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

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| **Case Reference** | **:** | **CAM/00JA/PHI/2017/0003** |
| **Properties** | **:** | **43 & 44 Keys Park, Parnell Way, Peterborough PE1 4SN** |
| **Applicant** | **:** | **The Berkley Leisure Group Ltd** |
| **Representative** | **:** | **Mr Paul Kelly of Tozers LLP Solicitors** |
| **Respondents** | **:** | **Mr Richard and Mrs Jean Salmon (43)**<br>**Mr Roger & Mrs Marlene Harrold (44)** |
| **Date of Application** | **:** | **27th March 2017** |
| **Type of Application** | **:** | **Determination of new pitch fee pursuant to paragraph 16 of Chapter 2 of Part 1 of Schedule 1 of the Mobile Homes Act 1983 (as amended)** |
| **Tribunal** | **:** | **Judge J R Morris** |
| | **:** | **Regional Valuer D S Brown FRICS** |
| **Date of Hearing** | **:** | **13th July 2017** |
| **Date of Determination:** | | **8th August 2017** |

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**DECISION**

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## Decision

1. The Tribunal determines that the new pitch fee for Number 43 and 44 Keys Park is £161.71 per month to take effect on the Review Date of 1st January 2017.

## Reasons

### Applications

2. The Applicant applied on the 27th March 2017 for a determination of the pitch fee payable by the Respondents. The Applicant by a Notice in the prescribed form dated 21st November 2017, proposed a new pitch fee for:
   - Number 43 Keys Park of £161.71 per month to take effect on the Review Date on 1st January 2017 to replace the last pitch fee of £158.54 per month reviewed on 1st January 2016
   - Number 44 Keys Park of £161.71 per month to take effect on the Review Date on 1st January 2017 to replace the last pitch fee of £158.54 per month reviewed on 1st January 216

3. The increase for both pitch fees was calculated on the basis of an increase in the Retail Price Index (RPI) of 2.0% as the percentage increase in the RPI over 12 months by reference to the RPI published for October 2016 (A copy of which was provided in the Bundle). This gave an increase in fee for both pitches of £3.17 per month.

4. The Respondents did not agree to the proposed pitch fee. Mr & Mrs Salmon in Written Representations objected to the increase on the following grounds:
   - Road outside their home rarely swept;
   - Compound opposite their home unsightly, the gate of which had been covered with plastic but had blown away;
   - Broken boundary fence
   - Speed bumps
   - Vehicles turning in the compound driveway
   - Uncontrolled traffic speed

5. Mr & Mrs Salmon had provided a full analysis of their case which was included in the bundle and which is summarised later in the reasons. Mr and Mrs Harrold endorsed Mr & Mrs Salmon's Representations in a letter dated 22nd April 2017 which was also included in the Bundle. Both Homes were on pitches at the entrance to the Park. The Respondents said that the pitches were created for the first time for their Homes and prior to their purchasing their homes no pitches had existed in this position. Therefore, the problems they experience were the same and, they felt, unique to their pitches.

6. The issue was whether under Paragraph 18 of the Mobile Homes Act 1983 as amended by the Mobile Homes Act 2013, there had been *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 [26th May 2013] in so far as regard has not previously been had to that deterioration or decrease.*

7. Mr and Mrs Salmon purchased their Home and entered an Agreement in relation to the pitch on 30th November 2011. (A copy of the Agreement was provided). Mr and Mrs Harrold purchased their Home and entered an Agreement in relation to the pitch on 11th November 2008. (A copy of the Acknowledgement of Receipt of the Agreement was provided).

**Law**

8. Section 2 of the Mobile Homes Act 1983 ("the Act") provides that the terms of Part 1 of Schedule 1 to the Act shall be implied and shall have effect notwithstanding the express terms of the Agreement. Paragraphs 16 to 20 of Chapter 2 of Schedule 1 to the Act were introduced by the Mobile Homes Act 1983 (Amendment of Schedule 1) (England) Order 2006. The relevant provisions of the legislation that apply to this decision given the issues raised are as follows:

9. Paragraph 16 provides:

*The pitch fee can only be changed in accordance with paragraph 17, either—*

*(a) with the agreement of the occupier, or*

*(b) if the court, 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.*

*10.* Paragraph 17 provides:

*(1) The pitch fee shall be reviewed annually as at the review date.*

*(2) At least 28 clear days before the review date the owner shall serve on the occupier a written notice setting out his proposals in respect of the new pitch fee.*

*(2A) In the case of a protected site in England, a notice under subparagraph (2) which proposes an increase in the pitch fee is of no effect unless it is accompanied by a document which complies with paragraph 25A.*

*(3) If the occupier agrees to the proposed new pitch fee, it shall be payable as from the review date.*

*(4) If the occupier does not agree to the proposed new pitch fee—*

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

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

*(c) the new pitch fee shall be payable as from the review date but the occupier shall not be treated as being in arrears until the 28th day after the date on which the new pitch fee is agreed or, as the case may be, the 28th day after the date of the court order determining the amount of the new pitch fee.*

*(5) An application under sub-paragraph (4)(a) may be made at any time after the end of the period of 28 days beginning with the review date.*

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

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

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

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

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

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

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

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

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

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

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

*(10) The occupier shall not be treated as being in arrears—*

*(a) where sub-paragraph (7) applies, until the 28th day after the date on which the new pitch fee is agreed; or*

*(b) where sub-paragraph (8)(b) applies, until the 28th day after the date on which the new pitch fee is agreed or, as the case may be, the 28th day after the date of the court order determining the amount of the new pitch fee.*

*(11) Sub-paragraph (12) applies if a tribunal, on the application of the occupier of a pitch in England, is satisfied that—*

*(a) a notice under sub-paragraph (2) or (6)(b) was of no effect as a result of sub-paragraph (2A) or (6A), but*

*(b) the occupier nonetheless paid the owner the pitch fee proposed in the notice.*

*(12) The tribunal may order the owner to pay the occupier, within the period of 21 days beginning with the date of the order, the difference between—*

*(a) the amount which the occupier was required to pay the owner for the period in question, and*

*(b) the amount which the occupier* has paid the owner for that period.

11. Paragraph 18 provides:

(1) *When determining the amount of the new pitch fee particular regard must 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 paragraphs 22(f) and (g); and*

*(iii) to which a majority of the occupiers have not disagreed in writing or which, in the case of such disagreement, the court [tribunal] 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 [26th May 2013] (in so far as regard has not previously been had to that deterioration or decrease for the purposes of this subparagraph);*

*(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 subparagraph);*

*(b) in the case of a protected site in Wales any decrease in the amenity of the protected site since the last review date*;

*(ba) in the case of a protected site in England, any direct effect on the costs payable by the owner in relation to the maintenance or management of the site of an enactment which has come into force since the last review date;*

*(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*

12. Paragraph 20 provides that:

*(A1) In the case of a protected site in England, unless this would be unreasonable having regard to paragraph 18(1), there is a presumption that the pitch fee shall increase or decrease by a percentage which is no more than any percentage increase or decrease in the retail prices index calculated by reference only to—*
*(a) the latest index, and*
*(b) the index published for the month which was 12 months before that to which the latest index relates.*

*(A2) In sub-paragraph (A1), "the latest index"—*
*(a) in a case where the owner serves a notice under paragraph 17(2), means the last index published before the day on which that notice is served;*
*(b) in a case where the owner serves a notice under paragraph 17(6), means the last index published before the day by which the owner was required to serve a notice under paragraph 17(2)*

*(1) In the case of a protected site in Wales there is a presumption that the pitch fee will 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).*

**Inspection**

13. The Tribunal inspected the Site in the presence of the Applicant's Representatives Mr David Curson, Operations Manager, Mr Stephen Drew, Company Secretary and Mr Paul Kelly of Tozers, the Applicant's Solicitor and the Respondents.

14. Access to the Site is from the main road. There is then a Site Road which gives access to the pitches. The site road is circular and traffic is directed one way. There are several speed limiters in the form of 'road bumps' or 'sleeping policeman'. There are also signs restricting the speed to 10 miles per hour.

15. Some pitches are directly off the Site Road whereas others are off a pedestrian walkway and a number of these have a parking space on the pitch. For those which do not there are parking areas. There is also a number of garages which are let separately.

16. The site has been expanded in recent years and there is a close off the main Site Road. Several bases are currently being re-laid on pitches which have fallen vacant. Notwithstanding this work the site was found to be well kept.

17. The Tribunal's attention was drawn to the area around pitches 43 and 44.

18. The Tribunal noted the entrance to the compound opposite pitch 43. The entrance to the compound was recessed from the Site Road. The Respondents pointed out that vehicles used the recess in which to turn. The compound was screened although the contents of the compound could be seen through a galvanised steel frame and mesh gate. It was said that the gate was originally in its present condition but had more recently been covered with a plastic sheeting which had masked the compound. This sheeting had blown off and there were remnants of it still adhering to the frame. At the time of the inspection the compound contained a vehicle and items that were being used in the construction work on the Site including gravel and hardcore.

19. Note was also taken of the fence at the entrance to the Site which was in front of a hedge on each side of the road and was now in poor condition. It was pointed out that the fence had enclosed one side of pitch 43 but had now fallen into such decay that it had been removed. It was also noted that now the first speed bump on the Site Road was just beyond pitch 44.

20. The Tribunal further noted that there was a section of the tarmac road in front of pitch 43 which was newer than the rest although uneven. It was pointed out that there had been a speed bump in this position. Indications of where the bolts that had held it in place could be identified.

21. The Respondents pointed out the condition of the Site Road outside pitches 43 and 44 which appeared clean. They said that the road had been swept on the Tuesday before the inspection and before that it was swept on the 19th May 2017.

**Applicant's Submission**

21. Early in the hearing Mr Kelly for the Applicant made a legal submission. He referred to Section 2 of the Mobile Homes Act 1983, as amended, and the terms it implies in the Agreement. In particular he drew the Tribunal's attention to Paragraph 20 of the implied terms which sets the basis for, in this case, any increase in the pitch fee. The paragraph states that: *unless this would be unreasonable having regard to paragraph 18(1), there is a presumption that the pitch fee shall increase or decrease by a percentage which is no more than any percentage increase or decrease in the retail prices index.*

22. He submitted that if the increase is not unreasonable having taken account of paragraph 18(1), the Site Owner is presumed to be entitled to an annual increase in the pitch fee in accordance with the retail price index unless there is some 'other factor' which rebuts the presumption i.e. a reason for saying that there should be no increase. He added that any 'other factor' (reason) for rebutting the presumption and so preventing the increase must be of "considerable weight".

23. In support of this submission he referred the Tribunal to the case of *Vyse v Wyldcrest Parks (Management) Limited* [2017] UKUT 0024 (LC) Case Number LRX/93/2016 and quoted the following paragraphs which are set out here for the convenience of the unrepresented Respondents:

> *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.*
>
> *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.*

24. Mr Kelly added that this decision had been approved in *Wyldecrest Parks (Management) Ltd v Kenyon* [2017] UKUT 0028 (LC) in which ist was said at paragraph 47:

*Based on this review of the Tribunal's [i.e. the Upper Tribunal's] decisions in this area, which were not challenged by either party in the appeal, the effect of the implied terms for pitch fee review can therefore be summarised in the following propositions*:

*(1) The direction in paragraph 16(b) that in the absence of agreement the pitch fee may be changed only "if the appropriate judicial body … considers it reasonable" for there to be a change is more than just a pre-condition; it imports a standard of reasonableness, to be applied in the context of the other statutory provisions, which should guide the tribunal when it is asked to determine the amount of a new pitch fee. 13*

*(2) In every case "particular regard" must be had to the factors in paragraph 18(1), but these are not the only factors which may influence the amount by which it is reasonable for a pitch fee to change.*

*(3) No weight may be given in any case to the factors identified in paragraphs 18(1A) and 19.*

*(4) With those mandatory consideration well in mind the starting point is then the presumption in paragraph 20(A1) of an annual increase or reduction by no more than the change in RPI. This is a strong presumption, but it is neither an entitlement nor a maximum.*

*(5) The effect of the presumption is that an increase (or decrease) "no more than" the change in RPI will be justified, unless one of the factors mentioned in paragraph 18(1) makes that limit unreasonable, in which case the presumption will not apply.*

*(6) Even if none of the factors in paragraph 18(1) applies, some other important factor may nevertheless rebut the presumption and make it reasonable that a pitch fee should increase by a greater amount than the change in RPI.*

25. Mr Kelly submitted that, taking these cases into account, there must be a reason of considerable weight or an important factor to rebut the presumption He added that based on the Respondents' written submissions, in the Applicant's opinion none of the matters referred to by the Respondents met the required standard to rebut the presumption.

**Evidence**

26. The Respondents identified each ground in turn based on their written representations to which the Applicant responded.

***Road outside their home rarely swept***

27. The Respondents stated that the road outside their homes was rarely swept. They said that it had been swept on the Tuesday before the inspection and hearing and before that it had been swept on the 19th May 2017. They could not say when it was swept before then as it was so long ago. Mr Salmon said that at their point in the road there was a build-up of dirt, dust and stones from the compound. In addition, the Site Road sloped down towards their homes at the entrance which led to an accumulation of debris there, particularly after heavy rain. When vehicles pass through the entrance they cause stones from this accumulation to be kicked up and hit the side of their home and in the past a stone has broken a window.

28. Mr Curson the Applicant's Operations Manager said that they endeavoured to sweep the Site Road regularly and certainly bi-monthly. However, he conceded that there had over the last twelve months been distractions with the construction work and planned maintenance that had been taking place at the Park. In the light of this the sweeping of the Site Road was not something that could be guaranteed.

29. In reply Mr Salmon said that he did not consider every year to be regular. He said that 43 and 44 were new pitches and the importance of keeping the road clear of dirt, dust and stones had not been appreciated. Other home occupiers do not have the same experience.

***Compound opposite their home unsightly, the gate of which had been covered with plastic but had blown away***

30. Mr Salmon referred the Tribunal to the appearance of the compound through the gate, stating that this was what they looked out on from their Lounge and bedroom window. He said that they had asked to have the gate to be covered with willow screening. Initially any sort of covering had been rejected until there were two burglaries at the compound when the gate was covered in polythene. He said this was an improvement as it blocked out the view of the compound. However, the polythene was ripped in the wind and although repaired, ripped again and so was removed.

31. Mr Kelly for the Applicants stated that the compound had been there since the Respondents took up occupation of the pitches in 2011 and 2008 respectively. It was always there and they knew about it when they purchased their homes on the pitches. This was therefore not a decrease in amenity since 2013 as required by the legislation. Even if the plastic sheeting put up and removed in October/November 2016 could be seen as relevant he submitted that it did not have sufficient weight to rebut the presumption.

***Broken boundary fence***

32. Mr Salmon referred the Tribunal to the fence on either side of the entrance to the Site, part of which formed the boundary to pitch 43. He said the fence had been there for many years and had received no attention for the last five and a half years. He said a portion of the fence on the pitch boundary has been removed and not replaced and the remainder is in very poor condition. The fence formed a deterrent to intruders but no longer does so and its dilapidated state spoils the appearance of the home and garden to pitch 43. In addition, it was an eyesore and not good for visitors to the park.

33. The Tribunal said that an item which deteriorates over time may not be a decrease in amenity initially but may over time reach a point when it does amount to a decrease in amenity i.e. since 2013.

34. Mr Kelly for the Applicant stated that as with the compound the fence had always been there.

35. Taking into account the Tribunal's comment he said the condition of the fence had not been raised as a cause for concern until the present proceedings and it had not been clear to the Applicant what was being identified until the inspection. He said that a decrease in amenity under paragraph 18(1) implied an adverse change, whereas a failure to address a repair issue would come within one of the other factors that would make an increase unreasonable. He submitted that this particular failure to repair was not of sufficient weight to rebut the presumption to increase the pitch fee in line with the retail price index.

***Speed bumps and uncontrolled traffic speed***

36. Mr Salmon said that the speed bump outside pitch 43 had long been a matter of contention between the Respondent and the Applicant. The original bump had been built in the road and was situated immediately beneath the lounge window of the home. However, the bump was so low it did not impede the speed of traffic. And heavier vehicles produced a tremendous jolt, with things falling off shelves. It did not have reflectors and was difficult to see in the dark.

37. Following requests from the Respondents, Mr Salmon said that the bump was replaced by a type that was bolted into the road which is used elsewhere on the Park. This type is more severe and so likely to slow traffic and had reflectors so could be seen in the dark. This bump began to be detached from the road and for its sections to come apart. This caused a loud flapping noise which was as bad if not worse than the previous bump. Attempts to reattach it to the road failed which Mr Salmon said was due to the poor condition of the road surface. He said that he considered the bump had never been attached to the road properly in the first place. The speed bump was removed at Mr & Mrs Salmon's request although they were under the impression that a new speed bump would be fitted when the road was re-surfaced which was scheduled for 2016. However, the road has still to be re-surfaced.

38. Mr Salmon said that the only speed bump now was just beyond pitch 44. Drivers think that the Park entrance is at that point and so continue to drive at

high speed from the main road past pitches 43 and 44 until they get to that speed bump. It is particularly dangerous as there are no foot paths on this section.

39. Linked to this issue Mr Salmon added that in the absence of a speed bump residents and visitors significantly exceeded the 10 miles per hour speed limit as they entered and left the Park past pitches 43 and 44. He suggested at speeds of up to 40 miles per hour. This was unacceptable considering there are people walking dogs and with grandchildren on the Park.

40. By way of illustration Mr Salmon referred to an instance of an occupier who he reported to the Applicant for speeding. He said he was asked to give details of the occupier's address which he did but heard no more about it and so assumed that nothing further had been done. He therefore questions how seriously the speeding issue was viewed by the Applicant.

41. Mr Harrold confirmed that the original tarmac creating the speed bump had become flattened and vehicles just rode over it without slowing. He said that they had felt the bump as delivery vehicles passed at number 44.

42. Mr Curson gave evidence in a Written Statement which he confirmed at the hearing that speeding was a concern however the Applicant has a duty not to prevent access to occupier, visitors and service providers. He said that the Applicant had taken reasonable steps to limit the impact of traffic. He referred to the provision in the site rules applicable to occupiers and their visitors which states:
*You must drive all vehicles on the Park carefully and within the displayed speed limit*.

43. He then referred to the displayed speed limit signs of 10 miles per hour which the Tribunal had noted at the inspection together with the speed bumps along the Site Road. He said additional speed bumps had been installed at the suggestion of Mr Salmon in 2013. These new speed bumps are of a hard rubber design bolted to the tarmac surface.

44. He also stated that across all 50 Parks the Applicant took steps to enforce the speed limit whenever there was satisfactory evidence such as a registration number. The Applicant writes at intervals to occupiers reminding them of the speed restriction, one-way system and rules of the park (a copy of a letter sent to residents was provided dated 18th July 2016).

45. With regard to the instance reported by Mr Salmon, Mr Curson referred the Tribunal to the correspondence provided in the bundle to demonstrate that action was taken by the Applicant so far as possible.

46. This correspondent included a copy of Mr and Mrs Salmon's letter of complaint dated 4th August 2016 and providing the registration number of the vehicle which they said was speeding and a log of the occasions when the vehicle appeared to be speeding past their home. There was also a copy of a subsequent letter confirming Mr and Mrs Salmon's and Mr and Mrs Harrold's view that the occupier was speeding.

47. Following the complaint Mr Curson said that the Applicant wrote to the occupier and a copy of that letter and the reply from the occupier was provided.

48. Mr Curson also addressed in his statement the issue of the speed bump outside pitch 43. He referred the Tribunal to correspondence which catalogued the sequence of events in respect of the removal of the original tarmac speed bump to the installing of the new style speed bump and its removal. This included an email dated 25th October 2013 from Mr Salmon stating that the additional speed bumps did not resolve the matter of speeding traffic entering and exiting the Park and requesting that the tarmac bump outside his home be replaced by one of the newer rubber type. An email dated 11th May 2014 from Mr Salmon suggesting white markings on the original tarmac speed bump. A reply dated 13th May 2014 from Ms Juliet Lloyd, Operations Assistant stating that the situation would be reviewed at her next visit but warning that there are those who choose to ignore speed bumps and for whom they do not pose a deterrent.

49. Mr Curson said that the tarmac speed bump was replaced by a new style speed bump and referred to a letter dated 16th October 2015 thanking Mr Curson for its installation.

50. In January 2016 Mr Salmon complained that the new speed bump was working loose and was noisy. The Applicant made two attempts to rectify the problem but it became clear the bump was not suitable. Mr Curson referred to his letter of 14th January 2016 in which he recalled a conversation prior to the installation of the new style speed bump in which he warned that they were noisier than tarmac ones and may not be suitable.

51. In a letter dated 17th May 2016 Mr Salmon asked for the speed bump to be removed and replaced by new one securely fitted. In a letter dated 1st June 2016 Mr Curson confirmed the speed bump would be removed but would not be replaced until the road was re-surfaced, which was scheduled for 2016 but has now been put back to 2017.

52. Mr Kelly submitted that the Applicants had sought to deal with the problem of both speeding and the speed bump. The Applicant had removed the original speed bump and replaced it with a modern one and then removed the more modern version at its own expense. It had no legal obligation to take the action.

53. Mr Kelly stated that the issue of the speed bump outside pitch 43 was ongoing and would hopefully be resolved when the road was re-surfaced. The issue of the speed bump did not decrease the amenity of the Park and in this instance neither the speed of vehicles entering and exiting the Park nor the speed bump outside pitch 43 were factors which rebutted the presumption entitling the Applicant to an increase in the pitch fee.

***Vehicles turning in compound driveway***

54. The Respondents stated that vehicles are constantly turning in the compound gateway at night. The "chief culprits" were taxi drivers and residents using the gateway as a drop off point. A particular irritation was when taxi drivers would turn their vehicles and stop with their headlights shining on numbers 43 or 44 while they did their paperwork. Both the lights and the sound of the engines caused a significant disturbance to both number 43 and 44. Mr Harrold said that the problem had existed eve sine he moved to the Park. The Applicants asked that cones be put across the gateway to prevent vehicles turning at night.

55. Mr Kelly referred to Mr Curson evidence with regard to the need to ensure that residents, visitors and delivery vehicles had access to the Park although the placing of cones was not discounted. He referred to the point made earlier that the compound and its incumbent problems had been there when the Respondents moved to the Park and they would have been aware of them when they signed the Agreements for their pitches. Also, the turning of vehicles in the gateway was not a factor of sufficient weight to rebut the presumption entitling the Applicant to an increase in the pitch fee.

**Decision**

56. The Tribunal carefully considered all the evidence and the submissions of the parties. The Tribunal must consider whether the matters put in issue by the Respondents amount to a decrease in amenity since 26th May 2013 and no account of that decrease had been made in the pitch fee before. If the matter complained of was in existence at the time the home was purchased and the pitch agreement entered then it will not amount to a decrease in amenity. In addition, any factor other than a decrease in the amenity must be of considerable weight i.e. be very significant, to justify the Tribunal not allowing the Applicant Site Owner an increase in the pitch fee in line with the retail price index, which he is presumed to be permitted under the legislation (As required by *Vyse v Wyldcrest Parks (Management) Limited* [2017] UKUT 0024 (LC) and *Wyldecrest Parks (Management) Ltd v Kenyon* [2017] UKUT 0028 (LC))

57. The Tribunal noted each of the grounds in turn and considered whether they amounted to a decrease in amenity since the homes were bought or since the 26th May 2013, whichever is the later, and were of such importance that they justified a reduction in the pitch fee to which the Site owner is entitled.

***Road outside their home rarely swept***

58. On the day of the inspection the Tribunal found that the Site was well kept notwithstanding the construction works that were taking place. The Site Road was showing signs of wear and, although due for renewal, was not yet in such a poor condition as to amount to a decrease in amenity of the site. The Applicant appeared to accept that the road had not been swept as often as it perhaps should have been, however, the Tribunal found that this did not amount to a decrease in amenity that warranted a reduction in the pitch fee increase.

***Compound opposite their home unsightly, the gate of which had been covered with plastic but had blown away***

59. With regard to the compound being unsightly the Tribunal found that it had been situated there since, and probably before, pitches 43 and 44 were created. The Respondents therefore would have purchased their homes and entered the Pitch Agreement with knowledge of the outlook from the home. The presence of the compound could not therefore be considered a decrease in amenity since 26th May 2013 or indeed since the Respondents purchased their home.

***Broken boundary fence***

60. Again, with regard to the boundary fence the Tribunal found that it had been in a deteriorating condition since pitch 43 was created and the Respondents purchased their homes and entered the Pitch Agreement. The Tribunal found that the boundary of pitch 43 was comprised of both a hedge and the boundary and the loss of the portion of the fence did not leave the pitch exposed. The Tribunal found that the poor condition of the fence was still only noticeable on inspection and so did not amount to a loss of amenity.

***Speed bumps and uncontrolled traffic speed***

61. The Tribunal found that the Respondent had removed the original tarmac speed bump at the Respondents' request and replaced it with a rubber one. When this also was found to be unsatisfactory by the Respondents then the Applicant removed it. The present situation is that there is no noise resulting from a speed limiting device, although the Respondents are of the opinion that a number of persons enter the park at a speed greater than 10 miles per hour and do not slow down until the first speed bump just beyond pitch 44.

62. The fact that vehicles come off the main road into the park and the existence of the original speed bump must have been known to the Respondents when the pitches were created and when they bought their homes and signed the Pitch Agreements. Notwithstanding this, the noise issue has been remedied and the Applicants by removing the speed bump and have sought to reduce the speed of traffic by signs and letters to make residents aware of the speed limit. The Tribunal found that because the speed issues were a pre-existing condition and the Applicant had taken steps to deal with them these were not factors that amounted to a loss of amenity.

***Vehicles turning in compound entrance***

63. The Tribunal found that the compound entrance had been used by vehicles turning since pitches 43 and 44 were created. Therefore, the Tribunal found that this was not a decrease in amenity since 26th May 2013.

***Summary***

64. Therefore, the Tribunal found that the compound, the fence, the speed bumps and the issue of the speed of vehicles entering and exiting the Park had all

been in existence when the Respondents purchased their homes and entered the Agreement and certainly since 26th May 2013. These being pre-existing conditions they cannot amount to a decrease in amenity. The pitch fee that was set either when the Respondents purchased their homes and signed the Agreement or the pitch fee as at the 26th May 2013 is deemed to take account of all these matters.

65. Any deterioration in the fence or lack of sweeping is not considered to be sufficiently significant as to support a claim of decrease of amenity and justify a reduction in the pitch fee of less than the retail price index to which the legislation presumes the Applicant is entitled.

66. Therefore, the Tribunal determines that the new pitch fee for Number 43 and 44 Keys Park is £161.71 per month to take effect on the Review Date of 1st January 2017.

**Judge JR Morris**

**Annex – Right of Appeal**

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.