monthly basis and drop any bait boxes.
- Appearance and state of plots – The Applicant confirms that this matter has been dealt with since the date of the letter. There are no further issues regarding any adjacent plots that appear "scruffy" nor issues with the states of any plots that raise health concerns.
- Electricity supply –The Respondents stated that an outage usually occurs during a period of heavy rain and the surrounding area in reaching the meter box is a hazard. The Applicant avers that it did not receive any complaints regarding this issue previously. The Applicant understands that any outage to the individual mobile homes are due to the occupiers overloading the fuse boards. However, the Applicant confirms it has obtained Electrical Installation Certificate in 2024 and that no issues regarding electricity supply has been reported. The Applicant further confirms that a Site Electrical Report was obtained outlining no issues regarding the meter boxes. Additionally, it must be noted that a individual electricity meters were updated on the Site…." "It is the Applicant's position that this issue does not carry sufficient weight in order to depart from the statutory presumption ..".
- General maintenance – "….It is noted that this issue was not raised in the Respondents' statement of objection …. the Applicant contends that frequent maintenance is carried out on the site by the Park Supervisor, Mr John Marsh. The Applicant confirms that Mr Marsh carried out maintenance on the site, including but not limited to grass cutting, hedges maintained, clearing borders and roads of debris and other tasks.
- the Respondents state that the Pitch Fee Review Forms were not received by the occupiers of 1, 27 and 57 Carter Hall Park. The Applicant encloses herewith the relevant notices and review form to each of the occupiers. The Applicant refers the Tribunal to section 7 of the

Interpretation Act 1978, which states that “service is deemed to be effected by properly addressing, pre-paying and posting a letter… unless the contrary is proved”. The Applicant confirms it compiled with section 7 of the Act and the Respondents have not provided any evidence to support the alternative”.

35. Mr Gillbanks on behalf of the Residents’ Association made various points in reply but reiterating the principal concern had always been the deteriorating roads.

36. Written statements were provided “from 18 residents and a regular visitor” as well as “a signed statement sheet from all residents included in this case (except numbers 7 and 44 who were on holiday), attesting to the deterioration of the roads since 2014” and numerous photographs.

37. Samples from some of the statements included comments such as "in the 9 years I have lived here the roadways have deteriorated to the point where, being only partially sighted and, at 90 years old, in frail health, I no longer dare to walk on the park to visit friends, post a letter, nor expect friends or neighbours to visit me. We keep being told the roads will be fixed. Nothing happens" and "I have been living here 17 years. The roads have got worse and worse over the last 10 years and nothing has been done about it” and “I have lived on the site for over 20 years… But over the years… the road and site deteriorated. At one time I had to replace a front nearside tyre and damage to my car trying to avoid the potholes” and so on.

38. Mr Gillbanks reiterated that “the “Residents’ Association would like the Tribunal to appreciate that this… case could have been avoided if the Respondents had had some form of communication at the time of the 2023 pitch fee increase. All the Respondents wanted was discussion and assurance that road repairs would be initiated during the following year after the 2023 increase”.

Inspection

39. The Tribunal members walked the full extent of the Site on 28 October 2024. Mr Gillbanks, Mrs Thomas (the long-standing secretary of the Residents’ Association from No 1), Ms Kirkby (Regency Living’s site manager), and Ms Reach (its operations manager) were all in close attendance throughout. Mrs Liston (from No 36) was also present for part of the time. Mr Glover (from 9) helpfully allowed access to his pitch so that the Tribunal Members could better inspect some of the mature trees growing in and overhanging it.

40. The Site is set in what were the grounds of Carter Hall, which Mrs Thomas explained had been a “gentleman’s residence”. She related that the site had evolved after workers constructing the adjoining A59 in the 1960s were housed in caravans on parts of the site. After they moved on, the caravans were left behind. Mrs Thomas said that parts of the site had included a laundry building (now mostly demolished) and the Hall’s lawn and a pond, which explained some of the present features and ornaments.

41. The park homes now within Carter Hall Park are predominantly single units. It is understood that approximately 44 out of 48 homes are presently occupied and 9 further pitches are vacant.

42. The site is approached from the east and Blackburn Road. The private tree-lined, access road, which is shown on the Land Registry plans as part of the land owned by AR (Home Estates) Ltd, leads up to the site entrance. At the time of the inspection, various large potholes were visible including those close to the junction with Blackburn Road. Having to try and avoid those potholes when leaving made the already restricted sightlines more hazardous. The site entrance itself is just beyond a junction where the private roadway, by then in different ownership, continues up and around to various buildings which on the Land Registry plan are variously referred to as Carter Place, Chantry Cottage, Carter Place Farm, Carter Place Farm Cottage, Carter Place Bungalow, Carter Place Barn and Carter Place Cottage. The part of the roadway which continues into the site narrows after the entrance and continues as a spine road around the site, with various cul-de-sacs leading off it. There are no pavements, and only scant lighting. The Tribunal found the main spine road at the time of inspection to be in a generally poor condition with multiple potholes of different depths, as confirmed in the various exhibited photographs. It was quite evident that the road surfaces had degraded over time, and this was particularly noticeable on the bends, at the edges, and at level changes. The lack of pavements means that pedestrian access will inevitably be hazardous particularly during the hours of darkness or in bad weather. Those living there commented that the site's elevated position means that it is more prone to snow and ice than the surrounding area.

43. There are various mature trees throughout the site, some of which are close to and overhang different park homes. The main concentration of trees is in the banked easterly section of the site above and to the east of the spine road. The site's handyman was understandably busy during the inspection with a leaf blower.

44. Ms Kirkby and Ms Reach were able to confirm that the necessary remediation works referred to in the original EICR report had subsequently been satisfactorily completed.

45. As was confirmed both at the time, and in its subsequent further directions, the Tribunal was grateful to all those who attended and participated in the inspection which was found to be useful and instructive.

46. Ms Kirkby and Ms Reach were asked to instruct Regency's solicitors to provide in advance of the hearing, copies of :

- the electrical certificates showing that the necessary works identified in the original EICR had been satisfactorily completed;
- the recent tree surgeon's report which was also referred to;
- the Land Registry title plan identifying the extent of the land within Regency's ownership and control: and
- the plan to the Site Licence to identify the extent of the licensed site.

The Hearing

47. The hearing took place on 3 December 2024 using CVP (the Common Video Platform). Present were Mr Clement, Regency's solicitor, Ms Reach, Mr Gillbanks and Mrs Thomas. The Tribunal is grateful to all for their assistance.

48. The Tribunal began by outlining the task before it, noting how useful it had found the inspection. It was confirmed that for ease of reference and understanding it intended to mostly refer to AR (Home Estates) Ltd as Regency. The same comment applies to this Decision.

49. The Tribunal then took some time to check its understanding of who of the park homeowners and respondents who had been referred to in the Application remained within the proceedings, and who were represented by the Residents' Association acting through Mr Gillbanks and Mrs Thomas.

50. Mr Clement was able to confirm that Regency had withdrawn those parts of the Application relating to Ms Henshall (of No 8), Mrs Hambleton (of No 28), Mr Bartam (of No 35), Mrs Holmes (of No 50), Mr Cavanagh (of No 18), Mr Ford (of No 47), and Mr Chatterton(of No 48), all of which the Tribunal indicated its consent to. It was also confirmed that Mrs Hill (of No 25), Mr McDonald (of No 23) and Mr Bracken (of No 51) were all now sadly dead. It was noted by Mr Clement and agreed by the Tribunal that, at law, their personal representatives now stand in their place.

51. Mr Gillbanks agreed the Tribunal's understanding of those respondents who remained within the proceedings and those represented by the Residents' Association. When doing so he noted that Mr and Mrs Orrell (of No 53) had paid the increased pitch fee as confirmed by their bank statements. Ms Reach agreed, after which Mr Clement gave notice to withdraw the part of the Application which related to their pitch. The Tribunal explained that in this instance it did not consent. Mr Gillbanks had alluded to Mr and Mrs Orrell having possibly been confused by the proceedings, and it was not clear to the Tribunal that the payment of the increase necessarily indicated their full agreement to it.

52. The Tribunal next explained that the relevant statutory provisions, summarised below, confirm that a pitch fee can only be changed either by agreement or by the Tribunal, and in both instances the service of an appropriately timed notice and prescribed form is a necessary precondition.

53. Because of that and noting that it had been confirmed that 3 of the homeowners had complained that they had not received a Notice or the prescribed form, the parties were questioned as to the relevant circumstances. Mrs Thomas confirmed that she did not receive a letter or Notice but was aware that others had. She had mentioned the matter to her immediate neighbour Ms Jarosz at No 57 who confirmed that she too had not received anything. Mrs Heap at No 27 said the same. Ms Reach confirmed her understanding that the various Notices were posted not hand delivered. She had had no personal involvement but assumed that the letters would have

issued from Royale's accounts administration department. No one was able provide any evidence, certificates, or recording of posting, or of any recorded delivery.

54. The Tribunal noted in passing that that whilst section 7 of the Interpretation Act provides that certain notices are deemed to have been served if they have been sent by ordinary post, unless the contrary is proved, it is not evidence of addressing or posting. It also noted that the date on the Notices was but within a fortnight of Royale's Administrators being appointed.

55. Mr Gillbanks confirmed that none of the other Respondents had complained of any procedural irregularity whether as regards the form, contents or service of the Notices.

56. The Tribunal apologised that earlier in the proceedings it had wrongly indicated that the Application had not been received until 5 December 2023. This was later found to be incorrect. The Application had been emailed to it on 30 November, and, as now agreed by all, made in time.

57. Mr Clement helpfully summarised the relevant statutory provisions.

58. It was agreed none of the parties had ever previously applied to the Tribunal for a determination of a pitch fee.

59. Mr Gillbanks stressed that the main issue had always been the deterioration of the roadways, and the fears for the safety of the respondents. He specifically referred to the correspondence in 2014, 2017 and 2021 and the unmet promises to properly repair the deteriorating surfaces. He confirmed that such works as had been done since 2013 and before the Application had been minimal, inadequate and concentrated in areas outside the park next to the cottages. He was concerned that Regency took four months to begin any dialogue with the Residents' Association, which he took to be in breach of the site owner's statutory obligations. Mr Clement emphasised that Regency was entitled to take over the Application began by Royale but had not been itself responsible for what had gone before its ownership, and was now taking active steps to improve matters.

60. Mr Gillbanks was at pains to emphasise that the extensive road works undertaken in recent weeks, following the inspection had been well done, were much appreciated by all the residents, and whose lives had been markedly improved as a direct consequence. The works included improvements to the site roads and the access road both owned by Regency, as well as to the exit road which is owned by others. Ms Reach confirmed the cost of the repairs to the exit road had been shared between Regency and its owner.

61. When discussing the electrical infrastructure and services the contents of the two EICRs were particularly noted. Mrs Thomas referred to the beginnings of the park in 1962 and the presumed limitations of the wiring that had then been installed. She confirmed that the system had a limited capacity, and that if a homeowner were to instal and use say a power shower it would trip the whole park. She related that many of the homeowners had installed solar

panels in recent years, some with the help of grants, and often in attempt to reduce the load on the infrastructure. There had been increased instances of problems in recent years.

62. The detailed contents of the tree survey report and the TPO consent were discussed. Mr Clement drew attention to there being no trees identified in the tree survey report as being in the most serious red category of "high urgency". Mr Gillbanks confirmed that many of the trees had grown causing increasing problems due to overhang and encroachment and referred to instances where roots were increasingly causing problems to some of the pitch bases. He said that there had been scant planned or regular management for many years.

63. In his closing submission, he said that the residents have been fighting for over 10 years for the increasingly problematic road safety issues to be properly addressed. If Regency had not now taken steps to ameliorate the position the residents would have been pushing for a reduction in the pitch fees.

64. Mr Clement in his closing submissions, whilst acknowledging that the roadways and electrical installations had been "sub-optimal", said that the trees, particularly having regard to the reports should not be seen as a factor of sufficient weight to displace the statutory presumption of an inflation-based increase. He submitted that if the Tribunal found that the presumption did not apply, and notwithstanding that the improvements now made to the roads had come after the review year, such improvements and other the works which had been undertaken were of sufficient weight to be properly taken into account.

The Law

65. 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 as recently amended by the Mobile Homes (Pitch Fees) Act 2023 ("the 2023 Act").

66. 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".

67. 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."

68. 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 consumer prices index (Para 20(A1)).

69. 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)).

70. The Upper Tribunal has provided helpful advice as to how the statutory provisions should be interpreted in various 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. *(note: following the coming into force of the 2023 Act the references to the RPI should be substituted by references to the CPI)*. 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*(now CPI)* 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*(now CPI)*.

71. 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

72. The Tribunal has carefully considered all the evidence; written, oral and importantly, that gleaned from the inspection.

73. In addition to the facts identified in the timeline it has made the following further findings. Where factual matters might be in issue, it applied the standard of proof required in noncriminal proceedings, being the balance of probabilities.

- its first considerations involved the procedural preconditions to any change to a pitch fee;
- all those who gave evidence to the Tribunal were found to be credible;
- the Tribunal believed Mrs Thomas's testimony that she and Mr Thomas, Mrs Heap and Ms Jarosz had not received Notices;
- there was insufficient evidence to conclude that Notices had been properly posted to them;
- accordingly, the Tribunal found that Notices had not been properly served on them and, because the year beginning on 1 September 2023 has now gone, their pitch fees for that year cannot be increased beyond those of the previous year;
- the Tribunal continued its deliberations in respect of the remaining Respondents;
- there was no assertion that the statutory procedures had not been properly followed in relation to the remaining Respondents;
- the Notices served on each of them were valid and in the prescribed form. Each was served more than 28 days before the review date and correctly calculated the change in CPI over the specified period at 7.3%;
- and the Application was made within the specified time limits;
- the Tribunal next considered whether the presumption of an increase linked to the CPI should apply or be displaced, with the following findings being relevant;
- the roadways within the site, as well as those leading to it had deteriorated, and in many areas badly, between May 2013 and September 2024. The Tribunal could not but be impressed by the number of heartfelt individual statements made by so many of the homeowners. There was ample evidence of Starglade and Royale not making good on their promises to properly address what was a worsening position over time.

The deterioration was self-evident at the inspection. Mr Clement, to his credit, did not attempt to argue the unarguable at the hearing;

- the electrical infrastructure also degraded during the same period, or at least up until March 2024. The content of the initial EICR in July 2023 speaks for itself. The system had become unsafe and required over £12,000 worth of work to make it comply with the appropriate safety standards. The initial EICR referred to a previous inspection in 2009, when presumably it had been considered safe;
- the homeowners' evidence, which was accepted, was of increasing problems in recent years. The Tribunal had no difficulty in concluding that the electrical services had got worse before the remedial works undertaken in March 2024;
- there is still a question of whether the electrical installations are even now of a sufficient capacity for modern day living. Nevertheless, Tribunal's main consideration when determining whether the statutory presumption of an inflation-based increase might apply is not necessarily whether a certain standard is met, but rather whether there has been deterioration over the period under review;
- the period under review, as confirmed by the Upper Tribunal in the recent case of *Wyldecrest v Whiteley and others [2024] UKUT 55 (LC*) goes back to 26 May 2013, because there has been no intervening pitch fee determination made by the Tribunal. The same case makes it clear that the Tribunal is entitled to have regard to matters before uncontested pitch fee increases;
- many of the numerous trees on the park will have undoubtedly grown in the 11 years between 2013 and 2024. The tree survey report identified 29 of as requiring some level of the management, and the Council's Tree Officer authorised the immediate felling of 8;
- both the tree survey report and the TPO consent were consistent with the homeowners' assertion, found to be entirely credible, that there had been a lack of proper management over recent of years and prior to Regency's acquisition of the site;
- the Tribunal found complaints, at different times, as to rodents and as to the untidiness of certain vacant pitches to be of less significance, being part and parcel of life on a rural residential caravan park;
- nevertheless, the deterioration in the roadways, the degradation of the electrical installation, and increasing problems due to a lack of timely and regular management of the trees led the Tribunal inevitably to the finding, as articulately averred to by the homeowners, that there has been a material deterioration in the condition of the site and decrease in amenity during the period under review. In short, and as a consequence, the park had become a less attractive place to live;
- it follows that the statutory presumption of an inflation linked increase does not apply, and nor did the Tribunal find it reasonable that it should;
- nevertheless, it was also clear that matters started to markedly improve following Regency's acquisition of the site;

Conclusions and Determination

74. The finding that the statutory presumption of an inflation-based link had been displaced, does not mean that the pitch fees must stay the same. As confirmed at the hearing, the Tribunal's task is to consider whether it is reasonable for the pitch fees to be changed, and it is open to it, in appropriate circumstances, to determine an increase, a decrease, or that there should be no change.

75. It is probably helpful at this point to state that the Tribunal is not making an open market valuation, or deciding what is a reasonable fee per se. It is in the nature of park homes that pitch fees for comparable pitches may well be different, simply because of the figures individually agreed at the outset. As explained in *Wyldecrest v Whiteley* : –
"14. When a site owner and an occupier first agree a fee for the right to station a home on a pitch, there is no restriction on the amount they are able to agree. The only relevant implied terms are concerned with the annual review of the pitch fee and not with its original determination; market forces govern that bargain, but any subsequent increase is limited by the statutory implied terms.

76. The Tribunal is required to determine whether an increase is reasonable. It is not deciding whether the level of the pitch fee itself is reasonable.

77. The Tribunal would have found that there should be no increase, but for the steps taken by Regency to turn things around.

78. However, because Regency had both started the process of putting in hand various necessary repairs after its purchase, and in the case of the electrical and tree works effected some before the 2023/2024 year-end, the Tribunal concluded that such matters should be reflected in its determination.

79. It also factored inflation into its considerations. Inflation impacts everyone, businesses as well as individuals. The Tribunal is also aware that the statutory scheme for annual pitch fee reviews results in one year's figure providing the base for the next.

80. The Tribunal carefully considered the matter in round, weighing and balancing the various the relevant, and sometimes competing, considerations. Having done so, it determined that pitch fees for those Respondents (other than Mr and Mrs Thomas, Mrs Heap and Ms Jarosz) should increase with effect from 1 September 2023 from that which had been set the year before, but not by the full amount of the increase in the CPI. It found instead that the increase in each such case should be limited to 3%, rather than 7.3%. The Tribunal did not find a compelling reason for differentiating between the different pitches.

The Schedule hereinbefore referred to

Case reference	**Respondent**	**Address at Carter Hall Park BB4 5BQ**
MAN/30UM/PHI/2023/0436	Mr & Mrs Thomas	1
MAN/30UM/PHI/2023/0437	Mr& Mrs Fairless	6
MAN/30UM/PHI/2023/0439	Mr G Glover	9
MAN/30UM/PHI/2023/0440	Mrs Beryl Johnson	10
MAN/30UM/PHI/2023/0441	Mrs I Kirkbright	11
MAN/30UM/PHI/2023/0442	Mrs Elaine Green	11a
MAN/30UM/PHI/2023/0443	Mrs Pollock	22
MAN/30UM/PHI/2023/0444	PR's of T McDonald Dcd	23
MAN/30UM/PHI/2023/0445	PR's of Mrs Hill Dcd	25
MAN/30UM/PHI/2023/0446	Mrs Heap	27
MAN/30UM/PHI/2023/0448	Mr Gillbanks & Ms Wong	31
MAN/30UM/PHI/2023/0449	Mr Acton	33
MAN/30UM/PHI/2023/0451	Mrs P Liston	36
MAN/30UM/PHI/2023/0452	Mr Butterworth	37
MAN/30UM/PHI/2023/0453	Mrs D Dawson	40
MAN/30UM/PHI/2023/0454	Mr K & Mrs J Clarkson	45
MAN/30UM/PHI/2023/0455	Mrs C.A. Vail	46
MAN/30UM/PHI/2023/0456	PR's of Mr Bracken Decd	51
MAN/30UM/PHI1/2023/0457	Ms Jarosz	57
MAN/30UM/PHI/2023/0458	Mrs Valerie Freeman	52
MAN/30UM/PHI/2023/0460	Mr & Mrs Dodd	42
MAN/30UM/PHI/2023/0463	Mrs B O'Mahony	44
MAN/30UM/PHI/2023/0465	Ray Mercer	7
MAN/30UM/PHI/2023/0466	Mr & Mrs Marrs	19
MAN/30UM/PHI/2023/0467	Claire Leteney	15a
MAN/30UM/PHI/2023/0468	Mr Wynne-Jones	49
MAN/30UM/PHI/2023/0469	Edward Cunningham	3
MAN/30UM/PHI/2023/0470	Wendy Boniface	34
MAN/30UM/PHI/2023/0471	Mr & Mrs Orrell	53
MAN/30UM/PHI/2023/0472	Mr Borrill	56