FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	BIR/41UF/PHI/2021/0001
HMCTS	:	P:PAPERREMOTE
Property	:	102 Hinksford Mobile Home Park, Kingswinford, West Midlands, DY6 0BB
Applicant	:	Mr M Southall (Occupier)
Respondent	:	South Staffordshire Council (Site Owner)
Type of Application	:	Pitch Fee Review
Tribunal Members	:	Judge David R. Salter (Chairman) S Hopkins FRICS (Surveyor)
Date of Hearing	**:**	None. Decision determined on written submissions.
Date of Decision	**:**	**17 January 2022**

DECISION

Background

1 By an application received by the First-tier Tribunal (Property Chamber) (Residential Property) on 4 June 2021, the Applicant applied for a determination by the Tribunal under the Mobile Homes Act 1983 (as amended) ("the Act") of a new level of the pitch fee in relation to 102 Hinksford Mobile Home Park, Kingswinford, West Midlands DY6 0BB in view of his challenge to the proposed increase in the pitch fee with effect from 5 April 2021 of which he had been notified by the Respondent.

2 The Applicant is the occupier of the mobile home which is situated on the pitch known as 102 Hinksford Mobile Home Park, Kingswinford, West Midlands DY6 0BB ("*102 Hinksford*") under the terms of an agreement made between the Applicant and his wife (Mrs Jeanette Marie Southall) and the Respondent which commenced on 24 May 1999 ("the Agreement").

3 The Respondent is the current site owner of Hinksford Mobile Home Park, Kingswinford, West Midlands DY6 0BB ("the Site"). This is a residential mobile home park. It is a protected site within the meaning of the Act.

4 Directions were issued by the Regional Judge on 9 June 2021. The Directions were concerned, principally, with matters pertaining to the preparation and submission of the parties' respective Statements of Case and related documents. Further, the Directions stated that the Tribunal would not carry out an inspection and that it would rely on any plans and photographs served by the parties with their respective Statements of Case.

5 In addition, the Directions recorded that the Applicant had signified that he was content with a paper determination with which the Tribunal agreed. Nevertheless, the Directions afforded the Respondent the opportunity to request an oral hearing on lodging its Statement of Case.

6 In due course, the Respondent submitted a Statement of Case, together with supporting documents, dated 30 June 2021, indicating that it was content with a paper determination, whilst the Applicant's Statement of Case, together with supporting documents, was received by the Tribunal on 7 July 2021.

7 Thereafter and following initial deliberations, the Tribunal wrote to the Respondent on 26 August 2021 requesting that, on or before 10 September 2021, copies of the Agreement between the Applicant and the Respondent and of the pitch fee review notices for 2020 and 2021 served in respect of *102 Hinksford* together with clarification of various matters that arose from the Respondent's Statement of Case should be sent to the Tribunal and copied to the Applicant. The Respondent replied to the Tribunal on 18 September 2021 and provided copies of the Agreement between the Applicant and the Respondent together with copies of the pitch fee review notices for 2020 and 2021. The Respondent indicated that its reply and the copy documents had been sent to the Applicant.

Apropos the Tribunal's letter to the Respondent, Mr Southall wrote a letter to the Tribunal that was received on 9 September 2021 ("the 9 September letter"). In this letter he referred, *inter alia*, to flooding on the Site in February 2020, and, in relation thereto, provided the Tribunal with a copy of an undated letter from the Respondent concerning the impact of the flooding on the pitch fee review for 2020 and other consequences of the flooding.

8 Following further deliberations, the Tribunal issued Directions No. 2 on 13 October 2021. In those Directions, the Tribunal directed the parties, on or before 29 October 2021, to provide written representations to the Tribunal (with a copy to the other party) relating to the question of whether the above-mentioned pitch fee review notices and accompanying prescribed forms satisfy the requirements pertaining to the review of pitch fees in Schedule 1 Part I Chapter 2 of the Act and The Mobile (Pitch Fees) (Prescribed Form) (England) Regulations 2013 SI 2013/1505 ("the 2013 Regulations"). In response to those Directions, the Respondent submitted written representations to the Tribunal dated 29 October 2021 with a copy to the Applicant.

9 In light of the above, the Tribunal reaches its decision on the written submissions of the parties, without an inspection of *102 Hinksford* and the surrounding environs of the Site, and through the medium of a virtual platform.

Relevant Law

10 The relevant law is contained within Schedule 1 Part I Chapter 2 of the Act ("the Schedule") and the 2013 Regulations.

11 Paragraph 17(1) of the Schedule provides that the pitch fee shall be reviewed as at the review date and in this regard paragraph 17(2) states that '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'. Paragraphs 17(2A) and (6A) specify that this notice is of no effect unless it is accompanied by a document that complies with paragraph 25A.

12 Paragraph 25A requires this document to be in the form prescribed by the Secretary of State in regulations. Presently, this is the 2013 Regulations. In the 2013 Regulations, it is stated in paragraph 2 that the document 'shall be in the form prescribed in the Schedule to these Regulations or in a form substantially to like effect.' Further, paragraph 25A provides that, substantively, the document must specify any percentage increase or decrease in the retail prices index calculated in accordance with paragraph 20(A1) (see below, paragraph 13), explain the effect of paragraph 17, specify the matters to which the amount proposed for the new pitch fee is attributable, and refer to various owner's and occupier's obligations.

13 Paragraph 20(A1) states that there is a presumption that the pitch fee shall increase or decrease by a percentage which is no more than the percentage change in the RPI since the last review date, unless this would be unreasonable having regard to paragraph 18(1).

14 Paragraph 18 sets out factors to which 'particular regard' must be had when determining the amount of the new pitch fee. Paragraph 18(1)(aa) refers to '… 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)'. This paragraph came into force on 26 May 2013.

15 Account may also be taken of improvements carried out since the date of the last review (paragraph 18(1)(a)) and also under paragraph 18(1)(ab) of '… 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 for the purposes of this sub-paragraph)'. Similarly, paragraph 18(1)(ab) came into force on 26 May 2013.

16 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) refer to it being possible to take into account other factors which are 'weighty factors'.

17 Generally, it would appear that for the RPI presumption to be displaced under the provisions of paragraph 18, the other considerations must be of considerable weight, because as Her Honour Judge Robinson opined in *Vyse* [50], 'If it were a consideration of equal weight to RPI, then applying the presumption, the scales would tip the balance in favour of RPI'.

Submissions

The Applicant

18 In the application, the Applicant challenged the proposed increase in the pitch fee for *102 Hinksford* stated to take effect from 5 April 2021 of which he had been notified in a letter from the Respondent dated 3 March 2021. The Applicant adduced this letter in evidence.

19 The Applicant contended in his Statement of Case that this proposed increase constituted a 3.2% increase in the pitch fee, whilst the actual RPI increase for the year was only 1.4%. The Applicant intimated that he had contacted the Respondent about this on several occasions, and that, ultimately, he was informed by the Respondent that the increase of which he had been notified included the increase in the pitch fee for 2020 which had not been implemented because of the flooding that had taken place on the Site in February 2020.

20 Further, the Applicant informed the Tribunal that he had sought advice from the Leasehold Advisory Service (LEASE) about what he described as the inclusion of last year's pitch fee in this year's pitch fee. This request for advice was made in an e-mail that was adduced in evidence and sent by the Applicant to LEASE on 21 May 2021 and in which his inquiry was couched in the following terms:

'...the council increased this year's pitch fee by 3.2%. I have disputed this as it should be 1.4%. There [sic] reply is that there was no increase last year due to parts of the site flooding so this year they have added last year's increase to this year's. Are they allowed to do this.'

Such advice was forthcoming in an e-mail dated 30 May 2021 which was addressed to the Applicant by Richard Hand, a Senior Leasehold Adviser. The Applicant presented this e-mail in evidence. The advice given is as follows:

'The annual pitch fee review can be carried out late, but the new pitch fee only has effect 28 days after service of the pitch fee review notice if it has not been challenged.

If the site owner misses the review date completely he cannot add the previous years increase in RPI to the pitch fee. The resident does not have to accept a disputed pitch fee and can continue to pay the old fee until it has been determined by a tribunal application. Thus to impose the higher fee the Local Authority would have to apply to the FTT and have a determination that the presumption that it should only increase by this year's RPI be set aside.'

21 As to the impact of the flooding in February 2020 on the pitch fee review for 2020, the Applicant relied on his reference in the 9 September letter to the undated letter sent by the Respondent and signed by Andrew France, Commercial Services Officer, to residents on the Site following this flooding. The part of the letter that deals with this matter states:

'As you are aware the annual review of your ground rent equivalent to the increase in the Retail Price Index is due on 1 April 2020. Following discussions with the Chief Executive and the Leader of the Council in view of the flooding to the site the Council have decided that for this year only the rent review will not be implemented, and your ground rent will remain the same.'

In light of this, the Applicant opined that it is clear that 'the pitch fee will not be implemented for 2020 with no mention of any deferral…'

22 The Applicant also submitted that the Respondent had neither complied with the proper procedures nor used the proper documents, as was evident from the letter dated 3 March 2021, in relation to the 2020 and 2021 pitch fee reviews. There had been no consultation.

23 In addition, the Applicant drew the Tribunal's attention to the outcomes of the pitch fee reviews undertaken in respect of *102 Hinksford* between 2016 and 2020.

The Respondent

24 Within the context of the documents provided to the Tribunal and in furtherance of Directions No. 2, the Respondent's substantive submissions concerned, principally, the validity of the pitch fee review notices and the related prescribed forms for 2020 and 2021. In this respect, the Respondent submitted, initially, that the pitch fee review notices issued in the years 2020 and 2021 and the accompanying prescribed forms satisfy the requirements of the Schedule and the 2013 Regulations. The Respondent cited the following reasons in support of that position:

'Paragraph 17 of the Act requires that the pitch fee shall be reviewed annually. This review is in accordance with the Respondent Finance Team's systems. For the 2021 review, at least 28 days prior to the review date the Respondent served on the occupiers written notice by letter dated 3rd March 2021 setting out is proposals to increase the pitch fee in accordance with RPI. This notice states that the increase is not due to take effect until 5th April 2021 which date is more than 28 days later. For the 2020 review, at least 28 days prior to the review date the Respondent served on the occupiers written notice by letter dated 11th February 2021 [*sic 2020*] setting out is proposals to increase the pitch fee in accordance with RPI. This notice states that the increase is not due to take effect until 1st April 2020 which date is more than 28 days later.

The Act further requires that the written notice is accompanied by a document which complies with paragraph 25A of the Act which requires the document to be:

- In such form as the Secretary of State may by regulations prescribe,
- specify any percentage increase or decrease in the retail prices index calculated in accordance with paragraph 20(A1),
- explain the effect of paragraph 17 (essentially – occupier doesn't have to comply and routes available),
- specify the matters to which the amount proposed for the new pitch fee is attributable,
- refer to the occupier's obligations in paragraph 21(c) to 21(e) and the owner's obligations in paragraph 22(c) and (f) (as glossed by paragraphs 24 and 25).

The document that accompanied the above referred notice letter to the occupiers complies with paragraphs 25A and is in a form prescribed by or *in a form substantially to the like effect* as required by regulation 2 of the Mobile Homes (Pitch Fees) (Prescribed Forms (England) Regulations 2013.'

25 The Respondent presented the letter dated 3 March 2021 in evidence the material part of which for the purposes of this application states:

'Dear Resident,

Subject: Pitch Fee Increase

I am writing to advise you that effective from 5 April 2021 your pitch fee will be increased as follows:

Pitch Fee £30.36. This is an increase of 95p per week….'

It is signed by the above-named Andrew France.

26 With regard to the contents of the letter dated 11 February 2020, the Respondent explained to the Tribunal that these are reproduced in two letters, adduced in evidence, dated 30 June 2021 and 20 September 2021 respectively which represent successive automatic updates of that original letter by its computer. The material part of that original letter is as follows:

'**Subject: Pitch Fee Increase**

Further to the information sent to you recently I am writing to advise you that effective from 1 April 2020 your pitch fee will be increased as follows.

Pitch Fee **£30.05.**
This is an increase of 64p per week.

The above payments are for the 52 week term 1st April 2020 – 31st March 2021…'

It is signed by the above-named Andrew France.

27 The Respondent added that the proposed increase in both 2020 and 2021 is for an RPI increase and, therefore, paragraph 20 takes effect. This paragraph provides that 'unless unreasonable' 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. In this circumstance, the Respondent opined that an increase need not be agreed or, in the absence of agreement, adjudicated upon by the Tribunal.

28 As to the impact of the flooding in February 2020, the Respondent explained to the Tribunal that as a result of that flooding a political decision had been taken by the Council to defer the annual increase for 2020. This was intended as a 'one off without prejudice gesture of goodwill towards the tenants at the Park to assist with clean up works'. The Respondent presented in evidence a letter dated 16 March 2020 sent by the Council to the Applicant which purported to relay this decision and its effect on the pitch fee for 2020. The material part of that letter states:

'Dear Resident,

Subject: HINKSFORD MOBILE HOME PARK – PITCH FEE

I refer to the letter regarding flooding that took place on Sunday 16th February 2020 and the decision taken by the Chief Executive and the Leader of the Council in view of the flooding that the Council will for this year only defer/not implement the rent review and your ground rent will remain the same.

Pitch Fee **£29.41.** This is an increase of 0p per week…

The above payments are for the 52 week term 6th April 2020 to 29th March 2021…'

Again, this letter is signed by the above-named Andrew France.

Decision

29 The Tribunal reaches its decision on the basis of the written evidence submitted by the parties over a fairly protracted period.

30 The critical issue is whether it is possible for a pitch fee increase for one year to be deferred, for whatever reason, and then carried forward with the result that it becomes payable in the following year together with the pitch fee increase for that year. In this instance, the Respondent calculated a pitch fee increase for 2020 (0.64p per week) and purported to defer and carry this forward to 2021, albeit for an understandable reason (the occurrence of the flooding in February 2020), with the consequence that when combined with the pitch fee increase calculated by the Respondent for 2021 (0.31p per week) a liability of 0.95p per week arose for the occupiers of mobile homes on the Site. In essence, it is this outcome to which the Applicant objects.

31 The Applicant also questioned whether, regardless of the legitimacy or otherwise of the above step taken by the Respondent, the Respondent had precluded the possibility of any such deferral and carry forward by stating in the undated letter, which he adduced in evidence, that 'in view of the flooding to the site the Council have decided that for this year [*2020*] only the rent review will not be implemented, and your ground rent will remain the same.'; a position countered by the Respondent through reliance upon its letter dated 16 March 2020 in which it was stated that because of the flooding 'the Council will for this year [*2020*] only defer/not implement the rent review and your ground rent will remain the same.' Clearly, much depends on the interpretation of the words used by the Respondent in each of these letters. In this respect, there is undoubtedly a degree of ambiguity – did the Respondent intend to forego the pitch fee increase for 2020 as mooted by the Applicant in which case there was no justification for the Respondent seeking to add it to the pitch fee increase for 2021 or did the Respondent simply signify that the collection of that increase was to be deferred or postponed (on the assumption that this was a legitimate course of action)? As the contrary positions taken by the parties show, it is possible to adopt either of these interpretations. However, the Tribunal finds that if the respective statements of the Respondents are taken in the context of the desire on the part of the Respondent to provide a degree of relief from the immediate consequences of the flooding in February 2020 it is likely, on the balance of probabilities, that the Respondent, notwithstanding its recording of a 0.00p pitch fee increase for 2020 in its letter of 16 Match 2020, intended to defer the collection of the pitch fee increase for 2020 rather than to forego it.

32 This conclusion necessitates consideration of the critical issue, namely and in short, the legitimacy or otherwise of the purported carry forward by the Respondent of the pitch fee increase for 2020 to 2021; a matter that was not addressed by the Respondent in its representations.

33 The Act envisages annual reviews of pitch fees with reference to a specific review date which in this instance is 1 April. As the parties acknowledge any such review is conducted in accordance with paragraph 20 of the 2013 Regulations which provides, broadly and without more, that the pitch fee will increase or decrease in accordance with the percentage change in the RPI since the last review date (subject to the 'unreasonable' proviso). The outcome of such a review leads to a corresponding change to the schedule

of payments for occupiers in the given year. As far as the Tribunal is aware, there is no evidence in this case to suggest that in the relevant years it would have been unreasonable within the meaning of paragraph 18 to conduct each of the pitch fee reviews other than in this way and, indeed, the pitch fee reviews conducted by the Respondent in 2020 and 2021 were undertaken with reference to this retail price index matrix. It is possible for a late review to be undertaken, but this must be done before the next annual review is due and its result related back to the review date.

These features encapsulate the notion that reviews of pitch fees are predicated on successive annual reviews calculated in accordance with paragraph 20 and, where appropriate, taking into account any of the factors referred to in paragraph 18. Regardless of the manner within these confines the review is undertaken, there is transparency for occupiers as to the basis upon which each annual adjustment (if any) to a pitch fee is calculated and a degree of certainty that enables occupiers to plan for a defined and expected liability in a given year.

In this instance, the Respondent purported to carry out annual reviews for 2020 and 2021 of which the Applicant appears to deny that he was aware, but deferred the increase in the pitch fee for 2020 for the reason stated and sought to carry it forward to 2021 with the result that the Applicant became liable according to the Respondent in its letter of 3 March 2021 to pay from 5 April 2021 the amalgamated increase of 0.95p per week (0.64p + 0.31p). The Respondent did not cite in its representations any authority to support this stance, which appears to run counter to the focus on annual reviews in the Act, or engage with the Applicant's objection to it.

34 Against this backdrop, the Tribunal finds nothing in the Act or the 2013 Regulations that acknowledges the prospect of a deferral or a carry forward in the manner undertaken by the Respondent. Indeed, as intimated, the focus in the Act is on *annual* reviews in respect of which it is expected that any change is implemented or foregone in the given year to which it relates. As the increase in the pitch fee for 2020 was not implemented in that year, it is effectively foregone and cannot be added to any increase in the pitch fee or used to counter any decrease in the pitch fee for the subsequent year. It follows that the notification in the letter of 3 March 2021 by the Respondent to the Applicant of an increase in the pitch fee of 0.95p per week from 5 April 2021 is without foundation, and that the Respondent may only collect from 1 April 2021 (the review date) the increase in the pitch fee for that year i.e. 0.31p per week. The Tribunal so finds.

Judge David R. Salter

Date: 17 January 2022

Appeal Provisions

35 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 appeal must be received within 28 days after these written reasons have been sent to the parties (Rule 52 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

36 If the party wishing to appeal does not comply with the 28-day time limit, the party 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.

37 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.

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

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Property	:	102 Hinksford Mobile Home Park, Kingswinford, West Midlands, DY6 0BB
Applicant	:	Mr M Southall (Occupier)
Respondent	:	South Staffordshire Council (Site Owner)
Type of Application	:	Pitch Fee Review
Tribunal Members	:	Judge David R. Salter (Chairman) S Hopkins FRICS (Surveyor)
Date of Hearing	**:**	None. Decision determined on written submissions.
Date of Decision	**:**	**17 January 2022**

DECISION

Background

1 By an application received by the First-tier Tribunal (Property Chamber) (Residential Property) on 4 June 2021, the Applicant applied for a determination by the Tribunal under the Mobile Homes Act 1983 (as amended) ("the Act") of a new level of the pitch fee in relation to 102 Hinksford Mobile Home Park, Kingswinford, West Midlands DY6 0BB in view of his challenge to the proposed increase in the pitch fee with effect from 5 April 2021 of which he had been notified by the Respondent.

2 The Applicant is the occupier of the mobile home which is situated on the pitch known as 102 Hinksford Mobile Home Park, Kingswinford, West Midlands DY6 0BB ("*102 Hinksford*") under the terms of an agreement made between the Applicant and his wife (Mrs Jeanette Marie Southall) and the Respondent which commenced on 24 May 1999 ("the Agreement").

3 The Respondent is the current site owner of Hinksford Mobile Home Park, Kingswinford, West Midlands DY6 0BB ("the Site"). This is a residential mobile home park. It is a protected site within the meaning of the Act.

4 Directions were issued by the Regional Judge on 9 June 2021. The Directions were concerned, principally, with matters pertaining to the preparation and submission of the parties' respective Statements of Case and related documents. Further, the Directions stated that the Tribunal would not carry out an inspection and that it would rely on any plans and photographs served by the parties with their respective Statements of Case.

5 In addition, the Directions recorded that the Applicant had signified that he was content with a paper determination with which the Tribunal agreed. Nevertheless, the Directions afforded the Respondent the opportunity to request an oral hearing on lodging its Statement of Case.

6 In due course, the Respondent submitted a Statement of Case, together with supporting documents, dated 30 June 2021, indicating that it was content with a paper determination, whilst the Applicant's Statement of Case, together with supporting documents, was received by the Tribunal on 7 July 2021.

7 Thereafter and following initial deliberations, the Tribunal wrote to the Respondent on 26 August 2021 requesting that, on or before 10 September 2021, copies of the Agreement between the Applicant and the Respondent and of the pitch fee review notices for 2020 and 2021 served in respect of *102 Hinksford* together with clarification of various matters that arose from the Respondent's Statement of Case should be sent to the Tribunal and copied to the Applicant. The Respondent replied to the Tribunal on 18 September 2021 and provided copies of the Agreement between the Applicant and the Respondent together with copies of the pitch fee review notices for 2020 and 2021. The Respondent indicated that its reply and the copy documents had been sent to the Applicant.

Apropos the Tribunal's letter to the Respondent, Mr Southall wrote a letter to the Tribunal that was received on 9 September 2021 ("the 9 September letter"). In this letter he referred, *inter alia*, to flooding on the Site in February 2020, and, in relation thereto, provided the Tribunal with a copy of an undated letter from the Respondent concerning the impact of the flooding on the pitch fee review for 2020 and other consequences of the flooding.

8 Following further deliberations, the Tribunal issued Directions No. 2 on 13 October 2021. In those Directions, the Tribunal directed the parties, on or before 29 October 2021, to provide written representations to the Tribunal (with a copy to the other party) relating to the question of whether the above-mentioned pitch fee review notices and accompanying prescribed forms satisfy the requirements pertaining to the review of pitch fees in Schedule 1 Part I Chapter 2 of the Act and The Mobile (Pitch Fees) (Prescribed Form) (England) Regulations 2013 SI 2013/1505 ("the 2013 Regulations"). In response to those Directions, the Respondent submitted written representations to the Tribunal dated 29 October 2021 with a copy to the Applicant.

9 In light of the above, the Tribunal reaches its decision on the written submissions of the parties, without an inspection of *102 Hinksford* and the surrounding environs of the Site, and through the medium of a virtual platform.

Relevant Law

10 The relevant law is contained within Schedule 1 Part I Chapter 2 of the Act ("the Schedule") and the 2013 Regulations.

11 Paragraph 17(1) of the Schedule provides that the pitch fee shall be reviewed as at the review date and in this regard paragraph 17(2) states that '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'. Paragraphs 17(2A) and (6A) specify that this notice is of no effect unless it is accompanied by a document that complies with paragraph 25A.

12 Paragraph 25A requires this document to be in the form prescribed by the Secretary of State in regulations. Presently, this is the 2013 Regulations. In the 2013 Regulations, it is stated in paragraph 2 that the document 'shall be in the form prescribed in the Schedule to these Regulations or in a form substantially to like effect.' Further, paragraph 25A provides that, substantively, the document must specify any percentage increase or decrease in the retail prices index calculated in accordance with paragraph 20(A1) (see below, paragraph 13), explain the effect of paragraph 17, specify the matters to which the amount proposed for the new pitch fee is attributable, and refer to various owner's and occupier's obligations.

13 Paragraph 20(A1) states that there is a presumption that the pitch fee shall increase or decrease by a percentage which is no more than the percentage change in the RPI since the last review date, unless this would be unreasonable having regard to paragraph 18(1).

14 Paragraph 18 sets out factors to which 'particular regard' must be had when determining the amount of the new pitch fee. Paragraph 18(1)(aa) refers to '… 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)'. This paragraph came into force on 26 May 2013.

15 Account may also be taken of improvements carried out since the date of the last review (paragraph 18(1)(a)) and also under paragraph 18(1)(ab) of '… 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 for the purposes of this sub-paragraph)'. Similarly, paragraph 18(1)(ab) came into force on 26 May 2013.

16 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) refer to it being possible to take into account other factors which are 'weighty factors'.

17 Generally, it would appear that for the RPI presumption to be displaced under the provisions of paragraph 18, the other considerations must be of considerable weight, because as Her Honour Judge Robinson opined in *Vyse* [50], 'If it were a consideration of equal weight to RPI, then applying the presumption, the scales would tip the balance in favour of RPI'.

Submissions

The Applicant

18 In the application, the Applicant challenged the proposed increase in the pitch fee for *102 Hinksford* stated to take effect from 5 April 2021 of which he had been notified in a letter from the Respondent dated 3 March 2021. The Applicant adduced this letter in evidence.

19 The Applicant contended in his Statement of Case that this proposed increase constituted a 3.2% increase in the pitch fee, whilst the actual RPI increase for the year was only 1.4%. The Applicant intimated that he had contacted the Respondent about this on several occasions, and that, ultimately, he was informed by the Respondent that the increase of which he had been notified included the increase in the pitch fee for 2020 which had not been implemented because of the flooding that had taken place on the Site in February 2020.

20 Further, the Applicant informed the Tribunal that he had sought advice from the Leasehold Advisory Service (LEASE) about what he described as the inclusion of last year's pitch fee in this year's pitch fee. This request for advice was made in an e-mail that was adduced in evidence and sent by the Applicant to LEASE on 21 May 2021 and in which his inquiry was couched in the following terms:

'...the council increased this year's pitch fee by 3.2%. I have disputed this as it should be 1.4%. There [sic] reply is that there was no increase last year due to parts of the site flooding so this year they have added last year's increase to this year's. Are they allowed to do this.'

Such advice was forthcoming in an e-mail dated 30 May 2021 which was addressed to the Applicant by Richard Hand, a Senior Leasehold Adviser. The Applicant presented this e-mail in evidence. The advice given is as follows:

'The annual pitch fee review can be carried out late, but the new pitch fee only has effect 28 days after service of the pitch fee review notice if it has not been challenged.

If the site owner misses the review date completely he cannot add the previous years increase in RPI to the pitch fee. The resident does not have to accept a disputed pitch fee and can continue to pay the old fee until it has been determined by a tribunal application. Thus to impose the higher fee the Local Authority would have to apply to the FTT and have a determination that the presumption that it should only increase by this year's RPI be set aside.'

21 As to the impact of the flooding in February 2020 on the pitch fee review for 2020, the Applicant relied on his reference in the 9 September letter to the undated letter sent by the Respondent and signed by Andrew France, Commercial Services Officer, to residents on the Site following this flooding. The part of the letter that deals with this matter states:

'As you are aware the annual review of your ground rent equivalent to the increase in the Retail Price Index is due on 1 April 2020. Following discussions with the Chief Executive and the Leader of the Council in view of the flooding to the site the Council have decided that for this year only the rent review will not be implemented, and your ground rent will remain the same.'

In light of this, the Applicant opined that it is clear that 'the pitch fee will not be implemented for 2020 with no mention of any deferral…'

22 The Applicant also submitted that the Respondent had neither complied with the proper procedures nor used the proper documents, as was evident from the letter dated 3 March 2021, in relation to the 2020 and 2021 pitch fee reviews. There had been no consultation.

23 In addition, the Applicant drew the Tribunal's attention to the outcomes of the pitch fee reviews undertaken in respect of *102 Hinksford* between 2016 and 2020.

The Respondent

24 Within the context of the documents provided to the Tribunal and in furtherance of Directions No. 2, the Respondent's substantive submissions concerned, principally, the validity of the pitch fee review notices and the related prescribed forms for 2020 and 2021. In this respect, the Respondent submitted, initially, that the pitch fee review notices issued in the years 2020 and 2021 and the accompanying prescribed forms satisfy the requirements of the Schedule and the 2013 Regulations. The Respondent cited the following reasons in support of that position:

'Paragraph 17 of the Act requires that the pitch fee shall be reviewed annually. This review is in accordance with the Respondent Finance Team's systems. For the 2021 review, at least 28 days prior to the review date the Respondent served on the occupiers written notice by letter dated 3rd March 2021 setting out is proposals to increase the pitch fee in accordance with RPI. This notice states that the increase is not due to take effect until 5th April 2021 which date is more than 28 days later. For the 2020 review, at least 28 days prior to the review date the Respondent served on the occupiers written notice by letter dated 11th February 2021 [*sic 2020*] setting out is proposals to increase the pitch fee in accordance with RPI. This notice states that the increase is not due to take effect until 1st April 2020 which date is more than 28 days later.

The Act further requires that the written notice is accompanied by a document which complies with paragraph 25A of the Act which requires the document to be:

- In such form as the Secretary of State may by regulations prescribe,
- specify any percentage increase or decrease in the retail prices index calculated in accordance with paragraph 20(A1),
- explain the effect of paragraph 17 (essentially – occupier doesn't have to comply and routes available),
- specify the matters to which the amount proposed for the new pitch fee is attributable,
- refer to the occupier's obligations in paragraph 21(c) to 21(e) and the owner's obligations in paragraph 22(c) and (f) (as glossed by paragraphs 24 and 25).

The document that accompanied the above referred notice letter to the occupiers complies with paragraphs 25A and is in a form prescribed by or *in a form substantially to the like effect* as required by regulation 2 of the Mobile Homes (Pitch Fees) (Prescribed Forms (England) Regulations 2013.'

25 The Respondent presented the letter dated 3 March 2021 in evidence the material part of which for the purposes of this application states:

'Dear Resident,

Subject: Pitch Fee Increase

I am writing to advise you that effective from 5 April 2021 your pitch fee will be increased as follows:

Pitch Fee £30.36. This is an increase of 95p per week….'

It is signed by the above-named Andrew France.

26 With regard to the contents of the letter dated 11 February 2020, the Respondent explained to the Tribunal that these are reproduced in two letters, adduced in evidence, dated 30 June 2021 and 20 September 2021 respectively which represent successive automatic updates of that original letter by its computer. The material part of that original letter is as follows:

'**Subject: Pitch Fee Increase**

Further to the information sent to you recently I am writing to advise you that effective from 1 April 2020 your pitch fee will be increased as follows.

Pitch Fee **£30.05.**
This is an increase of 64p per week.

The above payments are for the 52 week term 1st April 2020 – 31st March 2021…'

It is signed by the above-named Andrew France.

27 The Respondent added that the proposed increase in both 2020 and 2021 is for an RPI increase and, therefore, paragraph 20 takes effect. This paragraph provides that 'unless unreasonable' 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. In this circumstance, the Respondent opined that an increase need not be agreed or, in the absence of agreement, adjudicated upon by the Tribunal.

28 As to the impact of the flooding in February 2020, the Respondent explained to the Tribunal that as a result of that flooding a political decision had been taken by the Council to defer the annual increase for 2020. This was intended as a 'one off without prejudice gesture of goodwill towards the tenants at the Park to assist with clean up works'. The Respondent presented in evidence a letter dated 16 March 2020 sent by the Council to the Applicant which purported to relay this decision and its effect on the pitch fee for 2020. The material part of that letter states:

'Dear Resident,

Subject: HINKSFORD MOBILE HOME PARK – PITCH FEE

I refer to the letter regarding flooding that took place on Sunday 16th February 2020 and the decision taken by the Chief Executive and the Leader of the Council in view of the flooding that the Council will for this year only defer/not implement the rent review and your ground rent will remain the same.

Pitch Fee **£29.41.** This is an increase of 0p per week…

The above payments are for the 52 week term 6th April 2020 to 29th March 2021…'

Again, this letter is signed by the above-named Andrew France.

Decision

29 The Tribunal reaches its decision on the basis of the written evidence submitted by the parties over a fairly protracted period.

30 The critical issue is whether it is possible for a pitch fee increase for one year to be deferred, for whatever reason, and then carried forward with the result that it becomes payable in the following year together with the pitch fee increase for that year. In this instance, the Respondent calculated a pitch fee increase for 2020 (0.64p per week) and purported to defer and carry this forward to 2021, albeit for an understandable reason (the occurrence of the flooding in February 2020), with the consequence that when combined with the pitch fee increase calculated by the Respondent for 2021 (0.31p per week) a liability of 0.95p per week arose for the occupiers of mobile homes on the Site. In essence, it is this outcome to which the Applicant objects.

31 The Applicant also questioned whether, regardless of the legitimacy or otherwise of the above step taken by the Respondent, the Respondent had precluded the possibility of any such deferral and carry forward by stating in the undated letter, which he adduced in evidence, that 'in view of the flooding to the site the Council have decided that for this year [*2020*] only the rent review will not be implemented, and your ground rent will remain the same.'; a position countered by the Respondent through reliance upon its letter dated 16 March 2020 in which it was stated that because of the flooding 'the Council will for this year [*2020*] only defer/not implement the rent review and your ground rent will remain the same.' Clearly, much depends on the interpretation of the words used by the Respondent in each of these letters. In this respect, there is undoubtedly a degree of ambiguity – did the Respondent intend to forego the pitch fee increase for 2020 as mooted by the Applicant in which case there was no justification for the Respondent seeking to add it to the pitch fee increase for 2021 or did the Respondent simply signify that the collection of that increase was to be deferred or postponed (on the assumption that this was a legitimate course of action)? As the contrary positions taken by the parties show, it is possible to adopt either of these interpretations. However, the Tribunal finds that if the respective statements of the Respondents are taken in the context of the desire on the part of the Respondent to provide a degree of relief from the immediate consequences of the flooding in February 2020 it is likely, on the balance of probabilities, that the Respondent, notwithstanding its recording of a 0.00p pitch fee increase for 2020 in its letter of 16 Match 2020, intended to defer the collection of the pitch fee increase for 2020 rather than to forego it.

32 This conclusion necessitates consideration of the critical issue, namely and in short, the legitimacy or otherwise of the purported carry forward by the Respondent of the pitch fee increase for 2020 to 2021; a matter that was not addressed by the Respondent in its representations.

33 The Act envisages annual reviews of pitch fees with reference to a specific review date which in this instance is 1 April. As the parties acknowledge any such review is conducted in accordance with paragraph 20 of the 2013 Regulations which provides, broadly and without more, that the pitch fee will increase or decrease in accordance with the percentage change in the RPI since the last review date (subject to the 'unreasonable' proviso). The outcome of such a review leads to a corresponding change to the schedule

of payments for occupiers in the given year. As far as the Tribunal is aware, there is no evidence in this case to suggest that in the relevant years it would have been unreasonable within the meaning of paragraph 18 to conduct each of the pitch fee reviews other than in this way and, indeed, the pitch fee reviews conducted by the Respondent in 2020 and 2021 were undertaken with reference to this retail price index matrix. It is possible for a late review to be undertaken, but this must be done before the next annual review is due and its result related back to the review date.

These features encapsulate the notion that reviews of pitch fees are predicated on successive annual reviews calculated in accordance with paragraph 20 and, where appropriate, taking into account any of the factors referred to in paragraph 18. Regardless of the manner within these confines the review is undertaken, there is transparency for occupiers as to the basis upon which each annual adjustment (if any) to a pitch fee is calculated and a degree of certainty that enables occupiers to plan for a defined and expected liability in a given year.

In this instance, the Respondent purported to carry out annual reviews for 2020 and 2021 of which the Applicant appears to deny that he was aware, but deferred the increase in the pitch fee for 2020 for the reason stated and sought to carry it forward to 2021 with the result that the Applicant became liable according to the Respondent in its letter of 3 March 2021 to pay from 5 April 2021 the amalgamated increase of 0.95p per week (0.64p + 0.31p). The Respondent did not cite in its representations any authority to support this stance, which appears to run counter to the focus on annual reviews in the Act, or engage with the Applicant's objection to it.

34 Against this backdrop, the Tribunal finds nothing in the Act or the 2013 Regulations that acknowledges the prospect of a deferral or a carry forward in the manner undertaken by the Respondent. Indeed, as intimated, the focus in the Act is on *annual* reviews in respect of which it is expected that any change is implemented or foregone in the given year to which it relates. As the increase in the pitch fee for 2020 was not implemented in that year, it is effectively foregone and cannot be added to any increase in the pitch fee or used to counter any decrease in the pitch fee for the subsequent year. It follows that the notification in the letter of 3 March 2021 by the Respondent to the Applicant of an increase in the pitch fee of 0.95p per week from 5 April 2021 is without foundation, and that the Respondent may only collect from 1 April 2021 (the review date) the increase in the pitch fee for that year i.e. 0.31p per week. The Tribunal so finds.

Judge David R. Salter

Date: 17 January 2022

Appeal Provisions

35 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 appeal must be received within 28 days after these written reasons have been sent to the parties (Rule 52 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

36 If the party wishing to appeal does not comply with the 28-day time limit, the party 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.

37 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.

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	BIR/41UF/PHI/2021/0001
HMCTS	:	P:PAPERREMOTE
Property	:	102 Hinksford Mobile Home Park, Kingswinford, West Midlands, DY6 0BB
Applicant	:	Mr M Southall (Occupier)
Respondent	:	South Staffordshire Council (Site Owner)
Type of Application	:	Pitch Fee Review
Tribunal Members	:	Judge David R. Salter (Chairman) S Hopkins FRICS (Surveyor)
Date of Hearing	**:**	None. Decision determined on written submissions.
Date of Decision	**:**	**17 January 2022**

DECISION

Background

1 By an application received by the First-tier Tribunal (Property Chamber) (Residential Property) on 4 June 2021, the Applicant applied for a determination by the Tribunal under the Mobile Homes Act 1983 (as amended) ("the Act") of a new level of the pitch fee in relation to 102 Hinksford Mobile Home Park, Kingswinford, West Midlands DY6 0BB in view of his challenge to the proposed increase in the pitch fee with effect from 5 April 2021 of which he had been notified by the Respondent.

2 The Applicant is the occupier of the mobile home which is situated on the pitch known as 102 Hinksford Mobile Home Park, Kingswinford, West Midlands DY6 0BB ("*102 Hinksford*") under the terms of an agreement made between the Applicant and his wife (Mrs Jeanette Marie Southall) and the Respondent which commenced on 24 May 1999 ("the Agreement").

3 The Respondent is the current site owner of Hinksford Mobile Home Park, Kingswinford, West Midlands DY6 0BB ("the Site"). This is a residential mobile home park. It is a protected site within the meaning of the Act.

4 Directions were issued by the Regional Judge on 9 June 2021. The Directions were concerned, principally, with matters pertaining to the preparation and submission of the parties' respective Statements of Case and related documents. Further, the Directions stated that the Tribunal would not carry out an inspection and that it would rely on any plans and photographs served by the parties with their respective Statements of Case.

5 In addition, the Directions recorded that the Applicant had signified that he was content with a paper determination with which the Tribunal agreed. Nevertheless, the Directions afforded the Respondent the opportunity to request an oral hearing on lodging its Statement of Case.

6 In due course, the Respondent submitted a Statement of Case, together with supporting documents, dated 30 June 2021, indicating that it was content with a paper determination, whilst the Applicant's Statement of Case, together with supporting documents, was received by the Tribunal on 7 July 2021.

7 Thereafter and following initial deliberations, the Tribunal wrote to the Respondent on 26 August 2021 requesting that, on or before 10 September 2021, copies of the Agreement between the Applicant and the Respondent and of the pitch fee review notices for 2020 and 2021 served in respect of *102 Hinksford* together with clarification of various matters that arose from the Respondent's Statement of Case should be sent to the Tribunal and copied to the Applicant. The Respondent replied to the Tribunal on 18 September 2021 and provided copies of the Agreement between the Applicant and the Respondent together with copies of the pitch fee review notices for 2020 and 2021. The Respondent indicated that its reply and the copy documents had been sent to the Applicant.

Apropos the Tribunal's letter to the Respondent, Mr Southall wrote a letter to the Tribunal that was received on 9 September 2021 ("the 9 September letter"). In this letter he referred, *inter alia*, to flooding on the Site in February 2020, and, in relation thereto, provided the Tribunal with a copy of an undated letter from the Respondent concerning the impact of the flooding on the pitch fee review for 2020 and other consequences of the flooding.

8 Following further deliberations, the Tribunal issued Directions No. 2 on 13 October 2021. In those Directions, the Tribunal directed the parties, on or before 29 October 2021, to provide written representations to the Tribunal (with a copy to the other party) relating to the question of whether the above-mentioned pitch fee review notices and accompanying prescribed forms satisfy the requirements pertaining to the review of pitch fees in Schedule 1 Part I Chapter 2 of the Act and The Mobile (Pitch Fees) (Prescribed Form) (England) Regulations 2013 SI 2013/1505 ("the 2013 Regulations"). In response to those Directions, the Respondent submitted written representations to the Tribunal dated 29 October 2021 with a copy to the Applicant.

9 In light of the above, the Tribunal reaches its decision on the written submissions of the parties, without an inspection of *102 Hinksford* and the surrounding environs of the Site, and through the medium of a virtual platform.

Relevant Law

10 The relevant law is contained within Schedule 1 Part I Chapter 2 of the Act ("the Schedule") and the 2013 Regulations.

11 Paragraph 17(1) of the Schedule provides that the pitch fee shall be reviewed as at the review date and in this regard paragraph 17(2) states that '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'. Paragraphs 17(2A) and (6A) specify that this notice is of no effect unless it is accompanied by a document that complies with paragraph 25A.

12 Paragraph 25A requires this document to be in the form prescribed by the Secretary of State in regulations. Presently, this is the 2013 Regulations. In the 2013 Regulations, it is stated in paragraph 2 that the document 'shall be in the form prescribed in the Schedule to these Regulations or in a form substantially to like effect.' Further, paragraph 25A provides that, substantively, the document must specify any percentage increase or decrease in the retail prices index calculated in accordance with paragraph 20(A1) (see below, paragraph 13), explain the effect of paragraph 17, specify the matters to which the amount proposed for the new pitch fee is attributable, and refer to various owner's and occupier's obligations.

13 Paragraph 20(A1) states that there is a presumption that the pitch fee shall increase or decrease by a percentage which is no more than the percentage change in the RPI since the last review date, unless this would be unreasonable having regard to paragraph 18(1).

14 Paragraph 18 sets out factors to which 'particular regard' must be had when determining the amount of the new pitch fee. Paragraph 18(1)(aa) refers to '… 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)'. This paragraph came into force on 26 May 2013.

15 Account may also be taken of improvements carried out since the date of the last review (paragraph 18(1)(a)) and also under paragraph 18(1)(ab) of '… 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 for the purposes of this sub-paragraph)'. Similarly, paragraph 18(1)(ab) came into force on 26 May 2013.

16 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) refer to it being possible to take into account other factors which are 'weighty factors'.

17 Generally, it would appear that for the RPI presumption to be displaced under the provisions of paragraph 18, the other considerations must be of considerable weight, because as Her Honour Judge Robinson opined in *Vyse* [50], 'If it were a consideration of equal weight to RPI, then applying the presumption, the scales would tip the balance in favour of RPI'.

Submissions

The Applicant

18 In the application, the Applicant challenged the proposed increase in the pitch fee for *102 Hinksford* stated to take effect from 5 April 2021 of which he had been notified in a letter from the Respondent dated 3 March 2021. The Applicant adduced this letter in evidence.

19 The Applicant contended in his Statement of Case that this proposed increase constituted a 3.2% increase in the pitch fee, whilst the actual RPI increase for the year was only 1.4%. The Applicant intimated that he had contacted the Respondent about this on several occasions, and that, ultimately, he was informed by the Respondent that the increase of which he had been notified included the increase in the pitch fee for 2020 which had not been implemented because of the flooding that had taken place on the Site in February 2020.

20 Further, the Applicant informed the Tribunal that he had sought advice from the Leasehold Advisory Service (LEASE) about what he described as the inclusion of last year's pitch fee in this year's pitch fee. This request for advice was made in an e-mail that was adduced in evidence and sent by the Applicant to LEASE on 21 May 2021 and in which his inquiry was couched in the following terms:

'...the council increased this year's pitch fee by 3.2%. I have disputed this as it should be 1.4%. There [sic] reply is that there was no increase last year due to parts of the site flooding so this year they have added last year's increase to this year's. Are they allowed to do this.'

Such advice was forthcoming in an e-mail dated 30 May 2021 which was addressed to the Applicant by Richard Hand, a Senior Leasehold Adviser. The Applicant presented this e-mail in evidence. The advice given is as follows:

'The annual pitch fee review can be carried out late, but the new pitch fee only has effect 28 days after service of the pitch fee review notice if it has not been challenged.

If the site owner misses the review date completely he cannot add the previous years increase in RPI to the pitch fee. The resident does not have to accept a disputed pitch fee and can continue to pay the old fee until it has been determined by a tribunal application. Thus to impose the higher fee the Local Authority would have to apply to the FTT and have a determination that the presumption that it should only increase by this year's RPI be set aside.'

21 As to the impact of the flooding in February 2020 on the pitch fee review for 2020, the Applicant relied on his reference in the 9 September letter to the undated letter sent by the Respondent and signed by Andrew France, Commercial Services Officer, to residents on the Site following this flooding. The part of the letter that deals with this matter states:

'As you are aware the annual review of your ground rent equivalent to the increase in the Retail Price Index is due on 1 April 2020. Following discussions with the Chief Executive and the Leader of the Council in view of the flooding to the site the Council have decided that for this year only the rent review will not be implemented, and your ground rent will remain the same.'

In light of this, the Applicant opined that it is clear that 'the pitch fee will not be implemented for 2020 with no mention of any deferral…'

22 The Applicant also submitted that the Respondent had neither complied with the proper procedures nor used the proper documents, as was evident from the letter dated 3 March 2021, in relation to the 2020 and 2021 pitch fee reviews. There had been no consultation.

23 In addition, the Applicant drew the Tribunal's attention to the outcomes of the pitch fee reviews undertaken in respect of *102 Hinksford* between 2016 and 2020.

The Respondent

24 Within the context of the documents provided to the Tribunal and in furtherance of Directions No. 2, the Respondent's substantive submissions concerned, principally, the validity of the pitch fee review notices and the related prescribed forms for 2020 and 2021. In this respect, the Respondent submitted, initially, that the pitch fee review notices issued in the years 2020 and 2021 and the accompanying prescribed forms satisfy the requirements of the Schedule and the 2013 Regulations. The Respondent cited the following reasons in support of that position:

'Paragraph 17 of the Act requires that the pitch fee shall be reviewed annually. This review is in accordance with the Respondent Finance Team's systems. For the 2021 review, at least 28 days prior to the review date the Respondent served on the occupiers written notice by letter dated 3rd March 2021 setting out is proposals to increase the pitch fee in accordance with RPI. This notice states that the increase is not due to take effect until 5th April 2021 which date is more than 28 days later. For the 2020 review, at least 28 days prior to the review date the Respondent served on the occupiers written notice by letter dated 11th February 2021 [*sic 2020*] setting out is proposals to increase the pitch fee in accordance with RPI. This notice states that the increase is not due to take effect until 1st April 2020 which date is more than 28 days later.

The Act further requires that the written notice is accompanied by a document which complies with paragraph 25A of the Act which requires the document to be:

- In such form as the Secretary of State may by regulations prescribe,
- specify any percentage increase or decrease in the retail prices index calculated in accordance with paragraph 20(A1),
- explain the effect of paragraph 17 (essentially – occupier doesn't have to comply and routes available),
- specify the matters to which the amount proposed for the new pitch fee is attributable,
- refer to the occupier's obligations in paragraph 21(c) to 21(e) and the owner's obligations in paragraph 22(c) and (f) (as glossed by paragraphs 24 and 25).

The document that accompanied the above referred notice letter to the occupiers complies with paragraphs 25A and is in a form prescribed by or *in a form substantially to the like effect* as required by regulation 2 of the Mobile Homes (Pitch Fees) (Prescribed Forms (England) Regulations 2013.'

25 The Respondent presented the letter dated 3 March 2021 in evidence the material part of which for the purposes of this application states:

'Dear Resident,

Subject: Pitch Fee Increase

I am writing to advise you that effective from 5 April 2021 your pitch fee will be increased as follows:

Pitch Fee £30.36. This is an increase of 95p per week….'

It is signed by the above-named Andrew France.

26 With regard to the contents of the letter dated 11 February 2020, the Respondent explained to the Tribunal that these are reproduced in two letters, adduced in evidence, dated 30 June 2021 and 20 September 2021 respectively which represent successive automatic updates of that original letter by its computer. The material part of that original letter is as follows:

'**Subject: Pitch Fee Increase**

Further to the information sent to you recently I am writing to advise you that effective from 1 April 2020 your pitch fee will be increased as follows.

Pitch Fee **£30.05.**
This is an increase of 64p per week.

The above payments are for the 52 week term 1st April 2020 – 31st March 2021…'

It is signed by the above-named Andrew France.

27 The Respondent added that the proposed increase in both 2020 and 2021 is for an RPI increase and, therefore, paragraph 20 takes effect. This paragraph provides that 'unless unreasonable' 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. In this circumstance, the Respondent opined that an increase need not be agreed or, in the absence of agreement, adjudicated upon by the Tribunal.

28 As to the impact of the flooding in February 2020, the Respondent explained to the Tribunal that as a result of that flooding a political decision had been taken by the Council to defer the annual increase for 2020. This was intended as a 'one off without prejudice gesture of goodwill towards the tenants at the Park to assist with clean up works'. The Respondent presented in evidence a letter dated 16 March 2020 sent by the Council to the Applicant which purported to relay this decision and its effect on the pitch fee for 2020. The material part of that letter states:

'Dear Resident,

Subject: HINKSFORD MOBILE HOME PARK – PITCH FEE

I refer to the letter regarding flooding that took place on Sunday 16th February 2020 and the decision taken by the Chief Executive and the Leader of the Council in view of the flooding that the Council will for this year only defer/not implement the rent review and your ground rent will remain the same.

Pitch Fee **£29.41.** This is an increase of 0p per week…

The above payments are for the 52 week term 6th April 2020 to 29th March 2021…'

Again, this letter is signed by the above-named Andrew France.

Decision

29 The Tribunal reaches its decision on the basis of the written evidence submitted by the parties over a fairly protracted period.

30 The critical issue is whether it is possible for a pitch fee increase for one year to be deferred, for whatever reason, and then carried forward with the result that it becomes payable in the following year together with the pitch fee increase for that year. In this instance, the Respondent calculated a pitch fee increase for 2020 (0.64p per week) and purported to defer and carry this forward to 2021, albeit for an understandable reason (the occurrence of the flooding in February 2020), with the consequence that when combined with the pitch fee increase calculated by the Respondent for 2021 (0.31p per week) a liability of 0.95p per week arose for the occupiers of mobile homes on the Site. In essence, it is this outcome to which the Applicant objects.

31 The Applicant also questioned whether, regardless of the legitimacy or otherwise of the above step taken by the Respondent, the Respondent had precluded the possibility of any such deferral and carry forward by stating in the undated letter, which he adduced in evidence, that 'in view of the flooding to the site the Council have decided that for this year [*2020*] only the rent review will not be implemented, and your ground rent will remain the same.'; a position countered by the Respondent through reliance upon its letter dated 16 March 2020 in which it was stated that because of the flooding 'the Council will for this year [*2020*] only defer/not implement the rent review and your ground rent will remain the same.' Clearly, much depends on the interpretation of the words used by the Respondent in each of these letters. In this respect, there is undoubtedly a degree of ambiguity – did the Respondent intend to forego the pitch fee increase for 2020 as mooted by the Applicant in which case there was no justification for the Respondent seeking to add it to the pitch fee increase for 2021 or did the Respondent simply signify that the collection of that increase was to be deferred or postponed (on the assumption that this was a legitimate course of action)? As the contrary positions taken by the parties show, it is possible to adopt either of these interpretations. However, the Tribunal finds that if the respective statements of the Respondents are taken in the context of the desire on the part of the Respondent to provide a degree of relief from the immediate consequences of the flooding in February 2020 it is likely, on the balance of probabilities, that the Respondent, notwithstanding its recording of a 0.00p pitch fee increase for 2020 in its letter of 16 Match 2020, intended to defer the collection of the pitch fee increase for 2020 rather than to forego it.

32 This conclusion necessitates consideration of the critical issue, namely and in short, the legitimacy or otherwise of the purported carry forward by the Respondent of the pitch fee increase for 2020 to 2021; a matter that was not addressed by the Respondent in its representations.

33 The Act envisages annual reviews of pitch fees with reference to a specific review date which in this instance is 1 April. As the parties acknowledge any such review is conducted in accordance with paragraph 20 of the 2013 Regulations which provides, broadly and without more, that the pitch fee will increase or decrease in accordance with the percentage change in the RPI since the last review date (subject to the 'unreasonable' proviso). The outcome of such a review leads to a corresponding change to the schedule

of payments for occupiers in the given year. As far as the Tribunal is aware, there is no evidence in this case to suggest that in the relevant years it would have been unreasonable within the meaning of paragraph 18 to conduct each of the pitch fee reviews other than in this way and, indeed, the pitch fee reviews conducted by the Respondent in 2020 and 2021 were undertaken with reference to this retail price index matrix. It is possible for a late review to be undertaken, but this must be done before the next annual review is due and its result related back to the review date.

These features encapsulate the notion that reviews of pitch fees are predicated on successive annual reviews calculated in accordance with paragraph 20 and, where appropriate, taking into account any of the factors referred to in paragraph 18. Regardless of the manner within these confines the review is undertaken, there is transparency for occupiers as to the basis upon which each annual adjustment (if any) to a pitch fee is calculated and a degree of certainty that enables occupiers to plan for a defined and expected liability in a given year.

In this instance, the Respondent purported to carry out annual reviews for 2020 and 2021 of which the Applicant appears to deny that he was aware, but deferred the increase in the pitch fee for 2020 for the reason stated and sought to carry it forward to 2021 with the result that the Applicant became liable according to the Respondent in its letter of 3 March 2021 to pay from 5 April 2021 the amalgamated increase of 0.95p per week (0.64p + 0.31p). The Respondent did not cite in its representations any authority to support this stance, which appears to run counter to the focus on annual reviews in the Act, or engage with the Applicant's objection to it.

34 Against this backdrop, the Tribunal finds nothing in the Act or the 2013 Regulations that acknowledges the prospect of a deferral or a carry forward in the manner undertaken by the Respondent. Indeed, as intimated, the focus in the Act is on *annual* reviews in respect of which it is expected that any change is implemented or foregone in the given year to which it relates. As the increase in the pitch fee for 2020 was not implemented in that year, it is effectively foregone and cannot be added to any increase in the pitch fee or used to counter any decrease in the pitch fee for the subsequent year. It follows that the notification in the letter of 3 March 2021 by the Respondent to the Applicant of an increase in the pitch fee of 0.95p per week from 5 April 2021 is without foundation, and that the Respondent may only collect from 1 April 2021 (the review date) the increase in the pitch fee for that year i.e. 0.31p per week. The Tribunal so finds.

Judge David R. Salter

Date: 17 January 2022

Appeal Provisions

35 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 appeal must be received within 28 days after these written reasons have been sent to the parties (Rule 52 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

36 If the party wishing to appeal does not comply with the 28-day time limit, the party 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.

37 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.