



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

**Case Reference** : **BIR/41UG/PHI/2019/0045-54**

**Property** : **Lodgefield Park, Stafford,ST17 0YE**

**Applicant** : **Mr. Asa Hartley t/a Hartley Park Homes**

**Representative** : **Ms. Pollimac of Counsel**

**Respondents** : **Mrs. Cumpston (Pitch 11)  
Mrs. Gulliver (Pitch 17)  
Personal Representatives of Mrs Gaskin (Pitch 18)  
Mrs. A Rowe (Pitch 20)  
Mr. and Mrs. Pearce (Pitch 67)  
Mr. Boden (Pitch 68)  
Mr. P J Glover (Pitch 70)  
Mr and Mrs. Gilbert (Pitch 83)  
Mr. and Mrs. Potter (Pitch 103)  
Mrs. Wilson (Pitch 118)**

**Type of Application** : **Pitch Fee Review (2019)**

**Tribunal Members** : **Judge T N Jackson  
Ms. S Hopkins FRICS**

**Date of inspection** : **4<sup>th</sup> November 2019**

**Date of Decision** : **4<sup>th</sup> December 2019**

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**DECISION**

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**We determine that the annual pitch fee for the Properties should increase from the review date of 1<sup>st</sup> April 2019 to the amounts detailed below:**

<b>i.Pitch 17</b>	<b>£1,569.27</b>
<b>ii.Pitch 18</b>	<b>£1,851.67</b>
<b>iii.Pitch 20</b>	<b>£1,842.70</b>
<b>iv.Pitch 67</b>	<b>£1,902.07</b>
<b>v.Pitch 68</b>	<b>£1851.67</b>
<b>vi.Pitch 70</b>	<b>£1,842.70</b>
<b>vii.Pitch 83</b>	<b>£1,509.79</b>
<b>viii.Pitch 103</b>	<b>£1,509.79</b>
<b>ix.Pitch 118</b>	<b>£1509.79</b>

### **Reasons for the Decision**

#### **Introduction**

- 1.Each Respondent had signed a Written Statement in relation to their respective Property described above which detailed the pitch fee and contained an annual review date of 1<sup>st</sup> April. The pitch fee was last reviewed on 1<sup>st</sup> April 2018.
- 2.By Notice dated 28<sup>th</sup> February 2019, the Applicant gave notice to each of the Respondents that he proposed to review the pitch fee from the review date of 1<sup>st</sup> April 2019. The proposed increase related to the increase in the RPI Index only.
- 3.The current and proposed annual pitch fees are set out below:

	<u>Current</u>	<u>Proposed</u>
Pitch 11	£1,806.51	£1,851.67
Pitch 17	£1,531.00	£1,569.27
Pitch 18	£1,806.51	£1,851.67
Pitch 20	£1,797.76	£1,842.70
Pitch 67	£1,855.68	£1,902.07
Pitch 68	£1,806.51	£1,851.67
Pitch 70	£1,797.76	£1,842.70
Pitch 83	£1,472.97	£1,509.79
Pitch 103	£1,472.97	£1,509.79
Pitch 118	£1,472.97	£1,509.79

- 4.The Respondents did not agree to the proposed increase but did not make an application to the Tribunal. On 29<sup>th</sup> March 2019, the Applicant applied to the Tribunal for a determination of new level of the pitch fee in relation to the Properties.
- 5.Mrs. Cumpston (Pitch 11) subsequently agreed the pitch fee with the Applicant and is therefore no longer a Respondent.

6. On 24<sup>th</sup> October 2019 the Applicant, Ms. Whittingham, (Site Administration), Mr. C Butcher, Environmental Health Officer of Stafford Borough Council and Mr. N Pearson of Rob Keyzors Tree Surgeons, met on site with most but not all of the Respondents. The purpose of the meeting was to discuss the issues raised by the Respondents in their submission to the Tribunal, with a view to reaching an amicable resolution and negate the need for a Tribunal hearing.
7. On 29<sup>th</sup> October 2019, the Applicant wrote to each of the Respondents setting out his responses to the issues of concern and proposals in relation to some of those concerns. He asked each of the Respondents for their written agreement to the contents of the letter by 12pm on 1<sup>st</sup> November 2019 in order that the application to the Tribunal could be withdrawn. Due to the late provision of the letter, the majority of the Respondents were not able to respond within the timescale given. At the hearing we were provided with copies of responses from some Respondents. Mr. Glover agreed to pay the increased fee in consideration of the Applicant monitoring the crack in the base of Pitch 70 for 12 months on a 3 -monthly basis. His query regarding the boundary of Pitch 70 was to be addressed outside of the Tribunal proceedings.

### **The Inspection**

8. We inspected Lodgefield Park ('the Park') on the morning of 4<sup>th</sup> November 2019 in the presence of the Applicant, his legal representative Ms. Pollimac of Counsel and Mrs. Whittingham. Mr. and Mrs. Potter; Mrs. Rowe; Mr. and Mrs. Pearce; Mr. Glover; Mr. Boden; Mr. Gilbert and Mrs. Wilson attended from the Respondents.
9. The Park is situated on the outskirts of Stafford located on land between the Staffordshire and Worcestershire Canal to the south and the Railway line to the north. It is accessed off Baswich Lane Stafford, passing through the Saltings Park Site and continuing into Lodgefield Park. It occupies an 11 acre site. We were informed that the Site Licence permits 120 mobile homes. It is a rural setting, set within landscape grounds with established trees and open planting areas with grassed areas and shrubs.
10. The Office is situated in the old Club House at the western end of the Park. A concrete forecourt provides some parking, with a bench and a bus stop for the community bus. Our inspection started from the Office/Club House and along the top perimeter road which leads to and is bordered to the left by the canal. At the end of the road is a wooded area from which access can be gained on an unmade path down a slope to the canal bank and to a gate at the boundary of the Park. At the end of the Park the road turns to the right and climbs from the canal towards the railway line. We continued along the road until we reached the entrance to the site and then turned right to the Office/ Club House. There are intermediate roads between the perimeter road.
11. A number of mature trees are planted throughout the Park, these being positioned within the communal areas maintained by the Applicant between individual park homes, the canal and the railway embankment. We noted the trees planted on the bank opposite pitch 103. These trees had matured and were now at an angle to the bank. We noted that two trees had been felled and removed. We noted the height and condition of the conifer trees adjacent to and within pitches 17 and 18 and the mature

poplar trees on the ground adjacent to the canal with plot 17. We noted the height of the tree on the embankment to the rear of plot 118.

12. Footpath access to the side of the canal is provided directly from the Park. Leading from a sloped area, the footpath is level and provides access on foot to a secure gate at the site boundary with the canal and bridge. The footpath is maintained periodically by the Applicant. It is not an adopted footpath nor a permissive path.
13. The Park roads are a mixture of tarmac, concrete and gritstone. We noted recent tarmacadam repairs to the road by Pitch 70. The roadways were maintained and road markings and speed restrictions clearly defined.
14. Drainage for the access and perimeter roads is provided in some areas through French drains to a soakaway with gravel top dressing. A concrete gully is located between the entrance gate and the railway embankment, the embankment being supported by timber railway sleepers. There had been heavy rain in the two days prior to our inspection. We noted some standing water opposite Pitch 83 and at the entrance, (although to a much larger extent on the Saltings Park side of the entrance which we understand is a site owned by the Council.)
15. The Park site is bound by the railway embankment which is secured with metal security fencing and planted with low cover shrubs and grass. Trees are planted at regular intervals along its entirety, and the area is maintained on behalf of the Applicant by their contractors and maintenance team.
16. We noted the wooden hut by the entrance and two benches. We noted Pitches 53,69 and 126 which are owned by the Applicant, the first of which was empty and the second of which had been refurbished externally to a high standard by the Applicant. We did not inspect the interior.
17. We observed a well presented and maintained site which had not been achieved overnight. Mrs. Potter's submission and evidence refers to maintenance work being carried out immediately after the Applicant's submission had been sent to the Tribunal and also on the weekend immediately before the inspection. It was evident that some work had been carried out shortly before the inspection.
18. There is a dedicated qualified and professional team to maintain the Park and communal gardens and this is supported by a maintenance man employed by the Applicant and the Applicant's administrative assistant. The Respondents' claim is that there has been a significant decline in the standard of maintenance.

### **The Hearing**

19. The hearing was attended by the Applicant and he was represented by Ms. Pollimac of Counsel. Mr. Hartley and Ms. Whittingham gave evidence. The Respondents identified Mrs. Potter as their spokesperson and we also heard evidence from Mrs. Gulliver and Mrs. Rowe.

### **The Law**

20. The relevant legislation is contained within Schedule 1 Part 1 Chapter 2 of the Mobile Homes Act 1983 (as amended) ('the 1983 Act'). Paragraph 20 (1) states that unless it

would be unreasonable having regard to paragraph 18(1), there is a presumption that the pitch fee will increase or decrease by a percentage which is no more than the percentage change in the RPI in the 12 months before the Notice of Pitch Review was served.

21. Paragraph 18 sets out factors to which “particular regard” must be had when determining the amount of the new pitch fee.

*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) to (iii) not relevant.*

*(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<sup>1</sup> (in so far as regard has not previously been had to that deterioration or decrease for the purpose of this sub paragraph);*

*(ab).....any reduction in the services that the owner supplies to the site, pitch, or mobile home, and any deterioration in the quality of those services since the date on which this paragraph came into force<sup>2</sup> (in so far as regard has not previously been had for the purpose of this sub-paragraph).*

22. The decisions in **Wyldecrest Parks Management Ltd v Kenyon and others [2017] UKUT 28 (LC)** and **Vyse v Wyldecrest Parks Management Ltd [2017] UKUT 24 (LC)** both refer to it being possible for us to take into account other factors which are “weighty factors”.

23. For the RPI presumption to be displaced under the provisions of paragraph 18, the other considerations must be of considerable weight. “If it were a consideration of equal weight to RPI, then applying the presumption, the scales would tip the balance in favour of RPI”<sup>3</sup>.

24. Schedule 1 Part 1 Chapter 2 of the 1983 Act sets out terms implied in all Written Statements including:

Occupiers obligations:

Paragraph 21 (d)

*Maintain (i) the outside of the mobile home, and*

*(ii) the pitch, including all fences and outbuilding belonging to, or enjoyed with, it and the mobile home*

*in a clean and tidy condition.*

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<sup>1</sup> 26<sup>th</sup> May 2013

<sup>2</sup> 26<sup>th</sup> May 2013

<sup>3</sup> Judge Robinson Vyse v Wyldecrest Parks Management Ltd [2017] UKUT 24 (LC)

Site Owners obligations:

Paragraph 22 (d)

*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...*

**The submissions**

25. The Respondents' submission is a joint submission. The Respondents do not dispute the validity of the Notice itself. They also accept that there they have not been charged for any improvements made since the last pitch review. They agree that 2.5% is the appropriate percentage RPI increase in the relevant period.
26. Some of the Respondents did not agree with the proposals outlined in the Applicant's letter dated 29<sup>th</sup> October 2019 and wished the matters to be determined by the Tribunal.
27. Without any admission of liability, and as a gesture of goodwill, at the hearing, the Applicant confirmed that he would carry out the following:
- i) install a traffic mirror on the lamppost adjacent to the office building car park and erect a 'Slow' sign on pitch 3 side of the shrubs;
  - ii) lay a decorative stone surface on the unmade area by Pitch 23 and erect no parking signage or fencing to prevent pedestrians walking over it and/or cars travelling over it;
  - iii) install a handrail at the entrance to the common area to the canal gate for assistance when walking down the slope.

On behalf of the Respondents, Mrs. Potter agreed to the proposals. We subsequently received confirmation after the hearing that those works had been carried out.

28. The submission referred to the notes attached to the Notice of Pitch fee review and specifically the phrases '*Site owner's consultation obligations*' and '*...the site owner must consult with any qualifying residents' association relating to the operation and management of the site*'. It is clear from the submission, and from Mrs. Potter at the hearing, that this was understood to mean that matters relating to failure to consult on any matter (our emphasis) were factors to be considered on a pitch review. The submission had therefore included examples of where it is alleged that the Applicant had failed to inform (as opposed to consult) the Respondents e.g. regarding a road closure; refused to meet occupiers or members of the Residents Association, and had failed to correspond with the personal representatives of a deceased owner.
29. We can see why Mrs. Potter read the notes attached to the Notice as she did. However, the references to consultation are specifically in relation to improvements carried out by a site owner. The matters raised in the submission are therefore not relevant to an application for a pitch review application although may be raised in other types of applications to the Tribunal.

30. The issues remaining in dispute are set out below.

#### Different pitch fees

31. Mr. and Mrs. Pearce (Pitch 67) and Mr. Boden (Pitch 68) are charged a higher pitch fee than the majority of the Respondents. It is submitted that their higher pitch fee should be taken into account when deciding the new pitch fee, with the suggestion being that they should have a reduced or no increase to reflect the current higher pitch fee.

32. The Applicant has explained in correspondence with Mr. and Mrs. Pearce and Mr. Boden the history of their pitches and the reasons for the higher pitch fees compared to other pitch fees. He says that the amount of the agreed pitch fee is not a relevant factor under paragraph 18 of the 1983 Act.

#### Drainage

33. The Respondents submit that there is flooding and standing water, particularly at the entrance to the Park and also outside pitch 83. The Respondents say that soil from the grass banking by the railway line falls into the drainage gullies and prevents proper drainage. The French drains are poorly maintained which leads to standing water on the road.

34. The Applicant says that the drainage for the Park has not changed since the Park was developed. Gravel was laid as a top dressing to the French drains approximately 8-9 years ago for them to function as a soakaway. The drainage gullies are cleared on a weekly basis by the gardening contractor or the maintenance man when leaves have fallen. There has been no change in how or the frequency with which the gullies have been maintained in the relevant period.

#### Flooding on Pitch 17

35. The Respondents say that the whole pitch is waterlogged and always has been with one side of the pitch permanently wet. Mrs Gulliver asserts that there are no soakaways.

36. The Applicant says that the flooding is on the pitch itself rather than on a communal area of the Park and is the Pitch owner's responsibility. Soakaways are installed on 4 corners of the pitch. He does not know of any reason for the alleged 'flooding'.

#### Lack of action regarding the height of trees

37. The Respondents accept that trees on the Park are healthy and that the Applicant takes action where trees are unhealthy or dangerous for example 2 alder trees on the embankment opposite Pitch 103 and 5 large poplar trees on the canal bank at the rear of pitch 17. The Respondents' concerns relate to the height of trees, specifically a conifer at each of Pitches 17 and 18, an alder to the rear of pitch 118 and trees on the central embankment opposite Pitch 103. The Respondents consider the trees to be too high and potentially dangerous and that it is the Applicant's responsibility to reduce their height which he has failed to do. Mrs Potter referred to two branches having fallen off trees in the last 3 years. The Respondents assert that the trees at pitches 17 and 18 are at least 30 years old, were planted by the original site owner and are

therefore the Applicant's responsibility. Mrs Potter suggests that the tree at Pitch 18 was planted by the previous site owner as a boundary between pitches 17 and 18.

38. Mrs. Potter provided an article which referred to the case of *R J Turner v JJ Cooper*, a First -Tier Tribunal case which she says supports her submission that the Applicant is responsible for the trees in pitches 17 and 18. The Respondents did not have any expert evidence regarding management of the trees and relied, in part, on Mr. Potter's background in horticulture although he confirmed that he did not have any arboricultural qualifications.
39. The Applicant says that since 2011, he has had an annual inspection of trees by a qualified tree surgeon and that he takes the action recommended by the tree surgeon. We had regard to the tree surgeon's reports dated September 2017 (pages 181-195); December 2018 (pages 165-180); and also his letter dated 29<sup>th</sup> October 2019 which explains his professional opinion as to whether healthy trees should be reduced in height and specifically refers to the trees on the central embankment and to the rear of Plot 118. We noted invoices for felling of trees dated 20<sup>th</sup> July 2018 (page 200); 21<sup>st</sup> August 2018 (page 199) and 14<sup>th</sup> May 2019 (page 198).
40. The Applicant says that the trees in Plots 17 and 18 are the responsibility of the pitch owners. His parents had developed the Park in 1987 and had provided specific landscaped areas for trees throughout the Park, including near pitches 12; 70; and 3 and 4. Neither his parents, nor he had planted conifer trees on pitches as boundaries or for any other reason. He was advised by the tree surgeon that the tree in Pitch 17 was approximately 20-25 years old. He says that that the trees have been planted by pitch owners (either current or previous), have not been adequately maintained by the pitch owners, (although he says Mrs. Gulliver had done some maintenance of the tree on pitch 17 in previous years) and remain the responsibility of the current pitch owner. Throughout the inspection he drew our attention to a significant number of pitches where conifers had been planted, and subsequently maintained, by pitch owners.
41. As a gesture of goodwill, in the letter of 29<sup>th</sup> October 2019, the Applicant had offered to arrange for both trees at Pitches 17 and 18 to be removed with the costs being divided between the affected pitch owners and the Applicant. At the hearing Mrs. Gulliver and Mrs. Rowe (pitch 20 into which the tree at Pitch 17 leans) said that as they did not know how much their share of the costs would be, and that they had limited means, they were unable to respond.
42. In relation to the tree at the rear of Pitch 118, the Applicant agreed that it was his responsibility as the tree was located on common area. On the basis of the tree surgeon's report, which stated that the extent of any reduction works would be so severe as to make tree retention pointless, the Applicant had suggested to Mrs Wilson who had raised the concerns, that the tree could be removed. He was awaiting Mrs. Wilson's response.
43. Mrs. Potter criticized the Tree Surgeon's report as she said the photo dated September 2017 could not have been taken on that date due to the features in the photo and it was taken prior to 2008. She submits that this therefore casts doubt on the validity of the dates on the remainder of the photos submitted by the Applicant. She also submits that the inconsistent descriptions of the trees in different parts of the report reduces the credibility of the tree report (pages 190,198 and 191). She



accepts that the professional views as to tree management may change over time but says that in the past trees were maintained more frequently. She suggests that the fact that the Applicant has offered to remove the trees at Plots 17 and 18 demonstrates that the Applicant accepts responsibility.

44. The Applicant explained that the photo in the tree surgeon report was used solely for the purpose of identification of the location of groupings of trees referred to in the report.

#### Lack of maintenance of the roads

45. The Respondents submit that the roads opposite pitches 7 and 70 had been in need of repair in the 12 months preceding the pitch fee review.
46. The Applicant submits that the condition of the road surfaces is monitored on an ongoing basis, and specifically in October and March due to the winter weather. He carried out repairs to the road opposite pitches 7 and 70 in April 2019 (invoice page 207). A Housing Standards Officer had inspected the site on 24<sup>th</sup> January 2017 and had identified 4 locations where the road surface should be monitored and may require minor repairs. Further suggested action was provided regarding the area by pitch 23 (page 65-66). Mr. Butcher, a Council Officer, had inspected the site on 27<sup>th</sup> June 2019 and had commented that a road adjacent to Pitch 64 was beginning to deteriorate but that no action was required at present. It was raised for information purposes to aid future remedial work (page 45). He also suggested a risk assessment be carried out regarding the area outside pitch 23, (which is now the subject of an agreement between the parties).

#### Lack of general maintenance of the common areas

47. The Respondents give examples of algae on one lamppost, the two benches and the wooden hut. Mrs. Potter said that she had raised the issue of the algae on the lamppost in response to the Applicant having written to her in the previous couple of years regarding algae on her guttering. The Respondents wished to have an increase in the number of benches.
48. The Applicant says that once matters were brought to his attention the algae was cleared. There has been no reduction in the number of benches although one had been relocated from outside the wooden hut to near the Office where the Community bus stop was located. The Applicant refers to the Respondents 'saving up' issues to counter pitch fee increase proposals rather than raising them in a timely fashion with the maintenance man on site.
49. The Applicant confirmed he has a Maintenance Programme and both he and Ms. Whittingham visit the site 3-4 days per week. On at least a weekly basis they separately walk the Park during which they 'informally' inspect the site and note any issues. A maintenance man is employed who is not based on the site but who visits the site daily. The Applicant has engaged 'Countrywide' to carry out gardening/landscape maintenance every 2 weeks between March and October and leaf collecting from October to February of each year. A Tree Surgeon is engaged to inspect the trees on the Park on an annual basis and recommended works are factored into the Maintenance Programme for completion. The Applicant has contracts for the servicing of the pumping station, drainage and access road repairs.

All contractors are required to take photos of work they have done (or where work has not been done, to photo and explain why) to provide an audit trail should a dispute arise.

50. The Applicant says that Council officers inspected the Park on 24<sup>th</sup> January 2017 and 27<sup>th</sup> June 2019 and determined there were no breaches of the Site Licence conditions although they made recommendations regarding some issues.

51. The Applicant had carried out improvements by replacing existing bulbs in street lighting on the Park for LED lamps at no cost to the residents.

#### Lack of maintenance of rental and empty homes owned by the Applicant

52. The Respondents produced photos of pitches 69 (a hole in the skirt), 53 (covered in algae), 126 and 5 (overgrown) all of which are owned by the Applicant and are empty or rented out. Mrs. Potter says that the day after the Respondents' Tribunal submission, the issues were addressed by the Applicant.

53. The Applicant says that he has a Refurbishment Programme and that pitch 53 is the next to be refurbished but that the timetable depends on finances. The Applicant said that he could share that Programme with the Respondents. In the last 12 months he had completely refurbished Pitch 126 and painted the mobile homes at pitches 53, 5, 69, 85, and 126. The Applicant's Maintenance Programme includes the maintenance of pitches owned by the Applicant and includes pitch and home maintenance, gas and electrical safety inspections/certifications. He prioritises maintenance he considers affects occupiers use and enjoyment of the Park generally, for example road maintenance.

#### The Site Office

54. The Respondents say that the whole of this area has deteriorated and that there has been a deterioration in the amenity of the Park as pitch owners whose pitches overlook the Site Office can see rubbish being stored at the side of the Office.

55. The Applicant says that the side of the Office has been used as storage for building materials and scrap materials awaiting removal since 1987. A caravan and low wall are located to obscure the view. He says that the area does not form part of the common area of the Park.

#### Condition of the footpath to the canal gate.

56. The Respondents say that the footpath needs to be made safe, in particular in relation to the slope leading towards the canal. The Respondents consider that the footpath should be levelled and refer to the Applicant making such an offer by letter dated September 2015 which states "The soil stored adjacent to pitch 16 has now been tidied. I will consider your suggestion for it to be used for the canal path area". Mrs. Potter's evidence was that the brambles along the footpath were not adequately maintained and cut back which required pedestrians to walk nearer to the canal itself.

57. The Applicant says that the area is a natural woodland setting and it has not fallen into disrepair. No designated pathway has been created either by the Applicant or his

predecessors and he does not 'advertise' it or encourage its use. The path has evolved over time as a short cut to the canal. He provided photographic evidence of the grass cutting/strimming carried out on the path on dates ranging from 22<sup>nd</sup> June 2018 (page 31); 13<sup>th</sup> August 2018 (page 28); 26<sup>th</sup> February 2019 (page 25) and 27<sup>th</sup> June 2019 (page 19). The area is strimmed on a 2 -weekly basis until approximately November of each year and recommences in March.

#### Condition of the grass banking by the railway line

58. The Respondents submit that the banking by the railway has been neglected and that the bank is slipping. On raising the matter with the Applicant his response has been to suggest that they obtain a surveyors' report which they had not sought for financial reasons.
59. The Applicant confirmed that he had suggested that the Respondents obtain a report as, in his opinion, there was no evidence that there was an issue. He produced photographs to show maintenance of the trees/shrubs on the banking of 13<sup>th</sup> August 2018 (page 27) and 27<sup>th</sup> June 2019 (page 20). The bank is strimmed twice weekly and the hedge cut twice per annum.

#### Lack of CCTV on site

60. The Respondents submit that as there is a sign at the entrance that says the site is covered by CCTV, then CCTV should be provided and that it is a misrepresentation.
61. The Applicant says that there has never been CCTV on the site.

#### Reduction in access to the Applicant and delays in correspondence

62. The Respondents submit that since 2013 there had been an open- door policy which allowed them access via phone to the Applicant or his secretary. Now, all phone calls go through to a call centre which takes a message and the Applicant or Ms. Whittingham will call back, up to a few hours later. They submit that this happens even when they can see the Applicant and/or Ms Whittingham in the office.
63. The Respondents say that they are encouraged to put things in writing but there are significant delays in receiving responses. The week before the hearing the Residents' Association had introduced an email address and there had been effective and timely communication from Ms. Whittingham providing information on a parking matter.
64. The Applicant says that since he took over the Park in 2002, and Ms. Whittingham confirms that since she started in November 2013, there has not been an open- door policy. Prior to 2010 there had been an answering machine. Post 2010, the Applicant had started to use the phone answering service described by the Respondents. The Applicant says that the Respondents may see him and Ms. Whittingham in the office but they are dealing with other responsibilities, such as accounts, and do not break off to answer queries on an ad hoc basis. Residents are required to make an appointment.
65. The Applicant says that he tries to respond to correspondence within 14 days but his performance indicator is 28 days. He has 7 Parks to manage. The Applicant says that residents at this Park repeat the same issues in each letter and that he therefore

advises them of his position, that he will tell them if and when his position changes and that any subsequent letters on the same issues are not then given the same priority in terms of response. He provided documentary evidence which confirmed this statement.

### **Decision**

66. We considered all the oral and written evidence and the submissions made by the Applicant and Respondents.
67. During the 12-month period applicable to this review, the RPI had risen by 2.5% and this is the increase which the Application seeks should be applied to the existing pitch fees to determine the new pitch fee.
68. For the purposes of the 1983 Act, the issue is not the actual condition of the site, nor indeed the actual amenity of the site. Whilst we may accept that the site has not always been maintained to a standard that the Respondents expect, (reasonably or otherwise), we have to consider whether there has been any **deterioration** in the condition or **decrease** in the amenity of the site in the relevant period, and, if we do so find, whether it would thereby be unreasonable for the pitch fee to be increased on the basis of the increase in the RPI index.
69. "Amenity" in this context means the quality of being agreeable or pleasant and so we must look at any decrease in the pleasantness of the site or those features of the site which are agreeable from the occupier's perspective.

### Different pitch fees

70. We cannot determine whether a pitch fee itself is reasonable and cannot look at other pitch fees to determine whether the pitch fees the subject of this case are reasonable or fair. We must look at the pitch fee agreed at the outset, (or as subsequently reviewed by agreement or Tribunal determination), and then apply the provisions of the 1983 Act as described above.

### Drainage

71. The evidence suggests that the current drainage system has been in situ since the site was built and has not been improved over this time. The residents have complained of 'flooding' for several years. We inspected the Park on a day following two days of heavy rain. We saw evidence of pooling and areas of standing surface water, particularly by the entrance to the Park, (more significantly on the Saltings Park side of the entrance) and opposite Pitch 83 and noted that certain areas of the Park were more affected by others due to the site topography. However, we did not see evidence of 'flooding' which we consider to be an exaggerated description. In our opinion, the photos submitted by the Respondents, (Respondents' bundle page 39iv) show pooling water and an areas of standing surface water rather than 'flooding'. Upon inspection, it appears to the Tribunal that the drainage system is the same as it has been for a significant number of years. The Respondents have provided limited anecdotal evidence regarding lack of maintenance of the road gullies. We prefer the Applicant's evidence regarding maintenance and do not consider that there has been a lack of maintenance of the drainage or of clearing the drains and gullies from

leaves. We do not consider that there has been a deterioration in the condition or a decrease in the amenity of the Park in relation to drainage.

#### Flooding on Pitch 17

72. At the inspection we noted that the pitch is on a slope and the last pitch on the slope. A very large mature tree is located adjacent to the plot and park home. After two days of heavy rain we noted a small amount of standing water to the left side of the pitch. Mrs Gulliver's submission refers to her pitch 'flooding on occasion' (Applicants bundle 6a).

73. The Respondents provided limited evidence of the assertion of lack of a soakaway and no expert report to confirm the reason for the 'flooding'. We find the description of the pitch to be permanently flooded to be exaggerated, particularly bearing in mind Mrs Gulliver's own description. We consider that any standing water is due to the location of the pitch, the topography and the proximity of large mature trees. There is limited evidence to suggest that there has been any deterioration in the condition or decrease in the amenity of the site in the relevant period.

#### Lack of action regarding the height of trees

74. We attached little weight to the case of *RJ Turner v JJ Cooper*. First Tier Tribunal decisions are not binding on any other Tribunal and each case needs to be considered on its own facts. That case related to uncertainty as to ownership of a dangerous tree where the tree had been planted by the site owner or his predecessor (as opposed to the pitch occupier).

75. The Respondents accept that the trees on the Park are healthy. They have provided anecdotal evidence that in the last three years two branches have fallen from trees. The Tree Surgeon's reports do not suggest that the trees the subject of this case are 'dangerous'. The Respondents have not produced any expert evidence to oppose that view. The Respondents have not provided any expert evidence that conflicts with the Tree Surgeon's letter dated 29<sup>th</sup> October 2019 regarding current tree management standards (BS3998:2010) in relation to reducing the height of trees to mitigate the potential for branch loss. Evidence suggests that work is carried out to trees when considered necessary. We do not consider that there has been any deterioration in the condition or decrease in the amenity of the site in the relevant period due to a failure to manage the height of the trees in the common areas.

76. In relation to the trees at Pitches 17 and 18, we have reviewed the Written Statements for the pitches, the Site Rules and paragraphs 21(d) and 22 (d) of Schedule 1 Part 1 of the 1983 Act.

77. Paragraph 3(e) of the Written Statements of pitches 17 and 18 requires the occupier *'to keep the mobile home in a sound state of repair and condition and to keep the exterior clean and tidy PROVIDED ALWAYS....'*

78. Paragraph 3 (f) of the Written Statements for Pitch 17 and 18 headed 'To maintain the pitch' requires the occupier *'to keep the pitch and all fences shed outbuildings and gardens thereon in a neat and tidy condition PROVIDED ALWAYS...'*

79. Paragraph 4 of the Site Rules dated 15<sup>th</sup> April 2018 states:

*You must not, until approval in writing has been obtained from the park owner (which will not be unreasonably withheld or delayed) carry out any of the following;*

*Planting, felling, lopping and topping of any trees or hedges. Unless in case of emergency and you have sought the advice of and work is carried out by a qualified tree surgeon or horticulturist. In cases of trees and hedges situated on general park land, no work is to be carried out in any circumstances unless agreed with the park owner first.*

80. The Written Statements clearly require gardens to be maintained by the pitch occupier. We do not construe the Site Rules to suggest that consent is required for any work on trees because the Site Owner is responsible for the trees on the pitch. We consider that it is to allow the Site Owner to protect the visual amenity of the area and to ensure that any such works are done professionally.
81. In relation to the trees at Pitches 17 and 18, in the absence of any evidence to the contrary, and having regard to the inspection, and the Applicant's evidence, we find it more likely than not that the trees were not planted by the Applicant or his parents and therefore are the responsibility of the pitch owners who have a responsibility to maintain them rather than the Applicant. We do not accept that the Applicant's offer on 29<sup>th</sup> October 2019 regarding sharing the costs of removal of the trees denotes accepting responsibility, as the letter itself makes explicit.

#### Lack of maintenance of the roads

82. Having inspected the Park and also noting the letters from the Council officers which suggested monitoring of areas and risk assessments rather than a requirement to carry out work or advise of any breaches of the Site Licence conditions, there is limited evidence to suggest that there has been any material deterioration in the condition or decrease in the amenity of the site in the relevant period due to the condition of the roads.

#### Lack of maintenance of the common areas

83. Whilst we accept that there was algae on one lamppost, the two benches and the wooden hut, we consider that these are de minimis and do not reflect a general lack of maintenance of the common areas such as to suggest that it is unreasonable to raise the pitch fees by the RPI percentage increase. Any increase in benches would be an improvement.
84. We note Mrs. Potter's evidence, including photographs that maintenance works were carried out immediately following the Respondents' submission to the Tribunal and on the weekend before the inspection. This is not unusual in these cases. However, having regard to the Appellant's evidence regarding his Maintenance Programme and sub-contracting arrangements, documentary evidence and the inspection. as an expert Tribunal, we found the Park to be well maintained and that this is unlikely to have been achieved solely by 'last minute' works.

Lack of maintenance of rental and empty homes owned by the Applicant

85. On a Park of this size there will be ongoing maintenance and repair issues. Having considered the Respondents' photos of and the description of the extent of the alleged lack of maintenance of pitches owned by the Applicant, we do not find that it amounts to a deterioration in the condition or decrease in amenity of the Park in the relevant period such as to justify displacing the presumption of the RPI increase.

The Site Office

86. We prefer the Applicant's evidence. As the area has been used for storage since 1987, there has not been a deterioration in the condition or a decrease in the amenity of the site in the relevant period.

Condition of the footpath to the canal gate.

87. We do not accept Mrs. Potter's assertion that the Applicant's photo evidence could not be relied on due to her concerns regarding the photo in the Tree Surgeon's report. This is a very serious accusation to make, particularly when the Respondents have not produced dated photographs of the matters in issue which would prove such an accusation. We preferred the Applicant's evidence, including the photographic evidence and find that the footpath is maintained in terms of grass cutting/strimming and cutting back brambles and that there has been no reduction in or lack of maintenance. In relation to the levelling of the footpath, as the footpath level has not changed, there has not been a deterioration in the condition or a decrease in the amenity of the site in the relevant period. Any levelling would be an improvement which is likely to result in an increased pitch fee.

Condition of the grass banking by the railway line

88. In the absence of any evidence from the Respondents, (as opposed to assertion), that the bank is slipping, and having regard to our inspection, which was carried out after two days of heavy rain, we are not persuaded that the bank is slipping. In relation to maintenance of the landscaping on the grass bank, there is limited evidence to suggest that it has been neglected as alleged. The evidence and inspection suggest that it is regularly maintained.

Lack of CCTV on site

89. As there has never been CCTV on the site, then the lack of CCTV cannot be described as a deterioration in the condition or decrease in amenity of the Park. The introduction of CCTV would be an improvement for which the Applicant could seek to increase the pitch fee. Any suggestions of misrepresentation are not a matter for this Tribunal.

Reduction in access to the Applicant and delays in correspondence

90. We prefer the evidence of the Applicant and Ms. Whittingham regarding there not being an open-door policy. This is evidenced in a letter from the Applicant to the Chair of the Residents Association of 12<sup>th</sup> May 2016 and in the 2018 Newsletter. How the Applicant manages his phone calls and work day is a matter for him. Responses

to phone calls a few hours after the original call cannot in any way be described as unreasonable.

91. Regarding responses to correspondence, whilst we consider 28 days to be a significant length of time, this appears to have been the standard for several years. We've also had regard to correspondence which supports the Applicant's evidence that the same matters are raised constantly (pages 55-57; 76-80). The Respondents' may not like the Applicant's responses but we would suggest that constant repetition of the same issues without new information for the Applicant to consider is unlikely to receive either a timely response or a response at all.
92. We do not find there to have been a reduction in the services or the quality of services supplied by the owner since 26<sup>th</sup> May 2013.

### **Conclusion**

93. We do not find that any deterioration in the condition or decrease in amenity of the Park in the relevant period has been shown measurably to have deteriorated the condition or decreased the amenity of the Park. The matters raised, even taken cumulatively, are de minimis. The Respondents have raised many assertions but have provided limited evidence to support those assertions. Many of the Respondents' issues relate to requests for improvements (as distinct from maintenance) and therefore fall outside of these proceedings which are concerned only with matters relating to the deterioration in the condition or decrease in the amenity of the Park. Any improvements requested by residents would likely be reflected in future pitch reviews.
94. Whilst the Applicant has a Maintenance Schedule and a Refurbishment Programme, they are not shared with the Respondents. This is entirely a matter for the Applicant. However, we suggest that if they were shared, the Respondents' expectations may be better managed regarding works to be carried out and timescale and would allow more open and timely discussion of any issues. However, it must be emphasized that it is not the Respondents' role to micromanage the Park.
95. We do not find there to have been a reduction in the services or the quality of services supplied by the owner since 26<sup>th</sup> May 2013 and which had not been taken into account in a previous review.
96. There have been no charges for improvements to the Park since the last review.
97. We accept the presumption that the pitch fee should be increased in line with the increase in RPI index over the relevant period shall apply. We are not satisfied that the Respondents have provided sufficient evidence to displace that presumption.
98. We determine that the pitch fee for all the Properties should increase from the review date of 1<sup>st</sup> April 2019 in accordance with the Notices dated 28<sup>th</sup> February 2019.
99. If the Respondents have continued to pay the original pitch fee since that date, they must pay the difference to the Applicant.
100. We are not clear whether the Applicant has issued letters to the Respondents regarding arrears of pitch fees arising from the proposed increase. We confirm that



the Respondents are not in arrears if they have continued to pay the pitch fee due before the service of the Notice of increase. The difference between the current pitch fee and the reviewed pitch fee becomes payable 28 days after this decision is issued (paragraph 17 (4)(c) Part 2 of Schedule 1 of the 1983 Act).

**Costs**

101.No party applied for costs and we make no such award.

**Appeal**

102.If any party is dissatisfied with this decision, they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties and must state the grounds on which they intend to rely in the appeal.

.....

Judge T N Jackson