UPPER TRIBUNAL (LANDS CHAMBER)

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TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

PARK HOMES – pitch fee review – site licence fee increased by local authority – whether increase should be included in the pitch fee – presumption of change in line with RPI not displaced – paragraphs 18(1)(ba) and 20(A1) Schedule 1 to Mobile Homes Act 1983

IN THE MATTER OF AN APPEAL AGAINST A DECISION OF THE FIRST-TIER TRIBUNAL (PROPERTY CHAMBER)

BETWEEN

MRS TONI VYSE

Appellant

and

WYLDECREST PARKS (MANAGEMENT) LIMITED

Respondent

Re: Scatterdell Park,
Scatterdell Lane,
Chipperfield,
Kings Langley,
Hertfordshire
WD4 9DW

Before: Her Honour Judge Alice Robinson

Sitting at: Upper Tribunal (Lands Chamber), Royal Court of Justice, Strand, London WC2A 2LL
on
4 January 2017

Mr Alan Savory, Independent Park Homes Advisory Service represented the appellant.
Mr David Sunderland, a director of the respondent represented the respondent.

The following cases are referred to in this decision:

Walker v Baldock [1997] 2 EGLR 163, CA
Sayer [2014] UKUT 283 (LC)
Stroud v Weir Associates [1987] 1 EGLR 190
Charles Simpson Organisation Limited v Martin Redshaw & another [2010] 2514 (Ch)
Britaniacrest Limited [2013] UKUT 521 (LC)
PR Hardman & Partners v Greenwood & Fox [2015] UKUT 587 (LC)
Britaniacrest Limited v Bamborough [2016] UKUT 144 (LC)
Wyldecrest Parks Management Limited v Kenyon and others (LRX/103/2016) [2017] UKUT 28 (LC)

DECISION

Introduction

1. These are appeals against a decision of the First-tier Tribunal (Property Chamber) ("FTT") dated 24 May 2016 in which it determined the pitch fees payable from the review date of 1 December 2015 in respect of a number of pitches at a mobile home site known as Scatterdells Park, Scatterdells Lane, Chipperfield, Kings Langley, Hertfordshire WD4 9DW ("the Site").

2. The Site is owned by Wyldecrest Parks (Management) Ltd ("Wyldecrest"). In 2014 the local authority, Dacorum Borough Council, introduced a site licence fee of £200 payable by Wyldecrest for the calendar year 2015. At the time of the previous pitch review date of 1 December 2014 a proportion of that site licence fee was included in the pitch fees payable by occupiers of mobile homes on the Site. In from 1st January 2016 the site licence fee payable in respect of the Site increased to £300.

3. On 12 January 2016 Wyldecrest applied to the FTT for determination as to the new level of pitch fee payable from 1 December 2015 in respect of pitches numbered 1, 4, 5, 6, 13, 13a, 15, 16, 18, 19, 23, 24 and 25. The application relating to pitch number 1 was dismissed and that decision forms no part of these appeals. In respect of the remaining pitches the FTT determined that the pitch fee should include a proportion of the sum of £200 payable by Wyldecrest to Dacorum Borough Council in respect of part of the site licence fee but that the £100 balance of the total site licence fee of £300 could not be included. The FTT further determined that no Retail Prices Index ("RPI") element could be applied to the site licence element of the pitch fee.

4. On 29 June 2016 the FTT granted Mrs Vyse, the occupier of pitch number 18, permission to appeal to the Tribunal against the decision. On 9 September 2016 the Tribunal granted Wyldecrest permission to appeal against the decision in respect of pitches numbered 4, 5, 6, 13, 13a, 15, 16, 18, 19, 23, 24 and 25. The appeals were consolidated with Mrs Vyse being treated as the appellant and Wyldecrest being treated as respondent/cross appellant. A full list of the respondents to Wyldecrest's cross appeal appears in Appendix 1 to this decision.

5. Mrs Vyse appeals on the ground that the FTT sought unlawfully to separate the site licence fee element from the pitch fees which should have included it and RPI should have applied to all elements of the pitch fee. Wyldecrest appeals on the ground that the pitch fees should include the whole of the £300 site licence fee.

Legislative background

6. The use and occupation of mobile home (or park home) sites is subject to two separate regulatory regimes. Subject to certain exemptions not relevant here, the Caravan Sites and Control of Development Act 1960 ("the 1960 Act") requires a site licence to be obtained from the local authority for use of land as a caravan site, s.1. The site licence may be subject to conditions (s.5)

which may be altered by the local authority (s.7) and provision is made for the licence holder to appeal if he is aggrieved by any conditions imposed or altered (ss.7 & 8(2)). Breach of condition is a criminal offence, s.9.

7. The Mobile Homes Act 1983 ("the 1983 Act") regulates the terms on which a person may station a mobile home and occupy it as his only or main residence (mobile home has the same meaning as caravan in the 1960 Act, s.5 of the 1983 Act). The main way in which it does so is by implying terms into such agreements, s.2. The implied terms are set out in Schedule 1 to the 1983 Act which were substantially recast by The Mobile Homes Act 1983 (Amendment of Schedule 1) (England) Order 2006 (SI 2006 No. 1755)("the 2006 Order"). They cover matters such as the duration and termination of pitch agreements, the maintenance and repair of the mobile home and surrounding site, payment and alteration of a pitch fee, rights of quiet enjoyment and entry.

8. There is no restriction on the amount of money the parties may agree as a pitch fee in the first instance. Prior to the 2006 Order there was limited provision in the 1983 Act for review of pitch fees. By s.2(3) of the 1983 Act the court had power to vary or delete any express term of an agreement and s.4 of the 1983 Act gives the court power to adjudicate on disputes arising under such agreements and the 1983 Act. However, there was nothing in the legislation to guide the court as to the determination of any alteration in pitch fee other than s.2(4) which stated that

> "On an application under this section, the court shall make such provision as the court considers just and equitable in the circumstances."

As the Court of Appeal said in *Walker v Baldock* [1997] 2 EGLR 163 at p.164E: "There are no precise rules laid down. It is left to the arbitrator or judge to decide."

9. The new implied terms set out in the 2006 Order included provision for alteration of the pitch fee either by agreement or, in the absence of agreement, by the court if it considered it reasonable for the pitch fee to be changed, paragraph 16 of Schedule 1. Provision was made for annual reviews and the procedure for review, paragraph 17. For the first time matters which could or could not be taken into account were specified, paragraphs 18-20.

10. Significant alterations to both the 1960 Act and 1983 Act were made by the Mobile Homes Act 2013. For the first time local authorities could require payment of a range of fees including an annual fee for a caravan site licence, s.5A of the 1960 Act. Before imposing fees the authority is required to prepare and publish a fees policy, s.10A of the 1960 Act. It also gave the authority power to serve an enforcement notice for breach of condition and further provision was made as to appeals, compliance with enforcement notices and offences, ss.9A to 9F of the 1960 Act. In tandem with those changes, amendments to the 1983 Act included provision in the implied terms in Schedule 1 as to which matters arising out of the 2013 Act amendments regard should, or should not, be had for the purposes of determining any change in the pitch fee. The key provisions are set out in paragraphs 16 to 20 of Schedule 1 which for ease of reference are set out in Appendix 2 to this decision.

11. Paragraph 18(1) sets out a range of matters to which "particular regard shall be had" when determining the amount of the new pitch fee including sums spent by the owner on improvements,

any deterioration in the condition of or decrease in the amenity of the site and any reduction in services supplied. Relevant for present purposes one of the matters to which particular regard shall be had is:

> "(ba) 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."

12. The matters to which no regard shall be had include costs incurred for the purposes of complying with amendments to the 1983 Act made by the 2013 Act (s.18(1A), litigation costs (s.19(2)), fees payable under the 1960 Act for applications to alter site licence conditions and transfer site licences (s.19(3)) and costs incurred by the owner in connection with enforcement action taken by the local authority pursuant to the 1960 Act (s.19(4)). Read together, the 2013 Act amendments as to what may or may not be taken into account indicate that the newly introduced annual site licence fee was intended to be taken into account as having a direct effect on the costs of management payable by a site owner.

13. Paragraph 20(A1) contains a presumption that any change in pitch fee, whether upwards or downwards, will be in line with RPI "unless this would be unreasonable having regard to paragraph 18(1)".

The First Tier Tribunal decision

14. In its' discussion of the issues the FTT recorded the submissions:

> "18. The next point raised is that because the wording of the 2013 Act says specifically that the site owner can only pass on charges in respect of an enactment coming into force since the last review date, no increase imposed since 1st December 2014 can be passed on. The fee imposed since the previous review date i.e. the £200, had been paid and no more than that could be recovered. Further, it is said that the Applicant did not complete a question in the application form correctly, because there is an assertion that a charge had been incurred since the enactment came into force. Because of this, they argue that the application be dismissed.
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> 19. Reference is then made to explanatory notes published by the government to assist with the interpretation of the 2013 Act. It should be said that these notes make it clear that they *"do not form part of the Act and have not been endorsed by Parliament"*. The notes say, at paragraph 13, that "*However site owners will be able to recover the cost of the annual licence fee through the pitch fee review, by adding this to the pitch fee in the first year that the licence is introduced. The cost of the licence fee will then remain part of the pitch fee and any subsequent RPI increases will be applied to it."*
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> 20. The final point made is that the extra £100 fee imposed by Dacorum Council is not just an ordinary increase of pitch fee. The Council has a policy which involves fees on an increasing scale depending on 'risk' which seems to mean that if they are involved in inspections more than every 3 years, a 'risk' element is added to the fee. The Respondents

say that the higher fee is due to the lack of good management and therefore why should they pay it?

21. The policy of Dacorum Council has been produced to the Tribunal and is seems that the low risk fee of £200 was imposed on every site for the first year but in the case of Scatterdells, the actual risk was high. There was a site visit during 2015 and that risk was reduced to medium because certain matters caused concern i.e. the distance between 'home 7 and the neighbouring homes', the condition of the access road, the provision of fire fighting equipment and the number of car parking spaces. The medium risk fee is the £300 claimed.

22. Despite Mr Sunderland's strong view about the Council's behaviour, they have come to a decision and there is nothing either the Respondents or the Tribunal can do to override that. It is simply not possible to say that the fee 'should be' £200."

15. After referring to another FTT decision in which the site licence was identified as a service item separate from the pitch fee, this FTT panel continued:

"25. …However, the decision does need to be looked at in the context of the 2013 Act and its purpose. It is clear that one of the purposes of the 2013 Act was to enable local authorities to charge for site licences and then for the site owners to be able to pass on those charges to occupiers. The new charges clearly anticipated an annual fee and the possibility of local authorities increasing those fees. This was all set out and provided for in the 'enactment' i.e. the 2013 Act.

26. One is reminded of the wording of the new implied term in the occupation agreement i.e. a matter to which particular regard must be had includes "… *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.*" In the case of Scatterdells Park, the annual review date is 1st December. The Respondents say that the first annual fee can be passed on but any increase in licence fee is not payable if it is imposed after 1st April 2015 because there has been no new 'enactment'. They say that the fee imposed in 2014 just forms part of the pitch fee, to be increased by inflation each year, but otherwise to remain the same unless and until there has been a new enactment. That would seem to be the effect of the guidance given.

27. The Tribunal considers that it would simply not make any sense for the site owners to be (a) unable to pass on increases in licence fees permitted by the 2013 Act and (b) able to charge RPI increases on fees if they remained the same. An RPI increase is not a direct effect on costs. Further and perhaps most important of all, the site owners would not be required to pass on any reduction in the licence fee which could easily happen if, for example, the site reduced substantially in size. Dacorum Borough Council, for example, have a low risk charge of £200 for the sized site but only £125 for a site with 11-20 mobile homes.

28. On the other hand, the 'risk' element in a site licence is a matter of management. If a high risk site has a high fee because of that risk, which, in turn, depends on the ability of the site owner to manage properly, then requiring the occupiers to meet that cost is hardly an incentive for the site owner to improve management and cannot have been in the mind of the

legislators who drew up the 2013 Act. The Tribunal must have 'regard' to the actual fee but that does not mean that all of it must be passed on. "

16. In its' conclusions that FTT said this:

"30. The Applicant wants to pass on the whole of the licence fee for this year i.e. £300. The Respondents say that they agreed the £200 last year and no more should be charged save for an RPI element in that figure.

31. The Respondents rely on the 2013 Act and, in particular, the Government Guidance, in saying that the only fee payable can be the licence fee imposed in the first year. It then becomes part of the pitch fee on which increases in accordance with RPI can be levied for each successive year. Any increase thereafter will depend on a further 'enactment'. Further, they say that any increase which relates only to lack of management should not be passed on to them.

32. The Tribunal determines that the purpose of the 2013 Act is clear and that the Guidance is wrong. The 2013 Act itself allows local authorities to impose licence fees and to increase them. It allows that cost to be passed on to the occupiers. It is that 'enactment' which allows those things. There is no need for any further enactment to cover increases in licence fees because they are already permitted and anticipated.

33. The wording of the 2013 Act does not say that the amount which can be passed on precludes any increase permitted by that statute. The Guidance appears to dispute that. It is the Tribunal's view that if that is what the Parliament intended, then it would have made that position very clear.

34. Thus, looking at the 2013 Act purposefully, the Tribunal concludes that any licence fee and any increase in such licence fee permitted by and specifically allowed for the 2013 Act can be passed on as an addition to the pitch fee but specifically separated so that it does not attract any RPI increase. Such fees, self evidently, have a *"direct effect on the costs payable by the owner in relation to ... the management of the site..."*. An RPI increase could not be said to have any effect on the cost of management and is not recoverable.

35. The original licence fee of £200 which has been charged again for 2016 is payable as part of the pitch fee. Having said that, the extra £100 is clearly a premium payable because of extra risk due to lack of management and it would be wrong in principle to allow that to be added."

Submissions

17. Mr Savory, who appeared on behalf of Mrs Vyse, submitted that the FTT had erred in law by separating the site licence fee from the pitch fee and that paragraph 18(1)(ba) of Schedule 1 to the 1983 Act required it to become an integral part of the pitch fee which would increase annually by RPI in accordance with paragraph 20 of Schedule 1. Paragraph 18(1)(ba) is specifically concerned with a matter to which particular regard should be had when determining the amount of the new pitch fee, not some separate service charge.

18. Further, Mr Savory submitted that paragraph 18(1)(ba) refers to the effect of an "enactment". The relevant enactment is the 2013 Act which amended the 1983 Act and which came into force on 1 April 2014. The charging policy introduced by Dacorum Borough Council pursuant to s.10A of the 1960 Act which has resulted in the site licence fee increasing is not an enactment. In addition, the relevant enactment had come into force since the last review date. Therefore the increase in site licence fee does not fall within paragraph 18(1)(ba). Nowhere does the legislation say that any subsequent increases in site licence fee may be passed on other than via the RPI. The 2013 Act amendments were quite specific that no other fees or charges could be passed on, see paragraphs 18(1A) and 19. There is no ambiguity or absurdity in the outcome of the literal construction of paragraph 18(1)(ba) which should therefore be followed. Further, this construction is in accordance with the Explanatory Notes to the 2013 Act which state:

> "However, site owners will be able to recover the cost of the annual licence fee through the pitch fee review, by adding this to the pitch fee in the first year that the licence fee is introduced. The cost of the licence fee will then remain part of the pitch fee and any subsequent RPI increases will be applied to it."

19. Mr Savory submitted that although in this case the decision may be harsh to the site owner, in other cases where there has been no increase in site licence fee the burden of increases will fall on the pitch occupier. If the FTT's interpretation is allowed to stand it will result in many arguments at many pitch fee reviews whereas the application of RPI is straightforward and provides certainty for all parties. Otherwise pitch occupiers will always have the uncertainty of an unpredictable increase in pitch fee owing to an increase in site licence fee. On the facts of this case, the increase in site licence fee is directly related to poor management and Mr Savory pointed to correspondence with the local authority which he said supported that submission.

20. In any event, Mr Savory submitted that where the risk rating of a mobile home site increases and as a result the site licence fee increases, as here, if the increase can simply be passed on there would be no incentive on the part of the site owner to manage the site properly. In those circumstances, even if the increase could be taken into account, it is not reasonable for the increase to be passed onto the occupiers.

21. Mr Sunderland, who appeared on behalf of Wyldecrest, did not dispute that paragraph 18(1)(ba) only allowed the site licence fee to be included in pitch fees in the year following the coming into force of the 2013 Act amendments. However, he submitted that paragraph 18(1) was not an exhaustive list of matters to which regard should be had when determining the amount of the pitch fee. The opening words are "When determining the amount of the new pitch fee particular regard shall be had to…". That does not preclude reference to other relevant matters, especially if it would be unfair or unjust not to do so.

22. The start of the process of altering the pitch fee is paragraph 16 of Schedule 1 to the 1983 Act namely whether, in the absence of agreement, the FTT "considers it reasonable for the pitch fee to be changed". He submitted that therefore the issue was whether the proposed increase was reasonable. Although paragraph 20 contains a presumption that the new pitch fee will reflect RPI that is merely the starting point and the presumption could be displaced by any other "weighty

matters". In support of that submission he relied upon the following passage in a decision of the Tribunal (Martin Rodger QC, Deputy President) in *Sayer* [2014] UKUT 0283 (LC):

> "22. The effect of these provisions as a whole is that, unless a change in the pitch fee is agreed between the owner of the site and the occupier, the pitch fee will remain at the same level unless the RPT considers it reasonable for the fee to be changed. If the RPT decides that it is reasonable for the fee to be changed, then the amount of the change is in its discretion, provided that it must have "particular regard" to the factors in paragraph 18(1), and that it must not take into account of the costs referred to in paragraph 19 incurred by the owner in connection with expanding the site. It must also apply the presumption in paragraph 20(1) that there shall be an increase (or decrease) no greater than the percentage change in the RPI since the last review date unless that would be unreasonable having regard to the factors in paragraph 18(1). In practice that presumption usually means that annual RPI increases are treated as a right of the owner.
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> 23. Although annual RPI increases are usually uncontroversial, it should be noted that the effect of paragraph 20(1) is to create a limit, by reference to RPI, on the increase or decrease in the pitch fee. There is no invariable entitlement to such an increase, even where none of the factors referred to in paragraph 18(1) is present to render such an increase unreasonable. The overarching consideration is whether the RPT considers it reasonable for the pitch fee to be changed; it is that condition, specified in paragraph 16(b), which must be satisfied before any increase may be made (other than one which is agreed). It follows that if there are weighty factors not referred to in paragraph 18(1) which nonetheless cause the RPT to consider it reasonable for the pitch fee to be changed, the presumption in paragraph 20(1) that any variation will be limited by reference to the change in the RPI since the last review date may be displaced."

23. As to whether the FTT had power to separate the site licence fee element from the pitch fee, Mr Sunderland submitted that this was a presentational issue and that the licence fee element had still been treated as part of the pitch fee but treated in a separate manner from the rest of the pitch fee.

24. Turning to the appeal by Wyldecrest, Mr Sunderland submitted that the system used by Dacorum Borough Council to risk rate sites is completely arbitrary and does not necessarily reflect site licence conditions. Wyldecrest does not agree with the local authority's assessment of the Site and there have been no management failures which would justify not passing on the increase in site licence fee. The FTT prevented him from arguing these points, see paragraph 16 of the decision, so that the site owner has not been able to put its case forward. If the local authority considered there had been a breach of any site licence conditions then it should serve an enforcement notice pursuant to s.9A of the 1960 Act. This would give rise to a right of appeal so the points being made could be adjudicated upon. He submitted that the local authority had effectively circumvented the legislation and imposed a financial penalty that Wyldecrest were unable to challenge which was unjust.

25. Both parties relied upon a number of FTT decisions in other cases to support their submissions.

Decision

26. In my judgment it is necessary to consider the interrelationship between the provisions concerning alteration in the amount of the pitch fee. The procedure for changing the pitch fee is provided for by paragraphs 16 and 17 of Schedule 1 to the 1983 Act. By paragraph 16 the pitch fee can only be changed in accordance with paragraph 17 either by agreement or by order of the appropriate judicial body, for present purposes the FTT. Paragraph 17(1) states that the pitch fee shall be reviewed annually as at the review date and provision is then made for service of notices and applications to the FTT.

27. As to the basis on which the FTT determines the pitch fee, this is less straightforward. There are four key provisions. First, paragraph 16 states that the pitch fee can only be changed by the FTT if it "considers it reasonable for the pitch fee to be changed and makes an order determining the amount of the new pitch fee". Second, paragraph 18(1) specifies a number of matters to which "particular regard shall be had" when determining the amount of the new pitch fee. Third, there are a number of matters to which no regard shall be had, see paragraphs 18(1A) and 19. Fourth, "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" that specified in the relevant RPI, paragraph 20(A1).

28. It is to be noted that, other than providing for what may or may not be taken into account for the purpose of determining any change in the amount of the pitch fee, there is no benchmark as to what the amount should be still less any principle that the fee should represent the open market value of the right to occupy the mobile home. Indeed, in *Stroud v Weir Associates* [1987] 1 EGLR 190, the Court of Appeal held that pitch fees on other sites were not a relevant factor to be taken into account when reviewing the pitch fee, per Glidewell LJ at p.192L-M.

29. Although much of paragraphs 16-20 was amended by the 2013 Act, their basic structure was established by the 2006 Order and they have been the subject of a number of decisions. Decisions prior to these amendments are of little assistance, there being little in the legislation to guide the court as to the determination of any alteration in pitch fee.

30. In *Charles Simpson Organisation Limited v Martin Redshaw & another* [2010] 2514 (Ch) (CH/AP/391) the site owner proposed an increase in a pitch fee in accordance with RPI but the pitch occupier objected on the grounds that there had been a decrease in the amenity of the site since the last pitch review date. This was a matter to which "particular regard" was to be had pursuant to paragraph 18(1). When dismissing an application for permission to appeal to the High Court from the county court decision, Kitchin J (as he then was) quoted the following passage from the decision under appeal:

> "13. I consider that the words of paragraph 20(1) up to the word "unless" should be given their obvious and natural meaning. It is that the benchmark for a rise or fall in the pitch fee is the increase/decrease in the RPI since the last (previous) review date. This is a clearly identifiable index whatever may be the factors that are used to arrive at the RPI. I am not concerned with the political/economic issues of whether it does or does not represent a true indicator of current inflation or, these days, even deflation. It is also clear that paragraph 20 treats this index as the prescriptive commencement point for the calculation of the new pitch

fee. It is a presumption which applies "unless this would be unreasonable having regard to paragraph 18(1)." I see no reason to depart from these obvious and clear words."

31. Kitchin J then said this in paragraph 21 of his judgment:

> "In my judgment, the judge was right for the reasons that he gave. The purpose of paragraph 20 is to provide a simple procedure for reviewing pitch fees for each year. Any change in the RPI provides a starting point for the determination of the appropriate increase or decrease in the pitch fee, but this may be departed from if it will produce an unreasonable result having regard to paragraph 18. This paragraph, it is to be noted, includes factors which may result in an adjustment by way of increase or decrease which is, in my judgment, more consistent with the change in RPI providing a starting point rather than a cap."

In the event, however, Kitchen J also upheld the decision that there had been no decrease in amenity and so no reason to depart from RPI.

32. It is to be noted that this decision relates to the relationship between the paragraph 20 presumption and paragraph 18(1), it does not deal with a factor which is not listed in paragraph 18(1). However, it does indicate that the presumption is a 'starting point.'

33. In *Britaniacrest Limited* [2013] UKUT 0521 (LC) the Tribunal (Martin Rodger QC, Deputy President) held that unless provision was made in the pitch agreement, either expressly or through the statutory implied terms, for recovery of an administration charge relating to the provision of utilities, no such charge could be levied separately from the pitch fee. On the true construction of the agreement in that case, it did not permit recovery of a separate administration charge. Administrative charges should be taken to be included in the pitch fee, being the provision of a service at a cost to the site owner, see paragraph 61. The decision does not consider what matters may be taken into account when determining any change in the amount of the pitch fee.

34. The approach in the 2013 *Britaniacrest* case was confirmed in a later decision, *PR Hardman & Partners v Greenwood & Fox* [2015] UKUT 0587 (LC) (Martin Rodger QC, Deputy President).

35. *Sayer* concerned a charge for the supply of water. The pitch agreement provided that it would be charged for separately but in practice, being a small sum, it had always been treated as included in the pitch fee. The issue was whether that was the correct approach and what increase in pitch fee should be made to reflect water costs. The Tribunal held that, although either party could require adherence to the wording of the agreement in the future by giving notice and require water to be charged for separately, hitherto the pitch fee was a single figure for the totality of the rights, benefits and services received under the agreement and it was not possible to identify a separate element which reflected the consideration for the supply of water, see paragraph 37. If water was to be charged for separately in future, the FTT could consider the impact that would have on the pitch fee, paragraphs 42 to 44.

36. In the passage from paragraph 23 quoted above the Tribunal described the presumption in paragraph 20 as a "limit" on the increase or decrease in pitch fee. This is consistent with paragraph 41 of the decision which states:

> "For so long as water charges continue to be subsumed into the pitch fee the effect is that the Park owner is restricted to the RPI increase in the pitch fee irrespective of the increase in the cost to it of supplying water to the Park."

37. However, this has to be read with the last sentence of paragraph 23 where the Tribunal also said that "if there are weighty factors not referred to in paragraph 18(1) which nonetheless cause the [FTT] to consider it reasonable for the pitch fee to be changed, the presumption in paragraph 20(1) that any variation will be limited by reference to the change in the RPI since the last review date may be displaced." This suggests that changes to the pitch fee need not be restricted to RPI and can in an appropriate case be greater. This in turn is consistent with the decision that if water was charged for separately in the future, the FTT could take that into account in deciding whether the presumption of change in line with RPI may be displaced. Until then, it appears that the increase in actual water charges was apparently not regarded as a sufficiently "weighty factor" to justify a greater increase in the pitch fee than RPI.

38. The decisions cited above pre-date the 2013 Act amendments and at that time paragraph 20(1) provided as follows:

> "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."

39. After introduction of the 2013 Act amendments, the Tribunal considered the correct approach towards the provisions relating to the amount of the pitch fee again in *Britaniacrest Limited v Bamborough* [2016] UKUT 0144 (LC). The issue was whether the site owner could include within the pitch fee an administration fee associated with the provision of utilities. The Tribunal (Martin Rodger QC Deputy President and Mr Peter McCrea FRICS) identified three basic principles that shape pitch fee reviews: annual review, no change without agreement unless the FTT considers it reasonable and determines the amount of the new pitch fee and the presumption of change in line with RPI. It continued:

> "These three principles… do not provide a benchmark by reference to which a new pitch fee is to be determined, such as the amount which might reasonably be expected to be agreed as the pitch fee in the negotiation of a new pitch agreement in the open market. The FTT is given a very strong steer that a change in RPI in the previous 12 months will make it reasonable for the pitch fee to be changed by that amount, but is provided with only limited guidance on what other factors it ought to take into account. It is clear, however, that other matters are relevant and that annual RPI increases are not the beginning and end of the determination, because paragraphs 18 and 19 specifically identify matters which the FTT is required to take into account or to ignore when undertaking a review."

40. The Tribunal then referred to paragraph 18(1) and said:

> "24. Two of these provisions are worthy of note at this stage. First, paragraph 18(1)(ab) requires the FTT to have regard to any reduction in services which the owner supplies to the site, the pitch or an individual home. That is consistent with the pitch fee being payment for a package of rights provided by the owner to the occupier, including the right to station a mobile home on the pitch and the right to receive services. Where such services are reduced, or the quality diminishes, the Act requires that reduction or deterioration to be taken into account (presumably as a factor justifying either a reduction in the pitch fee or a smaller increase than would otherwise be allowed).
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> 25. Secondly, paragraph 18(ba) requires that if any "enactment" (meaning a statute or regulation) which has come into force since the last pitch fee review has had "any direct effect on the costs" payable by the owner for maintenance or management of the site, then that effect must be taken into account. Thus, if the cost of maintaining the site were to increase because of some new statutory requirement (for example in relation to fire precautions), this could be taken into account in determining the pitch fee. But the requirement to take the effect of statutory changes into account is qualified by paragraph 18(1A), which prohibits taking into account any costs incurred in complying with the amendments made to the 1983 Act by the Mobile Homes Act 2013 (which included provisions concerned with site licensing)."

41. The Tribunal commented that what had been said in *Sayer* paragraph 23 could have been better expressed before continuing in paragraph 31:

> "…The fundamental point to be noted is that an increase or decrease by reference to RPI is only a presumption; it is neither an entitlement nor a maximum, and in some cases it will only be a starting point of the determination. If there are factors which mean that a pitch fee increased only be RPI would nonetheless not be a reasonable pitch fee as contemplated by paragraph 16(b), the presumption of only an RPI increase may be rebutted and a greater increase, one which raises the pitch fee to the level which the FTT considers reasonable, will be permissible.
>
> 32. Although on one reading of paragraph 20(1) of the statutory implied terms it might appear that the only matter which may justify an increase greater than the amount of the change in RPI is if improvements have been carried out within paragraph 18(1), that does not seem to us to be a proper reading of the provisions as a whole. If improvements have been carried out which make it unreasonable for the presumption to apply then the presumption is disapplied. If there are no such improvements the presumption remains a presumption rather than an entitlement or an inevitability. If there are other factors - not connected to improvements - which would justify a greater than RPI increase because without such an increase the pitch fee would not be a reasonable pitch fee, then they too may justify an above RPI increase. One such factor might be an agreement between the parties to vary the terms of the pitch agreement, so as to include a service charge. Another might be where, as in *Sayer*, the pitch agreement had been implemented in a manner which was inconsistent with its strict terms and one party subsequently wished to revert to those strict terms. A third factor might be where circumstances outside the control of either party had brought about a deterioration or improvement in the environment of the site.

> 33. We therefore agree with the basic submission advanced on behalf of Britaniacrest by Mr Mullan, namely, that the FTT has a wide discretion to vary the pitch fee to a level of a reasonable pitch fee taking into account all of the relevant circumstances, and that the increase in RPI in the previous 12 months is important, but it is not the only factor which may be taken into account."

42. However, in *Britaniacrest* the Tribunal concluded that the presumption of change in line with RPI was not displaced because the agreement provided for payment of the administration charge separately from the pitch fee, see paragraph 35.

43. In my judgment two points are clear from the above decisions and were not disputed by the parties to this case. First, when considering any change in the pitch fee, the FTT is not bound to apply RPI because the presumption does not apply if "this would be unreasonable having regard to paragraph 18(1)", paragraph 20(A1).

44. I agree with the parties that the increase in the site licence fee is not a matter which may be taken into account pursuant to paragraph 18(1)(ba). Whether the increase is the effect of an enactment or not, the relevant enactment, the 2013 Act, has not come into force since the last review date. The 2013 Act came into force on 1 April 2014 and the last pitch fee review date was 1 December 2014. Further, although the increase was caused by the 2013 Act in the sense that that legislation introduced the right to charge a fee and a requirement that the fee be charged in accordance with a policy (ss.5A and 10A of the 1960 Act as amended), the proximate cause of the increase is the application of the policy which in my judgment is too indirect to fall within the words "any direct effect on the costs… of an enactment". Were it otherwise, any cost which could eventually be traced back to legislation would fall within sub-paragraph (ba). That would run contrary to the clear indication of a temporal restriction on what may be taken into account namely that the cost has arisen pursuant to legislation which has come into force since the last review date.

45. The second point which is clear from the previous decisions and again was not contested by the parties is that the factors which may displace the presumption are not limited to those set out in paragraph 18(1) but may include other factors. The issue which arises in this case is whether they may include a factor for which some provision is made in paragraph 18(1), but paragraph 18(1) does not apply. Mr Savory's argument is that the cost of the site licence fee is dealt with in paragraph 18(1) – in sub-paragraph (ba) – and therefore should only be taken into account in accordance with the terms of paragraph 18(1). To do otherwise would be contrary to the intention of the legislator as clearly indicated in the wording of the 1983 Act as amended. On the other hand, Mr Sunderland's argument is that any "weighty matter" may displace the presumption, whether or not it is a factor dealt with in paragraph 18(1).

46. In *Sayer*, the Tribunal described the non-paragraph 18(1) factors which may displace the presumption (which I shall call 'other factors') as "weighty factors <u>not referred to</u> in paragraph 18(1)" (my emphasis), paragraph 23. In *Britaniacrest* (2016), the 'other factors' were described in these terms: "If there are other factors - <u>not connected to improvements</u> - which would justify a greater than RPI increase because without such an increase the pitch fee would not be a reasonable pitch fee, then they too may justify an above RPI increase." (my emphasis), paragraph 32. It would appear from both these decisions that a factor may only displace the paragraph 20(1) presumption if

it is not a factor dealt with in paragraph 18(1). Further, the three examples given in paragraph 32 of *Britaniacrest* (2016) – contractual variations or a change in the environment outside the control of either party – all relate to factors which are not dealt with in paragraph 18(1)

47. In my judgment, although the FTT may not alter the amount of the pitch fee unless it considers it reasonable to do so, paragraph 16(1), the issue of reasonableness is not at large. It is not open to the FTT simply to decide what it considers a reasonable pitch fee to be in all the circumstances. Reasonableness has to be determined in the context of the other statutory provisions.

48. The starting point is that there is a presumption of change in line with RPI "unless this would be unreasonable having regard to paragraph 18(1)", paragraph 20(A1). If, having regard to a factor to which paragraph 18(1) applies, it would be unreasonable to apply the presumption then the presumption does not arise. Thus, for example, if the site owner has spent a substantial sum of money on improvements in accordance with paragraph 18(1)(a) and it would be unreasonable to limit any increase in the pitch fee to RPI, the presumption in paragraph 20(A1) does not arise. It is not strictly speaking a question of the presumption applying but being displaced, in accordance with the express provision in paragraph 20(A1), the presumption does not arise in the first place, because to apply it would be unreasonable.

49. In this respect I do not consider that the change in wording from paragraph 20(1) to paragraph 20(A1) made by the 2013 Act was intended to change the meaning or nature of the presumption. The words "unless this would be unreasonable having regard to paragraph 18(1)" have been moved from the end of the sub-paragraph to the beginning but this is to accommodate the addition of words to be more specific about the period over which RPI is to be measured. The wording of the exemption is unchanged and to have left it at the end of the sub-paragraph would have been clumsy.

50. If there is no matter to which any of paragraph 18(1) in terms applies, then the presumption arises and it is necessary to consider whether any 'other factor' displaces it. By definition, this must be a factor to which considerable weight attaches. If it were a consideration of equal weight to RPI, then, applying the presumption, the scales would tip the balance in favour of RPI. Of course, it is not possible to be prescriptive as to precisely how much weight must be attached to an 'other factor' before it outweighs the presumption in favour of RPI. This must be a matter for the FTT in any particular case. What is required is that the decision maker recognises that the 'other factor' must have sufficient weight to outweigh the presumption in the context of the statutory scheme as a whole.

51. On the face of it, there does not appear to be any justification for limiting the nature or type of 'other factor' to which regard may be had. The paragraphs relating to the amount of the pitch fee expressly set out matters which may or may not be taken into account. "Particular regard shall be had to" the paragraph 18(1) factors and there are a number of matters to which the Act expressly states that "no regard shall be had". If an 'other factor' is not one to which "no regard shall be had" but neither is it one to which "particular regard shall be had", the logical consequence is that regard may be had to it. In my judgment this approach accords with the literal construction of the words of the statute. Further, it is one which would avoid potentially unfair and anomalous consequences.

52. To use the example of improvements mentioned above, if a site owner had carried out substantial improvements which were of benefit to the pitch occupiers but there had been no consultation at all with the result that the occupiers had not had the opportunity to disagree in writing, paragraph 18(1)(a) would not apply. Therefore, the presumption in favour of change in line with RPI would apply. That would not prevent regard being had to the improvements as an 'other factor' when considering the amount of the pitch fee. However, when deciding how much weight to attach to them the FTT should take into account that provision is made in paragraph 18(1)(a) for particular regard to be had to improvements in certain circumstances which the site owner had failed to comply with. Accordingly, the FTT might well take the view that this was not a factor of sufficient weight to displace the presumption if the site owner had the opportunity to comply with paragraph 18(1)(a) but chose not to do so and the pitch occupiers had therefore not had the opportunity to say that they did not want the improvements to be carried out with the likely consequent effect that the pitch fee would increase, potentially substantially.

53. On the other hand, suppose that substantial improvements of benefit to the pitch occupiers had been carried out with full consultation and few occupiers had disagreed, but that as a result of an administrative oversight there was a defect in the consultation because one occupier had not been consulted but that person had suffered no prejudice because s/he was well aware of the proposed improvements and the need for written objection but had not objected. The FTT should be able to have regard to the improvements and may take the view that it was a factor which outweighed the presumption, paragraph 18(1)(a) being complied with in substance if not in terms.

54. I have had the opportunity to consider the draft Tribunal decision in *Wyldecrest Parks Management Limited v Kenyon and others* (LRX/103/2016)(Martin Rodger QC, Deputy President). In my judgment this provides a good example of an 'other factor' relating to site licence fees which are dealt with in s.18(1) to which regard should be had when considering a pitch fee review. In that case the local authority did not publish a fees policy and therefore could not lawfully charge a site licence fee until after the first review date which followed the coming into force of the 2013 Act. Accordingly, paragraph 18(1)(ba) did not apply. In those circumstances the FTT held that it could not have regard to the new site licence fee payable by the site owner when determining the amount of the pitch fee. However, the amendments to the 1983 Act plainly envisaged that particular regard should be had to the introduction of the site licence fee when considering the amount of the pitch fee. It was not the site owner's fault that the local authority had delayed proper implementation of the site licence fee legislation. The Tribunal held that the site licence fee was a factor that could be taken into account and may provide grounds for rebutting the presumption of change in line with RPI. Accordingly, the appeal is to be allowed and the case remitted to the FTT.

55. In these circumstances, in my judgment the increase in site licence fee was an 'other factor' to which the FTT in this case could have regard when determining the amount of the pitch fee. The fact that the Explanatory Notes to the 2013 Act state that RPI changes would apply to the site licence fee after the first year does not detract from this. The notes do no more than point out, rightly, that after the first year the presumption of change in line with RPI will apply. It does not prevent the FTT from taking into account any increase (or decrease) in the site licence fee as an 'other factor' when considering whether the RPI presumption is displaced.

56. However, a note of caution is necessary. 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 a 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. In my judgment there is good reason for that.

57. There are a substantial number of mobile home sites in England occupied pursuant to pitch agreements which provide for relatively modest pitch fees. The legislative framework for determining any change in pitch fee provides a narrow basis on which to do so which no doubt provides an element of certainty and consistency that is of benefit to site owners and pitch occupiers alike. The costs of litigating about changes in pitch fee in the FTT and in the Tribunal are not insubstantial and will almost invariably be disproportionate to any sum in issue. I accept the submission of Mr Savory that an interpretation which results in uncertainty and argument at many pitch fee reviews is to be avoided and that the application of RPI is straightforward and provides certainty for all parties.

58. The potential examples given in paragraphs 53 and 54 above are cases where the site owner is either not at fault or has done his/her best to bring the case within paragraph 18(1), the pitch occupier has suffered no prejudice as a result of any failing by the site owner and, in both cases, paragraph 18(1) has been complied with in substance if not in terms. In circumstances where the 'other factor' is wholly unconnected with paragraph 18(1), a broader approach may be necessary to ensure a just and reasonable result. However, what is just or reasonable has to be viewed in the context that, for the reasons I have already given, the expectation is that in most cases RPI will apply.

59. Turning to the FTT decision, I accept the submission of Mr Savory, which was implicitly accepted by Mr Sunderland, that the FTT had no jurisdiction to decide the amount of any site licence fee which a pitch occupier should pay outside the pitch fee. The FTT's jurisdiction is governed by s.4(1) of the 1983 Act and is to determine "any question arising under this Act or any agreement to which it applies." There is no evidence that pitch agreements in this case entitled the site owner to recover the site licence fee from the occupiers. The only statutory provision entitling the site owner to charge a pitch occupier any fee is the pitch fee. Therefore, the only mechanism by which the site licence fee could be passed onto the pitch occupiers in this case is through the pitch fee.

60. However, in my judgment the FTT did not purport to require Mrs Vyse to pay a proportion of the site licence fee as a separate charge. Paragraph 29 of the 'Conclusions' describes what the FTT is to determine as "the element of the pitch fees which is directly referable to the licence fee" thus indicating that the site licence fee would be an 'element of' the pitch fee. In paragraph 34 the FTT decides that "any increase in such licence fee… can be passed on as an addition to the pitch fee." Although the sentence continues "but specifically separated so that it does not attract any RPI increase", in my judgment it is clear from the last sentence of paragraph 34 that the FTT is considering the site licence fee in the context of the pitch fee because RPI could only apply to the pitch fee. Finally, I note that in paragraph 2 which sets out the formal decision states:

> "The remaining pitch fees… can include the £200 paid or payable to Dacorum Borough Council as a low risk site licence fee but not the extra £100 imposed. No Retail Prices Index increase can be applied to that element of the pitch fee."

In my judgment, if it was not clear in the reasons which follow, it is clear from this statement of the decision that the FTT determined the allowable part of the site licence fee to be paid as part of the pitch fee not as a separate charge.

61. The FTT held, correctly, that the 1983 Act, as amended, did not prohibit increases in the site licence fee from being passed on as part of the pitch fee, see paragraphs 27 and 34. However, it would appear that the FTT wrongly treated the increase in site licence fee as falling within paragraph 18(1)(ba) rather than being an 'other factor'. Paragraph 32 of the FTT decision states:

> "There is no need for any further enactment to cover increases in licence fees because they are already permitted and anticipated"

and paragraph 34 states that site licence fees:

> "self evidently, have a *"direct effect on the costs payable by the owner in relation to… the management of the site…"*"

The reference to 'enactment' appears to be a reference to the wording of sub-paragraph (ba) and the quotation is taken directly from sub-paragraph (ba). For the reasons already given, the increase in licence fee is not the direct effect of an enactment nor the effect of an enactment which has come into force since the last review date as required by sub-paragraph (ba). It follows that the FTT misconstrued that provision.

62. The FTT was nevertheless entitled to take the site licence fee increase into account as an 'other factor.' However, in order to do so lawfully, the FTT would need to approach the case on the basis that paragraph 18(1)(ba) applies only to the initial introduction of the site licence fee. Therefore, the legislation does not envisage that 'particular regard' should be had to a subsequent increase or decrease in the fee and normally RPI will apply. In this respect the FTT fell into error when it stated in paragraphs 25 and 32 that not only the introduction of the site licence fee but also any increases fell within the 'enactment' for the purposes of paragraph 18(1)(ba). It could be said that this error does not matter, because the FTT has refused to allow the increase in site licence fee to be reflected in the pitch fee in any event. I consider the challenge to this aspect of the decision below. However, even if the FTT would have found the presumption not to have been displaced in any event because the increase in site licence fee was a result of management failings, it still found the presumption displaced for other reasons.

63. These are set out in paragraph 27 of the decision:

> "The Tribunal considers that it would simply not make any sense for the site owners to be (a) unable to pass on increases in licence fees permitted by the 2013 Act and (b) able to charge RPI increases on fees if they remained the same. An RPI increase is not a direct effect on costs. Further, and perhaps most important of all, the site owner would not be required to pass on any reduction in site licence fee which could easily happen if, for example, the site substantially reduced in size…"

64. The pitch fee is a composite fee being payment for a package of rights provided by the owner to the occupier, including the right to station a mobile home on the pitch and the right to receive services, *Britanniacrest* (2016) paragraph 24. In the absence of any express agreement for them to be charged for separately, the fee has to reflect all the site owner's administration costs which now include the site licence fee. Not all of the site owner's costs will increase or decrease every year, nor will they necessarily increase or decrease in line with RPI. The whole point of the legislative framework is to avoid examination of individual costs to the owner and instead to apply the broad brush of RPI. Parliament has regarded the certainty and consistency of RPI as outweighing the potential unfairness to either party of, often modest, changes in costs. That does not prevent any increase or decrease in licence fee from displacing the presumption of change in line with RPI. The example given by the FTT where a site changes significantly in size might be such a case. On the other hand, it might not, as the change in site licence fee would be reflected by a change in the number of pitches in respect of which fees were payable. However, the mere fact that a cost to the site owner has not changed is unlikely of itself to displace the presumption.

65. Turning to Wyldecrest's cross appeal, in my judgment the FTT was right to treat the matters which gave rise to a risk rating of medium for the Site as relating to management. They are set out in an exchange of correspondence between Dacorum Borough Council and the parties in October 2015 to January 2016, (appeal bundle p.51-57) and relate to the adequacy of fire fighting apparatus, the condition of roadways and the position of a new caravan (other objections appear to have been resolved). These matters relate to the management and maintenance of the Site.

66. Mr Sunderland submitted that these were not breaches of the site licence conditions and that Wyldecrest disagreed with the authority's stance as to whether these matters justified treating the Site as medium risk. However, the authority's letter dated 2 October 2015 states that they were breaches of the site licence conditions. Further, the fact (assuming it to be the case) that Wyldecrest have no means under the legislation of challenging the authority's assessment unless an enforcement notice is served does not detract from the (undisputed) fact that the site licence fee increased as a direct result of it. As the FTT put it in paragraph 22, "it is simply not possible to say that the fee 'should' be £200."

67. The FTT did not stop Mr Sunderland from asserting that the licence fee increase should be passed on to the pitch fees, only from making his (somewhat intemperate) allegations against the local authority and in my judgment there was no unfairness. As the FTT record in paragraph 15 of the decision, the authority stated in the email dated 19 November 2015 to Mrs Vyse that:

> "I have given [Wyldecrest] the opportunity to provide me with information which would enable me to reduce the risk rating further but he has not done so. My areas of concern are the distance between home 7 and the neighbouring homes, the condition of the access road, the provision of fire fighting equipment and the number of car parking spaces" (the issue of car parking was resolved)

68. The FTT was not in a position to adjudicate between the local authority and Wyldecrest but had evidence that Wyldecrest could have addressed the local authority's management concerns and indeed subsequently did so, but only in relation to car parking. In those circumstances I consider that the FTT was entitled to conclude that it would be wrong to allow the increase in site licence fee from £200 to £300 caused by extra risk due to an apparent lack of management to be included in the

pitch fees. The presumption of change in line with RPI did not arise because the FTT considered it unreasonable, applying what the FTT believed to be paragraph 18(1)(ba). If the FTT had properly considered the increase in site licence fee as an 'other factor', i.e. not one to which particular regard should be had, in my judgment on the facts of this case it would inevitably have concluded that the presumption was not displaced and would have reached the same decision in any event.

69. For all these reasons I allow the appeal and dismiss the cross appeal. Strictly speaking it would be for the FTT to determine whether, ignoring the £100 increase in site licence fee, the lack of change in the site licence fee was sufficient to displace the presumption of change in line with RPI. However, for the reasons already given, the fact that there has been no change in the cost of the site licence fee (ignoring the £100 increase), would not normally displace the presumption. To apply RPI rather than no increase at all would favour Wyldecrest and is the outcome Mr Savory argued for on behalf of Mrs Vyse. In those circumstances I consider there is no point in remitting the case to the FTT. I determine that the £200 site licence fee element of the pitch fee should be increased with effect from the 1 December 2015 review date in accordance with the presumption in paragraph 20(A1) of the 1983 Act as amended.

Dated: 30 January 2017

Her Honour Judge Alice Robinson

Appendix 1

Home number (Scatterdells Park)	Respondents name(s)
4	Mrs A Bridgeman
5	Mr & Mrs Dracup
6	Mr G Lewis
13	Mrs P Farrow
13a	Mrs Pauline Spencer
15	Mr D Grey
16	Miss S Case
18	Mr & Mrs Vyse
19	Mrs K Walker
23	Mr M Lawrence
24	Mr M Broadway
25	Mr & Mrs Blackman

Appendix 2

Chapter 2 of Part 1 of Schedule 1 to the Mobile Homes Act 1983 (as amended)

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)-(12) [provisions concerning the proposals and applications for determination of pitch fee increases and other procedural matters]

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) [Wales].

(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;

(c) [Wales]

(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 purpose of sub-paragraph (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 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 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 – 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 this would be unreasonable having regard to paragraph 18(1), there is a presumption that the pitch fee shall increase or decrease by 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" –

(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) [Wales]

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