



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

<b>Case References</b>	<b>:</b>	<b>BIR/00GG/PHI/2017/0007 BIR/00GG/PHI/2017/0008 BIR/00GG/PHI/2017/0009 BIR/00GG/PHI/2017/0010</b>
<b>Properties</b>	<b>:</b>	<b>9 Hollins Drive and 2, 5, &amp; 11 The Ridge Kidderminster Road, Quatford Bridgnorth, Shropshire WV15 6QP</b>
<b>Applicant</b>	<b>:</b>	<b>Hollins Park Estates</b>
<b>Representative</b>	<b>:</b>	<b>Tozers LLP Solicitors</b>
<b>Respondents</b>	<b>:</b>	<b>Mr &amp; Mrs Haywood - 9 Hollins Drive Mr &amp; Mrs Pryer - 2 The Ridge Mr &amp; Mrs Wale - 5 The Ridge Mr &amp; Mrs Hayward - 11 The Ridge</b>
<b>Type of Application</b>	<b>:</b>	<b>Application by site owner for a determination of a new level of pitch fee, under paragraph 16 of Schedule 2 Part 1 of the Mobile Homes Act 1983</b>
<b>Tribunal Members</b>	<b>:</b>	<b>Judge M K Gandham Mr I D Humphries B.Sc. (Est.Man.)FRICS Mr R P Cammidge FRICS</b>
<b>Date and venue of Hearing</b>	<b>:</b>	<b>16<sup>th</sup> August 2017 Kidderminster Justice Centre, Comberton Place, Kidderminster Worcestershire, DY10 1QQ</b>
<b>Date of Decision</b>	<b>:</b>	<b>27 September 2017</b>

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**DECISION**

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## **Decision**

1. The Tribunal determines that it is not reasonable for the pitch fee for the properties known as 9 Hollins Drive, 2 The Ridge, 5 The Ridge and 11 The Ridge, Kidderminster Road, Quatford (the 'Properties') for the year 2017/2018 to be increased. The Tribunal considers that there has been a deterioration in the condition and decrease in the amenity of the site and adjoining land which is controlled by the owner, under paragraph 18(1)(aa) of Chapter 2 of Schedule 1, Part 1, to the Mobile Homes Act 1983.
2. The Tribunal does not consider that the deterioration in the condition and decreased amenity is such that the pitch fees for the Properties should be reduced and, as such, the pitch fees should remain unchanged.

## **Reasons for Decision**

### **Introduction**

3. By an Application received by the Tribunal on 30<sup>th</sup> May 2017, Hollins Park Estates Ltd (the 'Applicant'), applied to the First-tier Tribunal, Property Chamber under paragraph 16 of Chapter 2 of Part 1 of Schedule 1 to the Mobile Homes Act 1983 (the 'Act') for the determination of a new level of pitch fee.
4. The Application was in respect of numbers 1, 3 and 9 Hollins Drive and numbers 2, 5 and 11 The Ridge, all of which were situate in Hollins Park (the 'Site'), a mobile home site located on Kidderminster Road in Quatford, Shropshire.
5. On 31<sup>st</sup> January 2017, the Applicant had served a notice on each of the Respondents detailing a proposed increase in the pitch fee for the properties. The increase was to take effect from 1<sup>st</sup> March 2017.
6. As the Respondents had failed to pay the increased pitch fee, the Applicant applied to the Tribunal for a determination of the new pitch fee under paragraph 17(4)(a) of Chapter 2 of Part 1 of Schedule 1 to the Act.
7. A Directions Order was issued by the Tribunal, on 5<sup>th</sup> June 2017, in respect of all six properties. In accordance with those Directions, a Statement of case and bundle was received from the Applicant and, subsequently, a Statement of case and bundle was received from Mr and Mrs Wale, in respect of the property known as 5 The Ridge, and a separate Statement of case and bundle was received jointly from Mr and Mrs Haywood, Mr and Mrs Pryer and Mr and Mrs Hayward, in respect of the properties known as 9 Hollins Drive and numbers 2 and 11 The Ridge.

8. A Hearing was scheduled to take place on 16<sup>th</sup> August 2017 at Kidderminster Justice Centre. Prior to the Hearing, the cases relating to 1 Hollins Drive and 3 Hollins Drive were settled.
9. On 14<sup>th</sup> August 2017, the Tribunal received a letter from Tozers LLP Solicitors (the ‘Applicant’s Representative’) enclosing a copy of *Mannai Investment Company Limited v Eagle Star Life Assurance Company Limited* [1997] 3 All ER (‘the Mannai decision’), which they confirmed formed part of the Applicant’s submissions.

### **The Issues**

10. Although both the Applicant and the Respondents had raised a number of other issues, such as problems with communication and the siting of a defibrillator, in their respective bundles; it was agreed at the Hearing that many of the issues raised in the bundles were not relevant to the proposed increase in the pitch fee and that the following disputed items were those pertinent to the matter:
  - a) the validity of the notices;
  - b) the general on-site maintenance;
  - c) the on-site security;
  - d) the maintenance of the site roads;
  - e) parking within the site;
  - f) the maintenance of the trees; and
  - g) the state of the recreational/amenity field

### **The Law**

11. The relevant law in relation to the application is set out in Chapter 2 of Schedule 1 to the Mobile Homes Act 1983, in particular, paragraphs 16 to 20 inclusive and paragraph 25A. Subsequent references in this decision to paragraphs 16 to 20 are references to this Chapter of this Schedule. The relevant provisions of the legislation that apply to this decision given the issues raised are as follows:

#### ***Mobile Homes Act 1983, Chapter 2 Schedule 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) In the case of a protected site in England, 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 28<sup>th</sup> day after the date on which the new pitch fee is agreed or, as the case may be, the 28<sup>th</sup> 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 notice under subparagraph (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 28<sup>th</sup> 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 28<sup>th</sup> 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 outside the time limit specified in sub-paragraph (5) (in the case of an application under sub-paragraph (4)(a)) or in the case of 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 28<sup>th</sup> day after the date on which the new pitch fee is agreed; or*

(b) *where sub-paragraph (8)(b) applies, until the 28<sup>th</sup> day after the date on which the new pitch fee is agreed or, as the case may be, the 28<sup>th</sup> 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);*

- (b) *in the case of a protected site in Wales, any decrease in the amenity of the protected site since the last review date;*
- (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*
- (c) *in the case of a protected site in Wales, the effect of any enactment, other than an order made under paragraph 8(2) above, which has come into force since the last review date.*

*(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 subparagraph (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.*

...

**20**

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

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*(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).*

(1) *In the case of a protected site in Wales, 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 since the last review date, unless this would be unreasonable having regard to paragraph 18(1) above.*

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

...

## **25A**

(1) *The document referred to in paragraph 17(2A) and (6A) must—*

(a) *be in such form as the Secretary of State may by regulations prescribe,*

(b) *specify any percentage increase or decrease in the retail prices index calculated in accordance with paragraph 20(A1),*

(c) *explain the effect of paragraph 17,*

(d) *specify the matters to which the amount proposed for the new pitch fee is attributable,*

(e) *refer to the occupier's obligations in paragraph 21(c) to (e) and the owner's obligations in paragraph 22(c) and (d), and*

(f) *refer to the owner's obligations in paragraph 22(e) and (f) (as glossed by paragraphs 24 and 25).*

...

## **The Site Agreements**

12. The site agreements in relation to each of the Properties set out the majority of the provisions referred to in paragraphs 16 to 20, detailed above.

## **Inspection**

13. The Tribunal inspected the Site and Properties on the morning of 16<sup>th</sup> August 2017, in the presence of Mr Lyndon Hollinshead and Mr Darren Hollinshead, the directors of the applicant company, and Mrs Hazel Weaver, the site manager. Also in attendance was Mrs Musson, from Tozers LLP Solicitors. Mr Wale, Mr Hayward and Mr Pryer attended on behalf of the Respondents. The Tribunal was informed that Mr and Mrs Haywood were unable to attend the inspection and Hearing due to unforeseen personal reasons.

14. Hollins Park is a mobile home site located in Quatford, approximately 2¼ miles from Bridgnorth. It currently houses 64 mobile homes and 40 caravans.



15. The properties which are the subject of the Application, were all completed within the first phase of the development of the Site, which commenced in 2008; with approximately 29 units completed in that phase. The Site is currently being further developed, having received planning permission for the development of 147 mobile homes.
16. The Tribunal inspected the relevant common parts of the Site and any locations referred to in the bundles received from the parties. In addition, the Tribunal inspected the sites to each of the Properties.
17. There is a large visitors' car park situated to the front of the Site, with a bin store area, which has recently been enlarged, to the rear of the parking area. The main reception is located to the left hand side of the spine road, adjacent to the car park.
18. In relation to the property known as 2 The Ridge, the Tribunal inspected the garden area and the trees planted to the verge along the side of the property. In relation to the property known as 11 the Ridge, the Tribunal inspected the garden and noted the recreational/amenity area to the rear. In relation to the property known as 5 The Ridge, the Tribunal inspected the bank adjoining the property, in which a number of silver birches had been planted. The Tribunal noted there had been some movement to the rear patio.
19. The Tribunal also inspected 9 Hollins Drive and walked along the site roads to the boundary of the Site with Dudmaston Woods. This area was currently being developed and the Tribunal noted that a wooden boundary fence had recently been erected along the edge. There was a deep bank between the Site and the woods.
20. The Respondents pointed out to the Tribunal various items on the Site, which they had referred to in the bundles - including the additional parking bays, drain covers and damage to the kerb stones.

## **Hearing**

21. Following the inspection, a public hearing was held at Kidderminster Justice Centre. The Hearing was attended by all of those persons who attended the inspection and, in addition, two further respondents - Mrs Pryer and Mrs Hayward.
22. As an initial issue, the Tribunal queried with Mr Wale the current position regarding the bank adjoining his property, 5 The Ridge. Mr Wale stated that the planting of the trees had deteriorated the condition of the bank causing it to slip, resulting in serious damage to his property. He referred to the engineer's report, from Clancy Consulting, dated 9<sup>th</sup> February 2017, included in his bundle. He confirmed that the matter was currently with his insurers. The Applicant confirmed that they were also in the process of obtaining a report on the issue. The Tribunal confirmed that, as this appeared to be a matter which may be subject to future litigation, it was not a matter which was within its remit.

### ***The Applicant's submissions***

23. Mrs. Musson, on behalf of the Applicant, confirmed that the rent review for the site was due on 1<sup>st</sup> March 2017. She stated that notices were validly served on the Respondents on 31<sup>st</sup> January 2017 and that the relevant RPI figure was that published in December 2016, being 2.5%.
24. She confirmed that the implied terms of paragraphs 16 to 20 of the Act were complied with and that, under paragraph 20(A1), it was presumed that the pitch fee would be increased by the percentage increase in the retail prices index (the 'RPI'), unless this would be 'unreasonable'.
25. She referred to paragraphs 18(1)(aa) and (ab) and stated that it would be unreasonable if there had been any deterioration or decrease in amenity of the Site or any reduction in the services or deterioration in the quality of the services as referred to in those paragraphs. She stated that there had been no such deterioration or decrease in either the amenities or the services.
26. She stated that the Applicants had a regular maintenance programme and were not seeking to recover any costs above the increase in the RPI.
27. She confirmed that there had been no decrease in the services due to the ongoing development and submitted that, as none of matters referred to in paragraph 18 applied, then the presumption of the increase in line with the increase in the RPI existed.

### ***The Validity of the Notices***

28. Mrs Musson, on behalf of the Applicant, stated that they accepted that there was an error in section 4(B) of the form as, instead of detailing the adjustment in the calculation, the Applicant had inserted the new proposed pitch fee figure in error. In addition, she also accepted as a mistake the error in the review date on Mr and Mrs Haywood's notice - which referred to 1<sup>st</sup> of March 2016, (a date that had already passed), as opposed to 1<sup>st</sup> March 2017.
29. She submitted that both of these mistakes would have been obvious and clear errors and referred the Tribunal to the *Mannai* decision, where the House of Lords clearly distinguished between an error that was "obvious" to that which may have been ambiguous.
30. She further referred to the case of *Carradine Properties Limited v Aslam* [1976]1 All ER 576 (referred to in the *Mannai* decision), where similarly a notice referred to a date that had taken place prior to the notice being served and, therefore, was clearly a mistake. She submitted that it would have been quite clear to anyone that the review could not have taken place in March the previous year.
31. She stated that the mistakes in the notices were obvious and, therefore, not fatal, and that the Respondents had clearly noted the errors and were

not confused as to the effective date, nor the amount that had been proposed as the new pitch fee.

32. The Tribunal referred Mrs Musson to the Upper Tribunal decisions in *Small and others v Talbot and others* [2014] UKUT 0015 (LC) ('the *Small* decision') and *Shaw's Trailer Park (Harrogate) v Sherwood and others* [2015] UKUT 0194 (LC) ('the *Shaw's Trailer Park* decision') for comment. Mrs Musson stated that in the current application, the existing pitch fee detailed was correct and the RPI figure used was also correct. She submitted that, in this matter, the mistake was 'obvious', which distinguished it from those earlier decisions.
33. The Tribunal noted that some of the written statements for the properties referred to the review date as being 1<sup>st</sup> January. The Applicant confirmed that they had entered in to new agreements with each of the relevant Respondents to revise the review dates to 1<sup>st</sup> March, so that all of the pitch fee reviews took place on the same date. The Respondents confirmed that this was correct. (Subsequent to the Hearing, copies of these agreements were forwarded to the Tribunal).

#### *The General On-Site Maintenance*

34. Mrs Musson confirmed that the Applicant did have a plan of maintenance, which was shared with the Respondents at a meeting. She stated that the Applicant was awaiting dates from the contractor in relation to certain planned works. She confirmed that there were still two members of staff and, as outside contractors were employed to attend the site twice a week to carry out maintenance, she submitted that any reduction in staff was irrelevant.

#### *The On-Site Security*

35. Mrs Musson stated that there was an on-site warden available 24 hours, either Mr or Mrs Weaver. In relation to the addition of security gates, she stated that it would be impracticable for the Applicant to install any gates at the present time, as the Site was still being developed and this would create difficulties in access for any construction traffic.
36. On questioning by the Tribunal, the Applicant confirmed that the 24 hour contact was via a mobile phone number and that if messages were left on the answer machine, these were answered within a reasonable time – the Applicant stated that this had always been the situation. The Applicant further confirmed that on-site security consisted of two CCTV cameras, together with the on-site warden.

#### *The Maintenance of the Site Roads*

37. The Applicant stated that they had carried out patch repairs to the site road, when made aware of any issues.

38. On questioning by the Tribunal, the Applicant confirmed that the road was laid in approximately 2009/2010 and that they were looking at laying the wearing course within the next five years.

#### *The Site Parking*

39. The Applicant stated that there were approximately 10 parking spaces at the car parking area close to the entrance of the Site, with a further two spaces in front of the reception office. In addition, they stated that there were additional parking bays on the Site. They denied that any permission had been given to residents to park on any visitor spaces.
40. The Applicant confirmed, on questioning by the Tribunal, that they did not uphold the site rules which prevented residents from parking on the visitors parking spaces. They also confirmed that there was no ratio between visitors and residents parking and that they had not considered parking to be an issue as there was a large car park to the entrance of the site.

#### *The Tree Maintenance*

41. Mrs Musson stated that the Applicant employed specialist contractors in relation to the tree maintenance and that the pruning was carried out by them. She stated that the Applicant refuted that the trees had caused any damage to the bank close to Mr Wale's property and stated that the trees were, in fact, planted to stabilise the bank.
42. Mrs Musson confirmed that the trees had been planted in 2011 and that, naturally, as they grew, some views would be obstructed. She stated that there was no right in law to a "view" and although it might be considered to be an amenity under paragraph 18(1)(aa), that there had been no decrease in the condition, quite the reverse, they were added to stabilise the banks.

#### *The Recreational/ Amenity Field*

43. On behalf of the Applicant, Mrs Musson stated that the field was greenbelt land and had not changed nor deteriorated in amenity or condition. She stated that the area was not, and had never been, designated as a recreational area.

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44. Wye Environmental Services had recently carried out a report, as a foul water drain in the field had overflowed, and a copy of the report was included in the Applicant's bundle. The Applicant agreed that there had been a problem with drainage, but that they were resolving the issue and that the drainage was shortly to be adopted at the Applicant's expense.

## ***The Respondents' submissions***

### *The Validity of the Notices*

45. Mr Hayward, on behalf the Respondents, submitted that the Pitch Review Notice Form had been incorrectly completed. He referred the Tribunal to Section B on page 2 of the form, which detailed the retail price index adjustment as £134.84, as opposed to the correct figure of £3.28.
46. In addition, he stated that in section 3 of Mr and Mrs Haywood's original Pitch Fee Review Form, the Applicant had referred to the effective review date as March 2016, as opposed to March 2017. He stated that the letter from Mrs Weaver, contained in the Applicant's bundle amending this error, had never been received by Mr and Mrs Haywood.
47. As such, he stated that the notices were misleading and therefore invalid.

### *The General On-Site Maintenance*

48. The Respondents stated that staff members at the Site had reduced, so that there was now only one member of staff carrying out maintenance on the Site, despite the number of mobile homes having increased. They stated that this had led to a reduction in the road sweeping, weeding and general maintenance around the Site.
  49. They stated that kerb stones had been damaged, as they had not been installed correctly, and that the drains had become blocked, flooding the main entrance to the Site. They stated that there had been two accidents on the Site, due to badly fitted manhole covers, and queried whether there was an accident log book.
  50. They stated that fencing was not repaired when required and soil movement from the banks, due to lack of maintenance, was causing damage to people's properties.
  51. In addition, they submitted that the maintenance works were 'reactive' rather than 'proactive' with the management company 'always playing catch-up'. They commented that, prior to the inspection that morning, works had been carried out to tidy up the Site.
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52. The Applicant confirmed, in reply, that there was an accident log book.

### *The On-Site Security*

53. Mr Pryer confirmed that on New Year's Eve in 2013, his mobile home had been burgled and that he had received no contact from the owner or the site manager. He stated that there was a CCTV camera outside the main reception and no further security system. He stated that they had been promised that this would be a gated community, but did not believe that this would ever materialise.

54. He stated that the boundary fence, near Dudmaston Woods, had only just been erected, despite them having complained several times.
55. He stated that they had been informed that there would be 24- on site-security, however, on several occasions they had not been able to get in touch with the site manager and had to, instead, leave a message on the answerphone.
56. Mr Wale supported Mr Pryer's views and confirmed that they were sold the properties with a vision that the site would be a secure, gated community and that, despite this, it had taken until 2016 to erect a boundary fence.
57. The Applicant refuted the allegation by Mr Pryer that the site manger had not contacted him after the burglary.

#### *The Maintenance of the Site Roads*

58. The Respondents stated that the roads had severely deteriorated since 2013 and that they were simply patched up without the road being resurfaced. They stated that some residents had tripped on the tarmac due to the unfinished and uneven surfaces throughout the Site.
59. They confirmed that some of the kerbstones had been knocked by passing vehicles, as they had not been fully concreted in to place, causing an addition hazard.
60. Mr Wale, confirmed that fillers of tarmac had been put down, which had been provided by Hollins Park; however, the final layer of road surface was still not completed. He said it was pertinent to note that all of the Respondents subject to the Application were from the first phase of the development, who had seen the deterioration in the Site.

#### *The Site Parking*

61. The Respondent stated that there was a shortage of visitors parking spaces and, despite the site practically doubling, no additional parking had been allocated. They stated that some residents had resorted to extending the parking within their own plots, but with some plots this was not practicable.
62. They further stated that some residents were parking in bays on the Site which had been allocated for visitors and that they believed that the site manager had given permission for certain residents to park in these areas. They stated that the parking bay off Hollins Drive had not been surfaced and was therefore difficult to utilise, due to the level difference that had to be surmounted to gain access.
63. They stated that, although there was a large car park to the entrance to the Site, many of the residents were elderly and that it was not practicable for them to park there, as there was an uphill walk to the homes.

64. The Applicant denied that any permission had been given to residents to park on any visitor spaces.

*The Tree Maintenance*

65. Mr Pryer referred the Tribunal to the minutes of a meeting dated 22<sup>nd</sup> January 2011 (contained in his bundle), which stated that the trees on the Site would be maintained so as “not to obstruct the views” of the residents. He stated that, although his trees had been pruned, he had later realised that these had been wrongly pruned and that, again, this year the views were obstructed. On questioning, Mr Pryer stated that he did not believe that there had been any deterioration to the area within which the trees were planted next to his property, simply that their views were being completely obscured. Mr Hayward also stated that the trees obscured their views.
66. Mr Wale confirmed that the trees on the bank to site were planted in 2013 and that he was not contacted or consulted by the Applicant prior to this planting. He stated that the trees now completely obscured his view and that he had contacted the Applicant several times as he was often also unable to receive any signal for his TV.
67. Mr Wale went on to state that he had paid £225,000 for his property, due to the elevated views, which were now completely obscured. He stated that he believed that this was a decrease in amenity. He also stated that the condition of the bank, which the trees were planted along, had deteriorated and that he believed the planting of the trees had contributed to the bank slipping.
68. In reply, Mr Lyndon Hollinshead stated that the additional payment made by Mr Wale for his plot was not in relation to the view, but was due to the additional ground works that were required due to the property having been built on a sandstone bank.

*The Recreational/ Amenity Field*

69. In relation to the field adjoining the site, the Respondents stated that this amounted to a loss of an amenity. They stated that this had been sold to them as a recreational area which could be used as a play area for their grandchildren and for them to walk and exercise their dogs, as well as to gain entrance to Dudmaston Woods. They stated that it was not made clear at the time that half the land did not belong to the Applicant, and that a boundary fence was installed in 2016 dividing the area that belonged to the Applicants from the adjoining caravan park.
70. Mr and Mrs Hayward confirmed that they had purchased this particular plot due to the fact that they had wonderful views to the woods; however this had been lost as the Applicant had used the field as, effectively, a dumping ground. They stated that the area was not maintained, which was a fire hazard to the adjoining homes, and now the site was riddled with foul water, with an unpleasant odour, leaving them unable to use the same.

71. They stated that the area was full of broken bricks, pipework et cetera and that the drainage mound had risen to such a height that they could no longer see the woods from their property.
72. The Respondents referred to the initial park layout for the Site, a copy of which was provided within each of their bundles, which clearly detailed the field as “recreational area”. Mr Wale also referred to the copy of the minutes of the meeting, dated 22<sup>nd</sup> January 2011, included within his bundle, which referred to the area as “Recreational Ground”, and stated there were “future plans” for it to be turned into “a garden area”. He pointed to the email from the Applicant, dated 6 February 2015, stating that the area did not “constitute a designated recreation area”, but that once development has been completed it could be used to access the National Trust forests around the park. He stated that this was a complete reversal of the original position and was therefore a loss of an amenity.

### **The Tribunal’s Deliberations**

73. The Tribunal considered all the written and oral evidence submitted and summarised above.

#### *The Validity of the Notices*

74. The statutory provisions, set out in paragraph 11 above, control the determination of a new pitch fee. The procedure includes the service of a notice in a prescribed form and in this matter both parties agree that there were errors in the notices. Firstly, in that on one of the notices they had referred to the effective date for the new pitch fee as March 2016, as opposed to March 2017, and, secondly, in that all of the notices detailed the proposed new pitch fee figure in section 4(B), rather than the amount of the adjustment. The question for the Tribunal is, therefore, whether the errors, or either one of them, was such as to render the notice(s) invalid.
75. The Applicant referred to the *Mannai* decision, and submitted that the errors in the notices were obvious and that the Respondents had clearly not been confused by the same.
76. In the *Small* decision, the Upper Tribunal confirmed that the fact an incorrect pitch fee was detailed in the notice cast “serious doubt” regarding the proposal in the notice form. The error was such that, in order to understand the notice, the occupier might have had to contact the site owner to clarify the information, in which case the notice period might have been significantly curtailed.
77. In the *Shaw’s Trailer Park* decision, the RPI percentage increase detailed in the notice was not calculated in the required manner. In paragraph 35 of the decision, Martin Roger QC stated that:

*“The recipient was entitled to assume that the information contained in the form is accurate, except where it is obvious*



*that an error has been made. In this case it was not obvious that there had been an error, nor what the correct figure ought to have been”.*

78. The Tribunal notes that the Respondents were aware that the incorrect information in the notices were clearly errors. The reference to the new review date being on 1<sup>st</sup> March 2016 – a date which had already passed, was clearly a mistake. In relation to the error in section 4(B), where the Applicant had included the new proposed pitch fee as opposed to the adjustment, again the mistake was clear; especially since the notices had been provided together with a letter to each of the Respondents which detailed the current pitch fee together with the proposed new pitch fee.
79. As such, the Tribunal considers that the errors contained in the notices were ‘obvious’ and not ‘fatal’ and accordingly the notices are valid.

#### *The General On-Site Maintenance*

80. The Tribunal notes the points made regarding the general maintenance of the site by the Respondents and also notes that the Applicant does employ outside contractors to carry out general maintenance.
81. The Site, upon the Tribunal’s inspection, appeared to be fairly well maintained and the Tribunal does not consider that there has been any reduction in the services as required under paragraph 18(1)(ab).

#### *The On-Site Security*

82. It was quite clear to the Tribunal, from the submissions made at the Hearing, that the provision of 24-hour security, had always been by way of a site manager/warden. Further, it is clear that the 24 hour contact is, and has always been, by way of an emergency contact on a mobile phone and that security gates have never been installed.
83. Paragraph 18(1)(ab) stipulates that regard should be had to a ‘reduction’ in the services or ‘deterioration in the quality’ of those services. Quite clearly, although the services may not be those which the Respondents had envisaged, the services do not appear to have decreased or deteriorated, as required by paragraph 18(1).

#### *The Maintenance of the Site Roads*

84. Although the site roads do have potholes and some of the surfaces are uneven, the Respondents have confirmed that the Applicant has provided some repairs, at their own cost, to the same. Quite clearly, the final surface layer of the road has not deteriorated, it has never been laid, and there appears to be no plans to lay the same until the development has been completed. The Tribunal does not consider the condition of the roads to be of a level as to be “unreasonable”, as to effect the level of the pitch fee.

85. Again, although the kerbstones may not have been installed correctly - it is quite clear that they do not appear to have been fully concreted in - this is not something that has 'deteriorated', as required by paragraph 18(1)(aa), as they appear to have been as originally installed.

#### *The Site Parking*

86. In relation to the site parking, the Respondents' arguments appear to be that the site parking is now inadequate for the number of homes on the site and that the current parking bays are being misused.
87. The Tribunal notes that, although the visitors car parking area to the front of the site, may not be ideal for elderly visitors, it is available. The failure to provide additional parking bays within the site does not fall within paragraph 18(1)(aa), as this is clearly not a decrease in the amenity, simply a failure to increase amenities.

#### *The Tree Maintenance*

88. The Site is located in a particularly scenic location where, the Tribunal is under little doubt, that the homeowners paid a premium due to the setting and panoramic views. It was quite clear from the Tribunal's inspection that the views, in particular, to numbers 2 and 5 The Ridge, have been obstructed by the planting and the way in which the trees are currently maintained.
89. Paragraph 18(1)(aa) refers to "*any deterioration in the condition, and any decrease in the amenity, of the site*". The Tribunal considers "deterioration" and "decrease" as separate conditions; if this were not the case, there might be a situation where the occupiers of a site had the benefit, of say, a parking area or playing area, which was subsequently closed. It would be hard to imagine, that this would, in addition to the decrease in the amenity, require a deterioration in the condition of the area to be able to have an effect on the pitch fee.
90. The Tribunal does consider the views from the homes as an amenity that falls within Paragraph 18(1)(aa), and, quite clearly, this amenity has decreased. As such, the Tribunal considers this to be a matter to which particular regard shall be given in determining the new pitch fee.

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#### *The Recreational/ Amenity Field*

91. It is not disputed by the parties that there has been an issue in relation to the drainage on the field, in fact, this is quite clearly referred to in the report from Wye Environmental Services referred to in both the Applicant's and Respondents' bundles. The dispute appears to be whether this field was, in fact, ever intended to be a recreational field.
92. It is quite clear from the initial site layout illustration, provided by the Respondents, that there was an intention at some time in the past for it to be utilised as such. In addition, the copy minutes dated 22<sup>nd</sup> of

January 2011 also refer to the area as recreational ground which may at some time in the future be used as a garden area. There also appears to have been an intention that the field could be used as access to the neighbouring woods.

93. Having regard to paragraph 18(1)(aa), the field is land that adjoins the site and is controlled by the occupier and quite clearly the condition of it has deteriorated.
94. In addition, the Tribunal also considers, on the evidence supplied, that this was an amenity which was available to the Respondents and considers that there was an intention that this be used as a recreational area and for access to the neighbouring woods. Therefore, the Tribunal also considers this as a decrease in the amenities available to the Respondents.
95. As such, the Tribunal considers that this matter satisfies both conditions referred to in paragraph 18(1)(aa).

### **Summary**

96. The Tribunal notes that there is a presumption, under paragraph 20, that the pitch fee shall increase by the percentage increase in the RPI. This presumption is rebuttable if the Tribunal considers it unreasonable for the increase to take place, having regard to the matters referred to in paragraph 18(1).
97. The Tribunal consider that both the deterioration in the condition, resulting in the inability to use the adjoining field, together with the deterioration of the views, due to the current maintenance of the trees, to be matters for the Tribunal to take into account when determining the amount of the new pitch fee. In addition, the Tribunal consider these matters would be such that an increase in the pitch fee would be unreasonable. In summary, and for the reasons given above, the Tribunal finds that there are no grounds to increase the pitch fees of 9 Hollins Drive, 2 The Ridge , 5 The Ridge or 11 The Ridge as at the date on the notice, 1<sup>st</sup> March 2017.

### **Appeal Provisions**

98. If either party is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties (rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

M. K. GANDHAM

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Judge M. K. Gandham