FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference:	CHI/18UH/PHI/2016/0013-0019
Premises:	Various Properties at Ashburton Park, Ashburton, Newton Abbott, Devon TQ13 7FG
Applicants:	Mr S & Mrs M Essex T/A Essex Park Homes
Representative:	Mr J Rudall of counsel
Respondents:	Mr R & Mrs P Moore Ms S Heyes Mrs P Duffen Mr R Dowdell Mrs S Evans Mr G & Mrs C Heyes Mr A & Mrs C Harris
Representative of Mr and Mrs Harris and Mrs Duffen:	Mr J Bell, solicitor
Type of Application:	Mobile Homes Act 1983, Schedule 1, paragraph 16 – Determination of pitch fee
Tribunal Members:	Judge A Cresswell (Chairman) Mr T N Shobrook BSc FRICS
Date and venue of Hearing:	8 November 2016 at Exeter
Date of Decision:	15 November 2016

DECISION

The Application

1. On 30 June 2016, Mr S & Mrs M Essex T/A Essex Park Homes, the site owner, made an application to the Tribunal for the determination of a pitch fee for the properties at Ashburton Park, Ashburton, Newton Abbott, Devon TQ13 7FG shown in the table below in paragraph 2 of this Decision for the year 2016/17 from 1 April 2016.

Summary Decision

2. This case arises out of the site owner's application, made on 30 June 2016, for the determination of a pitch fee for the year 2016/17 from 1 April 2016. The Tribunal has determined that the pitch fee for that period and from that date should be as detailed in the below table.

Property and Occupier	Current Pitch Fee £	New Pitch Fee £	Date of New Pitch Fee
B11 Waterleat Walk Mr R & Mrs P Moore	145.98	145.98	1 April 2016
1 Riverside Way Ms S Heyes	145.98	146.92	1 April 2016
2 Riverside Way Mrs P Duffen	127.73	128.56	1 April 2016
3 Riverside Way Mr R Dowdell	145.98	146.92	1 April 2016
5 Riverside Way Mrs S Evans	141.60	142.52	1 April 2016
10 Riverside Way Mr G & Mrs C Heyes	145.98	146.92	1 April 2016
12 Riverside Way Mr A & Mrs C Harris	141.60	142.52	1 April 2016

Inspection and Description of Property

3. The Tribunal inspected the properties on 8 November 2016 at 1000. Present at that time were Mr P Lewis (current site manager), Mr J Rudall of counsel, Mr A Harris, Mr J Bell, solicitor, Ms P Tenhumen (assistant to Mr Bell), Mrs S Evans, Mr R Dowdell, Ms S Heyes and Mr R & Mrs P Moore.
4. Ashburton Park is situated in a rural location of low density development approximately 2 miles outside the town of Ashburton and it lies in a wooded valley within the Dartmoor National Park and it is accessed from narrow country lanes. The Park adjoins open countryside with fields and wooded areas at least part of which is understood to be owned or operated by the Barn Owl Trust.
5. Previously a Caravan Holiday Park, it is believed to have been upgraded for its present use as a permanent residential site licensed for 40 residential units about 10 years ago. In evidence it was stated by the Park owner that there are currently 39 units on the site but that it had planning consent for 41 units.
6. A stream which is a tributary of the River Ashburn runs through the middle of the site, which has two distinct sections as a consequence, with Riverside Way on one side and Waterleat Walk on the other side of the stream. In this Decision, the stream is referred to as "the river".

Directions

7. Directions were issued on 25 July 2016. The Tribunal directed that the parties should submit specified documentation to the Tribunal for consideration.
8. This determination is made in the light of the documentation submitted in response to those directions, the Inspection and the evidence and submissions made by the parties at the Hearing. The Tribunal heard evidence from Mr S Essex, Mr & Mrs Harris, Mrs P Duffen, Ms S Heyes (her parents, Mr G & Mrs C Heyes were also present at the hearing), Mrs Evans, Mr & Mrs Moore and Mr R Dowdell and submissions from or on behalf of all parties. The parties confirmed that they had been able to say all that they wished to say to the Tribunal.

The Law

9. The law is contained in Mobile Homes Act 1983. Under Section 4, a Tribunal has jurisdiction to determine the issue of Pitch Fee. The Tribunal can decide if it is reasonable for the pitch fee to be changed and whether it is unreasonable for the fee to increase or decrease in accordance with the relevant Retail Prices Index for the relevant period and has regard to all of the relevant evidence, but, particularly to the factors detailed in Paragraph 18 of Schedule I, Part 1 of Mobile Homes Act 1983, as amended.
10. In this case, the Tribunal has had regard to the totality of the evidence available to it, with particular regard to the issues referred to in the previous paragraph. Although there had, for this Park, been previous reviews by the Applicant, and a history where some occupiers had maintained previous pitch fee levels, this was the first reference to a Tribunal. The Tribunal notes that Paragraphs 18(aa) and (ab) of Schedule I, Part 1 of Mobile Homes Act 1983, as amended came into force from 26 May 2013.
11. Paragraph 18 of Schedule I, Part 1 of Mobile Homes Act 1983, as amended, below, sets out as a consideration for particular regard any deterioration in the condition, and any decrease in the amenity, of the site and 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.
12. The relevant law is set out below:
    Mobile Homes Act 1983, as amended
    Schedule 1, Part 1:

    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.

    (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's] order determining the amount of the new pitch fee.

(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 28th day after the date on which the owner serves the notice under sub-paragraph (6)(b).

(9) An application under sub-paragraph (8) may be made at any time after the end of the period of 56 days beginning with 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].

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

(a) any sums expended by the owner since the last review date on improvements--

(i) which are for the benefit of the occupiers of mobile homes on the protected site;

(ii) which were the subject of consultation in accordance with paragraph 22(e) and (f) below; and

(iii) to which a majority of the occupiers have not disagreed in writing or which, in the case of such disagreement, the [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 sub-paragraph);

(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 sub-paragraph);]

(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.

20 [(A1) *In the case of a protected site in England, unless* [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.

29 In [this Chapter]--

"pitch fee" means the amount which the occupier is required by the agreement to pay to the owner for the right to station the mobile home on the pitch and for use of the common areas of the protected site and their maintenance, but does not include amounts due in respect of gas, electricity, water and sewerage or other services, unless the agreement expressly provides that the pitch fee includes such amounts;

The Background

13. The Tribunal has been supplied with the Written Statements under the 1983 Act.
14. The Statements provide for a review of the pitch fee each year on 1 April. There is no issue raised about the date of review.
15. The Applicant gave notice of a proposal to increase the pitch fees on 28 February 2016 to and from the sums detailed in the table at paragraph 2 above of this Decision in line with a 1.3% increase in RPI. There is no issue taken as to the timeliness of the notices, whether appropriate notice was given or the appropriate rate to apply.
16. Although there was a substantial bundle of papers, some 738 plus pages, it was not always possible to agree on relevant dates and other details having regard to the passage of time. For instance, there were at least 3 different dates recorded for the resignation of a Park Manager. The Tribunal must attempt, therefore, to do its best with what was made available to it. There were, by way of further example, photographs presented by both sides with the same, yet opposing, purpose of showing that it was that side whose efforts had led to the result shown (e.g. neat lawns). The Tribunal would like to record, however, that it was presented with what it finds to be a frank and honest account by witnesses for both sides in its role to establish, as best it can, the factual basis behind the issues.

New Tarmac Surface of Waterleat Walk

The Applicant

17. The Applicant relied on an improvement represented by the tarmacking over a roadway previously of compacted road stone at Waterleat Walk. Mr Essex said that he had done this work to please Mr and Mrs Moore and to save argument.

The Respondents

18. Mrs Moore indicated that this had occurred on 26 November 2014 by reference to a photograph on her mobile phone and the Tribunal was pointed to invoices close to that date.

The Tribunal

19. The Tribunal could see that the tarmacked surface was a better surface than compacted road stone, which could be seen elsewhere in Waterleat Walk. However, Paragraph 18 of Schedule 1, Part 1 above is specific insofar as it widens the time ambit for certain issues but it does not widen that ambit for costs incurred by an owner, such as this. Nor was there evidence of consultation in relation to the tarmacking, save for discussions with Mr and Mrs Moore at the time of their acquisition of their pitch and thereafter. Although not a matter of particular consideration within the context of Paragraph 18, this was still a matter to be weighed as part of the overall circumstances.

The River Bank

The Applicant

20. Mr Essex accepted that the river bank formed a part of the site and that it was his responsibility to maintain it. Mr Essex indicated that to undertake a comprehensive course of work for the whole river bank would be neither affordable nor a reasonable expectation. He had paid for works where and when necessary; these included the provision of gabions to support the bank and the employment of a stonemason to shore up the bank adjacent to the pitch of Mr & Mrs Moore.

The Respondents

21. The Respondents pointed to 3 distinct concerns.
22. Mr Harris was concerned that, at a time of heavy flow, the river would overflow onto the area adjacent to the end of his pitch.
23. Mrs Evans pointed to a slippage of the far bank of the river beyond the roadway opposite her property, which had been accompanied by the fall of a fence and a lawnmower down the far bank.
24. Mr and Mrs Moore were worried about the security of their pitch, the boundary of which ran alongside the river bank. Mr and Mrs Moore indicated that works undertaken by a stonemason employed by the Applicant to shore up the river bank had not gone far enough and that a promise in writing by the site manager of 10 March 2013 to effect further works on or after 24 March 2013 had not been acted upon.

The Tribunal

25. The Tribunal observed the presence of gabions on the far bank opposite Mrs Evans' pitch, which appeared to have been there for some time. There was evidence of slippage of soils above those gabions, but no obvious evidence of a threat from the river to the integrity of the bank at that position. Rather, the slippage appeared to be of part of a pitch on Waterleat Walk, about which the particular pitch occupier made no complaint.
26. Mr Moore, at the inspection, pointed to a section of the boundary where there was evidence of undercutting by the river, the unsettling of fencing and land slippage. It

was necessary for the Tribunal members to exercise care when walking along a part of the boundary because of the different levels caused by the apparent slippage. The Tribunal also accepted the evidence of Mr Essex and Mr and Mrs Moore that some works had been conducted to shore up a part of the bank forming the boundary of their pitch, although it was not possible or part of its role for the Tribunal to undertake a detailed inspection of these works. What was clear, however, is that the concern of the Moores as to the integrity of their pitch by reason of the undercutting of the bank was a concern genuinely and reasonably held by them and one directly impacting upon their enjoyment of their pitch.

27. The Tribunal noted the willingness of Mr Essex to respond to real need (save for the reality of what is described above in relation to Mr and Mrs Moore) and accepts that there is real balance here between actual protection and perceived danger. This is always going to be the reality on a site split by a natural river. Whilst accepting the genuine concerns of Mr Harris and Mrs Evans, the Tribunal finds that it is the continuing state of the boundary of the pitch of Mr and Mrs Moore which represents a deterioration in the condition of the site.

The Boundaries

28. The parties were unable to provide the Tribunal with any written evidence to show the boundaries of the Park and the boundaries of the pitches to the rear of Riverside Way and beyond the far edge of Mr and Mrs Harris's home. At the inspection, as well as the line of trees on the river bank beyond the far edge of Mr and Mrs Harris's home atop the river bank and at the top of the bank at the rear of the pitches of Riverside Way contiguous with a roadway on adjacent land owned by the Barn Owl Trust, the Tribunal saw two different types of fencing on the border at the rear of the pitch of Mr and Mrs Harris, and Mrs Evans indicated that there were three different barriers to the rear of her pitch.
29. Mr Essex told the Tribunal, and it accepts his admission, that the Applicant is the owner of the site boundary and of the large trees on the site.
30. Mr Dowdell had concerns about water flowing from the road of the Barn Owl Trust down on to his pitch, and the Tribunal saw evidence of this during the inspection. Mrs Evans reported a similar issue, but indicated that this was not of concern to her and that she had coped with it via soakaways. Given the geography, this was likely to remain an issue requiring some resolution, but it appeared to the Tribunal to have been an issue continuous in nature rather than something which had arisen since Mr Dowdell signed an agreement with the Applicant. On that basis, the Tribunal did not believe that this specific issue was one which ought to impact upon its consideration of an increase in pitch fee.

Mature Trees

The Applicant

31. Mr Essex accepted that trees on the boundaries of the pitches formed a part of the site and were his responsibility. He said that he had responded to concerns about the trees by engaging a tree surgeon, who had undertaken works and provided an expert report. It was his intention that the tree surgeon would visit again as and when the need arose.

The Respondents

32. A number of Respondent pitch occupiers were concerned that overhanging trees could cause a danger to their property and felt that more needed to be done. Those concerned included Mr & Mrs Harris, Mr Dowdell and Mr & Mrs Moore. Evidence

was given to the effect that some pitch occupiers had themselves paid for tree lopping.

The Tribunal

33. The Tribunal could well understand the concerns of the pitch occupiers who had relatively large trees on their pitch boundaries. Indeed, Mr Harris related how a branch of a laurel had hit his roof. There can, however, be a genuine fear even in a situation where no actual danger exists; a fear which is understandably exacerbated by past experience. The only expert evidence available to the Tribunal was in the form of a tree surgeon's report, i.e. that of Robert Keay, a qualified arborist, of 30 March 2016. Mr Keay noted that *"all recommendations have been carried out"* and "*it is recommended that some trees are inspected yearly but all over trees on a 5-year basis*".
34. The site is in a very rural position. Part of its attraction is the fact that it is so rural and is surrounded by trees and shrubs, attracting wildlife. There is always going to be a tension between nature and safety where residence is so close to nature. On the basis of the evidence available to it, the Tribunal was unable to say that there was to date, in relation to large trees, a deterioration in amenity or condition of the site.

Maintenance of Grass & Shrubs

The Applicant

35. Mr Essex frankly admitted that maintenance required of him under the terms of the Agreements was generally undertaken by pitch occupiers and that he had no schedule for such works. In the past, some grass cutting and pruning had been performed by and on behalf of his manager as a log of maintenance showed, but Mr Essex himself lived 200 miles away and had to rely upon his manager, yet was willing to respond to the concerns of pitch occupiers. He had, he said, allowed pitch occupiers to plant shrubs on the site and to prune trees.

The Respondents

36. The Respondents complained of a dereliction of duty on the part of the Applicant by reason of a failure to maintain trees, shrubs and grass. There was a division of opinion, some enjoying the garden work, but the majority acting because the site would otherwise become overgrown. There was reference to the need to maintain an avenue for vehicles such as the refuse lorry to pass.
37. Allied to this was the extra cost of removing green rubbish following the removal of bins at the site office and the introduction of charged green bins.

The Tribunal

38. The Tribunal saw this as a somewhat complex situation. The Applicant was required by the Written Statements *"to keep and maintain all roads, footpaths, fences, hedges, trees on the park which are not the responsibility of the occupiers in a good state of repair and condition … all at no added cost to the occupiers. (Mature trees are the park owner's property and responsibility)."* The Applicant was clearly in breach of that term by its failure to have any schedule for such works and the lack of evidence of a consistent historical attention to this issue; in relation to Riverside Way, Mrs Evans pointed to there being no entries in the Maintenance log post 16 December 2014. Although Mr Rudall used the words "minimum standard" the term refers to "good state"; a failure to act cannot be described as either minimum or good.
39. Paragraph 22(d) of the terms implied by Schedule 1, Part 1 of the 1983 Act too requires the site owner to *maintain in a clean and tidy condition those parts of the protected site, including access ways, site boundary fences and trees, which are*

not the responsibility of any occupier of a mobile home stationed on the protected site.

40. It was argued on behalf of the Applicant that there was no deterioration of amenity or condition because the pitch occupiers themselves did the works, but this was not an argument which found any attraction with the Tribunal, because the alternative open to the pitch occupiers was to live in a wilderness.

41. The Tribunal does, however, recognise that there is a balance here, noting the complexity referred to above. A good state of repair and condition is not an excellent state of repair and condition. Also in a situation where pitch occupiers add shrubs and flowers at their own request, there might be an expectation that the site owner would maintain this extra vegetation, but the site owner is running a business and such extra works come at a cost.

Site Office

The Applicant

42. Mr Essex gave the history of the site office. Originally the building had been a toilet block. Later, he used it as an office when he and his wife were on site and made it available for the site manager to undertake administrative work. When the site manager was not present, the office was locked up. Mr Essex gave permission on occasion for pitch occupiers to use the office for social celebrations. More recently, he had decided to demolish the office and create a new pitch; the office had been and remained closed awaiting demolition and the post box and notice board moved from it to the bridge over the river.

The Respondents

43. The Respondents felt that they had lost an amenity. Mrs Duffen told the tribunal that she had moved on site in 2006 and that there had been a monthly social event initially under her organisation assisted by others and later under a Mr Wheatman, but that this had stopped in 2010/11 shortly after he died. Mrs Harris told the Tribunal that events had occurred at the office building even up until September 2015, when pitch occupiers had first heard that the office was to close and that it was only in April 2016 that pitch occupiers were told to put letters in the post box on the bridge.

The Tribunal

44. The Tribunal noted that the office had been precisely that, an office used by the Applicant and its manager. There was no reference to the office in the Written Statements as forming any part of the common parts of the site; the office was locked when not in use by the Applicant or the site manager and was made available to pitch occupiers solely at the discretion and with the permission of the Applicant and without any form of contractual obligation. Whilst the Tribunal can see that this was honestly perceived by pitch occupiers as a loss of an amenity, it cannot, given the facts found, be a decrease in the amenity or deterioration of the condition of the site.

On Site Manager

The Applicant

45. Mr Essex asserted that there had always been an on site manager. It was the Applicant's case, in any event, that there was no requirement within the Written Statements for an on site manager and that the Local Authority had indicated in writing its satisfaction with pitch occupiers being given a point of contact notwithstanding the apparent requirement in the Site Licence of an on site manager.

46. Mr Essex said that because he was 200 miles away, he had to trust that his site manager was doing the works required of him and that the maintenance log kept by site managers gave him assurance that works were ongoing.

The Respondents

47. The Respondents argued that there had been gaps in on site management and they pointed to the Applicant's own documents as showing this to be the case. They were concerned at the attitude with which they had been met on occasion as exemplified in correspondence and the lack of actual maintenance. The maintenance log was described as "*a novel*".

The Tribunal

48. The Tribunal saw and heard from Mr Lewis, who has been on site manager since the beginning of the current (not relevant) review period. He told the Tribunal that he conducts walking inspections three a times a week or more as well as inspections of lighting. The Tribunal was told that he is unable himself to undertake some maintenance functions.
49. Looking at the history of the matter, whilst there is a maintenance log, full of entries, there was evidence before the Tribunal that maintenance had diminished over the relevant period with, perhaps, an over-emphasis on the area adjacent to the site office.
50. The resignation of site manager Mr Bob Shemeld in 2015 was a somewhat moveable feast. The maintenance log suggests that he resigned as site manager on 1 April 2015; written submissions from the Applicant suggest that he was in post until July 2015; a letter of 1 June 2015 from Mr Shemeld to "all residents" told them that a Mrs Chandler-Davis would be taking on the role of key-holder for the Park and undertaking office duties from 1 July 2015 and that he would be stepping down from undertaking any more free maintenance duties around the Park.
51. It was common ground between the parties that Mr Shemeld took on a new role by end June 2015. There was reference to this being the role of Environmental Officer, although his letter referred to him concentrating on the electric billing only and monthly checks on fire boxes.
52. Given the above findings, the Tribunal can only conclude that there was no on site maintenance manager between end June 2015 and the appointment of Mr Lewis.
53. The requirement of a caretaker/manager being resident on site was a condition of the Park Licence, but there is evidence, as stated above, that the Local Authority was satisfied with the provision of contact details and the role of such a person is not altogether clear from the description (certainly there is no reference to that person actually being personally expected to perform required maintenance). The real issue of reduction in services arises in respect of what actually happened in practice and that is particularised by the Tribunal in the section above dealing with Maintenance of Grass and Shrubs.

The Dispute

54. **The Respondents** argued in Mr Bell's skeleton argument that the Applicant has not spent money on improvements and that there had been a deterioration in the condition and/or a decrease in the amenity of the site since 26 May 2013 and a reduction in the services or a deterioration in the quality of the services provided by the site owner since 26 May 2013.
55. Factors leading to those submissions include the absence of an on site manager (resident caretaker manager) contrary to the site licence since 26 April 2014; a more limited role by a site manager since that date; the demolition of the site office in late 2015, which office had previously been a social area where bills could be paid and

correspondence left for the park owner and manager; the removal of bins for garden waste and subsequent charging for green bins; the lack of maintenance of foliage, grass and the stream.

56. In oral submissions, Mr Bell pointed to the letter of resignation as site manager by Mr Shemeld of 1 June 2015.
57. He contended that the tarmacking of Waterleat Walk was pursuant to an agreement with an individual owner.
58. He contended that tree work had been at the instigation of the Local Authority and that there were still overhanging branches at the time of inspection; the site rules prohibit the trimming of trees by pitch occupiers and that was confirmed to the pitch occupiers by a letter from Mr Shemeld.
59. Mr Bell placed reliance upon the quotation from Kitchen J in **Charles Simpson Organisation Ltd v Redshaw** (2010) 2514 (CH), para 32 below:
"In my judgment, the word "amenity" in the phrase "amenity of the protected site" in paragraph 18(1)(b) simply means the quality of being agreeable or pleasant. The Court must therefore have particular regard to any decrease in the pleasantness of the site or those features of the site which are agreeable from the perspective of the particular occupier in issue."
60. **The Applicant** argued that it was entitled to propose to the Respondents a fee based upon the most recent RPI increase known to it when it made its proposal in accordance with the statutory framework.
61. In written submissions, Mr Rudall argued that the Applicant had complied with its obligations to maintain the park in accordance with its duties in the written agreements and statutory implied terms. There had been no reduction in "amenities" that had been agreed to be provided in accordance with written agreements. There had been improvements; in particular a new road surface, and all notifications required for such improvements had been complied with. A park manager had been in place at all times.
62. In oral submissions, Mr Rudall contended that the site office had never formed a part of any contractual agreement or implied term and that the pitch occupiers were not entitled to use the office, save with the permission of Mr Essex. There was a lack of real evidence as to what had happened there. The planned new premises would improve the look of the site.
63. Mr Essex, he said, was willing to provide maintenance, and contact details were available to the pitch occupiers. The photographs provided by the Applicant provided evidence of maintenance of the property. There was no loss of amenity. There was a site manager at all times and Mr Essex had dealt personally with residents too. He said that the pitch occupiers had chosen to do work themselves and that the requirement of the Applicant was to maintain a minimum standard.
64. There was, he said, no evidence that trees on the border of the site were causing danger to the pitches. Whilst there might be a possibility of danger and the trees look unsightly, the report from the tree surgeon reported no evidence of risk. There was evidence that the trees had been cut back and there was an intention to conduct further works as and when necessary.
65. The stream bank could be seen to have a solid foundation of gabions and the immediate occupier on Waterleat Walk had taken no issue in relation to the bank and there was no evidence of risk to other properties. The Applicant would continue to monitor the bank and do works as and when necessary.
66. In relation to the bank adjacent to the property of Mr & Mrs Moore, a stonemason had dealt with the problem by way of a new wall and bedrock. Although this was an ongoing issue, that did not mean that further works would not be done. What had

been done to address the problem was reasonable. There was evidence of substantial remedy work to the river.

67. Residents had knowingly bought properties next to a river.

Conclusion

68. **The Tribunal** has considered the competing arguments of the parties against the factual matrix it has found and detailed above. Whilst taking particular account of the issues required of it, the Tribunal has taken account of the totality of the evidence before it and finds partly in favour of the Respondents.

69. The Tribunal has determined that there should be no increase in the pitch fee for B11 Waterleat Walk (Mr & Mrs Moore), having particular regard to the issues associated with the land associated with the boundary of the pitch adjacent to the river bank more fully detailed above and taking that issue in the context of its overall findings. As the Tribunal detailed above, the concern of the Moores as to the integrity of their pitch by reason of the undercutting of the bank was a concern genuinely and reasonably held by them and one directly impacting upon their enjoyment of their pitch.

70. The failure by the Applicant, despite a promise in writing to Mr and Mrs Moore by the site manager of 10 March 2013 to effect further works on or after 24 March 2013, to remedy this serious issue was a failure by the Applicant to remedy a serious deterioration in condition of the site (the river bank), which was having a direct impact upon the enjoyment of the pitch. There was evidence to support the conclusion that this was a worsening state of affairs by virtue of the fact that the site manager was promising further work after the initial work of the stonemason and in the oral evidence of Mr Essex about the nature of a river and the need for constant monitoring. The Tribunal regarded this deterioration in condition of the river bank in question as being so serious insofar as it affected B11 Waterleat Walk and one which was growing worse with each subsequent heavy flow of the river, that there should be no increase in the pitch fee for B11 Waterleat Walk.

71. The Tribunal has determined that there should be an increase in the pitch fee for the properties of all other Respondents, being pitch occupiers on Riverside Way, but limited to a half of the sum sought, having particular regard to the issues associated with the maintenance of Riverside Way more fully detailed above and taking that issue in the context of its overall findings.

72. The Tribunal balanced the attitude and application of remedial works by the Applicant to mature trees with its attitude and lack of application of remedial works to grass and shrubs on Riverside Way. It was apparent, as Mr Essex honestly admitted, that the Applicant had taken a deliberate decision not to carry out the latter works, with the last recorded instance of such works on Riverside Way (other than associated with the site office) being 16 December 2014. There had been a reduction in the services that the owner Applicant supplies to the site, accordingly, from that date, which an element of the pitch fee was meant to meet, as the express term of the Written Statements detailed in paragraph 38 above makes clear (supported too by the implied term in paragraph 22(d)). That reduction in services meant that each time the work needed to be performed, the pitch occupiers were both paying for the work and performing it themselves.

73. Drawing the balance between the situations of mature trees and other vegetation on the site, and noting the complexities which it has detailed more fully in paragraphs 38 – 41 above, the Tribunal determined that the pitch fees should increase, but only by one half of the sum sought. The Tribunal could not apply any form of scientific assessment on the basis of the evidence before it, and is conscious that the sums

involved are relatively small, but believes, doing the best with the information available to it, that this is the fairest and most reasonable outcome to reflect its findings of fact.

A Cresswell (Judge)

APPEAL

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 which 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.

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.