FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference:	CHI/OOHE/PHI/2018/0232
Premises:	14 Valley View Park, Valley View Caravan Site, Dunmere, Bodmin, Cornwall PL31 2RA
Applicant:	Wyldecrest Parks (Management) Ltd
Representative:	Mr D Sunderland
Respondent:	Mr W RJ Dudley Ms MA Fletcher
Representative:	Mr S Hassall
Type of Application:	Mobile Homes Act 1983, Schedule 1, paragraph 16 – Determination of pitch fee
Tribunal Members:	Judge A Cresswell (Chairman) Mr W H Gater FRICS
Date and venue of Hearing:	18 December 2018 at Bodmin
Date of Decision:	11 January 2019

DECISION

The Application

1. On 11 September 2018, the site owner made an application to the Tribunal for the determination of a pitch fee for the premises from 13 August 2018.

Summary Decision

2. This case arises out of the site owner's application, made on 11 September 2018, for the determination of a pitch fee from 13 August 2018. The Tribunal has determined that the pitch fee for that period and from that date should be £159.58.

Current Pitch Fee £	New Pitch Fee £	Date of New Pitch Fee
154.03	159.58	13 August 2018

Inspection and Description of Property

3. The Tribunal inspected the property on 18 December 2018 at 1100. Present at that time was Mr Sunderland; the Tribunal also met and spoke with Mr Dudley at his home. Weather conditions were very poor.
4. The property is situated on a residential park home site about a mile to the north west of Bodmin, on the A389, connecting the town with the North coast of Cornwall which is about 15 miles away.
5. The site slopes down from the main road and number 14 is located at the lower end.
6. The property is amongst similar units arranged in the style of a bungalow. It has a preformed metal roof in the style of concrete tiling. The metal walls are painted and finished with courses of reformed concrete blockwork at the base. The accommodation is approached up a short flight of external steps.
7. The roadways throughout the site are tarmacadam.

Directions

8. Directions were issued on 25 October 2018.
9. The Tribunal directed that the parties should submit specified documentation to the Tribunal for consideration.
10. 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 Dudley, Mr Hassall and Mr Sunderland. At the end of the hearing, the parties confirmed that they had been able to say all that they wished to say to the Tribunal.

Preliminary Notes

11. The Tribunal noted that a previous Decision of the Tribunal had identified the correct Review date as being 2 May. Mr Hassall confirmed his agreement with the process and figures used by the Applicant to establish the RPI increase relevant to 2 May 2018 and that proper processes had been followed by the Applicant in notifying the proposed fee increase.
12. Mr Hassall also properly conceded that a failure by the Applicant to display a Licence for the Park (the Licence displayed showed the name of a previous owner) was not a factor capable of influencing the quantum of the Review. The Tribunal, accordingly, does not detail the discussion of that issue.
13. Mr Hassall also properly conceded that the distance of the electricity meter from the Respondent's pitch was not a factor capable of influencing the quantum of the Review. The Tribunal, accordingly, does not detail the discussion of that issue.

14. As will be explained later, the Tribunal found that the correct site Licence for the site did not contain the various conditions the subject of critical analysis by the Respondent. The Tribunal, accordingly, does not detail the discussion of those conditions.

The Law

15. 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.
16. Paragraph 20 of chapter 2 of Part 1 of Schedule 1 to the Act provides that the presumption is that the pitch fee shall increase or decrease in proportion to the movement in the RPI. The increase in the pitch fee can be greater, however, if the presumption would produce an unreasonable amount. Paragraph 18 of chapter 2 specifies certain matters to which there must be paid particular regard in determining the amount of the new pitch fee.
17. The Tribunal has a wide discretion to vary the pitch fee to a level of a reasonable pitch fee taking into account all of the relevant circumstances, including factors not connected to improvements, and the increase in RPI in the previous 12 months is important, but it is not the only factor which may be taken into account. Factors not encompassed by paragraph 18(1) may nevertheless provide grounds on which the presumption of no more than RPI increases (or decreases) may be rebutted. If another weighty factor means that it is reasonable to vary the pitch fee by a different amount, effect may be given to that factor.
18. Paragraph 18(1A) and Paragraph 19 preclude regard being paid to certain matters on the review but none of those are relevant to these proceedings.
19. There is advice for the Tribunal about other factors in **Vyse v Wyldecrest Parks (Management) Limited** (2017) UKUT 0024 (LC):

> *50. If there is no matter to which any of paragraph 18(1) in terms applies, then the presumption arises and it is necessary to consider whether any 'other factor' displaces it. By definition, this must be a factor to which considerable weight attaches. If it were a consideration of equal weight to RPI, then, applying the presumption, the scales would tip the balance in favour of RPI. Of course, it is not possible to be prescriptive as to precisely how much weight must be attached to an 'other factor' before it outweighs the presumption in favour of RPI. 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.*
>
> *51. On the face of it, there does not appear to be any justification for limiting the nature or type of 'other factor' to which regard may be had. The paragraphs relating to the amount of the pitch fee expressly set out matters which may or may not be taken into account. "Particular regard shall be had to" the paragraph 18(1) factors and there are a number of matters to which the Act expressly states that "no regard shall be had". If an 'other factor' is not one to which "no regard shall be had" but neither is it one to which "particular regard shall be had", the logical consequence is that regard may be had to it. In my judgment this approach accords with the literal construction of the words of the*

statute. Further, it is one which would avoid potentially unfair and anomalous consequences.

20. The amount of the pitch fee rests solely on what the occupiers agree or the First-tier Tribunal determines to be reasonable on the annual review.
21. In respect of a late review notice, the Upper Tribunal advises in **Shaw's Trailer Park (Harrogate) Limited v Sherwood** (2015) UKUT 0194 (LC):
41. If the owner does not serve a pitch fee review notice "by the time by which it was required to be served" (i.e. at least 28 days before the review date, as required by paragraph 17(2)) but does so "at any time thereafter" (as permitted by paragraph 17(6)(b)) then sub-paragraphs 17(7) to (10) apply. A late review notice given under paragraph 17(6)(b) serves the same purpose and takes the same form as an "in-time" review notice under paragraph 17(2): it sets out the owner's proposals in respect of the new pitch fee and must be accompanied by a document which complies with paragraph 25A. Its effect mirrors the effect of an in-time notice with the sole exception that any new pitch fee which is agreed or determined by the FTT following a late review notice will take effect not from the review date but from the 28th day after the date of service of the late review notice (paras 17(7) and 17(8)(c)). There is a slight difference in the figures used to calculate the relevant RPI increase although unless an in-time notice is served long before the review date the difference is likely to be insignificant.

22. In **Charles Simpson Organisation Ltd v Redshaw** (2010) 2514 (CH), Kitchen J advised:
"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."

23. In this case, the Tribunal has had regard to the totality of the evidence available to it.
24. The relevant statute law is set out in the Appendix below.

The Agreed Background

25. The Applicant gave notice of a proposal to increase the pitch fee on 13 August 2018 to £159.58 (from £154.03) in line with a 3.6% increase in RPI. There is no issue taken as to the timeliness of the notice, whether appropriate notice was given or the appropriate rate to apply.

The Park Licence

The Applicant

26. The Applicant raised a number of concerns as to the Applicant's compliance with conditions attached to the site Licence.

The Respondent

27. The Respondent argued that the Respondent was referring to an incorrect Licence and that none of the conditions complained about appeared on the correct Licence.

The Tribunal

28. The Tribunal was provided with two Licences purporting to apply to the site. Both parties said that they had obtained the Licences from Cornwall Council; the

Tribunal finding, as it will explain, that the Applicant's version is the correct Licence and the Respondent's version the incorrect Licence.

29. The Tribunal saw two copies of the correct Licence on notice boards at the entrance to the site and attached to a store cupboard within the site.

30. The Tribunal can only determine an issue on the basis of the evidence before it. The best evidence available was a signed witness statement from Graham Thomas Bailey, Senior Licensing Compliance Officer and Safety Officer with Cornwall Council, of 28 June 2018. Put succinctly, Mr Bailey indicated an error within the Council's database, such that the incorrect Licence had been *"incorrectly produced and placed in the council's data base";* it is that licence that the Respondent incorrectly believed was the right one.

31. Further support for that Licence being incorrect can be seen in the conditions themselves, one of which forbids the placement of a "caravan" less than 2 metres from the road; this condition would be applied from 1 December 2015 when a number of homes were clearly then less than 2 metres from the road.

32. One further issue is that the conditions provided by the Respondent appeared to be a generic list and did not contain the name of this site.

Fire Extinguishers

The Respondent

33. The Respondent was concerned about the removal in 2017 of fire extinguishers from the site. A wall below his home had had a cabinet and 2 associated fire extinguishers and bricks from the wall removed on 31 May 2017, replaced by a notice stuck to the wall with black gaffer tape giving safety instructions, effectively, in the case of fire, to evacuate, sound the alarm and call the fire brigade.

34. The Respondent said that the cabinet and extinguisher had been in a poor state for some time and not been checked or serviced since the Applicant took over the site in January 2015. He said that he had made a number of complaints to the Applicant.

35. In questioning by Mr Sunderland, the Respondent said that he had his own extinguisher and fire blanket.

The Applicant

36. The Applicant said that there was no evidence of complaints being made.

37. The Respondent has his own equipment.

38. Provision of fire-fighting equipment has, since the Regulatory Reform (Fire Safety) Order 2005, been the responsibility of the Fire Service and not a matter for the local authority. There was no requirement to have fire-fighting equipment on the communal parts. There has been a risk assessment. A fire extinguisher is there to allow safe exit from the home; people should get clear and call the fire brigade.

39. There is no requirement under the 1983 Act or site licence requirement for fire-fighting equipment.

The Tribunal

40. The Tribunal notes the legal requirements relative to fire safety. Mr Sunderland is correct to say that the issue is dealt with primarily by the Regulatory Reform (Fire Safety) Order 2005, but that Order places responsibilities upon the Applicant far greater than Mr Sunderland appeared to appreciate.

41. Section 5(2A) Caravan Sites and Control of Development Act 1960 states: *Where the Regulatory Reform (Fire Safety) Order 2005 applies to the land, no condition is to be attached to a site licence in so far as it relates to any matter in relation to which requirements or prohibitions are or could be imposed by or under that Order.*

42. The Applicant, as site owner, is a "responsible person" within the meaning of Article 3 of the Regulatory Reform (Fire Safety) Order 2005 ("the 2005 Order") of premises

defined by Articles 1 and 6 (this excludes domestic premises as defined in Article 2: "*domestic premises" means premises occupied as a private dwelling (including any garden, yard, garage, outhouse, or other appurtenance of such premises which is not used in common by the occupants of more than one such dwelling*;"). As such, it is required to take measures as "general fire precautions" under Article 6, defined in Article 4. It is required to carry out a fire risk assessment (Article 9) and take specific action to minimise the risk of fire in the common parts. Having identified the general fire precautions that are necessary and, having implemented them, the responsible person must put in place a suitable system of maintenance and ensure that equipment is maintained in an efficient state, in effective working order and in good repair (Article 17).

43. Article 4 defines "general fire precautions" as follows:

> 4.—(1) In this Order "general fire precautions" in relation to premises means, subject to paragraph (2)—
>
> (a) measures to reduce the risk of fire on the premises and the risk of the spread of fire on the premises;
>
> (b) measures in relation to the means of escape from the premises;
>
> (c) measures for securing that, at all material times, the means of escape can be safely and effectively used;
>
> (d) measures in relation to the means for fighting fires on the premises;
>
> (e) measures in relation to the means for detecting fire on the premises and giving warning in case of fire on the premises; and
>
> (f) measures in relation to the arrangements for action to be taken in the event of fire on the premises, including—
>
> (i) measures relating to the instruction and training of employees; and
>
> (ii) measures to mitigate the effects of the fire.

44. Under the 2005 Order, the Applicant is required to get rid of or reduce the risk from fire as far as is reasonably possible and provide general fire precautions to deal with any possible risk left.

45. Although Mr Sunderland said that there had been a risk assessment, he showed no greater understanding of the duties required under the 2005 Order. Nor does the Tribunal agree with Mr Sunderland that fire safety is not an issue capable of being an *'other factor'* of *sufficient weight to outweigh the presumption in the context of the statutory scheme as a whole (*see **Vyse v Wyldecrest Parks (Management) Limited** above).

46. That being said, there was before the Tribunal insufficient evidence for the Tribunal to conclude that there was here a real safety issue. Nevertheless, where people's safety is involved, the Tribunal believes it is incumbent upon a site owner who removes fire-fighting equipment to communicate its reasons for doing so to

residents of the site so that they can be assured that the Applicant's duties under the 2005 Order are being properly met.

47. The other relevance of the removal of the cabinet and extinguishers and their replacement with a stuck-on notice is whether this reflects a *deterioration in the condition,* or *a 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).*
48. There was no evidence before the Tribunal such as to show that the condition of the fire-fighting equipment had deteriorated since 26 May 2013, the date the above sub-paragraph came into force. Nor was there evidence as to whether this issue had ever been the subject of regard at an earlier review or whether there was deterioration/decrease following the 2017 review and before the removal. The evidence pointed to a long-standing issue of neglect. The removal of a damaged cabinet and rusty extinguishers can be seen from one perspective to be an amelioration, but set off by removal of bricks and the clumsy affixing of a notice to the wall. Certainly, when the Tribunal saw the wall on inspection, there was nothing in terms of appearance to suggest an issue of concern as to its condition.

Loss of Amenity

The Respondent

49. The Respondent raised concerns about steps down to the roadway beyond his pitch and lighting.
50. The Respondent's pitch is at the bottom end of the site. Beyond the road ending at that point, there is an opening within some bushes/trees leading to a stone set of steps down towards the main road and the town of Bodmin beyond. At the top of the steps is a light.
51. There are complaints about the steps. They are in a poor state of repair and they are deteriorating. There are leaves and vegetation on the steps. The steps had deteriorated over the years since he moved in in 2000; they were pointed out to the previous site owner and the Applicant. Chunks have been missing for 18 months to 2 years. The light does not work.
52. There is no maintenance on site. The second site light atop a pole adjacent to a wooden store cupboard on the one-way road system has not worked since half way through 2015 following a dispute about misuse of electricity.
53. The only lighting is provided by residents themselves, mostly PIR lighting.

The Applicant

54. The Applicant contended that there was no evidence that the lights were not working. They had been checked 2 weeks ago by the maintenance team and found to be working.
55. The Respondent himself had provided a witness statement saying that the light at the steps had not worked for several years, but had been fixed on 9 May 2018 (the Respondent accepted that he had made this statement).
56. There was no requirement for lights under the site licence. Surrounding roads did not have lights. Most homes have exterior lighting.
57. There was no requirement for lighting under the 1983 Act.
58. There was no evidence of deterioration.

The Tribunal

59. The Tribunal notes the Respondent's assertion that there are no visits by the maintenance team, but this was conflicted by the 3 examples he gave of when the maintenance team had been in attendance.

60. The steps had been referred to in pre-hearing documentation and the lack of lighting there. The condition of them was a development at the hearing.
61. The Tribunal looked at the steps at the inspection in the context of the lighting issue. With water pouring down the steps from the roads of the site and the presence on the steps of leaves, the Tribunal did not venture down the steps.
62. There was a steep decline, so that the steps too were steep. There was evidence of leaves and other detritus on the steps in this wooded area, but the time is autumn end and the weather was foul.
63. The Tribunal did not see, but would expect and accept that there would be some deterioration of concrete steps over time. There would be a need for maintenance and safety in terms of obstruction/slip removals, particularly when considering fire escape.
64. There was, however, no evidence such as allow the Tribunal to conclude that the condition of the steps had deteriorated significantly since 26 May 2013, the date the relevant sub-paragraph came into force. Nor was there evidence as to whether this issue had ever been the subject of regard at an earlier review or whether there was deterioration following the 2017 review. The evidence pointed to a long-standing issue of concern. The Respondent's suggestion of a handrail appeared to the Tribunal to be eminently sensible, but one which would come at a cost to the residents and would require discussions with the Applicant. The Applicant will also need to reflect upon any liability for slip injuries if it can be shown that a lack of maintenance is a contributory factor.
65. So far as the light above the steps is concerned, the inspection was in daylight and the light was not then operative. This has clearly been a long-standing issue.
66. The evidence of Mr Sunderland at the inspection was not comforting. He told the Tribunal first that the area beyond the tree line beyond the Respondent's home was not part of the site (he did not repeat this at the hearing), but it was clear to the Tribunal that the site did extend beyond the tree line. Part of the Respondent's pitch went beyond the tree line and the light maintained by the Applicant was also beyond that line. There was no site plan available.
67. Mr Sunderland told the Tribunal at the inspection that the light was powered by sunlight, but it was obvious to the Tribunal that the lamp was wired.
68. The Tribunal also saw the second light atop the pole toward the top end of the site. Again, the inspection was in daylight and the light was not then operative. This light has clearly too been a long-standing issue.
69. Even on the evidence of the Respondent, at some time each of the lights had been operative.
70. Mr Sunderland provided the Tribunal with a signed witness statement from Graham Thomas Bailey, Senior Licensing Compliance Officer and Safety Officer with Cornwall Council, of 28 June 2018. In that statement, Mr Bailey detailed a visit to the site at approximately 0630 on 7 February 2018 and could find no street lighting at that time. He does not say, however, whether he went beyond the tree line or close to the position where the light is atop the pole at the top end of the site.
71. The evidence, therefore, for the 2 lights was, as detailed, very mixed. There was no satisfactory evidence such as to allow the Tribunal to conclude that the condition of the lights had deteriorated significantly since 26 May 2013, the date the relevant sub-paragraph came into force. Nor was there evidence as to whether this issue had ever been the subject of regard at an earlier review or whether there was deterioration/decrease following the 2017 review. The evidence pointed to a long-standing issue of concern.

Overhanging Trees

The Respondent

72. The Respondent raised concern about an overhanging tree to a corner pitch at the top end of the site. Also, he said, there was a need for maintenance because of the presence of overhead cables.

73. In the past, he had had cutting down performed to a tree overhanging his pitch by the council when the then owner neglected to take action. He had had trees near his property trimmed in 2017.

The Applicant

74. The Applicant said that there was no evidence of a worsening of the situation in the period in question.

75. So far as the corner pitch was concerned, there had been no complaint by the resident there and he had paid his pitch fee. The Applicant's responsibility related to the communal part.

The Tribunal

76. The Tribunal could not see an obvious issue with the corner plot tree. There was some evidence of some trees overhanging one of the roads in the park, but no obvious resultant problems associated with it.

77. There was no evidence of deterioration.

78. The Tribunal saw no evidence of danger caused by proximity to wiring.

Conclusion

79. **The Tribunal** has considered the competing arguments of the parties against the factual matrix it has found and detailed above in paragraphs 26 to 78.

80. For the purposes of the 1983 Act, the issue is not the actual condition of the park, nor indeed the actual amenity of the park. While the Tribunal might accept that the park has not always been maintained to a standard which the Respondent might reasonably expect, it has to consider whether there has been any deterioration/decrease in the condition or amenity of the park in the relevant period and, if it did so find, whether it would thereby be unreasonable for the pitch fees to be increased on the basis of the agreed increase in the retail prices index.

81. The Tribunal does not find though that any deterioration/decrease associated with the relevant period has been shown measurably to have deteriorated/decreased the condition or amenity of the park.

82. Accordingly the Tribunal does not find there has been a deterioration in the condition or decrease of the amenity of the park or, if it is wrong about that, any minimal decrease is such that it is nevertheless not unreasonable for the pitch fees to be increased on the basis of the agreed increase in the retail prices index. The Tribunal, therefore, orders that increase, effective from 13 August 2018.

83. Regarding the fire extinguisher issue, there was before the Tribunal insufficient evidence for the Tribunal to conclude that there was a real safety issue, which could constitute a factor of *sufficient weight to outweigh the presumption in the context of the statutory scheme (*the 1983 Act*) as a whole*.

84. 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 in favour of the Applicant for reasons which it has detailed above.

Costs

85. The Tribunal heard from Mr Sunderland that he intended to make an application for costs, but he would detail this when he had seen this Decision.

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.

APPENDIX

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.

[(2A) [A] notice under sub-paragraph (2) which proposes an increase in the pitch fee is of no effect unless it is accompanied by a document which complies with paragraph 25A.]

(3) If the occupier agrees to the proposed new pitch fee, it shall be payable as from the review date.

(4) If the occupier does not agree to the proposed new pitch fee--

(a) the owner [*or (in the case of a protected site in England)* the occupier] may apply to the [appropriate judicial body] for an order under paragraph 16(b) determining the amount of the new pitch fee;

(b) the occupier shall continue to pay the current pitch fee to the owner until such time as the new pitch fee is agreed by the occupier or an order determining the amount of the new pitch fee is made by the [appropriate judicial body] under paragraph 16(b); and

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

(5) An application under sub-paragraph (4)(a) may be made at any time after the end of the period of 28 days beginning with the review date [but*, in the case of an application in relation to a protected site in England,* no later than three months after the review date].

(6) Sub-paragraphs (7) to (10) apply if the owner--

(a) has not served the notice required by sub-paragraph (2) by the time by which it was required to be served, but

(b) at any time thereafter serves on the occupier a written notice setting out his proposals in respect of a new pitch fee.

[(6A) *In the case of a protected site in England, a* [A] notice under sub-paragraph (6)(b) which proposes an increase in the pitch fee is of no effect unless it is accompanied by a document which complies with paragraph 25A.]

(7) If (at any time) the occupier agrees to the proposed pitch fee, it shall be payable as from the 28th day after the date on which the owner serves the notice under sub-paragraph (6)(b).

(8) If the occupier has not agreed to the proposed pitch fee--

(a) the owner [or *(in the case of a protected site in England)* the occupier] may apply to the [appropriate judicial body] for an order under paragraph 16(b) determining the amount of the new pitch fee;

(b) the occupier shall continue to pay the current pitch fee to the owner until such time as the new pitch fee is agreed by the occupier or an order determining the amount of the new pitch fee is made by the [appropriate judicial body] under paragraph 16(b); and

(c) if the [appropriate judicial body] makes such an order, the new pitch fee shall be payable as from the 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].

[(9A) A tribunal may permit an application under sub-paragraph (4)(a) or (8)(a) *in relation to a protected site in England* to be made to it outside the time limit specified in sub-paragraph (5) (in the case of an application under sub-paragraph (4)(a)) or in sub-paragraph (9) (in the case of an application under sub-paragraph (8)(a)) if it is satisfied that, in all the circumstances, there are good reasons for the failure to apply within the applicable time limit and for any delay since then in applying for permission to make the application out of time.]

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

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

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

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

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

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

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

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

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

18

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

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

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

(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);]

[(ba) *in the case of a protected site in England,* any direct effect on the costs payable by the owner in relation to the maintenance or management of the site of an enactment which has come into force since the last review date; and]

[(1A) But*, in the case of a pitch in England,* no regard shall be had, when determining the amount of the new pitch fee, to any costs incurred by the owner since the last review date for the purpose of compliance with the amendments made to this Act by the Mobile Homes Act 2013.]

(2) When calculating what constitutes a majority of the occupiers for the purposes of sub-paragraph (1)(b)(iii) each mobile home is to be taken to have only one occupier and, in the event of there being more than one occupier of a mobile home, its occupier is to be taken to be the occupier whose name first appears on the agreement.

(3) In a case where the pitch fee has not been previously reviewed, references in this paragraph to the last review date are to be read as references to the date when the agreement commenced.

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[(1)] When determining the amount of the new pitch fee, any costs incurred by the owner in connection with expanding the protected site shall not be taken into account.

[(2) *In the case of a protected site in England,* when determining the amount of the new pitch fee, no regard may be had to any costs incurred by the owner in relation to the conduct of proceedings under this Act or the agreement.]

[(3) *In the case of a protected site in England, when* [When] determining the amount of the new pitch fee, no regard may be had to any fee required to be paid by the owner by virtue of--

(a) section 8(1B) of the Caravan Sites and Control of Development Act 1960 (fee for application for site licence conditions to be altered);

(b) section 10(1A) of that Act (fee for application for consent to transfer site licence).]

[(4) *In the case of a protected site in England, when* [When] determining the amount of the new pitch fee, no regard may be had to any costs incurred by the owner in connection with--

(a) any action taken by a local authority under sections 9A to 9I of the Caravan Sites and Control of Development Act 1960 (breach of licence condition, emergency action etc);

(b) the owner being convicted of an offence under section 9B of that Act (failure to comply with compliance notice).]

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[(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.

(A2) In sub-paragraph (A1), "the latest index"--

(a) in a case where the owner serves a notice under paragraph 17(2), means the last index published before the day on which that notice is served;

(b) in a case where the owner serves a notice under paragraph 17(6), means the last index published before the day by which the owner was required to serve a notice under paragraph 17(2).]

(2) *Paragraph 18(3) above applies for the purposes of this paragraph as it applies for the purposes of paragraph 18.*

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;