



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

**Case Reference** : BIR/17UK/PHI/2020/0027-0037, 39

**Property** : Weston Hill Park, Bridge Lane,  
Weston-on-Trent, Derbyshire DE72 2BU

**Applicants** : Michael Mark Anthony White (1)  
Michael Thomas White (2)  
t/a White Park Homes

**Representative** : Blacks Solicitors

**Respondents** : John and Ellen Sowter (5)  
Brian and Rose Beardsley (7)  
Paul Wilkinson (8)  
Nina Garland (10)  
Anthony Hill (12)  
Mrs E Peapell (15)  
Elaine Walters (16)  
Mandy Simpson (17)  
Simon Bird (18)  
Trevor and Dorothy Melmore (19)  
Errol Thompson (22)  
Dennis and Annette Bushell (23)

**Type of Application** : Pitch Fee Review (2020)

**Tribunal Members** : Judge T N Jackson  
Ms S Hopkins FRICS

**Date and venue of  
Hearing** : 5<sup>th</sup> October 2020  
Paper Determination

**Date of Decision** : 18<sup>th</sup> January 2021

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**DECISION**

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## Reasons for decision

**We determine that the annual pitch fee for the Properties should increase from the review date of 1<sup>st</sup> May 2020 to the following amounts:**

Pitch 5	148.91
Pitch 7	145.00
Pitch 8	128.88
Pitch 10	98.59
Pitch 12	148.91
Pitch 15	138.70
Pitch 16	128.88
Pitch 17	152.84
Pitch 18	149.94
Pitch 19	148.91
Pitch 22	121.19
Pitch 23	154.05

### Introduction

1. Weston Hill Chalet Park ('the Park') is a protected site for the purposes of the Mobile Homes Act 1983. It is licensed by South Derbyshire District Council ('the Council').
2. With the exception of pitches 10, 16 and 22, Written Statements had been provided in respect of each pitch which detailed the pitch fee and an annual review date which varied between the pitches. There is no dispute between the parties that pitches 10, 16 and 22 are "mobile homes" as defined under the Caravan Sites and Control of Development Act 1960.
3. By Notice dated 12<sup>th</sup> March 2020 and served on or around the same date, the Applicants gave notice to each of the Respondents that they proposed to review the pitch fee effective from 1 May 2020 (being at least 28 clear days after service of the documentation on a date on or after 12<sup>th</sup> March 2020 the exact date being unknown). The proposed increase related to the increase in the RPI Index only, namely 2.7%.
4. There is a discrepancy between the figures in the applications and the Pitch Fee Review Notice for Pitches 5 and 15. We have therefore relied on the figures in the Notice. The current and proposed annual pitch fees are set out below:

	<u>Current £</u>	<u>Proposed £</u>
Pitch 5	145.00	148.91
Pitch 7	141.18	145.00
Pitch 8	125.50	128.88
Pitch 10	96.00	98.59
Pitch 12	145.00	148.91
Pitch 15	135.06	138.70
Pitch 16	125.50	128.88
Pitch 17	148.83	152.84

Pitch 18	146.00	149.94
Pitch 19	145.00	148.91
Pitch 22	118.00	121.19
Pitch 23	150.00	154.05

- The Respondents did not agree to the proposed increase but did not make an application to the Tribunal. On 10<sup>th</sup> July 2020, the Applicants applied to the Tribunal for a determination of a new level of the pitch fee in relation to the Properties. The residents of Pitch 24 subsequently agreed the pitch fee and are no longer Respondents.
- Directions dated 5<sup>th</sup> August 2020 and 20<sup>th</sup> October 2020 were issued to the parties.

### **The Law**

- The relevant legislation is contained within Schedule 1 Part 1 Chapter 2 of the Mobile Homes Act 1983 (as amended) ('the 1983 Act'). Paragraph 20 (1) states that 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 the percentage change in the RPI in the 12 months before the Pitch Review Notice was served.
- Paragraph 18 sets out factors to which "particular regard" must be had when determining the amount of the new pitch fee.

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

.... .... (not relevant to this case)

*(aa).... "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<sup>1</sup> (in so far as regard has not previously been had to that deterioration or decrease for the purpose of this sub paragraph);*

*(ab).....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<sup>2</sup> (in so far as regard has not previously been had for the purpose of this sub-paragraph).*

- The decisions in **Wyldecrest Parks Management Ltd v Kenyon and others [2017] UKUT 28 (LC)** and **Vyse v Wyldecrest Parks Management Ltd [2017] UKUT 24 (LC)** both refer to it being possible for us to take into account other factors which are "weighty factors".

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<sup>1</sup> 26<sup>th</sup> May 2013

<sup>2</sup> 26<sup>th</sup> May 2013

10. For the RPI presumption to be displaced under the provisions of paragraph 18, the other considerations must be of considerable weight. “If it were a consideration of equal weight to RPI, then applying the presumption, the scales would tip the balance in favour of RPI”<sup>3</sup>.

### **History of the Site**

11. We note the history of the Site from a previous Tribunal Decision determined by the current Tribunal Members (BIR/17UK/PHC/2018/0003). From the late 1950's the land at Weston Park was used as a caravan Site without planning permission. A Site Licence was granted by the Council to a Mrs Hill on 14 November 2001. After the Site Licence was granted in 2001, some residents received and signed Written Agreements under the 1983 Act.
12. The Applicants bought the Park in 2007. The Site Licence was transferred to the Applicants on 3 March 2008. At the time of the original grant of the Site Licence and subsequent transfer to the Applicants, the land did not have the benefit of planning permission. A certificate of lawful use was granted to the Applicants in 2009. The Site Licence was subsequently withdrawn as the Council said it had been issued ultra vires. However, in November 2012, the Court of Appeal determined that the Site Licence issued in 2001 was valid. A subsequent Site Licence with slightly amended conditions was granted in January 2017, (Applicants’ bundle Exhibit WPH4). The Site Licence does not limit the number of pitches on the Park by a fixed number but rather by the density provisions within the Licence. The Applicants are not aware of a plan attached to the Site Licence.
13. The Applicants have produced plans dated 19<sup>th</sup> March 2010 used by the Council’s planning team showing the boundaries of the Park and the adjoining land known as Hidden Valley Park (‘the Holiday Park’). The Holiday Park is owned by the Applicants (but controlled by a separate entity, WPH Group Limited).
14. Development works on Pitch 23 of the Park were concluded by the Applicants by or before March 2010 as the Second Applicant resided in one of the homes in 2010.
15. We are told that a historic Tree Preservation Order No.300 [2008] which covered the whole of the Park has been amended in favour of new Tree Preservation Orders relating to specific trees identified on a plan. We have not been provided with the up to date Tree Preservation Orders.
16. New Site Rules for the Park were determined by a Tribunal on 30<sup>th</sup> July 2018 (BIR/17UK/PHC/2018/0002). One issue before that Tribunal was whether all structures on the Park comprised mobile homes for the purposes of the Mobile Homes Act 1983. The Applicants and the residents subsequently agreed which structures were ‘mobile homes’ and advised the Tribunal. As at the 12<sup>th</sup> March, 2020, 30 pitches were occupied as ‘mobile homes’ within the statutory definition of the Caravan Sites and

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<sup>3</sup> Judge Robinson Vyse v Wyldcrest Parks Management Ltd [2017] UKUT 24 (LC)

Control of Development Act 1960 with an additional 7 pitches that were not occupied as 'mobile homes' as defined.

17. Development works on Pitch 20 commenced in August 2020 (after the Pitch Fee Review Notice). It is intended to complete the development (subject to weather and finance) by March 2021.
18. The Holiday Park is accessed by the same Access road as the Park. It was developed in two phases. The first phase, (Pitches 1-7), was concluded in January 2013. The second phase commenced in March 2019 and it is anticipated that Pitches 8-21 will be completed prior to March 2021, three already having been completed by 12<sup>th</sup> March 2020, the date of the application.
19. The Respondents have not agreed to any historical increase in the pitch fee since 2007 when the Applicants bought the Park. The Applicants have not previously sought a determination by the Tribunal of the pitch fee payable due to the ongoing litigation proceedings both at court and Tribunal as detailed above.

### **The Inspection**

20. We inspected the Park and the Holiday Park on the adjoining land on 5<sup>th</sup> October 2020. There had been a weekend of heavy rain immediately prior to our inspection. Due to social distancing requirements attendance was restricted. Mr M T White Applicant (2), and Mr Melmore (Pitch 19) on behalf of the Respondents attended.
21. The Park is a mobile home site located off Swarkestone Road, approximately one mile from Weston on Trent in Derbyshire. The Park comprises a number of mobile homes and chalets of mixed age and tenure set in a rural location.
22. It is accessed by a private road located outside the Park boundary between a line of trees/shrubs and the Hidden Valley Holiday Park. The Park is in a low-lying position bound by a dense area of woodland and the Trent and Mersey Canal at its southern point. Within the Park the road surfaces are a mix of hardcore, gravel and tarmac within which are areas of patch repair and deterioration to the wearing course. The road surface is uneven with areas of standing water and weed growth.
23. Foul drainage is provided throughout the Park made up of a number of private drainage systems to septic tank or storage tank supported by pumps to transfer the waste to the mains drainage located outside the Park. The provision of foul drainage is provided for and has been renewed in part in 2019 by the Applicants. There is no specific provision for the removal of road or surface water drainage. The drainage tank covers were identified by the Tribunal on the inspection. The Tribunal was advised of the previous need to renew them owing to their damage by vehicles manoeuvring over them.
24. The Tribunal identified communal parking areas. The parties identified the parcel of land now in development to form the Holiday Park that the Respondents had considered a communal area of open space. Similarly, they identified the grassed area

that existed before the development of Plot 23 used by residents for social and community uses and events.

25. External lighting columns are located in the areas adjacent to plot 23 but were not provided to all areas of the Park, being limited to the most recently developed area surrounding plot 23.
26. Mains electricity is provided to the Park, the supply distributed by overhead line. There is no mains gas at the Park. Bottled gas is utilised by residents within the Park. There is a borehole and water treatment plant on land owned by the Applicants. Some of the newer homes on the Park are connected to the borehole. However, with the exception of Pitch 23, the Respondents are not supplied water from the borehole and/or the water treatment plant.
27. The Park is bound by a dense area of woodland adjacent to the Canal and a number of trees within the Park are subject to a Tree Preservation Order. The landscaping is mature and a mix of trees, shrubs and areas set to grass which were overgrown, a number of the trees had over hanging branches and there was no planned maintenance programme for the trees. It was noted that the Fire equipment and notices were overgrown with Ivy and that the instructions on the Fire Notices were unable to be read due to their deterioration.
28. At the inspection, the Tribunal were advised that the Holiday Park was undergoing a second phase of development and that the land to the rear of Pitch 19 was in the process of redevelopment to provide three new plots. The Holiday Park provides modern lodge accommodation with recreational amenity.

### **The Hearing**

29. Neither party requested a hearing and we therefore considered the matter on the basis of the written submissions.

### **The submissions**

30. The Respondents' submission is a joint submission. The Respondents do not dispute the validity of the respective Notices. The Respondents raise a number of issues as set out below.

### **Deterioration in the condition of and/or decrease in the amenity of the Site**

#### Communal areas

31. The Respondents say that previous communal areas have been removed, communal areas have not been maintained and they have been prevented from accessing communal areas that were previously available, as the Holiday Park has been developed on that specific area. They refer to a letter dated 10<sup>th</sup> December 2012 from the Applicants which advised residents that they would require permission from the Applicants before accessing the land adjacent to the Park (which was to be developed for what is now the Holiday Park) and other nearby land owned by the Applicants.

32. The Applicants say that the 2001 Site Licence only requires a recreational space on the Park if there are children on the Park or if there are no suitably alternative publicly provided recreational facilities which are readily accessible. The Applicants say that suitable recreational space is available and easily accessible at the Trent and Mersey Canal which is adjacent to the Park. Further, the 2017 Site Licence does not require communal space to be provided.
33. The Applicants say that an area the Respondents describe as ‘communal’ was not, but was rather part of Pitch 23 which was redeveloped by March 2010. The Applicants submit that the sporadic use by the Respondents without consent of the Applicants’ land at Pitch 23 and/or the adjoining land subsequently developed as the Holiday Park does not grant the Respondents the right to use the land as communal areas.

Lack of maintenance of roads and lighting; communal areas; drains; signs; clearing of rubbish

34. The Respondents allege that there has been no maintenance of the Park since 2007. They say that there is no drainage on the Park and water runoff from new bases and other added plots pour onto the roads into the potholes and onto residents’ driveways. They assert that the residents of plots 15 and 16 have to clear outside their properties when it rains. They say that there are potholes in the roads and uneven surfaces which are hazardous. They contend that the majority of the new street lighting has been placed on the Holiday Park rather than the Park.
35. After 2013, the residents established a Working Party to address maintenance issues and they submit photos showing them maintaining gardens and car parks.
36. The Applicants say that they do not have a written maintenance programme in relation to the Park. They conduct maintenance on a reactive basis as and when required following any reported maintenance queries. They have provided details of maintenance carried out at the Park between 26<sup>th</sup> May 2013 and 12<sup>th</sup> March 2020 as follows:
- i. An invoice for the purchase of tarmac planings on the site road dated 21 August 2019 in the sum of £1482;
  - ii. Email correspondence dated November 2018 in relation to the purchase of drainage pumps for the Park;
  - iii. A letter from Peter Mason Associates dated 25 November, 2015 regarding the drainage on the Park.
37. The Applicants say that Capital Works have been undertaken at the Park between the 26<sup>th</sup> May 2013 and 12<sup>th</sup> March 2020 as follows, (although they have not provided documentary evidence or details of actual costs):
- i. The installation of a water treatment plant at a cost of approximately £50,000;
  - ii. The installation of 11 additional street lights at a cost of approximately £7,500;

- iii. The installation of road kerbs to and the widening of the access road to the Park at a cost of approximately £10,000;
  - iv. The installation of new drainage pumps at a cost of approximately £5000.
38. The Applicants say that the road is predominantly gravel and occasionally develops ruts. On occasion, when works have been required it has been necessary to dig into the roadway. They say that periodically they relay gravel to address these issues. Road planing was laid on the roadway when works were carried out to install a water treatment plant. The Applicants have provided photos of the road.
39. The Applicants says that the lighting on the Park is adequate and that they have installed additional lighting, although they have not described where.
40. In relation to drainage the Applicants say that it is the same as when they bought the Park in 2007, it is adequate and that the roadway is constituted of gravel which is itself porous.
41. The Applicants say that they comply with the Licence as regards maintenance of the road, communal footpaths and car parks and that they are in a good condition and clear of rubbish. They say that they maintain the grass verges to the side of the roadway. They are not able to comment on signs as the Respondents have not particularised their concern.

#### Construction works

42. The Respondents complain that the Applicants have failed to ensure that workmen clear up, that plots are left empty and that demolitions are carried out. They have provided some undated photographic evidence of the Respondents removing piles of bricks. They assert that the Park has been a building site for years.
43. The Applicants acknowledge that after purchasing Pitch 23 it was redeveloped and new homes sited thereon but that this was concluded by 2010. The Applicants acknowledges that new bases are currently under construction on Pitch 20 but denies that this comprises considerable building works. They say that they endeavour to keep any noise and disruption to a minimum. They acknowledge that on occasions building materials were situated on the Park although contractors are instructed to ensure storage is safe and discrete as far as is reasonably possible.

#### Trees

44. The Respondents allege that the Applicants have randomly removed trees despite a Tree Preservation Order existing on the Park. The Respondents say that a number of residents have paid money to have invading trees attended to despite trees being the Applicants' responsibility. The Respondents bundle includes Council approvals in 2014 and 2018 to the occupier of Pitch 16 to prune an oak and silver birch, and to top an oak tree respectively at Pitch 16.



45. The Applicants deny that they have conducted any works on trees in breach of the Tree Preservation Order and further state that the allegation is inadequately particularised to allow them to appropriately respond. The Applicants aver that the Respondents are required, pursuant to paragraph 21 of the Implied terms, to maintain their pitch which the Applicants state includes trees situated within the pitch. The Applicants say they do not recall having received, for some considerable time, any notification from any of the Respondents in accordance with rule 8 of the Site Rules regarding any nuisance or unsatisfactory trees.

#### Adjoining land

46. The Respondents say that they experienced noise and disruption during the building of the Holiday Park and noise nuisance now they are occupied.

47. The Applicants say that the development works at the Holiday Park was undertaken in two phases. The first phase of development works (pitches 1-7) was concluded in January 2013. The second phase (pitches 8-21) is currently ongoing, such works having commenced in March 2019 and it is proposed to conclude them prior to March 2021 (subject to weather conditions and finance). Three pitches had been completed by 12 March 2020.

48. The Applicants say that they have imposed Site Rules to regulate the conduct and noise levels of the holiday makers on the Holiday Park (Applicants Exhibit WPH9). The Applicants acknowledge that there have been occasions where it has been necessary to seek to reduce noise from holiday makers and that they enforce the Site Rules when necessary. They consider that the development of the Holiday Park has increased the amenity of that land and of the Park

#### **Decline in services**

##### Warden

49. The Respondents assert that there is no longer a working warden on the Park but have not particularised when they say it ceased. The Applicants say that there has always been a warden on the Park and that the role is carried out by a resident on the Park. The current warden occupies Pitch 28.

##### Sewage

50. The Respondents say that there are major problems and that residents have to pay the cost of the electricity to pump the sewage uphill. Sewage collecting tanks are left until the effluent comes up through manholes and residents' properties.

51. They assert that the drain hole covers that were replaced in the road are lightweight, not fitted properly and allow foul odours to be emitted.

52. The Applicants say that there are a range of sewerage systems at the Park .These include a new sewerage system installed by the Applicants (Pitch 5 and included in the pitch fee); a historic main sewerage system for the Park which predates the Applicants' purchase of the Park and which they maintain (Pitches 7,8,10,12,15,16 and 23- included in the pitch fee); a separate historic system consisting of separate

septic tanks which was subject to a separate agreement between pitches 19-22 for which the residents are responsible for the collective costs of emptying and maintaining the septic tank (not included in the pitch fee); Pitches 17 and 18 are connected to a private sewage system which is not maintained by the Applicants (not included in the pitch fee).

53. Pitches 19 and 22 have now been connected to the new sewage system but the Applicants do not accept that the cost of the service is included in the pitch fee due to the previous separate agreement.
54. The Applicants do not accept that there has been a deterioration or decrease in the quality of the service and state that some Respondents have been connected to a new sewage system at the Park's expense.
55. In relation to the foul odours, the Applicants say that they have not experienced them themselves, nor received any reports of foul odour smell. The Applicants ensure that when necessary the septic tanks they control at the Park are emptied and that throughout their ownership of the Park they have made two historical septic tanks redundant.

#### Water

56. The Respondents say that the Applicants have not paid the water account for the Park despite the residents paying the water charges as part of their pitch fee. The residents are unclear as to whether they receive water from the bore hole and water treatment plant installed on site or from Severn Trent. It is claimed that due to continuing development on the Park the water supply is occasionally turned off without prior warning causing problems with washing machines and water pressure for showers. This was said to have occurred approximately 4 times in the last 12 months (Respondents' evidence page 23). The Respondents say that the water system cannot cope due to the additional pressure of the holiday homes built in the Holiday Park.
57. The Applicants say, as evidenced by a letter from their predecessor dated 25<sup>th</sup> March 2007, (Applicants Bundle Exhibit WPH8), that water is not included within the pitch fee, and with the exception of Pitch 23, the Respondents are each responsible for paying the supplier directly. Pitch 23 is supplied by a borehole and water treatment plant on the Park and pays the Applicants for the supply of water/drainage in addition to the pitch fee. Therefore, with the exception of Pitch 23 the supply of water is not a service supplied to the Respondents by the Applicants and they are therefore not responsible for any disruptions or deterioration in the quality of the service.

#### Electricity

58. The Respondents allege that there has been non-payment of electricity accounts by the Applicants despite residents paying the requested amount to the Applicants. They state that there was an issue with the meter controlled by the Applicants from which the charge to some residents is calculated.

59. The Applicants did not respond as they say they are unclear as to which statement in the Respondent's bundle is being referred to.

#### Gas bottles

60. The Respondents allege that the gas bottles obtained from the Applicants don't last very long and allege that they are second hand from the homes on the Holiday Park.

61. The Applicants say that residents are able to purchase gas bottles from any supplier. They say they cannot comment on the allegation as it is insufficiently particularized.

#### **Right of 'peaceful existence'**

62. The Respondents identify a range of issues which they say have deprived them of their right to 'peaceful existence' on the Park. The Applicants' have provided a response to the majority of the issues where they are sufficiently particularised and have denied that the actions breach the Respondents' rights to quiet enjoyment. The issues include:

- a. threats; court cases and solicitors' letters;
- b. smashing of a greenhouse;
- c. swearing and threats by the Applicants including an alleged assault several years ago on a resident which was not pursued by CPS;
- d. clamping residents' cars in approximately 2013;
- e. inappropriate rules;
- f. unnecessary survey requests of pitches; the use of a drone by the Applicants;
- g. taking areas of residents' pitches in approximately 2007;
- h. the fitting of a barrier in approximately 2017 to prevent access to the Park by commercial vehicles and which was made redundant in September 2018;
- i. Council bins not being emptied;
- j. the need to contact Local authority, police and parish councillors regarding issues on the Park;
- k. disrespect of the Residents Association;
- l. workman, delivery men and postal deliveries turned away from the Park;
- m. pitch 18 had to pay for their own concrete base;
- n. rent increased when new people take over the contract;
- o. introduction of a Toll charge to pay if a new home is brought onto the Park;
- p. Applicants' refusal to sign a document to assist a resident to confirm eligibility for a grant

#### **Decision**

63. We considered all the written evidence submitted. During the 12- month period prior to this review, the RPI had risen by 2.7%, and this is the increase which the Applicants seek.

64. As there has been neither an agreement by the Respondents to a pitch fee review nor a determination by a Tribunal from 2007 to date, we must have regard to the phrase '*since the date on which this paragraph came into force<sup>4</sup> (in so far as regard has not previously been had to that deterioration or decrease for the purpose of this sub*

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<sup>4</sup> 26<sup>th</sup> May 2013

*paragraph*’) in paragraph 18(1)(aa) and a similar phrase in paragraph 18(1)(ab). The starting date of the relevant period for consideration of any matters under paragraph 18(1) is therefore **26<sup>th</sup> May 2013**.

### **Deterioration in the condition or decrease in the amenity of the Park.**

65. For the purposes of the 1983 Act, the issue is not the actual condition of the Park, nor indeed the actual amenity of the Park. We have to consider whether there has been any **deterioration** in the condition or **decrease** in the amenity of the Park in the relevant period, and, if we do so find, whether it would thereby be unreasonable for the pitch fee to be increased on the basis of the increase in the RPI index.
66. “Amenity” in this context means the quality of being agreeable or pleasant and so we must look at any decrease in the pleasantness of the Park or those features of the Park which are agreeable from the occupier’s perspective.

#### Communal areas

67. Having had regard to the provisions of the Site Licences, the history of the development of the Park and particularly the letter dated 10<sup>th</sup> December 2012, we are satisfied that what the Respondents considered to be ‘communal areas’ were pieces of land owned by the Applicants, namely Pitch 23 and the adjoining land which became the Holiday Park and were not part of the Park for use by all residents . By 10<sup>th</sup> December 2012, access to the latter needed consent and Pitch 23 had been developed. Since 26<sup>th</sup> May 2013, there has been no removal of ‘communal areas’ or restriction of access to ‘communal areas’ as such ‘communal areas’ for the use of Respondents did not exist.

#### Lack of maintenance

68. The Applicants do not have a proactive maintenance plan for the Park. There is some evidence that they carried out reactive maintenance between 26<sup>th</sup> May 2013 and the date of the application, although limited. From our inspection we considered that the condition of the Park, particularly around landscaping reflected a lack of general maintenance.
69. We note that the residents established a Maintenance Working Group in 2013 and that they appeared to take on some of the maintenance responsibility in order to remedy what they considered to be the Applicants’ omission. We have attached some weight to this, although not substantial, as we appreciate that the residents’ aspirations of standards of ‘maintenance’ may either be unreasonable or actually comprise ‘improvements’ rather than maintenance and which the Applicants would not be required to provide.
70. We understood that the renewal of the foul drainage system was necessary owing to the obsolescence of the original system that existed but was also for the development of the second phase of the Holiday Park and the plots in construction to the rear of pitch 19

71. Whilst we accept that Capital Works have been carried out in parts of the Park, (and for which we note there has not been a proposed increase in the pitch fee in relation to an improvement) it was evident from the inspection that the majority of the Capital Works were necessary arising from obsolescence of the foul drainage in the Park and more specifically to facilitate the development of the adjacent Holiday Park.
72. The Park was established in the late 1950's without the benefit of a Site Licence or planning permission, which is reflected in its design and infrastructure. This background, combined with its age has provided a 'low base' in terms of condition compared to more modern sites. We have to consider whether there had been a deterioration in the condition of what was already there namely gravel rather than tarmacked roads, existing water run off arrangements and existing street lighting. Having inspected the Park, whilst we accept that since 26<sup>th</sup> May 2013 that there has been a lack of proactive maintenance and that any reactive maintenance has been sporadic, we do not find there to have been a **material** decrease in the condition of the Park since 26<sup>th</sup> May 2013.

#### Construction works on the Park

73. With the possible exception of the Access Road, the evidence suggests that no construction works have been carried out on the Park, (as distinct from the Holiday Park), from 26<sup>th</sup> May 2013 until after the date of application to the Tribunal. The development and intensification of park home sites is not unusual, particularly where the Site Licence does not have a fixed number of pitches and it is inevitable that there will be some disruption from such development. Of itself, development and construction works do not constitute a deterioration in the condition or decrease in the amenity of the Park. The Respondents have provided unparticularised anecdotal information and there is limited evidence that the duration, nature, extent and practical effect and impact on the Respondents of any construction works in the Park in the relevant period has affected the condition or amenity of the Park.

#### Trees

74. We have not made a determination as to who has responsibility for trees located on a pitch as opposed to areas of the Park excluding the pitches. Whilst the Respondents have provided an unattributed commentary on two unreferenced Tribunal decisions to suggest that the Applicants are responsible for all mature trees on the Park, each case depends on its individual facts, including the history of the site and the Written Statement. In the absence of agreement between the parties, the question of responsibility for trees on pitches is a matter for determination under an application under section 4 of the Mobile Homes Act 1983 (for a determination of a question arising under the 1983 Act or agreement to which it applies).
75. The Respondents have not particularised the allegation that the Applicants have removed trees in breach of a TPO and we cannot therefore determine whether the removal of trees has impacted on the amenity of the area. However, whilst accepting that the Park is located in a woodland setting, the Applicants have provided limited evidence of any tree maintenance plan or invoices in relation to reactive tree works. On inspection we noted that within the Park the trees were mature with large

overhanging branches. We determine that, due to lack of maintenance of the trees, there has been a decrease in the condition and a deterioration in the amenity of the Park since 26<sup>th</sup> May 2013.

#### Foul odours

76. There will be occasions where foul odours emanate from drain covers particularly in warmer weather. On our inspection we did not note the covers to be poorly fitted. In the absence of any compelling evidence that this issue was significant in duration or impact, or required external action for public health reasons, we find that any such issue was de minimis and did not deteriorate the amenity of the Park.

#### Adjoining land

77. Pitches 1-7 were built by January 2013. The development of pitches 8-21 commenced in March 2019 and it is anticipated that they will be completed prior to March 2021 with 3 pitches having been completed by 12<sup>th</sup> March 2020. The pitches are holiday homes rather than having permanent occupants.
78. Prior to 26<sup>th</sup> May 2013, there had been a change of use of the adjoining land from open space to the development of 7 pitches for the Holiday Park. We consider this significant change of use of the adjoining land to have been a material decrease in the amenity of the Park. However, we cannot take it into account as we can only consider decrease in amenity from 26<sup>th</sup> May 2013. We do not find that the further development of 3 pitches since March 2019 is a decrease in the amenity of the Park as the fundamental change of use of the open space had already been made with the previous development. We have limited evidence of a decrease in the amenity of the Park arising from the construction work from March 2019 on the Holiday Park itself. Whilst the Respondents refer to noise nuisance from the occupiers of the Holiday Park, they have provided limited evidence to rebut the Applicants' evidence that Site Rules are enforced on the occasions when this occurs. We also have limited evidence as to the frequency or regularity of such noise nuisance. We therefore do not find there to have been a decrease in the amenity of the Park due to noise nuisance from the Holiday Park. In conclusion we determine that there has not been a decrease in the amenity of the Park or of the adjoining land arising from the development of the adjoining land.

#### **Reduction in or decrease in the quality of services provided.**

##### Warden

79. We prefer the Applicants' evidence that there is the continuing role of a warden on site, particularly in the light of the lack of particularisation of the assertion by the Respondents.

##### Sewage

80. There is limited evidence that the addition of homes on the Holiday Park has affected the sewage system on the Park. The Respondents have provided anecdotal information of sewage problems but without any particulars. Due to the range of sewage systems on the Park, some of which are maintained by the Applicants and others for which the pitch occupier is responsible, it is unclear whether the concerns

raised by the Respondents are made from an informed position regarding respective responsibilities. Further, the evidence suggests that improvements were made to the sewage system on the Park and for which the Applicants have not sought no increase to the pitch fee.

#### Water

81. The Respondents have not produced any evidence that the water service has been cut off due to non -payment of the bill by the Applicants or for any other reason. Neither have they produced evidence of any sustained or significant reduction in water pressure nor that any such reduction has been caused by the development of the Holiday Park. The Respondents are unclear as to who supplies the water.
82. It is not our role within this application to determine whether or not water charges are included within the pitch fee. That would need to be addressed by an application under section 4 of the 1983 Act. Whilst there is a lack of clarity as to who supplies the water, (which could also be determined under a section 4 application), we consider that the examples given of the lack of service for periods of a few hours to be sufficiently infrequent to be de minimis if it was established that the Applicants are the supplier.

#### Electricity

83. The Respondents have not produced any evidence that the electricity supply to residents was cut off. The complaint is therefore not relevant for the purposes of this application.

#### Gas

84. The provision of gas bottles is not a service provided by the Applicants under the Written Statement and the Respondents are able to procure them from any supplier. The complaint is therefore not relevant for the purposes of this application.
85. For the reasons outlined above, we determine that there has **not** been a reduction in the services or the quality of services supplied by the Applicants since 26<sup>th</sup> May 2013.

#### **Quiet enjoyment**

86. The Written Agreements include an implied term that the Respondents are entitled to quiet enjoyment of their mobile homes and pitches. Whilst the issues raised by the Respondents appear to reflect a long standing poor relationship between the Applicants and Respondents, (and in some cases the issues predate the period with which we are concerned), it is not the role of the Tribunal in this application to resolve every historical perceived grievance since the Applicants became owners of the Park in 2007. We do not find that the particular issues raised are relevant to the questions we have to address in this application. If the Respondents consider that the Applicants are in breach of their obligation regarding quiet enjoyment, they may wish to consider taking legal advice as to the avenues available to them and to do so in a timely manner if and when such issues arise. This application is not an appropriate avenue.

**Conclusion**

- 87. We have found that since 26<sup>th</sup> May 2013, there has been a deterioration in the condition of the Park due to lack of maintenance but, due to the age of the Park and its design and infrastructure, we do not find the deterioration to be material. Many of the Respondents’ concerns arise from the existing infrastructure of the 70 year old Park. A pitch review is not the method by which to obtain improvements. The tarmacking of roads, the provision of additional street lighting or new surface drainage comprise improvements, as distinct from maintenance, and which are likely to be reflected in future pitch fee reviews. There has not been a decrease in the amenity of the Park or the adjoining land due to the development of the adjoining land to comprise the Holiday Park. There has been a deterioration in the condition and a decrease in the amenity of the Park due to lack of maintenance of trees. However, as an expert Tribunal, we determine that such decrease in the condition and deterioration in amenity of the Park is insufficient to displace the presumption that the pitch fee should be increased in line with the increase in RPI index over the relevant period should apply. We do not consider it unreasonable for the presumption to apply.
- 88. We do not find there to have been a reduction in the services or the quality of services supplied by the Applicants since 26<sup>th</sup> May 2013. There have been no charges for improvements to the Park since the 26<sup>th</sup> May 2013.
- 89. We determine that the pitch fee for all the Properties should increase from the review date of 1<sup>st</sup> May 2020 in accordance with the Notices dated 12<sup>th</sup> March 2020.

**Costs**

- 90. No party applied for costs and we make no such award.

**Appeal**

- 91. If either party is dissatisfied with this decision, they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties and must state the grounds on which they intend to rely in the appeal.

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Judge T N Jackson