



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

**Case Reference** : CHI/24UD/PHI/2017/0002

**Property** : Pitches 1-22 Denmead Caravan Park, Dando Road,  
Waterloville, PO7 6PU

**Applicant** : Pratt Developments Unlimited

**Applicant's  
Representative** : Mr Townsend of Saluet Townsend Ltd

**Respondent** : Occupiers of Pitches 1-22 Denmead Caravan Park  
as listed in Schedule 1

**Respondents'  
Representative** : Ms Butland and Mr Langford

**Type of Application** : Park Home – pitch fee

**Tribunal Members** : Judge J Brownhill (Chair)  
Judge M Tildesley OBE  
Ms J Herrington

**Date and venue of  
Hearing** : 16<sup>th</sup> May 2017

**Date of Decision** : 30<sup>th</sup> May 2017

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**DECISION**

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- 1 Where numbers appear in square brackets [] in the body of this decision, they refer to pages of the Applicant's bundle before the Tribunal. Where the Tribunal refers to documents within the Respondents' bundle, the page references will also appear in square brackets, but with the prefix 'Resp' preceding the document number [Resp].
- 2 The Applicant site owner applied to the Tribunal, by an application dated 01/02/2017 [A1], seeking an increase in the pitch fees payable in respect of each of the 22 pitches on the Denmead Caravan Park site (hereinafter referred to as 'the site'). The Respondents are the occupiers of the 22 pitches on the site. The Applicants sought an increase to each of the 22 pitch fees being:
  - a. The RPI presumed increase calculated in accordance with paragraph 20 of the 1983 Act; and
  - b. A 1/22 share of the cost of the licence fee paid by the Applicant to the local authority, amounting in each case to a one off charge of £9.54.
- 3 Directions were given on the 23/02/2017 [B1] in which each Respondent was invited to complete a form indicating whether they agreed or disagreed with the proposed increase in their pitch fee, and if they disagreed their reasons for the same. The Tribunal received responses from the occupiers of all 22 pitches on the site, each disagreeing with the proposed increase in pitch fee [divider G]. Each occupier indicated that they wished to be represented by Ms Butland (of pitch 6) and Mr Langford (of pitch 5).

#### Summary of the Tribunal's conclusions

- 4 The Tribunal considered that an increase in the pitch fees in line with RPI (on the relevant figures a 2% increase) would be unreasonable having regard to the matters detailed within paragraph 18(1) of the 1983 Act, specifically the factors referred to at paragraphs 18(1)(aa) and (ab) of the Act. Therefore the presumption of an RPI increase does not arise and is in effect displaced.
- 5 The Tribunal found it to be reasonable that the pitch fees on the site should be increased by 1%. A schedule of the specific pitch fees payable by each of the Respondents, in relation to their individual pitches on the site, is attached hereto as Appendix 2.

#### The Inspection

- 6 The Tribunal took time to inspect the site on the morning of the hearing. Present at the inspection were Dr Pratt of the Applicant and Mr Townsend, Solicitor from Saulet Townsend Ltd (representing the Applicant). Ms Butland and Mr Langford attended on their own behalves as well as representing the other Respondents.

- 7 The site is situated down a private road (Dando Road) which is owned by the Applicant [Resp 17]. Dando Road is approximately 150-200 metres in length and consists of a series of concrete slabs. At one end of Dando road is the public highway and at the other end (to the left – when facing away from the public highway) is the entrance to the site. There are several private residences situated down one side of Dando Road. Towards the site end of Dando Road are a number of garages as well as some allocated parking places. At the very end of the road near the site entrance is a small building housing the electricity meters for the site, on top of which building is a single light.
- 8 The concrete slabs which make up Dando Road are in a state of disrepair: the slabs contain numerous large cracks of varying severity. Near the junction with the main highway there is a large crack down the central spine of the road. The difference in height between the edges of the slabs owing to a crack is, in places, significant. In some places the concrete surface appears blown and undulating. At the site end of the road, within allocated parking bay 2, is a significant area of cracking which the Respondents suggest follows the route of a drain from the site. There is also an area of tarmac within the concrete slabs which the Tribunal was told is a result of a patch repair carried out in 2010. The nature and severity of the cracks vary throughout the length of the road, but a good impression can be gained from the photographs in the Respondents' bundle at [Resp 19]. The Tribunal was also told that on the 11/05/2017 (the Thursday before the Tribunal's inspection), the Applicant's servants or agents had attended at the site and had undertaken a number of further patch repairs to certain areas of Dando Road including to the area around parking bay 3.
- 9 Towards the site end of Dando Road, in the middle of the road, is a drain grille: this was completely blocked, with significant green vegetation growing out from within, and mud visible beneath supporting such vegetation. The Tribunal was told that as a result of this blockage, part of Dando Road flooded during rainfall. A photograph of this drain appears at [Resp 8].
- 10 As stated above there were a number of garages lining Dando Road which the Tribunal was told were let to a number of the occupiers of the site. The garages themselves were old with rusting metal frames for the doors and the Respondents reported ageing structures and internal disrepair. The evidence before the Tribunal about the status of these garages was unclear. While at one stage Dr Pratt of the Applicant referred to them being let on separate licences, it appeared that the charge for the garages was included within the monthly pitch fee. The Tribunal was told by the Respondents that the occupier of pitch 15 had 'given up' her garage and had consequently had a reduction of £30 applied to her pitch fee. It was unclear whether this amount was an annual or monthly reduction. If any particular occupant has given up their garage and not obtained a reduction in their pitch fee that may well be something they feel is worth taking up with the Applicant. Normally one would not expect charges for garages to be part of the pitch fee.
- 11 The site was accessed via Dando Road through a five-bar metal gate and a pedestrian path to the right of the gate. The gate was in full and proper working order. The Tribunal was shown a cement patch repair to the concrete road adjacent to the entrance, on the site side of the gate. There were two

notice boards to the right of the entrance to the site; one of these having been provided by the Applicant. The Respondents indicated that they had purchased the other, larger, notice board as they felt that the Applicant's was too small. Dr Pratt indicated that he had no knowledge of this, and was adamant that no one had asked the Respondents to purchase an additional notice board.

- 12 There are flowers to the side of the entrance road within the site; the Tribunal understood that these are maintained by the Respondents. Two large 'Jewson' builders' bags (containing sand/ building materials) are being stored on one side of the entrance road at this point. On top of these bags a wooden pallet and some plastic wrapping were evident. When discussing these bags Dr Pratt commented that these materials needed to be put somewhere. While the bags are rather incongruous and out of keeping with the rest of the site, they do not, the Tribunal found, represent or illustrate a lack of amenity.
- 13 Off the site entrance road to the right is a pedestrian path consisting of grey flagstone paving. This is the only access route to the majority of the pitches on the site. The pitches are positioned around the edge of the site, with a large area of lawn containing a few trees in the centre. The paving undulates in places and is uneven, with varying height differences being visible between individual flagstones. The Tribunal noted one flagstone was cracked though there was no significant difference in height between the two parts. The Tribunal was told, and it was not disputed by the Applicant, that there had been at least 3 significant tripping accidents on the site as a result of the uneven nature of this paving. The Tribunal observed that in a number of cases, most notably in relation to pitch 15, the path within the pitch boundary leading up to the mobile home was in a state of disrepair. It was evident that that concrete path had blown in a number of places creating a very uneven and what appeared to be a friable surface.
- 14 The lighting along the pedestrian path was said to be adequate and worked well. While the issue of sewage had been raised in one Respondent's reply to the Tribunal, Ms Butland and Mr Langford were clear that the sewage system on the site was in working order. Mr Langford expressed the view that perhaps the problem referred to by the one occupier related to fat being deposited into the system.
- 15 The site is connected to mains electricity and occupiers' central heating is either run from bottled gas or oil (stored in tanks on individual pitches).
- 16 As can be seen from the above description the Tribunal found that there was disrepair:
  - a. to the grey flagstone paving which made up the pedestrian access route around the site;
  - b. to the concrete access road within the site;
  - c. to the drain (blocked grille) on Dando Road; and
  - d. to the concrete surface of Dando Road itself.

17 After the inspection the parties and representatives appeared before the Tribunal in order to hear evidence and submissions at the Havant Justice Centre.

A preliminary matter.

18 The Tribunal's directions [B1] provided for the Applicant to send a statement of case to the Respondents (or their representative) by 07/04/2017 and permitted the Respondents to send a brief statement in reply, if they wished, by no later than 19/04/2017. Nothing further was received from the Respondents pursuant to this direction. The Applicants were required to prepare and submit the hearing bundles by 04/05/2017 which they did.

19 However on Monday 08/05/2017 the Respondents' representative submitted one copy of their own bundle of documents to the Tribunal, and sent another copy to the Applicants. This was outwith the scope of the Tribunal's directions. The Tribunal's clerk explained to the Respondents' representative that they would need to seek the Tribunal's permission at the hearing to rely on these late documents. The Respondents' representatives submitted 2 further copies of their bundle to the Tribunal the day before the hearing.

20 At the final hearing Mr Langford and Ms Butland made the required application requesting permission to rely on their late documentation. They explained that Ms Butland had been called away as a result of her sister becoming ill, and although Mr Langford had meant to comply with the deadline in Ms Butland's absence, due to a bereavement on 04/04/2017 he forgot about the same. Ms Butland took the Tribunal through the contents of the Respondents' bundle, which largely consisted of photographs and duplication of other documentation already contained in the Applicant's bundle. There was however a summary of the Respondents' arguments and a number of emails from the local authority relating to the site.

21 Mr Townsend helpfully indicated that, subject to observing that one of the emails pertained to an issue concerning electricity which hadn't been previously raised by the Respondents, he did not object to the late admission of these documents.

22 The Tribunal took time for consideration, and decided pursuant to its case management powers under Rule 6(3)(a) of The Tribunal Procedure (First Tier Tribunal)(Property Chamber) Rules 2013 it would exercise its discretion to extend time to permit reliance by the Respondents on their late bundle of documents. In reaching such a conclusion the Tribunal noted that:

- a. The Applicant did not object to the application;
- b. The documentation was likely to help shorten the hearing, containing as it did a summary of the Respondents' case;
- c. The photographs of the site were useful;
- d. There was no significant prejudice to the Applicant if the documents were admitted; and

- e. The emails contained therein corroborated an aspect of the Respondents' case.

### The Statutory Framework

- 23 The statutory framework applicable to these type of applications is contained within the Mobile Homes Act 1983 (the 1983 Act). In particular at paragraphs 16 to 20 (inclusive) of Chapter 2 of Schedule 1 to the 1983 Act. These provisions are set out at Schedule 3 to this decision.
- 24 The Upper Tribunal has recently considered the operation of these provisions, in two recent cases: Vyse v Wyldecrest Parks (Management) Limited [2017] UKUT 24 and Wyldecrest Parks (Management) Limited v Kenyon [2017] UKUT 28.
- 25 While Mr Townsend, solicitor for the Applicant, referred in the Applicant's Statement of Case [F1-para 2] to it being "...held that a site owner can recover the costs of the annual site licence from the residents on a mobile home site", he cited a First Tier Tribunal decision in this regard. He was not aware of the two Upper Tribunal authorities on this point and which are referred to above. The Tribunal provided copies of the Upper Tribunal decision in Vyse v Wyldecrest Parks (Management) Limited and also the decision in Shaw's Trailer Park (Harrogate) v Sherwood and others [2015] UK UT 0194 to both Mr Townsend and the Respondents, giving them time to read and consider the same.
- 26 The following points can be gleaned from those judgments:
  - a. While the FTT may not alter the amount of the pitch fee unless it considers it reasonable to do so (para 16(1)), the issue of reasonableness is not at large. Therefore it is not open to the FTT simply to decide what it considers a reasonable pitch fee to be in all the circumstances. The issue of reasonableness of any increase has to be determined in the context of the other statutory provisions.
  - b. The starting point is that there is a presumption of change in line with RPI "unless this would be unreasonable having regard to the matters detailed within paragraph 18(1)", (see para 20(A1). If having regard to a factor to which paragraph 18(1) applies, it would be unreasonable to apply the presumption of an RPI increase, the presumption does not arise and is in effect displaced.
  - c. If there is no matter to which any of the paragraph 18(1) factors apply, then the RPI increase presumption arises and it is necessary for the Tribunal to consider whether any other factor displaces it. If another factor is to displace the RPI presumption then this must, by definition, be a weighty factor. The Tribunal needs to recognise that the 'other factor' must have sufficient weight to outweigh the presumption in the context of the statutory scheme as a whole.

- d. An increase in a site licence fee (charged by a local authority/ local council) is capable of being an 'other factor' to which the FTT could have regard when determining the amount of the pitch fee. "The fact that an increase or decrease in the site licence fee is an 'other factor' and therefore a material consideration as a matter of law when considering whether the presumption of change in line with RPI is displaced does not necessarily mean that it should displace the presumption. The Scheme of the 1983 Act is that when determining any change in the pitch fee, no regard is to be had to a range of factors, particular regard is to be had to limited number of factors but that otherwise (unless it would be unreasonable having regard to the specified limited factors) there is a presumption in favour of change in line with RPI..... there is good reason for that."(para 56 of Vyse ante)
- e. It is also important to note that paragraph 20 of the 1983 Act provides that the pitch fee shall increase or decrease by a percentage which is no more than any percentage increase or decrease in the RPI as calculated by reference to the stipulated formula. It is therefore possible for the increase or decrease to be applied to the pitch fee to be less than the RPI percentage arrived at using the formula.

#### The Notices of proposed increase

- 27 Paragraph 17 of the provisions of Chapter 2 of the 1983 Act provides that a pitch fee can be reviewed annually at the review date. At least 28 clear days before the review date the owner must serve on the occupier a written notice setting out the owner's proposals in respect of the new pitch fee (para 17(2)). Such notice will only be effective if it is accompanied by a document which complies with paragraph 25A.
- 28 The Tribunal considered the written agreements provided for each of the pitches on the site (as contained within divider D of the Applicant's bundle). Each of the agreements applicable to the pitches on the site specified the review date as the first of January. The Tribunal considered each of the notices of increase relied on by the Applicant. No issue was taken by the Respondents in relation to the service of these notices. The Tribunal found that all the respective notices of increase were served by the Applicants on the respective Respondents on 21/11/2016 with the accompanying documentation in the prescribed form.
- 29 The Tribunal pointed out to Mr Townsend that a number of the agreements which had been provided appeared to refer to the pitch fee being paid weekly, rather than monthly (as was specified in the notices of increase). In particular the agreements in respect of pitches 4; 7; 8; 11; 12; 13; 19; and 22 all referred to weekly pitch fees being payable and there was not before the Tribunal any evidence of variation/ addendum agreements altering this. Nonetheless, the Respondents in their oral evidence explained that all occupiers paid pitch fees on a monthly basis (whether by standing order, or otherwise).
- 30 The Tribunal raised an issue with Mr Townsend in relation to the validity of the notices of increase served. As noted above, the increases sought by the

Applicant had two elements: the RPI increase which was calculated at 2%, plus an additional one off charge in relation to the site licence fee. The notices of increase on the front page set out the relevant figures only for the proposed new pitch fee including the RPI increase. There was no reference on that front page to the one-off charge in relation to the site licence fee. That additional charge, which was sought in addition to the RPI increase, was not referred to on the front page at all. In light of the Upper Tribunal's decision in Shaw's Trailer Parker v Sherwood (ante) the Tribunal asked Mr Townsend to address it on whether the notices of increase were valid. Paragraphs 33 and 34 of that decision provide:

“.....a notice which proposes an increase in the pitch fee “is of no effect unless it is accompanied by a document which complies with paragraph 25A”. That express statement of the consequences of non-compliance removes any doubt, and leaves no room for considerations of whether any prejudice has been suffered as a result of the non-compliance. The only relevant question is therefore whether the first review form complied with paragraph 25A.

Paragraph 25A(1)(b) requires that the notice must “specify any percentage increase or decrease in the retail prices index calculated in accordance with paragraph 20(A1)” and it is agreed that the notice failed to do so. The percentage increase in RPI which was specified was not calculated in the required manner.”

- 31 While on the current facts the RPI increase had in fact been calculated in the required manner, the issue was whether the notices served complied with the statutory provisions, because the figure given on the first page as the proposed new pitch fee was incorrect – it took no account of the one-off charge sought in relation to the site licence fee.
- 32 As it transpired it was not necessary for the Tribunal to consider this argument. Having been given time to consider the issue, and before hearing argument on the point, Mr Townsend notified the Tribunal after the luncheon adjournment that the Applicant accepted that the site licence fee figure should have been included within the monthly figure referred to on the first page of the notice, and that he was withdrawing the request to include the site licence fee figure within the pitch increase application. He requested that the Tribunal consider the application on the basis of the 2% RPI figure alone.
- 33 The Tribunal found that the RPI increase proposed within the respective pitch fee review forms had been calculated correctly and in accordance with the statutory provisions; the correct figures had been used by the Applicant from the published index, and the increase sought was 2%.

#### The Respondents' case

- 34 The Respondents' case, in short, was that while they considered the site to be a lovely place to live, the Applicant did not carry out the required repairs to the site, in particular to: the flagstone paving; Dando Road; the site road; and also



in relation to the drain and blocked grille on Dando Road. The Respondents made repeated reference to the fact that there had been a series of accidents (at least three) when occupiers and their visitors had fallen/ tripped on the site roads/ flagstone paving because of the disrepair.

- 35 The Respondents were able to point the Tribunal to email correspondence from the local authority, in particular in an email seemingly dating from 04/01/2017 in which Jon Evans, a Housing Technician from Winchester City Council stated “Mr Pratt has also asked what else he needs to do to the roads and pathways after I told him that the work done was not enough – he has proposed a site meeting with me to look at this.”

#### The Applicant’s case

- 36 Dr Pratt giving evidence for the Applicant stated that in effect he had done what had been asked of him by the local council, at one point when asked whether he had known that the residents had complained to the local council about the state of the road and paths he stated that the council had mentioned it to him “...we went round and put it level and the council said ok.”. When the email from Mr Evans of the council dated 04/01/2017 was put to him, he replied “I was taking the Council at their word, as the Judge of the road. If they didn’t demand anything then they accept that the road is ok.” Dr Pratt went onto say that he had not had a site meeting with the council about the road and paths, and that he didn’t have any information about any of his employees attending such a meeting nor of any report from his employee (Mr Ben Reeder) saying that “so and so” is required.
- 37 In answer to questions from his own representatives Dr Pratt expressly stated that “I think the repair is adequate.” He went onto discuss the performance of his employee Mr Pillan, whose job it was he claimed to remedy any disrepair with the paving stones; “He’s [Mr Pillan] supposed to keep the paving stones level and report concerns or problems to me in writing and he hasn’t done so.” Mr Pillan, an occupier on the site, is employed by the Applicant in connection with the site. A copy of his ‘contract of employment’ appears at [Resp 3]. It refers to his duties as “financial arrangements look after Denmead Park” [sic], and to the collection of rent, electricity, water and garage rents, investigation of written complaints reading the relevant meters quarterly and additional work listed as “cut grass, tidy park and keep attractive, cope with any out of hours problems”. Dr Pratt argued that it was part of Mr Pillan’s job to clear the blocked drain on Dando Road and rectify any uneven or broken paving slabs and/or problems on the site road. Mr Pillan is employed for 5 hours per week.
- 38 The Tribunal noted within the Respondent’s bundle a letter from Mr Pillan addressed to Dr Pratt (and dated 20/04/2017) in which Mr Pillan categorically denied that he was responsible for maintaining the footpaths on the site, and furthermore that this was something that he would be properly able to do on his own. He referred to having specifically referred problems with the footpaths to Ben [presumably Ben Reeder, the Applicant’s employee] on more than one occasion.

## The Tribunal's decision

39 The Tribunal considered that taking into account all the circumstances it was reasonable to increase the pitch fees applicable to the site, that was the starting point. The pitch fee covers a package of services provided, not all of which were criticised by the Respondents.

40 The Tribunal considered that when considering paragraph 18 of Chapter 2 to the 1983 Act, the following factors were relevant and were to be taken into account when considering the application to increase the pitch fees, namely:

“(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)”.

41 As noted above the Tribunal found that there was disrepair, and a deterioration, in the condition of the site roads, the footpaths, and the access road to the site (Dando Road). While the Tribunal did not expressly hear evidence on the precise extent of the site, and therefore whether in fact Dando Road formed part of the site itself, the Tribunal considered that the disrepair and deterioration in the condition of Dando Road was relevant and could be taken into account under paragraph 18(1) as Dando Road was adjoining land which is owned and controlled by the Applicant. Dr Pratt accepted this in his oral evidence to the Tribunal and moreover the Respondents provided evidence in support of this contention in any event at [Resp 17].

42 The Tribunal heard from the parties that previously pitch fee reviews in relation to the site had been undertaken by agreement with the occupiers. Indeed this was stated on the face of the Application [A5]. Therefore the deterioration in the site and access roads in this regard had not, on the evidence before the Tribunal, been previously taken into account under paragraph 18(1).

43 The Tribunal found that the disrepair to Dando Road as specified above, as well as to the site road and footpaths had the effect of decreasing the amenity of the site. While some works had been undertaken by the Applicant immediately before the Tribunal's inspection of the site, it was clear that the areas described were still in a state of disrepair:

- i. There was evidence before the Tribunal that at least three residents had tripped/ fallen as a result of the disrepair and were fearful of further accidents of this nature. The Tribunal heard oral evidence that the Applicant's employee/ manager when spoken to about this issue retorted that it was of little consequence as Dr Pratt had insurance.;

- ii. There was evidence before the Tribunal that some residents' visitors had been impacted by the disrepair, having to alter their method of visiting the site because of access difficulties caused by the disrepair, including on one occasion causing damage to a tyre of a mobility scooter [G10];
- iii. A recent repair completed in cement on the site side of the gate was slippery;
- iv. The Tribunal was told by Ms Butland that standard adopted by the local council when considering cracks and uneven surfaces was a difference of 10mm in levels. The Tribunal noted, during its inspection, areas which appeared to exceed this level- though no precise measurements were taken by the Tribunal. The Tribunal noted that in places, both on Dando Road and the footpaths this level of difference between surfaces appeared to be exceeded. See too photographs at [Resp 19];
- v. The Tribunal found that the site end of Dando Road flooded during rainfall, because of the blocked drain;
- vi. The Tribunal accepted that the Respondents had taken it upon themselves to maintain flowers to the edge of the site roads.
- vii. Dr Pratt's suggestion that his employee, Mr Pillan, was responsible, on his own, for maintaining the footpaths around the site, was not at all clear from his contract of employment. Dr Pratt's suggestion that the phrase 'look after Denmead Park' within the contract encompassed this type of work was, in the Tribunal's view, stretching the limits of construction; it was unreasonably wide. Moreover the Tribunal considered that it was for Dr Pratt and the Applicant to ensure that their employee was suitably monitored. Dr Pratt sought to claim in his oral evidence that he regularly inspected the site. If that had been the case the Tribunal was surprised that he had only just before the Tribunal's inspection purported to realise that Mr Pillan was not doing the jobs Dr Pratt apparently thought he should have been doing (and moreover that there were some minor further repairs undertaken at the site the week before the hearing). If Dr Pratt had been undertaking proper regular inspections the Tribunal would not have expected that late flurry of activity to be necessary, and moreover for the drain on Dando road still be blocked. The Tribunal also noted that Mr Pillan was employed for 5 hours per week. Given the other jobs which were expressly covered by the terms of his employment the Tribunal did not consider it reasonable to expect Mr Pillan to additionally carry out remedial works to the entire footpath around the site.
- viii. Dr Pratt's oral evidence was also of further concern to the Tribunal in that it was very clear that his response to issues was reactive only. There was not, as the Tribunal would have expected, a planned maintenance programme. The Tribunal

considered the effect of Dr Pratt's evidence to be that he considered the state of the roads and footpaths to be "...fine..." and that he wasn't planning to carry out any further or other works unless specifically required to do so by the local council.

ix. Dr Pratt expressly stated that he considered that the Respondents were exaggerating the disrepair at the site, and on Dando Road. The Tribunal does not accept that to be case in particular given its findings detailed above.

- 44 The Tribunal considered that it would be unreasonable to increase the pitch fees in line with the 2% RPI presumed increase on these facts, given the factors specified within paragraph 18(1). The Tribunal found the RPI presumption was displaced, and found that an increase of 1% was reasonable and should be applied to the pitch fees.
- 45 In reaching this decision the Tribunal considered not only the disrepair and lack of amenity as noted above, but also the fact that there were other services which were provided under the site licence, for example in relation to the care and maintenance of the central area of lawn (which was a significant area), the lighting (to the footpath) and that other services on the site were maintained and of an appropriate standard. The Tribunal was also concerned that in future there may be problems with the drains on the site and leading onto/ off the site, given the disturbance to the concrete slabs on Dando road and the site road.

### Conclusions

- 46 The Tribunal considered that a change in line with RPI (on the figures a 2% increase) would be unreasonable having regard to the matters detailed within paragraph 18(1) of the 1983 Act, specifically the factors referred to at paragraphs 18(1)(aa) and (ab) of the Act. Therefore the presumption does not arise and is in effect displaced.
- 47 The Tribunal considered that a 2% RPI increase would be unreasonable. However the Tribunal found it to be reasonable to reduce the RPI increase by 1%, therefore resulting in a 1% increase to the Respondents' pitch fees. The precise figures applicable to each pitch are set out in Schedule 2 to this decision.
- 48 The new pitch fee, as specified, is payable as from the review date (01/01/2017) but an occupier (Respondent) is not to be treated as being in arrears until the 28<sup>th</sup> day after the date of the Tribunal's order determining the amount of the new pitch fee (paragraph 17(5)).
- 49 A copy of this decision is to be provided to each of the 22 Respondents.

### Appeals

- 50 A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
- 51 The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
- 52 If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
- 53 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.

### **Schedule 1 – Respondents**

Address	Name of Occupier
Pitch 1, Denmead Caravan Park	S Adamson
Pitch 2, Denmead Caravan Park	P Vince
Pitch 3, Denmead Caravan Park	R Plant
Pitch 4, Denmead Caravan Park	P J Wilson
Pitch 5, Denmead Caravan Park	J Langford
Pitch 6, Denmead Caravan Park	C Butland
Pitch 7, Denmead Caravan Park	D Dosewell
Pitch 8, Denmead Caravan Park	C Cleverley
Pitch 9, Denmead Caravan Park	O Dromnes
Pitch 10, Denmead Caravan Park	M Thompson
Pitch 11, Denmead Caravan Park	J Naylor
Pitch 12, Denmead Caravan Park	D Barnfather
Pitch 13, Denmead Caravan Park	P Oliver
Pitch 14, Denmead Caravan Park	M Pillans
Pitch 15, Denmead Caravan Park	L Huggett
Pitch 16, Denmead Caravan Park	P A Alner
Pitch 17, Denmead Caravan Park	S A Smith
Pitch 18, Denmead Caravan Park	M J Adamson
Pitch 19, Denmead Caravan Park	P Heneghan
Pitch 20, Denmead Caravan Park	H Audrain
Pitch 21, Denmead Caravan Park	P Kent
Pitch 22, Denmead Caravan Park	J Harrison

**Schedule 2 – Increase in Pitch fees**

Address	Name of Occupier	2016 Pitch fee (£ pcm)	New pitch fee – from 01/01/2017 (£ pcm)
Pitch 1, Denmead Caravan Park	S Adamson	245.58	248.04
Pitch 2, Denmead Caravan Park	P Vince	215.69	217.85
Pitch 3, Denmead Caravan Park	R Plant	211.46	213.57
Pitch 4, Denmead Caravan Park	P J Wilson	229.15	231.44
Pitch 5, Denmead Caravan Park	J Langford	257.06	259.63
Pitch 6, Denmead Caravan Park	C Butland	201.57	203.59
Pitch 7, Denmead Caravan Park	D Dosewell	223.28	225.51
Pitch 8, Denmead Caravan Park	C Cleverley	209.86	211.96
Pitch 9, Denmead Caravan Park	O Dromnes	258.04	260.62
Pitch 10, Denmead Caravan Park	M Thompson	241.18	243.59
Pitch 11, Denmead Caravan Park	J Naylor	229.97	232.27
Pitch 12, Denmead Caravan Park	D Barnfather	279.99	282.79
Pitch 13, Denmead Caravan Park	P Oliver	209.86	211.96
Pitch 14, Denmead	M Pillans	234.55	236.90

Caravan Park			
Pitch 15 , Denmead Caravan Park	L Huggett	258.50	261.09
Pitch 16, Denmead Caravan Park	P A Alner	230.38	232.68
Pitch 17, Denmead Caravan Park	S A Smith	247.60	250.08
Pitch 18, Denmead Caravan Park	M J Adamson	221.67	223.89
Pitch 19, Denmead Caravan Park	P Heneghan	241.29	243.70
Pitch 20, Denmead Caravan Park	H Audrain	229.78	232.08
Pitch 21, Denmead Caravan Park	P Kent	238.13	240.51
Pitch 22, Denmead Caravan Park	J Harrison	240.36	242.76



Schedule 3 – Legislative Provisions

**The Mobile Homes Act 1983 (as amended)**

**Schedule 1 Part 1 Chapter 2**

“ .....

The pitch fee

**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 [A] notice under sub-paragraph (2) which proposes an increase in the pitch fee is of no effect unless it is accompanied by a document which complies with paragraph 25A.]
- (3) If the occupier agrees to the proposed new pitch fee, it shall be payable as from the review date.
- (4) If the occupier does not agree to the proposed new pitch fee—
  - (a) the owner [or (in the case of a protected site in England) the occupier] may apply to the [appropriate judicial body] for an order under paragraph 16(b) determining the amount of the new pitch fee;
  - (b) the occupier shall continue to pay the current pitch fee to the owner until such time as the new pitch fee is agreed by the occupier or an order determining the amount of the new pitch fee is made by the [appropriate judicial body] under paragraph 16(b); and
  - (c) the new pitch fee shall be payable as from the review date but the occupier shall not be treated as being in arrears until the 28th day after the date on which the new pitch fee is agreed or, as the case may be, the 28th day after the date

of the [appropriate judicial body's] order determining the amount of the new pitch fee.

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

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

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

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

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

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

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

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

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

(c) if the [appropriate judicial body] makes such an order, the new pitch fee shall be payable as from the 28th day after the date on which the owner serves the notice under sub-paragraph (6)(b).

(9) An application under sub-paragraph (8) may be made at any time after the end of the period of 56 days beginning with date on which the owner serves the notice under sub-paragraph (6)(b) [but, in the case of an application in relation to a protected site in England, no later than four months after the date on which the owner serves that notice].

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

- (10) The occupier shall not be treated as being in arrears—
- (a) where sub-paragraph (7) applies, until the 28th day after the date on which the new pitch fee is agreed; or
  - (b) where sub-paragraph (8)(b) applies, until the 28th day after the date on which the new pitch fee is agreed or, as the case may be, the 28th day after the date of the [appropriate judicial body's] order determining the amount of the new pitch fee.
- [(11) Sub-paragraph (12) applies if a tribunal, on the application of the occupier of a pitch in England, is satisfied that—
- (a) a notice under sub-paragraph (2) or (6)(b) was of no effect as a result of subparagraph (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.

## **19**

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

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

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

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

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

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

- (a) any action taken by a local authority under sections 9A to 9I of the Caravan Sites and Control of Development Act 1960 (breach of licence condition, emergency action etc);
- (b) the owner being convicted of an offence under section 9B of that Act (failure to comply with compliance notice).]

**20**

[(A1) In the case of a protected site in England, unless [Unless] this would be unreasonable having regard to paragraph 18(1), there is a presumption that the pitch fee shall increase or decrease by a percentage which is no more than any percentage increase or decrease in the retail prices index calculated by reference only to—

- (a) the latest index, and
- (b) the index published for the month which was 12 months before that to which the latest index relates.

(A2) In sub-paragraph (A1), “the latest index”—

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- (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.”