

**Y TRIBIWNLYS EIDDO PRESWYL**  
**RESIDENTIAL PROPERTY TRIBUNAL**

**IN THE MATTER OF AN APPLICATION TO DETERMINE A NEW PITCH FEE UNDER THE MOBILE HOMES (WALES) ACT 2013**

**Reference:** RPT/0047/02/23, RPT/0048/02/23 AND RPT/0049/02/23

**Property:** No. 9, No. 25 and No. 28 Middletown Residential Park, Middletown, Welshpool, Powys, SY21 8EX

**Applicant:** Wyldecrest Parks (Management) Ltd

**Respondents:** Mr & Mrs Dixon (No. 9), Mr and Mrs Davies (No. 25) and Mr & Mrs Harland (No. 28)

**Tribunal:** Mrs Siân Westby (Legal Chair)  
Mr Hefin Lewis FRICS (Surveyor Member)  
Mr Dean Morris (Lay Member)

**Appearance for Applicant:**

Mr Sunderland (Estates Manager for the Applicant)

**Appearance for Respondents:**

Mr Harland on behalf of Mr & Mrs Dixon (No. 9) and Mr & Mrs Harland (No. 28)

Mr Davies on behalf of Mr & Mrs Davies (No. 25)

**Decision of the RESIDENTIAL PROPERTY TRIBUNAL**

Summary of Decision

**The Tribunal determines that the new monthly pitch fee for the properties is as follows:**

- **No.9 Middletown Residential Park     £122.07 per month;**
- **No. 25 Middletown Residential Park   £167.69 per month; and**
- **No.28 Middletown Residential Park   £167.69 per month.**

**The pitch fee is payable from 1 January 2023.**

**Background**

1. Mr & Mrs Dixon are the occupiers of pitch number 9

2. By way of three separate applications to the Residential Property Tribunal, all dated 23 February 2023, the Applicant, Wyldecrest Parks (Management) Ltd, seeks a formal determination of the pitch fees payable by the Respondents, pursuant to paragraph 17(1)(b) of Schedule 2, part 1, chapter 2 of the Mobile Homes (Wales) Act 2013 (“the Act”).
3. The Tribunal issued directions on 15 March 2023 and invited written representations from the Respondents by no later than 4pm on 14 April 2023 and any further written representations from the Applicant by no later than 4pm on 28 April 2023.

### **The Applicant’s Case**

4. The Tribunal has before it copies of the pitch fee review forms, all dated 30 November 2022, that were served on the Respondents by the previous owner of the site, Laird Estate Group Holdings Ltd (“Laird”), in respect of each of the relevant park homes (“the Pitch Fee Review Forms”). This is the form prescribed under paragraph 23 of Chapter 2 of Part 1 of Schedule 2 to the Act.
5. All of the Pitch Fee Review Forms propose an increase in the pitch fees of 11.1%, calculated by reference to the published percentage change in the Consumer Price Index (“CPI”) for October 2022.
6. The current pitch fee for No.9 is £109.99 and the proposed new pitch fee is £122.07.
7. The current pitch fee for No.25 is £150.94 and the proposed new pitch fee is £167.70.
8. The current pitch fee for No.28 is £150.94 and the proposed new pitch fee is £167.70.
9. The Applicant’s case is that the pitch fee has been calculated in accordance with the Act, which presumes that the pitch fee will increase annually by a percentage, which is no more than the CPI.

### **The Respondents’ Case and the Applicant’s Supplementary Response**

10. Mr & Mrs Dixon (No.9) and Mr & Mrs Harland (No.28) filed and served a joint written statement dated 3 April 2023. Mr & Mrs Davies (No.25) filed and served a written statement dated 14 April 2023. The Applicant filed two supplementary statements thereafter, one in response to Mr & Mrs Dixon’s and Mr & Mrs Harland’s statement and the other in response to Mr & Mrs Davies’ statement.
11. The Pitch Fee Review Forms proposed that the new pitch fee would take effect from 1 January 2023 for each of the Properties. This commencement date is not disputed by any of the Respondents.
12. Mr & Mrs Dixon and Mr & Mrs Harland’s dispute in respect of the proposed new pitch fee can be summarised as follows:

- 12.1 They express doubts as to the validity of the Pitch Fee Review Forms served upon them due to a change in the owner of the Park after the Pitch Fee Review Forms had been served on them;
  - 12.2 They express concern as to the way in which the pitch fee review and change of ownership from Laird to the Applicant was handled and communicated to them;
  - 12.3 They dispute the accuracy of the information contained within the application forms submitted to the Tribunal by the Applicant.
13. In response to this statement, the Tribunal received a supplementary statement in response from the Applicant, dated 4 April 2023, in which the Applicant:
- 13.1 asserts that the Pitch Review Forms served are valid.
  - 13.2 asserts that the pitch fee review and change of ownership from Laird to the Applicant was handled in the correct manner.
  - 13.3 asserts that although Mr and Mrs Dixon and Mrs Harland dispute the accuracy of the information provided on the application form, they do not say why it is disputed.
  - 13.4 asserts that no submissions have been made, nor evidence provided to rebut the statutory presumption that the pitch fee shall increase by a percentage which is no more than any percentage increase in CPI.
14. Mr & Mrs Davies' dispute in respect of the proposed new pitch fee can be summarised as follows:
- 14.1 the Pitch Fee Review Form is invalid as the accompanying notice did not contain the landlord's registered address, phone number, company registration number or VAT number, contrary to paragraph 27 of the written statement for No.25.
  - 14.2 the pitch fee calculation used by Laird is incorrect due to a rounding error. Mr & Mrs Davies state that, using the correct rounding of the figures, the fee increase by reference to a CPI of 11.1% should be £167.69, and not £167.70 as stated on the Pitch Fee Review Form.
  - 14.3 there has been a general lack of maintenance and/or a reduction in services and amenities over the 12 months since the last pitch fee review. Mr & Mrs Davies detail a number of issues and refer to the Model Standards 2008 for Caravan Sites in Wales and to its accompanying explanatory notes ("the Model Standards"), as well as to photographs and other documents annexed to their witness statement). Briefly, the issues covered by Mr & Mrs Davies are as follows:
    - 14.3.1 no risk assessments have been provided by the Applicant raising health and safety issues under the Health and Safety at Work Act 1974.
    - 14.3.2 the fire risk assessment supplied by the landlord is not adequate or accurate, and the landlord has not complied with the Model Standards in respect of fire safety at the Park.

- 14.3.3 Since January 2022, the site warden no longer grits the roads on the Park in cold weather.
  - 14.3.4 that a speed limit sign had fallen to the ground and had not been re-mounted (this was raised as an issue to the landlord on 16 January 2022) and a suggestion by residents that further road signs should be installed had not been implemented.
  - 14.3.5 the landlord has not repaired, painted or generally maintained fence panels on the Park and hedges, trees and bushes are not trimmed or maintained on the Park. Mr & Mrs Dixon refer to, and purport to quote, letters and emails (not included within the Tribunal's bundle) from licencing officers at Powys County Council which refer to a 'lack of maintenance' of boundary fences.
  - 14.3.6 there are numerous issues relating to the lighting around the Park including faulty lights and lighting bollards being obscured by bushes that have not been trimmed appropriately.
  - 14.3.7 it is alleged that there has been a decline in the cleanliness and tidiness of the Park during 2022. Mr & Mrs Davies refer to the stone spheres at the entrance to the Park and the kerb stones not being cleaned, litter being left in the communal areas, grass and hedges not being cut at regular intervals and debris from trees and hedges (once they have been cut) not being cleared properly and being left in the gardens of the occupiers.
  - 14.3.8 the site noticeboard does not display the appropriate notices or utility bills as required by the Model Standards.
- 14.4 Mr & Mrs Davies also cast doubt on the validity of the application to the Tribunal made by the Applicant for the following reasons:
- 14.4.1 The ownership of the Park is unclear. Laird informed the occupiers that their interest in the Park had been sold to Best Holdings (UK) Limited; however, Mr & Mrs Davies allege that the pitch fees and utility bills are paid to UK Properties Management Limited and it is Wyldecrest Parks (Management) Limited that has submitted the application to the Tribunal.
  - 14.4.2 Mr & Mrs Davies have received advice (not contained within the bundle of documents before the Tribunal) that as it was not the Applicant who issued the Pitch Fee Review Form, the Applicant is unable to ask the Tribunal to determine the pitch fee payable.
  - 14.4.3 On the date that application to the Tribunal was made, 23 February 2023, not one of the following companies: Best Holdings (UK) Limited, UK Properties Management Limited, nor Wyldecrest Parks (Management) Limited held a site licence for the Park. Again, Mr & Mrs Davies refer to advice received (but not contained in the bundle) which suggests that the site owner needs to hold a site licence in order to ask the Tribunal to determine the pitch fee payable and that occupiers are not obliged to pay the pitch fees when the owner does not hold a site licence.
  - 14.4.4 The application form submitted by the Applicant contains numerous errors and factual inaccuracies, including a statement that Mr & Mrs Davies' pitch fees do not include sewerage and that pages of relevant documents were missing from the bundle of documents sent to the Tribunal.
  - 14.4.5 Finally, Mr & Mrs Davies allege that the Applicant has failed to inform the Park's qualifying residents' association of the address at which notices may be served on

the owner, contrary to paragraph 24(1) of Part 1, Chapter 2 of Schedule 2 to the Act and, as such, any amount due to the owner in respect of the pitch fee is to be treated for all purposes as not being due.

15. In response to Mr & Mrs Davies' statement, the Tribunal received a supplementary statement from the Applicant, dated 18 April 2023. The Applicant's response can be summarised as follows:

15.1 Invalid Pitch Fee Review Form – the Applicant argues that there is no requirement to provide the registered or trading address, phone number, company registration number or VAT number in the accompanying notice nor in the Pitch Fee Review Form. In any event, the name and address of the owner of the Park (at that time) is set out at Section 6 of the Pitch Fee Review Form and the Pitch Fee Review Form is not a 'demand for payment' and, accordingly, does not fall within the ambit of paragraph 27 of the written statement for No.25.

15.2 Incorrect Pitch Fee Calculation – The Applicant does not dispute the rounding error in the calculation of the proposed new pitch fee and agrees that the proposed pitch fee, increased by reference to the CPI for October 2022, should be £167.69 rather than the £167.70 stated in the Pitch Fee Review Form. The Applicant denies, however, that this in any way invalidates the Pitch Fee Review Form.

15.3 Lack of maintenance - The Applicant states that Mr & Mrs Davies have erred in referring to the Model Standards throughout this section of their witness statement. The Applicant states that the Model Standards are standards that are relevant to the Council in deciding when to apply conditions to a park licence, not to a Tribunal when determining a pitch fee. The Applicant also asserts that a lack of maintenance is not a reduction in amenity of a park unless it is a 'weighty matter' which outweighs the statutory presumption of a CPI increase; in support, the Applicant refers to the case of Vyse-v- Wyldecrest Parks (Management) Ltd [2017] UKUT 0024. In dealing with the specific items identified in Mr & Mrs Davies' statement, the Applicant responds as follows:

15.3.1 Regarding the health and safety, fire safety, gritting of the Park and speed limit signage, the Applicant contends that none of these matters are contractual issues and do not amount to a reduction in the amenity of the Park.

15.3.2 The Applicant states that it has an obligation, at paragraph 22(d) of Mr & Mrs Davies' written statement to maintain in a clean and tidy condition the common parts of the Park. The Applicant states that the matters referred to by Mr & Mrs Davies and the photographs annexed to their witness statement do not show any breach of this obligation and do not evidence a reduction in the amenity of the Park.

15.3.3 Street lighting – although the Applicant acknowledges that, from time to time, there may be faulty lights on the Park, it states that there is no evidence to show that there is insufficient light to allow safe movement of pedestrians and vehicle nor that there has been any reduction in the amenity of the Park.

15.3.4 Cleanliness of the Park – the Applicant acknowledges that, on occasion, small items of rubbish may appear on the Park but denies that there has been any reduction in the amenity of the Park.

- 15.3.5 Site noticeboard – the Applicant contends that the noticeboard is not a relevant consideration in respect of the pitch fee and again denies that there has been any reduction in the amenity of the Park.
- 15.4 Regarding Mr & Mrs Davies' contention that the Applicant's application to the Tribunal may not be valid, the Applicant argues:
- 15.4.1 that the Applicant is the owner of the Park and Mr & Mrs Davies were informed of this by way of a notice dated 31 January 2023, in compliance with paragraph 24 of their written statement.
  - 15.4.2 That as the owner of the Park, it is entitled to make an application to the Tribunal to determine the pitch fee payable and that this is supported by s.17 of the Act.
  - 15.4.3 Laird, as the owner of the Park at the time the Pitch Fee Review Form was served, was the correct entity to serve the Pitch Fee Review Forms.
  - 15.4.4 By virtue of section 3(1) of the Mobile Homes Act 1983, the Applicant is now a party to the written statement with Mr & Mrs Davies.
  - 15.4.5 That site licences are issued by the local authority and, whilst an application for a site licence is being processed, the owner can legally operate a park and that this does not impact upon the contractual relationship between the owner and occupier.
  - 15.4.6 Although there are errors in the application to the Tribunal, for example a typographical error in an email address and the statement in the application form that sewerage is not included within the pitch fee (which the Applicant now acknowledges is included within Mr & Mrs Davies' pitch fee), these errors do not render the application to the Tribunal invalid.
  - 15.4.7 That the local authority have not given the requisite notice to it, as owner of the Park, of a qualifying residents' association and, in any event, as a residents' association is made up of occupiers of the Park and all of the occupiers have received a notice from the Applicant, the Chairman and the Secretary of any association must have received such notice from the Applicant.

### **The Inspection**

- 16. Mrs Westby and Mr Lewis inspected the Park on 26 June 2023 in the presence of Mr Davies of No.25. No other Respondents were present and Mr Sunderland of the Applicant company confirmed over the telephone that he would not be attending the inspection.
- 17. The Park is split into two different levels; a lower level and an upper level. A road leading up the centre of the site links the lower level to the upper level and is flanked by wooden fences ("the Central Road").
- 18. The Park lighting consisted of a mixture of traditional lamp posts and approximately 1-metre-high columns. The Tribunal was informed that the lights that had been reported not to work had now been repaired.
- 19. Two of the lighting columns were found to be partially or wholly obstructed by vegetation on the Park.

20. The Tribunal observed that the wooden fencing flanking the Central Road between the upper and lower levels of the Park were roughly the same size but of different design. Whilst of a reasonable standard, some fence panels exhibited areas of 'wear and tear' to which maintenance repair would become necessary in the short term. It was noted that the bottom of one of the fences (on the right hand side of the road as you travel towards the upper-level) appeared to be rotting and would require replacement in the near future.
21. Firefighting equipment was observed throughout the Park and appeared to be modern and appropriate for the size of the site and number of homes, being 36 in total. It was noted, however, that much of the signage on firefighting equipment was faded and hard to read.
22. The Tribunal observed that the Park was generally well maintained although it was noted that some of the vegetation on the Park would need to be cut at the appropriate time.

### Hearing

23. The hearing was convened remotely on Microsoft Teams on 3 July 2023 commencing at 10.30am.
24. The hearing commenced with an application by the Applicant seeking a strike-out of Mr and Mrs Dixon and Mr and Mrs Harland's joint witness statement on the ground that the witness statement offered no evidence that displaced the statutory presumption that the pitch fee should increase by no more than the percentage increase in CPI.
25. The Tribunal invited Mr & Mrs Dixon and Mr and Mrs Harland to respond to this application. Mr Harland responded on behalf of himself, Mrs Harland and Mr & Mrs Dixon and stated that their witness statement called into question the validity of the Pitch Fee Review Form which had a bearing on the matter and whether there was even a case for a pitch fee review.
26. Having heard both parties' arguments, the Tribunal dismissed the Applicant's application for strike-out for the following reasons:
  - 26.1 although there was a lack of detail in the Mr & Mrs Dixon's and Mr & Mrs Harland's witness statement, they were clearly seeking to challenge the proposed increase in their pitch fee and had cited reasons for this;
  - 26.2 in order to have a fair hearing in respect of the application for strike-out, it would be necessary to hear Mr & Mrs Dixon's and Mr & Mrs Harland's evidence in any event such that no practical purpose would be served in striking out the witness statement; and
  - 26.3 it was considered fair and just to allow Mr & Mrs Dixon and Mr & Mrs Harland to present their case to the Tribunal, in accordance with the overriding objective at paragraph 3, part 2 of the Residential Property Tribunal Procedures & Fees (Wales) Regulations 2016.
27. The Tribunal went on to hear from the parties. As a starting point, the Tribunal asked the Applicant to clarify who the 'owner' of the Park is, as both of the Respondents' witness statements expressed confusion in this regard. On behalf of the Applicant, Mr Sunderland

confirmed that Best Holdings (UK) Limited had purchased the freehold title for the Park from Laird on 31 January 2023 and had, on the same day, then completed a lease of the Park to the Applicant. Mr Sunderland confirmed that the Applicant was the 'owner' of the Park for the purposes of Section 3 of the Act. This was not disputed by any of the Respondents.

28. The Tribunal then went on to hear from Mr Harland who confirmed that the witness statement of Mr & Mrs Dixon and Mr & Mrs Harland stood as their submissions in the matter and re-iterated that their view of the matter was that the Applicant should have submitted a fresh Pitch Fee Review Form and could not rely upon the one served by Laird. Mr Harland also asserted that the notice that accompanied the Pitch Fee Review Form should have been signed and dated with an address and company registration number for the owner also specified on the notice.
29. Upon being questioned by the Tribunal, Mr Harland stated that he considered that there had been a deterioration in the condition of the Park and referred to hedge cutting and a lack of maintenance across the whole Park and stated that the Park had deteriorated ever since Laird had taken over the Park from the previous owner of the Park, Salop, although no further detail was given in this regard.
30. Mr Sunderland's response mirrored the submissions he had made in his response to Mr & Mrs Dixon and Mr & Mrs Harland. He referred to paragraphs 17(3) and 17(1)(b) of Part 1, Chapter 2 of Schedule 2 to the Act which requires the 'owner' to serve the pitch fee review form on the occupier and entitles the 'owner' to make an application to the Tribunal to determine the pitch fee. Mr Sunderland asserted that Laird, as the 'owner' at the time the Pitch Fee Review Forms were issued was the correct entity to serve those forms and that the Applicant, as the 'owner' at the relevant time, was entitled to make an application to the Tribunal. He argued that there was no requirement that the owner making the application to the Tribunal be the same owner that served the Pitch Fee Review Forms.
31. In respect of the notice accompanying the Pitch Fee Review Forms, Mr Sunderland acknowledged that this did not contain the information Mr & Mrs Dixon and Mr & Mrs Harland referred to but stated that there was no requirement for it to. Mr Sunderland referred to paragraph 24(1) of Part 1, Chapter 2 of Schedule 2 to the Act and stated that as the Pitch Fee Review Forms and the accompanying notice were not a 'demand for payment', there was no requirement for this paragraph of the Act to be complied with. In any event, Mr Sunderland argued that as section 6 of the Pitch Fee Review Form specified Laird's name and address it was sufficient to comply with paragraph 24(1) in any event.
32. Mr Sunderland went on to state that the Applicant had not received any contact from Mr & Mrs Dixon nor Mr & Mrs Harland to try to resolve the issue, that no evidence had been brought to show the condition of the Park before the alleged lack of maintenance, nor any evidence filed to support the allegation of invalidity they had raised. Mr Sunderland referred to the case of *Vyse v Wyldecrest Parks (Management) Limited [2017] UKUT 0024* and asserted that the starting point is that the CPI presumption applies to the whole pitch fee unless a 'weighty' factor exists. Mr Sunderland alleged that Mr & Mrs Dixon and Mr & Mrs Harland had not raised any relevant factors to displace the CPI presumption in their favour.



33. The Tribunal then heard from Mr Davies. His evidence in chief echoed the joint witness statement he had made with his wife and referred to the Model Standards as being the standards applicable to the Park, regardless of what company was the owner of the Park at the time and regardless of which company held a licence for the Park. Mr Davies asserted that no maintenance had been carried out to the Park since the middle of 2022 and that Laird had not cut back the vegetation in September 2022 as it ought to have done. He referred to one streetlight in the Park which had not worked properly for a considerable amount of time (although acknowledged that it had been fixed in March 2023) and had caused the visitor car park to be extremely dark at night and, particularly, in the winter months.
34. In relation to the gritting of the roads on the Park, Mr Davies stated that the roads had been gritted at the start of January 2022 by the site warden who gritted the roads only 'occasionally' and 'not to a high standard'.
35. Mr Davies referred to the photographic evidence that he had supplied which he said evidenced a reduction in the amenity of the Park and submitted that 'amenity' meant 'the quality of being agreeable or pleasant'.
36. Mr Davies did also raise an argument in respect of charges that had been made for liquid petroleum gas provided to his property and asserted that he had been charged twice for the gas but no evidence was submitted in support of this assertion.
37. Mr Davies argued that, in respect of the lack of maintenance, the cumulative evidence provided to the Tribunal was sufficient to rebut the CPI presumption.
38. The Applicant's submissions in response again largely mirrored the submissions he had made in his response to Mr & Mrs Davies' statement. Mr Sunderland referred to the Model Standards being standards to which the local authority must have regard when deciding what conditions to impose in a site licence. Mr Sunderland denies that the Applicant is in breach of any of the conditions attached to its site licence but also referred to the case of Cathmal v Mr & Mrs Bownes BIR/17UD/PHI/2022/009 which, he submits, suggests that any alleged breach of the site licence is a matter for the Council, not the Tribunal determining a pitch fee.
39. Mr Sunderland did confirm during the hearing that hedges belonging to the Applicant would be cut in due course but that none of the matters raised by the Applicants was sufficient to rebut the CPI presumption.
40. Upon being questioned by the Tribunal, Mr and Mrs Davies confirmed that they had lived on the Park for 2.5 years and that the site warden had gritted the road since they had lived on the Park but that the gritting had stopped when they had received a letter from Laird in January 2022 confirming that it would no longer be doing so and that residents were expected to carry out their own gritting.
41. The surveyor member of the Tribunal also asked a number of questions of the parties as to who was responsible for the boundary fences on the Park, including the fences that abutted the Central Road. There was some dispute between the parties on this issue, particularly as to who was responsible for the fences abutting the Central Road and the Park boundary fences.

## The Relevant Law

42. Section 3 of the Act sets out the definition of 'owner' for the purposes of the Act as follows:  
*In this Act "owner", in relation to any land, means the person who, by virtue of an estate or interest in the land-*

- (a) Is entitled to possession of the land, or*
- (b) Would be entitled to possession of the land but for the rights of any other person under any licence or contract granted in respect of the land (including a licence or contract to station or occupy a mobile home there),*

*But see also sections 29(2), 42(7) and 55(2)(a).*

43. The relevant extracts of paragraph 17 of Schedule 2, part 1, chapter 2 of the Act, are as follows:

- (1) The pitch fee can only be changed in accordance with this paragraph either –*
  - (a) with the agreement of the occupier, or*
  - (b) if a Tribunal, on the application of the owner or an occupier, considers it reasonable for the pitch fee to be changed and makes an order determining the amount of the new pitch fee.*
- (2) The pitch fee must be reviewed annually as at the review date.*
- (3) At least 28 clear days before the review date the owner must serve on the occupier a written notice setting out proposals in respect of the new pitch fee.*
- (4) A notice under sub-paragraph (3) which proposes an increase in the pitch fee is of no effect unless it is accompanied by a document which complies with paragraph 23.*
- (5) If the occupier agrees to the proposed new pitch fee, it is payable as from the review date.*
- (6) If the occupier does not agree to the proposed new pitch fee –*
  - (a) the owner or the occupier may apply to a tribunal for an order under sub-paragraph (1)(b) determining the amount of the new pitch fee,*
  - (b) the occupier must 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 tribunal under sub-paragraph (1)(b), and*
  - (c) the new pitch fee is payable as from the review date but the occupier is not to be regarded 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 tribunal's order determining the amount of the new pitch fee.*
- (7) An application under sub-paragraph (6)(a) may be made at any time after the end of the period of 28 days beginning with the review date but no later than 3 months after the review date.*

44. Paragraph 18(1) of Schedule 2, part 1, chapter 2 of the Act requires that when determining the amount of the new pitch fee particular regard is to 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(1)(e) and (f), and*
  - (iii) to which a majority of the occupiers have not disagreed in writing or which, in the case of such disagreement, a tribunal, on the application of the owner, has ordered should be taken into account when determining the amount of the new pitch fee.*

- (b) *any deterioration in the condition and any decrease in the amenity, of the protected site or any adjoining land which is occupied and controlled by the owner since the date when this sub 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, and*
  - (c) *any reduction in the services which 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 sub-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, and*
  - (d) *any direct effect on the costs payable by the owner in relation to the maintenance or management of the site if an enactment which has come into force since the relevant review date.*
45. Paragraph 19(1) of Schedule 2, part 1, chapter 2 of the Act states that ‘*when determining the amount of the new pitch fee, any costs incurred by the owner in connection with expanding the protected site are not to be taken into account*’. Paragraph 19(2) states that ‘*when determining the amount of the new pitch fee, no regard may be had to –*
- (a) *any costs incurred by the owner in relation to the conduct of proceedings under this Part or the agreement,*
  - (b) *any fee required to be paid by the owner by virtue of section 6 or 13, or*
  - (c) *any costs incurred by the owner in connection with –*
    - (i) *any action taken by a local authority under sections 15 to 25, or*
    - (ii) *the owner being convicted of an offence under section 18’.*
46. Paragraph 20(1) of Schedule 2, Part 1, Chapter 2 of the Act states that –
- (1) ‘*unless it would be unreasonable having regard to paragraph 18(1), there is a presumption that the pitch fee will increase or decrease by a percentage which is no more than any percentage increase or decrease in the consumer 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.*
  - (2) *In sub-paragraph (1) “the latest index” –*
    - (a) *In a case where the owner serves a notice under paragraph 17(3), means the last index published before the day on which that notice is served; and*
    - (b) *In a case where the owner serves a notice under paragraph 17(8)(b) means the last index published before the day by which the owner was required to serve a notice under paragraph 17(3).*
47. Paragraph 24(1) and (2) of Schedule 2, Part 1, Chapter 1 of the Act states that-
- (1) *The owner must by notice inform the occupier and any qualifying residents’ association of the address in England and Wales at which notices (including notices of proceedings) may be served by the occupier or a qualifying residents’ association.*
  - (2) *If the owner fails to comply with sub-paragraph (1), then (subject to sub-paragraph (5)) any amount otherwise due from the occupier to the owner in respect of the pitch fee is to be treated for all purposes as not being due from the occupier to the owner at any time before the owner complies with sub-paragraph (1).*
48. Paragraph 25 of Schedule 2, Part 1, Chapter 1 of the Act states that –

- (1) *Where the owner makes any demand for payment by the occupier of the pitch fee, or in respect of services supplied or other charges, the demand must contain-*
  - (a) *The name and address of the owner, and*
  - (b) *If that address is not in England or Wales, an address in England or Wales at which notices (including notices of proceedings) may be served on the owner.*
- (2) *Subject to sub-paragraph (3), where –*
  - (a) *The occupier receives such a demand, but*
  - (b) *It does not contain the information required to be contained in it by virtue of sub-paragraph (1), the amount demanded is to be treated for all purposes as not being due from the occupier to the owner at any time before the owner gives that information to the occupier in respect of the demand.*
- (3) *The amount demanded is not to be treated as not being due in relation to any time when, by virtue of an order of any court or tribunal, there is in force an appointment of a receiver or manager whose functions include receiving from the occupier the pitch fee, payments for services supplied or other charges.*

## **Deliberation**

49. The Tribunal considered all the written, oral and photographic evidence submitted. It also had regard to the inspection that was carried out on 26 June 2023.
50. During the 12-month period applicable to this review, we agree that the CPI had risen by 11.1% and, indeed, this has not been disputed by the Respondents.
51. For the purposes of the Act, what we have to consider is whether there has been any deterioration in the condition or decrease in the amenity of the Park or any reduction or deterioration in the service that the owner is obliged to supply. If we find that there has been, the Tribunal then has to consider whether allowing a CPI increase would produce an unreasonable result, having regard to our decision on the reasonableness of the pitch fee increase generally.
52. It was accepted by both Mr Sunderland and Mr & Mrs Davies during the hearing that ‘amenity’ in the context of this matter means the quality of being agreeable or pleasant, and we agree with this. Accordingly, it is necessary for the Tribunal to look at any decrease in the agreeableness or pleasantness of the Park.
53. The Tribunal must therefore consider whether anything the Respondents have said is sufficient to persuade us that it would not be reasonable to increase the pitch fee by the CPI. Dealing with the issues the Respondents have raised, we comment as follows:

### Is the Applicant entitled to rely upon the Pitch Fee Review Forms served by the previous owner, Laird?

54. Section 3 of the Act, as set out above, provides a definition of the ‘owner’ for the purposes of the Act. It was not disputed at the hearing that Laird was the owner of the Park when the Pitch Fee Review Forms were served pursuant to paragraph 17(3) of Schedule 2 to the Act. Accordingly, the Tribunal can see no issue with the validity of the Pitch Fee Review Forms

served by Laird and which were in the form prescribed under paragraph 23 of Chapter 2 of Part 1 of Schedule 2 to the Act.

55. Again, no dispute was raised in respect of the Applicant being the owner of the Park at the time the three applications were made to the Tribunal. Rather, there appeared to be concern from the Respondents in the way the communications were handled, with occupiers receiving communication from Laird that the Park was to be sold to Best Holdings (UK) Limited and then receiving a letter from the Applicant confirming that it was the new owner of the Park. Whilst the communication to the occupiers may have caused confusion, there was no evidence before the Tribunal, nor was it disputed by the Respondents, that the Applicant was not the owner of the Park on 23 February 2023, when the applications were submitted to the Tribunal.
56. Pursuant to paragraph 17(3) of Schedule 2 to the Act, set out above, the owner (or an occupier) of the Park is entitled to make an application to the Tribunal to determine the amount of the new pitch fee.
57. Section 53 of the Act provides for an agreement to which the Act relates to be binding on a successor in title to the site owner. This will include any written statements that are in existence between the owner and occupier and, on general principles, the Tribunal can see no reason why the new owner would not take the benefit of the Pitch Fee Review Forms served by its predecessor in title. The Tribunal considers that this must be the case in the same way that the new owner will be entitled to any pitch fee arrears at the time title to the land is transferred.
58. Accordingly, the Tribunal finds that the Applicant is entitled to rely upon the Pitch Fee Review Forms served on the Respondents by Laird.

#### Content of the Pitch Fee Review Forms and accompanying notice

59. It was alleged that the notice accompanying the Pitch Fee Review Form should have contained Laird's registered address, telephone number, company registration number and other information in order for it to be valid. Mr & Mrs Davies rely on paragraph 27 of Part 3 to their written statement in making this assertion. This paragraph largely mirrors paragraph 25 of Schedule 2, Part 1, Chapter 1 of the Act, which is set out above and requires that in any demand for payment of a pitch fee the owner must include its name and an address in England and Wales.
60. The Pitch Fee Review Forms and the accompanying notice are not a demand for payment by the owner; the form is a proposal to increase the pitch fee. Indeed, pursuant to paragraph 17(1) of Schedule 2, Part 1, Chapter 1 of the Act a pitch fee can only be changed either with the agreement of the occupier or upon determination by a Tribunal. Accordingly, the Tribunal does not consider that paragraph 25 of Schedule 2, part 1, Chapter 1 of the Act applies to the Pitch Fee Review Forms or its accompanying notice. In any event, the legislation only requires that the owner's name and an address in England and Wales is stated on any such demand for payment. Notwithstanding that the Tribunal does not consider that the Pitch Fee Review Forms and the accompanying notice are a demand for payment, Laird's name and an address in England is included on the Pitch Fee Review Forms at section 6.

61. Therefore, the Tribunal finds that the Pitch Fee Review Forms are valid and comply with the relevant legislation.

Does the fact that the Applicant did not hold a site licence for the Park at the time it made the applications to the Tribunal invalidate those applications?

62. The issue here is whether the pitch-fee review can take place because the Applicant did not hold a site licence when the applications were made to the Tribunal. On the evidence before the Tribunal, the Applicant's site licence was issued on 15 March 2023, whereas it applied to the Tribunal for a determination of the pitch fees on 23 February 2023.

63. Although an owner is under a statutory obligation to obtain a licence (Section 6 of the Act), there appears to be nothing that makes that a pre-condition of a pitch-review. In addition, in so far as having a site licence is a pre-condition, the defect has now been cured as the Applicant now holds a site licence for the Park and did so at the time the Tribunal hearing.

64. He who alleges must prove, and it is not enough for the Respondents to assert that the process has been invalidated. The respondents must establish this by argument, relying on provisions in the 2013 Act and/or case law. No such arguments were advanced by the Respondents other than to say that they had been advised of this by various organisations.

65. The Tribunal therefore finds that the applications are valid, notwithstanding that the Applicant did not hold a site licence for the Park at the time of issuing those applications.

Inaccuracies within the applications to the Tribunal

66. The Tribunal considers that the errors within the application forms were relatively minor and did not prejudice the Respondents in any way. Accordingly, the Tribunal does not consider these errors in any way invalidate the applications made to the Tribunal.

Qualifying Residents Association

67. The Tribunal did not have the necessary evidence before it to determine whether there was a qualifying residents' association at the Park, pursuant to Section 61 of the Act, nor whether there had been a breach by the owner of the implied term at paragraph 24 of Schedule 2, Part 1, Chapter 1 of the Act. In any event, the Tribunal does not consider that any alleged breach of this implied term constitutes a deterioration in the condition or decrease in the amenity of the Park.

68. Accordingly, the Tribunal considers that such a matter falls outside its remit to determine the pitch fees for the Properties in any event. The Tribunal therefore makes no determination in this regard.

Health & Safety

69. The Tribunal does not consider that the absence of risk assessments for the Park and the applicability, or otherwise, of the Health and Safety at Work Act to be a relevant consideration for it when determining the pitch fee. There is no evidence that such issues amount to a deterioration in the condition or decrease in the amenity of the Park.

Fire Safety and Site Noticeboard

70. Much of Mr & Mrs Davies' arguments in respect of these issues focused on the Model Standards. However, Section 10(2) of the Act states that *'In deciding what (if any) conditions to impose in a site licence, a local authority must have regard to any model standards which have been specified.'* The Model Standards are therefore relevant when it comes to the conditions that are attached to the owner's site licence.
71. Many of the issues raised by Mr & Mrs Davies in this respect may amount to a breach of the Park's site licence conditions. However, if the Respondents consider that the Applicant is in breach of the Park's site licence, the appropriate avenue is a complaint to the Council in order that the matter can be investigated.
72. In so far as these issues are relevant to the Tribunal's determination of the pitch fee, the Tribunal is not persuaded that there has been a deterioration in the condition or decrease in the amenity of the Park such as to displace the presumption of an increase in the pitch fee by the CPI.

#### Gritting of the roads

73. Upon Mr & Mrs Davies' evidence, the site warden had occasionally gritted the roads of the Park since they had moved there some 2.5 years ago, albeit 'not to a high standard'. Laird confirmed that it would stop gritting the roads in January 2022. Having reviewed Mr & Mrs Davies' written statement, although there is an obligation to keep the access ways clean and tidy, there is no contractual obligation on the owner to grit the roads on the Park.
74. On the evidence before it, the Tribunal does not consider that the gritting of the roads can be said to have been incorporated into the owner's obligation through custom and practice. Accordingly, the Tribunal is not persuaded that the lack of gritting on the Park since January 2022 amounts to a deterioration in the condition or decrease in the amenity of the Park, nor a reduction in the services that the owner supplies to the Park such as to displace the presumption of an increase in the pitch fee by the CPI.

#### Signage and road markings

75. The Tribunal notes that the Respondents have suggested to Laird and the site warden that 'stop' markings and signage should be installed at the Park. However, as the Park has never had such markings or signage, the lack of them is not a deterioration or decrease in the condition or amenity of the Park.
76. The Tribunal does not consider that the removal of a speed limit sign at the bottom of the Central Road amounts to a deterioration in the condition or decrease in the amenity of the Park such as to displace the presumption of an increase in the pitch fee by the CPI.

#### Vegetation and Fences on the Park

77. During its inspection, the Tribunal noted that some of the hedges were overgrown on the Park and in need of a cut. Two hedges in particular were obscuring lighting bollards. Mr Sunderland confirmed that the hedges would be cut in due course and the Tribunal notes that the usual time to cut back such vegetation would be early Autumn thereby avoiding the potential nesting birds.

78. The Tribunal did find some 'wear and tear' to the fence panels and that one of the fence panels in particular had a rotten section at the bottom and would require replacement in the short term. However, on the whole, the fencing appeared reasonable.
79. It was evident at the hearing that there was a dispute between the parties as to who was responsible for some of the boundary structures on the Park and the Tribunal did not have the requisite evidence before it to consider this issue. Nevertheless, having regard to its inspection and for the reasons stated above, the Tribunal is not persuaded that, even if the fences were the responsibility of the Applicant, there has been a deterioration or decrease in the condition of amenity of the Park.

#### Street Lighting

80. In relation to lighting at the Park, although there was evidence that a lamp post had not worked as it ought to have done, the evidence before the Tribunal was that all of the lighting now worked. The Tribunal does not find that this aspect of the evidence advanced by Mr & Mrs Davies amounts to a decrease in the amenity of the Park to the extent that any CPI increase is unreasonable.

#### Cleanliness

81. The Tribunal has already explained why it does not consider the Model Standards to be relevant to its determination of the pitch fee. The Respondents should contact the Council if they consider that the owner is in breach of the site licence conditions for the Park.
82. Regarding the concerns about cleanliness of the Park, the photographs of the litter put forward by Mr & Mrs Dixon show a number of items of litter around the Park but these, in the opinion of the Tribunal, are relatively minor instances of litter which can be expected of most open spaces and which are very easily remedied.
83. The Tribunal did not consider the walls or spheres at the entrance to the Park or the kerb stones were particularly dirty or in need of cleaning.
84. Again, The Tribunal does not find that this aspect of the evidence advanced by Mr & Mrs Davies amounts to a decrease in the amenity of the Park to the extent that any CPI increase is unreasonable.

#### **Decision**

85. Having considered all the facts and with the benefit of the inspection we find that the Respondents have not provided sufficient evidence to rebut the presumption in favour of a CPI increase as contended for by the Applicant. Although the Tribunal notes the Respondents' concerns in relation to the matters set out above, we do not form a view that they, individually or cumulatively, are sufficient enough to rebut the CPI presumption.
86. The Tribunal determines that the pitch fee for the Properties should increase from the review date of 1 January 2023 by the percentage increase in CPI, being 11.1%.

#### **Mr & Mrs Dixon (No.9)**



87. The Tribunal determines that the pitch fee for No.9 will be £122.07 per month from 1 January 2023, pursuant to the Applicant's application and Pitch Fee Review Form for No.9.

**Mr & Mrs Davies (No.25)**

88. The Applicant has acknowledged the rounding error in Mr & Mrs Davies' Pitch Fee Proposal Form and has accepted that the CPI increase of 11.1% to their pitch fee would amount to a new pitch fee of £167.69 per month.

89. The Tribunal therefore determines that the pitch fee for No.25 will be £167.69 per month from 1 January 2023.

**Mr & Mrs Harland (No. 28)**

90. The Tribunal considers that the calculation in the Pitch Fee Review Form for No.25 has also been incorrectly rounded up, as it had with No. 25:

Existing pitch fee:            £150.94 x 11.1% (CPI % increase) = £16.75 increase

£150.94 + £16.75 = £167.69

91. The Tribunal therefore determines that the pitch fee for No.28 will be £167.69 per month from 1 January 2023.

92. In accordance with paragraph 17(6)(c) of Schedule 2, paragraph 1, chapter 2 of the Act, the new pitch fee is payable from the review date, being 1 January 2023. However, pursuant to that same paragraph, the Applicant is not to be regarded 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.

**Costs**

93. Although the Applicant in its responses to the Respondents' witness statements stated that it reserved its right to make an application for wasted costs, when expressly asked by the Tribunal at the hearing, it made no application and Mr Sunderland advised that he would wait until the applications had been determined.

94. Accordingly, as no party applied for costs, we make no such award.

**Additional thoughts**

95. Whilst the Tribunal understands the Respondents' position and notes that the Applicant has only recently taken ownership of the Park, it did appear to us (although did not form part of the reasoning for our decision) that there has been a lack of communication between the parties. There are clearly issues, such as who has responsibility for the boundary structures, that need to be resolved moving forward in order for the parties to have an amicable future relationship. The Tribunal feels that better lines of communication between all concerned would be beneficial. Whilst this does not form part of our decision, we do hope that the parties will take note of these comments.

Dated this 17th day of July 2023.

Tribunal Judge S. Westby