FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CHI/29UK/PHI/2018/0033-0041**
Property	**:**	**Wickens Meadow Park, Rye Lane, Dunton Green, Sevenoaks TN14 5JB**
Applicant	**:**	**Wyldecrest Parks Management Ltd**
Representative (Director)	**:**	**Mr David Sunderland**
Respondents	**:**	**Mrs Julie Truzzi-Franconi (6), Mr S Copon and Mrs H Bailey (12), Mr TE Talbot (14), Mr E Peacham (15), Mr and Mrs P Iline (16), Mr G Myers and Mrs Hayes (17) Mr Terry Payne and Mrs Catherine Payne (20) Mrs Joan Roake (33) Mr Bob Hoall and Mrs Hoall (35)**
Representative	**:**	**In person**
Type of Application	**:**	**Review of Pitch Fees**
Tribunal Members	**:**	**Judge M Loveday** **Mr R Athow FRICS MIRPM**
Date/venue of Hearing	**:**	**11th October 2018 and 26th February 2019, Sevenoaks, Kent**
Date of Decision	**:**	**16th April 2019**

DECISION

Introduction

1. This is an application dated 8th March 2018 for the determination of the level of new pitch fees for nine park homes at Wickens Meadow Park, Rye Lane, Dunton Green, Sevenoaks TN14 5JB. The Applicant is the site owner. The Respondents are the occupiers of 9 pitches at the site.

2. The application relates to pitch fees payable for the 2018 calendar year. However, as a result of various procedural delays, this decision could not be given until after the 2018 calendar year ended and the 2019 calendar year pitch fee review was due. The Tribunal need not set out these difficulties in any detail. In essence, the matter was listed for hearing on 11th October 2018 but the hearing could not proceed on that day for the reasons given in Directions dated 11th October 2018. The resumed hearing was re-listed for 12th November 2018, but this date was vacated at short notice after the untimely death of one of the Respondents. The next date which was convenient to all the parties was 26th February 2019, and the hearing concluded on that date.

3. At both hearings, the Applicant appeared by its director, Mr David Sunderland. The Respondents' case was presented by Ms Julie Truzzi-Franconi, the occupier of 6 Wickens Meadow Park.

4. The Applicant relied on pitch fee review forms served on each Respondent dated 20th November 2017. Sections 2 and 3 of these forms stated that the previous review date had been 1st January 2017 and that the new reviewed pitch fee would take effect on 1st January 2018. The proposed fees are summarised in Appx.2 to this Decision. In each case, they included (i) an adjustment of +4% in line with the movement in the Retail Prices Index over the 12 months to October 2017 and (ii) an

additional sum of £28.13 per pitch per week for improvements to the site over the same period. The RPI element of the increase was not in dispute and the sole question for the Tribunal was the element of the reviewed pitch fees relating to improvements.

Inspection

5. Wickens Meadow Park is set in a rural location approx. 2 miles from Sevenoaks in Kent. The site is roughly triangular in shape with the apex of the triangle to the south. The western side of the triangle is formed by Rye Lane itself, whilst the other two sides of the triangle follow two main internal site roads. The principal access to the highway at Rye Lane is at the north west corner of the site, although there is an "exit only" gate at the southern apex where one of the site roads emerges onto Rye Lane.

6. At the north east corner, by the main entrance, is a small car park. On inspection, this had a new tarmac surface and recently painted parking spaces. There was a new green electrical cabinet containing meters and fuse boxes for each pitch, together with a control unit for CCTV. There was also a modern electricity substation and some 9 newly installed lighting bollards. There is a second larger car park in the north east corner of the site connected to the entrance by the northern site road. The northern site road had a new tarmac surface and speed bumps. The Respondents showed the Tribunal electrical cables which were exposed above ground along the front edge of various pitches and some damaged brickwork to dwarf walls. The second car park was also newly surfaced and marked, with recently installed floodlighting. Behind a small fence were 3 "Avanti" branded bulk LPG gas tanks. The second site road along the eastern edge of Wickens Meadow Park was in a similar condition to the first, and again there was evidence of exposed cabling and damaged walls. In the centre of the site were five new pitches. Three of these were served by their own access road off the second site road, which was again newly installed and in good condition. These five pitches were served by a second electrical sub-station, and a second cabinet containing fuses and meters. There were CCTV cameras attached to the home on pitch

no.1 at the southern end of the site. Insofar as it is relevant, the Tribunal noted there was little or no artificial surface drainage for the roads and car parks, and some obvious problems with resurfacing and flooding.

7. The site includes some 40 pitches, access to which are either from Rye Lane itself, or from one of the internal site roads. Of these, 35 pitches (including the 9 owned by the Respondents) already existed at the time the Applicant acquired the site in 2015. The other 5 pitches were created by the Applicant after it acquired Wickens Meadow Park.

Approach to new pitch fee

8. The occupation of park homes is subject to two separate statutory regimes. The first is the requirement for a local authority site licence under the Caravan Sites and Control of Development Act 1960. The licence may be subject to conditions, breach of which would be a criminal offence. The second is the Mobile Homes Act 1983 ("the Act"), which regulates the terms on which an occupier may station a park home on the relevant pitch. The main means of regulation is to imply mandatory terms into pitch agreements. The implied terms appear in s.2 and Sch.1 to the Act, as varied by the Mobile Homes Act 1983 (Amendment of Schedule 1) (England) Order 2006. The material terms of Sch.1 relating to pitch fee reviews are set out in Appx.1 to this Decision.

9. In re: Sayer [2014] UKUT 283 (LC), the Deputy President summarised the position as follows:

> *"20 If a review of the pitch fee is not agreed, and it is therefore necessary for it to be referred to the [Tribunal] for determination, the approach to be applied to determining the new fee is described in paragraphs 18, 19 and 20 of Part 1 of Schedule 1.*
>
> *21 These paragraphs do not provide a comprehensive code for the determination of the pitch fee. Instead, paragraph 18(1) identifies certain specific matters (concerning expenditure on improvements by the owner, the amenity of the site, and statutory changes since the last review date) and directs that "particular regard shall be had" to them. Paragraph 19 identifies one further factor which is not to be taken into*

account (costs incurred by the owner in expanding the site). Paragraph 20(1) then introduces a presumption which is to operate in the determination of the new pitch fee, namely: "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."

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.*

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 [Tribunal] 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 [Tribunal] 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."*

Paragraph 20(1) of the Implied Terms therefore sets out a presumption of an RPI increase in each year, unless it would be unreasonable having regard to paragraph 18(1). Paragraph 18(1) lists a range of matters to which "particular regard shall be had", including any deterioration in the condition or amenity of the site and any reduction in services supplied etc.

10. The most important consideration is paragraph 18(1)(a), which concerns sums expended on improvements. 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 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".*

In Britaniacrest v Bamborough & anor [2016] UKUT 144 (LC), the Upper Tribunal explained that if a Tribunal finds that "improvements have been carried out [within paragraph 18(1)] which make it unreasonable for the presumption to apply then the presumption [in paragraph 20(1)] is disapplied".

11. However, it is clear enough from the above passage in Sayers (and similar statements in Britaniacrest) that the factors spelt out in paragraph 18(1) are not exhaustive and that a Tribunal may also take into account other "weighty matters". However, the Tribunal does not have an unlimited discretion simply to set a reasonable level of pitch fee. The limits of the other "weighty matters" were spelt out in Vyse v Wyldecrest Parks (Management) Ltd [2017] UKUT 24 (LC) at paragraph 46:

> *"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)".*

The Applicant's Case

12. Mr Sunderland referred to copies of each of the Pitch Fee Review Forms which were in the bundle of documents before the Tribunal. For the purposes of paragraph 18(1)(a), the "period since the last review

date" was the 2017 calendar year. The Forms included the above proposal to increase the pitch fees by RPI plus £28.13 per month.

13. Mr Sunderland explained that the figure of £28.13 per pitch per week was not directly derived from the sums actually expended on improvements. Instead, this had necessarily been based on the budgeted cost for improvement works. The budgeted figure of £256,615.76 appeared in figures provided to the residents at a meeting on 26th May 2016, and had been broken down into the same 7 items of cost that appear in Appx.3 to this decision. The £256,615.76 capital cost was then spread over 20 years (£12,830.79pa) and amounted to £337.65pa for each of the original pitches. This was equivalent to £28.13 per pitch per annum[1].

14. The meeting referred to above formed part of the statutory consultation under paragraphs 22(e) and (f) of Sch.1 to the Act. At the meeting (or subsequently), a majority of the occupiers signed consent forms prepared by the Applicant. Each consent form was dated 26th May 2016 and read as follows:

> "*Following the meeting with the Site Owner Wyldecrest and the proposed improvements to Wickens Meadow Park including the introducing [sic] of piped gas, upgraded electricity supply, improved water and sewerage mains and upgraded roads, I/we agree to a pitch fee increase for this improvement to the amenity of the park. At a subsequent review we will propose a pitch fee increase of £28 per calendar month only to be introduced once the proposed works have been completed*."

Mr Sunderland stressed that these consent forms were not agreements or objections in writing under paragraph 18(1)(a)(iii) of Schedule 1 to the Act. That provision did not require any positive agreement, only a written objection to proposed improvements.

15. The Applicant referred the Tribunal to the provisions of paragraph 16 of Sch.1. His first submission was that the signed consent forms

[1] This assumes the number of "original" pitches is 38. In fact, there appear to be 40: see above.

amounted to an "agreement of the occupier" to the change in the pitch fee within the meaning of paragraph 16(a). It followed that the Tribunal had no jurisdiction to make any order determining the amount of the new pitch fee.

16. However, in case the Tribunal did not accept this primary submission, Mr Sunderland dealt with the sums expended on improvements in some detail.

17. The Applicant's secondary argument was that under paragraph 16(b) of Sch.1 to the Act, it was reasonable to change the pitch fees. A reasonable change in each case would be an increase of RPI plus an allowance of £28.13 per month for improvements[2].

18. Mr Sunderland dealt with the RPI increase fairly briefly. In each case, he produced an extract from ONS dataset MM23 showing RPI increases over the relevant period. He further referred to the presumption of an RPI increase in paragraph 20(1) of Sch.1 to the Act.

19. The first requirement of paragraph 18(1)(a) was that the Tribunal must have regard to "sums expended by the owner since the last review date" on 1st January 2017. As explained above, the proposed pitch fee here was based on estimated expenditure of £256,615.76. In fact, the Applicant actually expended a sum of £254,859.59 on improvements, as appeared in a Schedule provided in response to the Tribunal's Directions of 11th October 2018. The Schedule is summarised in Appx.3 to this Decision, with the years for each item updated according to evidence provided by Mr Sunderland at the hearing.

20. As to the works included in this Schedule, they all related to "improvements" within the meaning of the Act (see below). Mr Sunderland accepted that two sums included in the Schedule were

[2] In fact, the Applicant's arithmetic suggested an increase of £35.40per month: see Appx.3. This is largely because of an undercounting of the number of pitches on site.

strictly speaking "expended" by the Applicant before the previous review date on 1st January 2017. These were both invoices for £5,150 for cabling work from M Newland Electrical dated 26th September and 11th October 2016. The invoices were stated to be payable within 7 days and were apparently paid by the Applicant on 21st September and 25th October 2016. However, he submitted that these were other "weighty factors not referred to in paragraph 18(1)" which the Tribunal ought to take into consideration under paragraph 23 of Sayers.

21. It was submitted that in accordance with paragraph 18(1)(a)(i), the works were "for the benefit of the occupiers of mobile homes on the protected site". The £254,859.50 was all expended on improvements to the infrastructure of the site, which benefitted the Respondents and the other occupiers of mobile homes at Wickens Meadow Park.

22. As far as the procedural requirements of paragraph 18(1)(a)(ii) are concerned, the Applicant had consulted under paragraphs 22(e) and (f) of Sch.1 to the Act. A majority of occupiers had not objected in writing under paragraph 18(1)(a)(ii).

23. It follows from the above that paragraph 18(1)(a) was made out and the presumption for an RPI increase in pitch fee was displaced. As to the reasonable change in pitch fee under paragraph 16(b), the Applicant submitted that the starting point was an RPI increase, which should be adjusted upwards or downwards according to the factors in paragraph 18(1). The Applicant had taken the expenditure on improvements and amortised them over 20 years.

24. Mr Sunderland took the Tribunal through the improvements in the Schedule. These can be summarised as follows:

    a. £51,139.19 spent on a metered gas supply. Before the works, individual owners had to buy bottled gas for heating, cooking etc. The Applicant installed a communal gas supply with three large gas tanks, as well as pipework etc. All but two of the pitches

now had metred access to this gas supply which was cheaper and more convenient than individual bottled gas.

b. £35,353.60 spent on electrical works. Mr Sunderland described the previous electrical supply to the pitches as "old, but not at the end of its useful life". It complied with relevant IEEE wiring regulations and there were no faults. The Applicant upgraded this by re-wiring it to provide a modern system meeting current safety regulations. This was up to date, safer and easier to control. This work went beyond mere maintenance of the old system. There were meters at the entrance to the park and substations at each pitch. During the course of the work, the contractors had been unable to trace some of the existing cable runs, so they had had to excavate new trenches and supply new cabling.
c. £63,330 spent on new water pipes and connections. The existing water supply had suffered repeated leaks. The Applicant upgraded it to reduce the need for repairs.
d. £58,055.60 spent on resurfacing of roads and the car parks. The existing roads had a pea shingle surfacing. The Applicant laid a hardcore base and resurfaced them with asphalt.
e. £36,000 spent on renewing, relining, cleaning and descaling all drainage. This related to both soil and surface drainage for the site. Mr Sunderland stated there had been problems (including subsidence damage) to the previous system, although these did not prevent the drainage from working. He referred to the invoice from M.R. Drains Ltd dated 18th May 2017, which included details of defects to the drains following a CCTV foul drain inspection. The drainage was "replaced and upgraded", which went beyond repair.
f. £3,439.20 spent on security. This had originally been described as "electric gates". But for security purposes the Applicant had decided to fit CCTV and electronic security systems rather than gates and perimeter security. The expenditure on "gates" was

therefore only for lighting for the roadways with new lighting bollards.

g. £7,542 spent on new CCTV. One of the CCTV invoices for £2,142 was dated 7th August 2017 and only paid on 23rd January 2018. This was either "incurred" in 2017, or if not, it was another "weighty matter" (see above).

25. In his closing submissions, Mr Sunderland stated that none of the improvement costs related to expansion of the site under paragraph 19(1) of Sch.1 to the Act. The one exception was the electrical lighting, where he accepted that 15% of the work related to the five new pitches. He had made an allowance for this. Mr Sunderland also addressed the quality of the work in some detail, arguing that the improvements delivered a far superior standard of service. He did not accept that any further adjustment should be made to the pitch fee to reflect deterioration in condition under paragraph 18(1)(aa) of Sch.1 to the Act.

The Respondents' case

26. At the start of the hearing, the Respondents sought permission to rely on additional documentation. They accepted they had not served this evidence in accordance with previous Directions given by the Tribunal. Mr Truzzi-Franconi explained that she had been admitted to hospital in November 2018 and had been unable to consider the Applicant's Schedule and the supporting documents at that time. She had sent the Applicant copies of the Respondents' further documentation on 12th February 2019. Mr Sunderland objected to the additional documentation. But the Tribunal indicated it would consider the additional material. Although late, the Applicant had had an adequate opportunity to consider the additional material and there was little or no, prejudice. There was an adequate explanation for failure to comply with the directions – and the Tribunal bears in mind the resources of the Respondents who were acting in person. The amount of additional material was limited, and it was proportionate to allow the material in. The Tribunal therefore considered that the Respondents should be

permitted to allow in this additional material to enable them to participate fully in the proceedings.

27. In relation to the Applicant's primary case, the consent forms had been handed out at the meeting on 26th May 2016, which took place at the offices of Sevenoaks DC in Bradbourne. The Applicant's spokesman explained there would be further consultation about the works – and had answered many questions by stating that they would be answered at a later date. The occupiers assumed there would be another meeting, but it had not happened. Ms Truzzi-Franconi submitted that the plain meaning of the consent form was that the occupiers recognised the Applicant would propose a £28 per month increase in the pitch fee, not that they agreed to pay it.

28. As far as the works in the Applicant's Schedule were concerned, Ms Truzzi-Franconi suggested the Applicant had produced at least three different sets of figures over time, at one time saying it had spent over £300,000 on works. She accepted that some of the works in the Schedule were improvements and that the Applicant had incurred some expenditure on these works in 2017.

29. The Respondents were happy to accept an increase in the pitch fee of 4%pa for RPI, but not the additional change attributable to the alleged improvements. One problem with the Applicant's proposal was that at the meeting on 26th May 2016, the occupiers had understood the improvements would be funded by way of a 20-year loan at a fixed rate of interest equivalent to £28per month. In fact, the Applicant's proposals effectively meant the £28per month would increase by inflation every year.

30. One consideration is that the works did not entirely "benefit" the occupiers. They were part of scheme which involved the creation of the five new pitches and the loss of the recreational areas in the centre of the

site previously enjoyed by the existing occupiers. Some occupiers had lost parts of their gardens.

31. Turning to the various heads of work:

    a. The electrical installation and some other costs were for 42 pitches, not 37. They were therefore partly costs incurred by the Applicant "in expanding the protected site" which fell to be disregarded under paragraph 19(1) of Schedule 1. The new pitches were laid in 2016 and the new mobile homes pulled on site in 2017.

    b. Some of the works were repairs/maintenance, not improvements. Under paragraph 22(c) of Sch.1 to the Act, the Applicant was obliged to maintain "gas, electricity, water, sewerage" and "other services" supplied to the pitches repair as part of the existing pitch fee. It was also obliged to maintain access ways as part of the existing pitch fee under paragraph 22(d).

    c. In respect of the metered gas supply, this was a matter of preference and convenience. In many ways, the new supply was less convenient than bottled gas in that there had been gas supply interruptions for periods of up to 4 days. The new gas supply was not an "improvement". In fact, the occupiers had proposed to go back to bottled gas, but the Applicant had refused.

    d. The new electrical supply replaced a system which worked perfectly well. It did trip occasionally, but this could be dealt with easily because the main switches and fuse boxes were mounted on individual poles adjacent to each pitch. The new system located switches and fuses in inaccessible locked central cabinets. The main reason for upgrading the electrical system was to benefit the five new pitches.

    e. The old water system worked perfectly well. The new one suffered from frozen pipes. The pressure was the same. There had been leaks with the old system, but the problems had not

been significant. Again, a new system had been provided to the 5 additional pitches as part of an expansion of the site.

f. Ms Truzzi-Franconi simply did not agree with Mr Sunderland's evidence about the previous estate road surfaces. They had been surfaced with asphalt and stone chippings. The estate roads had needed maintenance, and there were potholes. Similarly, the car parks were surfaced with asphalt and chippings. Ms Truzzi-Franconi's family had a motorbike and a small Ford Focus motorcar, which had been able to drive along the estate road and onto the car park without any problem at all. Ms Truzzi-Franconi produced a photograph taken by her father about 10-12 years ago showing the estate road with an asphalt surface. Again, this was "maintenance", not an "improvement". They had been "old roads but functional". In addition, the Applicant had taken the opportunity to build a completely new access road to two of the new pitches which had not been there before.

g. The drainage works were again essentially undertaken for the 5 new pitches. The only new trench dug was to those areas of the site. But if any other work was carried out, it was "maintenance" not an "improvement".

h. The lighting and CCTV were a poor substitute for gates and proper perimeter security. In fact, the Respondents could only find 13 of the 15 bollards referred to in the Applicant's papers. Some of them again served the new pitches. Moreover, this was a lot of money for what was involved and the work was carried out to a very poor standard.

32. Finally, the Respondents sought an adjustment of any pitch fee increase to reflect deterioration in condition under paragraph 18(1)(aa) of Sch.1 to the Act. The works had been carried out poorly. The contractors had lost cables to some of the pitches and been forced to provide new ones. Some of the cabling was exposed. The new road surfaces did not have drainage, and rainwater simply ran onto the gardens. The existing facilities had

been interrupted for lengthy periods while the contractors were on site, and the works caused significant disruption.

Discussion

33. The Tribunal will first deal with Mr Sunderland's primary submission. In this instance, the Tribunal finds the signed consent forms were not agreements to any change in the pitch fee within the meaning of paragraph 16 of Sch.1 to the Act. In the Tribunal's view, an "agreement" in paragraph 16(a) requires not only an agreement that a change shall be made, but also an agreement by the occupier to the amount of the new pitch fee. So much is clear from paragraph 16(b), which gives the Tribunal the power to determine the specific level of pitch fee as an alternative to a paragraph 16(a) "agreement". In any event, the consent forms prepared by the Applicant and pre-dated 26th May 2016 did not have the meaning now contended for by Mr Sunderland:

    a. Although the second sentence of the forms agrees to a "pitch fee increase for [the] improvement", the reference to a £28 per calendar month increase for improvements is in the next sentence, which states that "we will propose a pitch fee increase" of that amount. "We" in that context means a site owner, which is the only person who could propose an increase under the Act, or who would logically do so. That "we" means the Applicant is further supported by the fact the forms were prepared by the Applicant and were on the Applicant's letterhead. The "agreement" is therefore an agreement by the Applicant, not the occupiers.
    b. The agreement in the second sentence is that a pitch fee increase of £28 per calendar month for improvements will be "proposed". This does not suggest finality or any agreement that the figure of £28 was conclusive.
    c. In the context of statutory rights for occupiers to challenge a site owner's proposals for a change in pitch fees, an agreement to dispense with such rights must be expressed in clear words. The forms did not do so.

d. The forms were prepared against a background of a statutory consultation about improvements in paragraphs 22(e) and (f) of Sch.1 to the Act. Mr Sunderland was at pains to stress that the Applicant did not intend the consent forms to be connected with the requirements of paragraph 18(1)(a)(iii) of Schedule 1 to the Act. But the issue here is the objective intention of the Respondents when they signed the consent forms. On balance, the Tribunal finds that the consent forms are more consistent with a form of agreement for the purposes of paragraph 18(1)(a)(iii) than one under paragraph 16(a).
e. The forms were of course prepared part-way through the year based on anticipated costs, when the site owner's actual expenditure on improvements was not yet known.
f. The consent forms only purported to deal with an element of the proposed change to the pitch fee, namely that element relating to improvements. The forms did not, for example, deal with any RPI increase, which the Applicant sought in the Pitch Fee Review forms.

It follows that the Tribunal has jurisdiction to deal with the new pitch fee under paragraph 16(b) of Sch.1 to the Act.

34. In respect of the substantive arguments, the Tribunal must first address the question whether the Applicant has incurred sums in respect of improvements within the meaning of paragraph 18(1)(a) of Sch.1 to the Act. If so, the Tribunal must disapply the presumption of an RPI increase in paragraph 20(1) if it is reasonable to do so: see Britaniacrest (supra).

35. Two points of interpretation of paragraph 18(1) arose during the course of the Respondents' arguments. First, it was suggested that the expenditure did not "improve" the site in the sense that it did not "enhance" it. The 1983 Act does not define the word "improvements". But in the context of other legislation it has been held that the word is a physical and not an economic concept, and means "additions or alterations which are not merely repairs or renewals": Shalson v John

Lyons Charity [2003] 3 WLR 1. The Tribunal adopts this same approach to the meaning of "improvements" in the 1983 Act. Secondly, there was a similar argument that the works did not "benefit" the occupiers of mobile homes at Wickens Meadow Park because, again, the works were of little or no utility to them. Again, the Act does not define "benefit" in paragraph 18(1)(a)(i), but the Tribunal considers a person may still "benefit" from an "improvement" even if the improvement provides something less convenient than before. It is enough if the mobile home occupier may take advantage of the improvement once made. "Benefit" here is used in the same sense as the enjoyment of a legal right such as an easement.

36. In the light of the above interpretation, the Tribunal is satisfied that the Applicant has established each of the elements of paragraph 18(1)(a):
    a. Although (for the reasons set out below), some of the items listed in the Schedule were not expended since the previous review date on 1st January 2017, the bulk of the expenditure in the Applicant's Schedule was incurred during the period specified in paragraph 18(1)(a).
    b. Similarly, although (again for the reasons set out below), some of these works were not "improvements" within the meaning of the Act, most plainly were.
    c. The same were works "for the benefit of the occupiers of mobile homes" at Wickens Meadow Park within the meaning of "benefit" set out above.
    d. There was consultation under paragraph 18(1)(a)(ii) and there was no written opposition to the proposals under paragraph 18(1)(a)(iii). Indeed, the Respondents did not suggest otherwise.

37. The approach adopted by the Applicant is to adopt the RPI increase as a starting point and then adjust this for paragraph 18(1)(a) of Sch.1 considerations. The adjustment is approached by applying the expenditure on paragraph 18(1)(a) improvements, amortising it over an appropriate period and then allocating the resulting figure over a period

of time. Although the Respondents point out that this effectively locks in an RPI increase over time, no other approach to paragraph 18(1)(a) improvements was suggested. The Tribunal notes that a similar methodology has been adopted by other First-tier Tribunals in the past[3]. The Applicant proposes a 20-year period to amortise the cost of the improvements, and the Tribunal accepts this as the appropriate period over which the cost of improvements should be spread.

38. The first element is the £51,139.19 spent on a metered gas supply. The Tribunal considers that the provision of a new gas supply is an "improvement" within the meaning of paragraph 18(1)(a). Whether some or all the occupiers find the new supply of any real advantage compared to bottled gas is (for the reasons given above) not a material consideration. The Tribunal has considered the two invoices for the gas works dated 31st May, 8th July and 10th August 2017, which expressly refer to works for connecting 35 mobile homes to the new tank system. However, parts of the infrastructure for the new gas system, including the three gas tanks and parts of the mains and fittings also served the five new pitches and were provided in connection with the expansion of the site. It is therefore necessary to disregard an element of the total cost under paragraph 19(1) of Sch.1 to the Act. Although evidence is thin, the Tribunal would allow 15% for the gas improvements which related to site expansion. This is the figure advanced by Mr Sunderland in relation to the electrical works, which the Tribunal adopts. In short, the new pitch fee should take into account £43,468.31 of expenditure on gas improvements.

39. The second element is the £35,353.60 spent on a new electric supply. It is common ground that there was an existing functioning electrical supply. Although the Applicant was obliged to repair this supply under paragraph 22(c) of Sch.1 to the Act, the Tribunal accepts the evidence of the Applicant that the old supply had not reached the end of its useful life. It did not therefore need any more than repair. The Applicant argues

[3] See for example, Wickland (Holdings) Ltd v T G Pigram (CAM/22UA/PH/2017/0001).

that in this situation, the entire cost of installing a new electrical supply should be treated as an "improvement" under paragraph 18(1)(a). If that were right, the consequence would be that a pitch fee review should always reflect the cost of improvements by the site owner, no matter how pointless or unmerited they might be. In the Tribunal's view, such a conclusion would be inconsistent with the direction in paragraph 16(b) of Sch.1 of the Act that it should be "reasonable" to change the pitch fee. In this instance, it is an important consideration that substantial expenditure on a replacement electricity supply duplicated what was already there. The Tribunal does not therefore consider it is reasonable to increase the pitch fee to reflect the expenditure on duplicate electrical works.

40. If the Tribunal was wrong about this point, it would in any event make two further adjustments to the expenditure on electrical works:

    a. Some £10,300 of expenditure was "incurred" in 2016, when the two invoices were rendered by the contractor Newland Electrical. The Tribunal does not consider these therefore properly fall within paragraph 18(1)(a). As to the contention that these costs are other "weighty matters" as suggested by the Applicant, the Tribunal does not consider one can bring in by the back door something which cannot come in by the front door. Paragraph 18(1)(a) specifically excludes from consideration any expenditure on improvements incurred before the previous review date. The plain intention is that a site owner who wishes to reflect earlier expenditure on improvements should do so in the previous year's pitch fee review. This approach is supported by the Upper Tribunal in Britaniacrest: Pre-review date improvement expenditure is expressly "dealt with in paragraph 18(1)" because it directs such costs to be disregarded for the purposes of the pitch fee review. It follows that the Tribunal does not take the £10,300 into account.
    b. Once again, some element of the balance of these costs related to site expansion. The new supply provided power to the 5

additional pitches and was provided in connection with the expansion of the site. Again, adopting Mr Sunderland's figures for the electrical works, the Tribunal would not have regard to 15% of the balance of the £25,053.60 cost of electrical works as a result of paragraph 19(1).

41. The third element is £63,330 spent on a new water pipe supply and connections. In essence, the Tribunal's reasoning on this follows the above. It accepts the Respondents' evidence that the existing water supply was in working order, albeit subject to occasional leaks. But it is not reasonable for the pitch fee to reflect expenditure on improvements when such works simply replaced a perfectly workable water supply. If the Tribunal is wrong about this, it would adopt Mr Sunderland's 15% deduction as a result of paragraph 19(1) of Sch.1 to the Act.

42. The fourth element is £58,055.60 spent on resurfacing of roads and the car parks. The Tribunal again accepts the Respondents' evidence (supported by the photograph) that the existing roads and car parks were surfaced with asphalt and chippings, albeit that they were in disrepair. In the premises, resurfacing of the roads was periodic "maintenance" which falls within the Applicant's obligations in paragraph 22(c) of Sch.1 to the Act. Such site owner liabilities are already reflected in the pitch fee, and they are in the nature of repairs, not "improvements". If the Tribunal is wrong about this, it would adopt Mr Sunderland's 15% deduction as a result of paragraph 19(1) of Sch.1 to the Act.

43. The fifth element is £36,000 spent on renewing, relining, cleaning and descaling all drainage. The Tribunal considered the CCTV report contained on the invoice dated 18th May 2017. The contractors had originally intended to jet clean and reline 118m of existing clay pipework, but discovered numerous open joints. They therefore excavated and re-laid the existing pipework with the 110mm plastic pipe, as well as laying new inspection chambers. The Tribunal considers that the defects to the existing pipework fall squarely within the Applicant's obligations to

maintain in paragraph 22(c) of Sch.1 to the Act. A "repair" may sometimes involve replacement of the whole of the subject matter of the obligation to repair. That obligation is included in pitch fee and is not treated as an "improvement" under paragraph 19(1)(a) of Sch.1 to the Act. If the Tribunal is wrong about this, it would adopt Mr Sunderland's 15% deduction as a result of paragraph 19(1) of Sch.1 to the Act.

44. The sixth element is £3,439.20 spent on lighting and £7,542 spent on CCTV. It is clear enough that the lighting bollards and CCTV were new items which did not replace anything previously there. The Tribunal considers these are "improvements" within the meaning of paragraph 19(1)(a) of Sch.1 to the Act. The CCTV costs were all incurred when invoiced for in 2017, irrespective of the date the Applicant met the bills. But an element of the costs of lighting and security relate to the 5 new pitches and was connected to the expansion of the site. Once again, the Tribunal therefore allows 85% of these sums for security as a result of paragraph 19(1) of Sch.1 to the Act. The expenditure on improvements to be taken into account in the new pitch fee under these two headings is £2,923.32 and £6,644.14 respectively.

45. Finally, the Tribunal rejects the submission by the Respondents that during the 2017 calendar year there was any deterioration in condition or any decrease in amenity under paragraph 18(1)(aa) of Sch.1 to the Act. It accepts the works may have been disruptive, and some were not completed to a satisfactory standard. But the complaints about the improvement works are relatively modest and did not amount to any significant permanent deterioration or damage to the use and enjoyment of the mobile homes. Moreover, the defective works appear to fall well within any snagging/defect liability provision. No matter how inconvenient, both are inevitable features of any significant works contract.

Conclusion on pitch fee

46. The Tribunal therefore takes into account expenditure on improvements amounting to £53,035.77. Over a 20-year period, this amounts to

£2,651.79, or £75.77 per pitch per annum. The equivalent monthly pitch fee change would be £6.31 for each pitch, details of appear in Appx.3 to this Decision. When added to the RPI figures for each pitch, the new monthly pitch fees are as follows:

Pitch No.	**Existing**	**RPI (+4.0%)**	**Improvement**	**New pitch fee**
6	£93.47	£3.74	£6.31	£103.52
12	£111.27	£4.45	£6.31	£122.03
14	£102.37	£4.09	£6.31	£112.77
15	£93.47	£3.74	£6.31	£103.52
16	£102.37	£4.09	£6.31	£112.77
17	£97.92	£3.92	£6.31	£108.15
20	£89.02	£3.56	£6.31	£98.89
33	£97.92	£3.92	£6.31	£108.15
35	£94.08	£3.76	£6.31	£104.15

Judge M Loveday

16th April 2019

Appendix 1: Material provisions of Schedule 1 to the Act

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 level of the new pitch fee."
…
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;
…

Appendix 2: Proposed pitch fee reviews

Pitch No.	From	To
6	£93.47	£125.34
12	£111.27	£143.85
14	£102.37	£134.59
15	£93.47	£125.34
16	£102.37	£134.59
17	£97.92	£129.97
20	£89.02	£120.71
33	£97.92	£129.97
35	£94.08	£125.97

Appx.3: Improvements

		Claimed	*Allowed*
1. Metered gas supply			
i.	Estimate for Works £52,000		
ii.	Invoice 31st May 2017	£35,277.09	£29,985.53
iii.	Bank Statement 27th March 2017 £10,077.09		
iv.	Bank statement 8th June 2017 £25,200		
v.	Invoice 8th July 2017	£8,115.84	£6,898.46
vi.	Bank Statement 28th July 2017 £8,115.84		
vii.	Invoice 10th August 2017	£7,746.26	£6,584.32
viii.	Bank Statement 10th October 2017 £7,746.26		
	Remainder of installation carried out by Avanti Gas at their expense		
		£51,139.19	£43,468.31
2. New electric supply with new check meters			
i.	Invoice 11th October 2016	£5,150.00	£0.00
ii.	Payment receipt 25th October 2016 £5,150.00		
iii.	Invoice 26th September 2016	£5,150.00	£0.00
iv.	Payment receipt 21st September 2016 £5,150.00		
v.	Invoice 10th July 2017	£8,640.00	£0.00
vi.	Payment receipt 10th August 2017 £5,278.00		
vii.	Payment receipt £2,940.00		
viii.	Invoice 17th May 2017	£6,609.60	£0.00
ix.	Payment receipt £6,609.60		
x.	Invoice 10th July 2017	£7,560.00	£0.00
xi.	Statement 19th July 2017 £7,560.00		
xii.	Invoice 20th July 2017	£2,244.00	£0.00
xiii.	Payment Receipt £2,940.00		
		£35,353.60	£0.00
3. New water pipe supply and connections			
i.	Invoice 1st June 2017	£15,330.00	£0.00
ii.	Payment receipt 9th June 2017 £7,326.00		
iii.	Payment receipt 17th February 2017 £4,300.00		
iv.	Payment receipt 28th March 2017 £7,944.00		
v.	Invoice 31st January 2017	£24,000.00	£0.00
vi.	Invoice 9th June 2017	£24,000.00	£0.00
vii.	Payment receipt 12th July 2017 £12,000.00		
viii.	Payment receipt 19th July 2017 £12,000.00		
ix.	Payment receipt 24th February 2017 £35,684.00		
		£63,330.00	£0.00
4. Resurface of roads/car park			

i.	Invoice 3rd February 2017	£6,720.00	£0.00
ii.	Payment receipt 6th April 2017 £1,720.00		
iii.	Payment receipt 3rd February 2017 £5,000.00		
iv.	Invoice 27th April 2017	£25,065.60	£0.00
v.	Payment receipt 6th June 2017 £25,065.60		
vi.	Invoice 8th March 2017	£24,000.00	£0.00
vii.	Payment receipt 18th April 2017 £24,000.00		
viii.	Invoice 27th June 2017	£2,270.00	£0.00
ix.	Bank Statement 29th September 2017 £33,786.58		
		£58,055.60	£0.00

5. Renew and reline, clean and descale all drainage

i.	Invoice 18th May 2017	£36,000.00	£0.00
ii.	Bank Statement 13th July 2017 £36,000.00		
		£36,000.00	£0.00

6. Electric gates (Now Lighting)

i.	Invoice 19th June 2017	£3,439.20	£2,923.32
ii.	Payment receipt £7,195.20		
		£3,439.20	£2,923.32

7. CCTV

i.	Invoice 18th October 2017	£5,400.00	£4,590.00
ii.	Payment receipt 2nd November 2017 £2,500.00		
iii.	Payment receipt 2nd October 2017 £2,900.00		
iv.	Invoice 7th August 2017	£2,142.00	£1,820.70
v.	Payment receipt 23rd January 2018 £5,122.00		
		£7,542.00	£6,644.14
		£254,859.59	£53,035.77
	pa over 20yrs	£12,742.98	£2,651.79
	per pitch /35	£364.09	£75.77
	per month	£30.34	£6.31

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

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

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.