Y TRIBIWNLYS EIDDO PRESWYL

RESIDENTIAL PROPERTY TRIBUNAL (WALES)

Reference: RPT/0019/06/18, RPT/0020/06/18, RPT/0021/06/18, RPT/0022/06/18, RPT/0023/06/18, RPT/0024/06/18, RPT/0025/06/18, RPT/0026/06/18, RPT/0027/06/18, RPT0028/06/18, RPT/0029/06/18

In the Matters of numbers 19,20,3,7,8,1,4,17,12,18 and 11 Scamford Park, Keeston Lane, Camrose, Haverfordwest, Pembrokeshire SA62 6HN.

In the matter of an Application to determine a new pitch fee under the Mobile Homes (Wales) Act 2013.

APPLICANT Mrs Louise Barney- Cooper

RESPONDENTS Mr and Mrs Lister (number 19)
Mr and Mrs Tedstill (number 20)
Mr and Mrs Culpeper (number 3)
Mr and Mrs Newell (number 7)
Mr and Mrs Whittle (number 8)
Mr and Mrs Loveridge (number 1)
Mr and Mrs Viveash (number 4)
Mr Blandford (number 17)
Mrs Taylor (number 12)
Mr and Mrs Ridgway (number 18)
Mrs Williams (number 11).

TRIBUNAL Legal Chair - Richard Payne
Surveyor – Peter Tompkinson
Lay member- Hywel Jones JP

HEARING The Wolf's Castle Hotel, Pembrokeshire, 24th September 2019.

REPRESENTATION; The Applicant Mrs Louise Barney Cooper in person.
Mr Stephen Hassall for the Respondents.

## DECISION

## ORDER

1. **The revised pitch fees will be the previous pitch fee plus the recoverable costs of £15.07 for the sewerage emptying, £8 for the annual gas tank rental and £36.66 for the electricity for the sewerage plant payable backdated to 1st April 2018. Therefore**

**the recoverable costs to be added will be £4.97 per month for Mr and Mrs Tedstill; Mr and Mrs Culpeper; Mr and Mrs Loveridge; Mr and Mrs Viveash; Mr and Mrs Whittle; Mr Blandford and Mrs Taylor, and an increase of £0.66 per month for Mr and Mrs Lister; Mr and Mrs Newell; Mr and Mrs Ridgway and Mrs Williams. There is no order for costs against any party.**

**Background.**

2. On 1st December 2015 the applicant became the owner of Scamford Park, a mobile homes site situated in Camrose, Pembrokeshire, and on 21 June 2016 approval was given for her site licence. The previous pitch fee review had been in 2014. On 10 February 2017 the Court of Appeal decided the case of PR Hardman and Partners v Greenwood and another [2017] EWCA Civ 52, an important decision in relation to pitch fees, referred to hereafter in this decision as "Hardman". On 17 November 2017 the applicant attended upon and took advice from Tozer's solicitors in Exeter. The result of that meeting was that she was advised to resell the LPG gas upon the site to the occupiers at the price she had paid to the LPG suppliers, and secondly that she should increase the pitch fee to cover costs that she had incurred in the maintenance of the sewerage treatment plant and the gas infrastructure. The applicant had a further meeting on 25 January 2018 with the Leasehold Advisory Service in London. They concurred that she should recover the costs of maintenance for the sewerage treatment plant and gas infrastructure through the pitch fee review process and it is her decision to do this that is at the heart of this case.

3. At the time of the application and the hearing there were fourteen occupied pitches and a further pitch used by the applicant. Between the 13th and 18th of June 2018 the applicant applied to the tribunal for a determination of the new level of the pitch fee in relation to the various respondents. With each application the applicant submitted a letter previously sent to the respective respondents dated 21 February 2018 headed "Pitch Fee Review Notice" in which she indicated that she proposed to review the pitch fee from the existing amount to the new pitch fee. The letter was accompanied by a pitch fee review form in the correct format prescribed under paragraph 23 of Chapter 2 of Part 1 of Schedule 2 to the Mobile Homes (Wales) Act 2013 ("the Act"), stating that the effective date when the proposed pitch fee was to come into effect was the review date of 1 April 2018. Each prescribed pitch fee review form contained details of the current pitch fee, the consumer prices index adjustment, an amount for recoverable costs of £6.36 per month and an explanation for the calculation of the recoverable costs. This included the annual electricity for the sewerage treatment plant from 1 December 2017 until 1 December 2018 for £800, divided equally by 15 homes providing a net charge to the occupier of £53.34. For the same period of time there was a cost of £226 for the annual sewerage treatment plant emptying which, divided equally by 15 amounted to £15.07 and the annual gas tank rental cost of £120, divided equally by 15 homes giving a net charge per occupier of £8. The total per occupier is £76.41, equating to the £6.36 net charge per month.

4. Mrs Barney-Cooper says that she did not receive any response to her letter and pitch fee increase form of 21 February 2018. The respondents did not make payment of the proposed pitch fee with effect from 1 April 2018, and so on 1 May 2018 she wrote a letter to all of the occupiers inviting them to contact her and arrange a meeting with her so that she could provide any further information and documentation in relation to the proposed pitch fee increase. She again says that she did not receive any response. She indicated that although she was willing to speak to the individual occupiers she did not wish to meet with everyone at the same time. Mrs Barney-Cooper was of the belief that since the occupiers declined to meet with her, she had no option other than to apply to the tribunal. She also asked the tribunal to reimburse her costs.

5. The respondents broadly dispute the applicant's approach to a meeting with them and make the point that they would prefer matters to have been dealt with by the Residents Association. They also considered that certain parts of the park within the applicant's control were in a poor state which was detrimental to the appearance of the park, and they considered the applicant's approach to potential meetings to be intimidatory, for example because she had indicated that she wished to speak to occupiers individually rather than for them to have an independent third party present with them at any meeting.

6. It was also the case that although many of the Respondents agreements were similar, they were not all identical.

**The law.**

7. Schedule 2, Part 1, Chapter 2 of the Act, contains the terms of mobile home agreements implied by the Act dealing with pitch fee reviews at paragraphs 17 – 20. Paragraph 18 says as follows;

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

*(a) any sums expended by the owner since the last review date on improvements--*

*(i) which are for the benefit of the occupiers of mobile homes on the protected site,*

*(ii) which were the subject of consultation in accordance with paragraph 22(1)(e) and (f), and*

*(iii) to which a majority of the occupiers have not disagreed in writing or which, in the case of such disagreement, a tribunal, on the application of the owner, has ordered should be taken into account when determining the amount of the new pitch fee,*

*(b) any deterioration in the condition, and any decrease in the amenity, of the site or any adjoining land which is occupied or controlled by the owner since the date on which this sub-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),*

*(c) 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 sub-paragraph came into force (in so far as regard has not previously been had to that reduction or deterioration for the purposes of this sub-paragraph), and*

*(d) any direct effect on the costs payable by the owner in relation to the maintenance or management of the site of an enactment which has come into force since the last review date.*

*(2) But no regard is to 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 complying with provisions contained in this Part which were not contained in the Mobile Homes Act 1983 in its application in relation to Wales before the coming into force of this Part.*

*(3) When calculating what constitutes a majority of the occupiers for the purposes of sub-paragraph (1)(a)(iii) each mobile home is to be taken to have only 1 occupier and, in the event of there being more than 1 occupier of a mobile home, its occupier is to be taken to be whichever of them the occupiers agree or, in default of agreement, the one whose name appears first on the agreement.*

*(4) 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."*

8. Paragraph 20 states that unless it would be unreasonable having regard to paragraph 18(1) there is a presumption that the pitch fee is to increase or decrease by a percentage which is no more than any percentage increase or decrease in the consumer prices index (and details are given as to how this is to be calculated).

**What are the terms governing the agreements at Scamford Park?**

9. All of the agreements at Scamford Park are governed by a mixture of the terms implied by the Act and by the express terms of the written agreement relating to that particular occupier and pitch.

**Relevant implied terms.**

10. It must first be noted that under section 62 of the Act, "**pitch fee"** means ***"the amount which the occupier of a mobile home is required by an agreement to pay for the right to station the mobile home on the pitch and for use of the common areas of the protected site and their maintenance, but does not include amounts due in respect of gas, electricity, water and sewerage or other services, unless the agreement expressly provides that the pitch fee includes such amounts;"***.

11. Under Chapter 2, of Part 1, Schedule 2 to the Act, at paragraph 21 are the Occupier's obligations which include;

*" 21 (1) The occupier must –*

*(a) pay the pitch fee to the owner,*

*(b) pay to the owner all sums due under the agreement in respect of gas, electricity, water and sewerage or other services supplied by the owner,"*

12. Likewise at paragraph 22 are the 'Owner's other obligations' that include;

"*22 (1) The owner must-*

*(b) if requested by the occupier, provide (free of charge) documentary evidence in support and explanation of-*

*i. Any new pitch fee*

*ii. Any charges for gas, electricity, water, sewerage or other services payable by the occupier to the owner under the agreement, and*

*iii. Any other charges, costs or expenses payable by the occupier to the owner under the agreement."*

13. It can be seen that the implied terms distinguish between the pitch fee and the charges and costs for other services payable by the occupier to the owner under the agreement.

**Written agreements between site owner and occupier.**

14. Each occupier has an agreement governing their occupation of their particular pitch, also described as a "Written Statement under Mobile Homes Act 1983". The agreements typically were in five parts.
    a. Part 1 was expressed to be "Introductory provisions and express terms".
    b. Part ll was described as "information about your rights".
    c. Part lll was described as "Implied terms" and set out terms that had been implied under Part One of Schedule 1 to the 1983 Act. These implied terms have of course now been superseded by the terms implied by Part 1 of Schedule 2 to the Mobile Homes (Wales) Act 2013, (although in practice they largely mirror the previous implied terms.) The relevant implied terms are set out above.
    d. Part 4 was said to be the supplementary provisions implied under the 1983 Act with regard to approvals for sale and gifting of the mobile home.
    e. Part V was described as "Express terms of the Agreement, subtitled "This part of the written statement sets out the terms of the Agreement settled between you and the Site Owner in addition to the implied terms."

In practice therefore, particular scrutiny is to be given to the express terms in Parts 1 and V of the agreements. For the sake of simplicity and clarity we shall use the term(s) "agreement(s)" to refer to the written statements/agreements between the site owner and the occupiers. These agreements constitute the contract between the site owner and the occupiers. All of the agreements were in a similar basic form save for those of Mr Blandford and Mrs Taylor which followed the same five parts but are agreements with slightly different wording as set out below where relevant.

**Relevant Express terms.**

15. With regard to **Mr and Mrs Lister at 19 Scamford Park,** their agreement was to begin on 17 October 2012 and was in a standard form. In Part 1, express terms, the Pitch fee was dealt with at numbered paragraph 7 as follows;

> *"The pitch fee will be payable from 17th of October 2012. The pitch fee will be payable MONTHLY IN ADVANCE. The pitch fee is: £145 excluding water. The following services are included in the pitch fee: site lighting and general park maintenance."*

The annual review date for the pitch fee was 1 April 2013 and there was then a new heading;

> **"Additional Charges***: 9. An additional charge will be made for the following matters: (a)* ***WATER £0*** *(b)* ***SEWAGE included in site fees*** *(c) anything that may be put upon the park owner via local government or local council or any unforeseen additional charges which belong to the running of the park."*

16. Part V, the express terms included the following;

> *"**Occupiers undertakings 3.** The occupier undertakes with the owner as follows:-* ***To pay pitch fee*** *(a)To pay to the owner an annual pitch fee of £1740 subject to review as hereinafter.....*
>
> ***To pay outgoings*** *(b) To pay and discharge all general and/or water rates which may from time to time be assessed charged or payable in respect of the mobile home or the pitch (and/or a proportionate part thereof where the same are assessed in respect of the residential part of the park) and charges in respect of electric, gas, water, telephone and other services."*

17. It is to be noted that although the term "site fees" was used in relation to the sewage, this is a reference to the pitch fees, as there is no other separate mention or definition of site fees in the agreement and this can only relate therefore to the pitch fees.

18. **Mr and Mrs Newell at 7 Scamford Park** have an agreement which does not have a start date although it can be inferred that it was 16 November 2012 because this was the date from which the pitch fee of £145 excluding water was payable. Similarly to Mr and Mrs Lister, in the additional charges it states "**WATER £0**" and **"SEWAGE included in site fees."** The Part V express term re outgoings is the same as previously.

19. **Mr and Mrs Ridgway at 18 Scamford Park** have an agreement dated 1 September 2012 in similar terms to those above, the pitch fee of £145 excluding water and at "additional charges", similarly to Mr and Mrs Lister and Mr and Mrs Newell, it states; **"WATER £0"** and **"SEWAGE included in site fees".** The occupier's obligation to pay outgoings in Part V is the same as the other similar agreements.

20. In summary therefore, the **payment of the sewage costs was expressly stated to be part of the site or pitch fees and there was no additional charge for this** for Mr and Mrs Lister, Mr and Mrs Newell and Mr and Mrs Ridgway. However, it must be noted that this was done in a potentially confusing fashion, in that in the part of the agreement that referred to the pitch fee and the services included in it, there was no mention of sewerage (only site lighting and general park maintenance) and the reference to the sewerage being included in the pitch fee was contained in the 'Additional charges' clause.

21. **Mrs Williams at 11 Scamford Park** has an agreement beginning on 1 September 2012 in similar terms with the pitch fee being £145 excluding water but including site lighting and general park maintenance. However in Mrs Williams agreement under "additional charges" it states at paragraph 9, "WATER £0", and **"SEWAGE included in the site fees** £50", but the £50 has been added in pen. The other express obligations in Part V are the same as for the foregoing occupiers. There is no indication as to the period to which this £50 relates but the presumption is that this is the annual charge for sewage.

22. There are four agreements therefore that expressly state that sewage is included in the pitch fees, one of which, Mrs Williams, indicates a fee of £50 for sewage.

23. With regard to **Mr and Mrs Tedstill at 20 Scamford Park**, their agreement was dated 12 December 2012 and Part 1, number 7, Pitch fee was expressed in identical terms to Mr and Mrs Lister, save that the pitch fee was £149.10 per month at the time of signing the agreement, however the **Additional Charges** at 9, said that *"an additional charge will be made for the following matters: (a) WATER (b) SEWAGE ."* In the copy of the agreement in our hearing bundle the word "sewage", unlike in Mr and Mrs Lister's agreement, is not followed by "included in site fees" but appears to have been partially crossed out in pen (that is, it is not struck through in print). The express term to pay outgoings in Part V is identical to that cited in paragraph 16 above for Mr and Mrs Lister. The effect of the word 'sewage' being crossed out as an additional charge does not alter the legal position that sewage is in fact an additional charge because it is not expressly included in the pitch fee (as per section 62 of the Act) and will be an additional charge in accordance with the implied terms (see paragraphs 10 and 11 above).

24. **Mr and Mrs Culpeper at 3, Scamford Park** have a similar agreement beginning on 1 April 2014. Their pitch fee was £149.10 per month excluding water but again, under additional charges, although water is included there is a clear word "SEWAGE" which again is crossed out in pen. The express term to pay outgoings in Part V is the same as for numbers 19 and 20.

25. **Mr and Mrs Loveridge at 1, Scamford Park** have an agreement which is to begin on 1 October 2013 and presumably this is the date from which the pitch fee will be payable although this part of the agreement is left blank. The pitch fee was expressed to be £149.10 excluding water but, as with the others, including site lighting and general park maintenance and again, under additional charges the word "sewage" is struck through and crossed out by a line made in pen. Other relevant aspects of the agreement are the same as for previous residents.

26. The agreement for **Mr and Mrs Viveash at 4 Scamford Park** was to begin on 1 October 2015 although again the date from which the pitch fee will be payable at paragraph 7 of part one of the agreement was left blank although it can be inferred as payable from the same date. The pitch fee was £149.10 per month excluding water and the additional charges were to be made for water at paragraph 9. In the same paragraph the word "SEWAGE" was struck through and crossed out by pen. This agreement is also noteworthy because at Part lll, the Implied Terms, at paragraph 8 (1G) (2) on page 5 of this agreement, with regard to the commission rate the site owner shall be entitled to receive, annotated in pen are the words "5% Max agreed with J.Hartley 1/10/15". This is initialled in what appears to be a different pen or hand, presumably by Mr or Mrs Loveridge although that is not definitively clear. This is the only agreement where handwritten annotations are initialled. The express terms to pay outgoings are the same as for the other agreements. The foregoing agreements were all made between the respective occupiers and Mr and Mrs Hartley, previous site owners.

27. So, the four agreements relating to Mr and Mrs Tedstill, Mr and Mrs Culpeper, Mr and Mrs Loveridge and Mr and Mrs Viveash all have the word "Sewage" as an additional charge, struck through, but in fact because sewage is not expressly included in the pitch fee this makes little difference in practice since the implied terms make sewage an additional payment to the pitch fee.

28. **Mr and Mrs Whittle at 8 Scamford Park** have an agreement beginning on 2 October 2013, the pitch fee was expressed to be £145 excluding water, and in additional charges at paragraph 9, there is both water and sewage. The word "sewage" is neither crossed out nor followed by "included in site fees". The express terms in Part V are the same as the other agreements. Therefore Mr and Mrs Whittle's sewage costs are not included in the pitch fee and are subject to an unambiguous additional charge.

29. **Mr Blandford of 17 Scamford Park** has an agreement in a different form to begin on 15 January 2010 and made with the then site owners Mr and Mrs RJ White. The agreement at Part One had introductory provisions and express terms which at

paragraph 7 said the pitch fee will be payable from six months after completion and will be payable "**Yearly in advance. Can be paid monthly by arrangement of standing order."** A separate box said "The pitch fee is **£1600 yearly in advance sewage an additional £50 per year in advance**." At numbered paragraph 9 of this agreement were additional charges. It said **"an additional charge will be made for the following matters; Sewage payable to the park owners, water by meter payable to the park owners, electricity, by meter payable to supplier (two park owners in short-term), gas – payable to the park owners, council tax payable to the local authority,….. service charges for meter reading and billing."** Part 2 of this agreement had information about his rights, Part 3 was the terms implied by the then Mobile Homes Act 1983 as amended, Part 4 was supplementary provisions and Part 5 the express terms of the agreement. At paragraph 3 (n) the express terms states "if you fail to pay the agreed pitch fee or any other sum due under this agreement within 28 days of the date due, you must pay to the site owner interest on the outstanding sum from the date when it fell due to the date on which it is paid. Interest shall be charged at 4% per annum over base rate from time to time of a London clearing bank."

30. In Part 3 of the agreement relating to implied terms, at paragraph 29, headed "Interpretation" it stated that *"in this schedule –… "Pitch fee" means the amount that the occupier is required by the agreement to pay to the owner for the right to station the mobile home on the pitch and the use of the common areas of the protected site and their maintenance, but does not include amounts due in respect of gas, electricity, water and sewerage or other services, unless the agreement expressly provides that the pitch fee includes such amounts;"* it is of course to be noted that this related to the implied terms and these have now been superseded by the implied terms under the 2013 Act and that this wording mirrors section 62 of the Act which now applies to this agreement.

31. For Mr Blandford therefore there was some ambiguity as to the treatment of sewage because it appeared as an additional £50 per year in advance in the pitch fee box of the agreement but there is also reference to an additional charge being made for sewage, payable to the park owners. The additional charges are listed separately to the pitch fee.

32. Mrs Taylor at 12 Scamford Park had an agreement in the same form as Mr Blandford's with previous site owners Mr and Mrs White and containing the same amounts and additional charges, save for the fact that unlike Mr Blandford's agreement, there was no reference in "additional charges" for service charges for meter reading and billing.

**Summary of express terms and treatment of sewerage costs.**

33. There are five different treatments of sewage fees in the agreements.
    a. Firstly Mr and Mrs Lister, Mr and Mrs Newell, and Mr and Mrs Ridgway all have agreements in which under additional charges it states "sewage included in site fees".
    b. Mrs Williams has the wording "sewage included in site fees" but has the amount of £50 written in pen after it. Although not explicit, it would be understood to be an annual charge of £50.
    c. Mr and Mrs Tedstill, Mr and Mrs Culpeper, Mr and Mrs Loveridge and Mr and Mrs Viveash have agreements where the word sewage has been crossed out as an additional charge in paragraph 9 and the sewage would be an additional amount to the pitch fee under the implied terms in any event.
    d. Mr and Mrs Whittle have the word sewage as an additional charge and it is not expressed to be "included in site fees", such words do not appear in their agreement under additional charges.
    e. Mr Blandford and Mrs Taylor have newer agreements in which sewage is expressed to be 'an additional £50 per year' and is included in the same box of the agreement that is headed 'pitch fee', but the words 'Sewage payable to the park owners' also appear in the additional charges box.

34. With regard to categories in paragraph 32 a, b, c and d, above, they of course all have the obligation to pay the outgoings as set out in paragraph 16 above, with its reference to "other services". There are three pitches and agreements therefore where there is an explicit reference to £50 for sewage; Mrs Williams, Mr Blandford and Mrs Taylor, although the latter two agreements have the £50 sewage fee in the pitch fee category and an explicit mention of sewage fees in additional charges.

35. In her application forms to the tribunal, the applicant has indicated on the tick box provided that the pitch fee does include payment for sewerage for Mr and Mrs Lister, Mr and Mrs Newell, Mr and Mrs Ridgway and for Mrs Williams, but does not for Mr and Mrs Blandford or for Mrs Taylor.

**PR Hardman and Partners v Greenwood and another [2017] EWCA Civ 52.**

36. In her statement and in her evidence, the Applicant referred to the Hardman case, although she mistakenly referred to it as a decision of the Upper Tribunal. Whilst the case had been to the Upper Tribunal, the decision referred to above was the Court of Appeal decision and it is that decision the applicant included in her hearing bundles and upon which she sought advice from Tozer's solicitors and from the Leasehold Advisory Service. In Hardman, the court considered the effect of a standard form agreement, in similar terms to those in this case, to determine whether occupiers were liable to pay the site owner for the costs of maintaining, providing and administering utilities. The Master of the Rolls, Sir Terence Etherton, giving the

leading judgement noted at paragraph 6 that the UT *"rejected Hardman's case that the applicants were liable to pay a general service charge and held that the standard form agreement with each of the applicants was concerned solely with the reimbursement of specific outgoings incurred by the owner in meeting liabilities to third party service providers."* He said *"That is the issue at the heart of this appeal".* The court held that such costs were not recoverable under paragraph 3 (b) of the agreement as this clause only governs charges incurred by third party providers. The court held that such costs were recoverable in the pitch fee instead of under paragraph 3 (b).

37. The wording that the Court of Appeal were considering was described as paragraph 3 (b) of Part IV of the standard form agreement. In fact the wording is identical to paragraph 3 (b) of Part V of the standard form agreements in this case (save for the agreements of Mrs Taylor and Mr Blandford) and as set out at paragraph 16 above.

38. The Court of Appeal held as follows;

> *43. The appeal turns on the proper meaning and effect of paragraph 3 (b)…… of the agreements. I consider it is clear that the "charges" mentioned in the second part of that paragraph are charges by third party utility suppliers and the "other services" mentioned are those provided by third parties in respect of third party utility supplies to the pitch. Payment for other third party contractors and the services undertaken by Hardman themselves is not recoverable under paragraph 3 (b) but can be recovered only as part of the site fee.*
>
> *44. There is a marginal note – "To pay outgoings" – by the side of paragraph 3 (b) of Part IV but this cannot be taken into account on the interpretation of paragraph 3 (b) because paragraph 9 of Part IV provides that marginal notes are inserted for convenience of reference only and shall not affect the construction, meaning or effect of anything in Part IV or govern the rights and liabilities of the parties.*

39. The court rejected Hardman's suggestion that paragraph 3 (b) covered liabilities incurred only to third parties as well as liabilities incurred to third parties or to Hardman, pointing out that the word "charges" would have been used to cover two distinct sources of liability, one for a specific amount clearly incurred and verified by reference to a third party charge and the other would in substance be a service charge to the park owner for work done and services performed by or on behalf of the owner. The court pointed out that the usual way of providing for a service charge would be by a separate covenant by the occupier to pay specified costs and expenses

incurred by, and to remunerate other specified work carried out by, the owner. The Court of Appeal further said:

> *48. It is highly improbable that a written statement in standard form made pursuant to the MHA would include provision for recovery of costs and expenses incurred by the owners themselves, or for remunerating other work carried out by the owners, without any express provision specifying limitations on what is recoverable by the owners and how the amounts charged by the owners could be challenged. It is notable that, by contrast the MHA specifies that the annually revised pitch fee has to be agreed with the occupiers or determined by the..... Tribunal.*
>
> *49. Such costs and expenses incurred by Hardman, and remuneration for work carried out, are potentially recoverable as part of the site fee. Under the terms of the agreements the site fee is reviewable annually.*
>
> *50.[Counsel for the site owners] accepted that, pursuant to the provisions of paragraph 7 (a) (ii) of Part IV of the agreements, Hardman can recover, through the annually reviewed site fee but only through the site fee, the costs and expense incurred by Hardman in complying with its obligations under paragraph 4 (a) (maintenance and repair of communal areas of the Park, such as the lakes, the swimming pool, the laundry, the shower block and public toilets), paragraph 4(c) (the provision and maintenance of facilities and service, to the extent that there is no right of recovery under paragraph 3(b) as [Counsel for the site owners] conceded would be the case in respect of communal areas) and paragraph 4(d) insurance of Part IV of the agreements. The definition of "pitch fee" in paragraph 29 of Chapter 2 of Part 1 of Schedule 1 to the MHA states expressly that the pitch fee embraces maintenance of the common areas of the protected site."[As does section 62 of the Act in Wales].*

40. The Court of Appeal also pointed out that there was nothing in the agreements or the Act to preclude Hardman from claiming such costs on account in anticipation of them being incurred as well as after they have been incurred. Paragraph 51 of the decision says that

> *"...whether and to what extent and in what way they are recovered as part of the site fee on review depends on what is agreed with the occupiers or, in the absence of any such agreement, is determined by the ...Tribunal to be reasonable. There is, therefore, nothing inherently improbable about costs and expenses incurred by Hardman in respect of work done and services provided by them in connection with utilities to*

*the pitches being recoverable as part of the site fee rather than under paragraph 3 (b) of Part lV of the agreements."*

*52. "For the same reasons there is no scope for an implied term that Hardman can recover the costs, expenses and other sums in issue in these proceedings pursuant to paragraph 3 (b). Such a term is neither so obvious it did not need to be expressed nor is it necessary to give the agreements commercial or practical coherence…"*

41. The Court of Appeal stated, at paragraph 54, that the implied terms of the occupier (to pay to the owner the sums due under the agreement in respect of gas, electricity, water, sewerage or other services supplied by the owner, in paragraph 21(1)(b) of Chapter 2 of Part 1, Schedule 2 to the 2013 Act in Wales) and the definition of pitch fee (in section 62 of the 2013 Act in Wales) did not take the matter further

*"…… Since they merely direct attention to what is due under the agreements in respect of gas, electricity, water, sewerage or other services. If, as I would hold, the costs expenses and other sums in issue are not due under paragraph 3 (b) of Part lV of the agreements, then there is nothing in principle to preclude them being included in the pitch fee."*

*"57. It follows that the second part of paragraph 3 (b) in Part lV of the agreements is limited to utilities supplied by third party providers and work by third parties in respect of such utilities and not to utilities and other services provided by or on behalf of the owners."*

42. The final paragraph (58) of the Court of Appeal decision referred to the finding of the Upper Tribunal that charges for third-party contractors to licence, service and empty the sewerage system and the cost of electricity required to run the sewerage system fell within paragraph 3 (b). Sir Terence Etherton MR stated;

*"for the sake of clarity and certainty for the future, however, it must be pointed out that, consistently with my earlier analysis and conclusions,* ***I consider that that part of the UT's decision was wrong since the provision of the sewerage system is a communal service.*** *In the absence of a respondent's notice, nothing can be done in respect of past charges already paid under paragraph 3 (b) for electricity to operate the sewerage system, and to reimburse Hardman for payment to third-party contractors engaged to empty and service the sewerage system and payment of the licence fee to the Environment Agency in respect of the system.* ***In the future, however, all such costs and expenses are recoverable only in the pitch fee."*** *(*Our emphasis).

**<u>The pitch fee increase.</u>**

43. The applicant's proposed increase in pitch fee from 1st April 2018 included the CPI adjustment of £4.47 and the recoverable costs claimed of £6.36, comprising the three discrete elements of;

a. The annual electricity for the sewerage treatment plant from 1 December 2017 until 1 December 2018 for £800, divided equally by 15 homes providing a net charge to the occupier of £53.34.
b. The cost of £226 for the annual sewerage treatment plant emptying which, divided equally by 15 amounted to £15.07.
c. The annual gas tank rental cost of £120, divided equally by 15 homes giving a net charge per occupier of £8.

44. The evidence supplied by the applicant in support of these claimed costs was exhibited to her witness statement. For the gas tank rental, there was an invoice from Gas4Wales/NwydrosGymru dated 11th December 2017 for the rental of two tanks until December 2018 at £50 each plus VAT, namely £100 plus £20 VAT totalling £120.

45. With regard to the emptying of the septic tank there was an invoice from Wales Environmental Ltd dated 31st of March 2017 for £220 plus VAT of £44 totalling £264. It is noted that this is a higher figure than the £226 claimed by the applicant.

46. In relation to the electricity fees the applicant says in her statement that electricity is required for the sewerage treatment plant for 24 hours a day 365 days a year and she provided a letter from Southern Electric dated 5 December 2017 confirming that in that year 6085.71 kWh had been used with total estimated costs of £1047.09, and that they estimated she will spend £1071.85 in the next 12 months including VAT.

**The inspection.**

47. Scamford Park is situated in the open countryside lying north of the A487 between the small settlements of Keeston and Camrose. The site is accessed off a single carriageway County class road known as Keeston Lane which links the adjacent villages and neighbouring property. Occupying a former agricultural enclosure the site is surrounded by farmland and buildings dedicated to agricultural land use. The site slopes gently to the East, is enclosed by agricultural hedges and is not overlooked. The site has an attractive entrance demarked by discreet signage, stone walls and landscaping carefully planted and maintained. The entrance splay leads onto the circular estate road which serves each of the pitches. The site was clean and tidy and generally well kept.

48. The development on the site consists of 15 occupied pitches along with an administrative building occupied by the park owner. There are a number of unoccupied pitches. Areas have been set aside for a foul water package treatment works, and a timber shed houses electrical switch gear. The pitches are presently arranged towards the boundary of the site but further development within the central grassed area is planned. The site is served by a private drainage system, LPG gas, mains water and mains electricity. The Estate road is private and not adopted by the Local Authority.

49. The Tribunal met on site prior to the Hearing as arranged. We were greeted by Mrs Barney -Cooper who showed us around the site and described the various buildings,

plant and machinery. During the tour we were joined by some of the residents who also helped us by providing commentary on the issues raised in their respective cases, although we did not take any evidence on the inspection.

50. We were shown the gas tanks behind the office building, the sewage package treatment tank, the timber framed shed housing the electrical equipment, the pitch lamps outside plots 20, 19, 16 and 6. Pitch No 6 was noted to have been formerly the property of a previous site owner. We noted the tarmac fillets placed to allow easier access onto the pavement from the road outside No's 7 and 20, alterations to the road drainage design, 4 vacant pitches, a lone minibus vehicle and a tired looking home occupying pitch No 15. We also inspected the lawn of Mr and Mrs Newell at the entrance to the site. The tour of the site was useful as it enabled us to identify the issues raised in the evidence and aided in the formulation of our considered opinion at the end of the process.

**The hearing.**

51. The applicant repeated and affirmed the contents of her statement. There was a great deal of evidence on both sides as to why the application was made and why the applicant would not meet with the residents as a group. We do not propose to deal with this evidence in any depth (save for in our concluding remarks), since it is simply not relevant to the task that we have to determine, namely whether or not the increase claimed in the pitch fee review is reasonable.

**The electricity costs for the sewerage plant- £800 claimed.**

52. The only evidence of electricity payments provided by the applicant was that described in paragraph 46 above (for example there were no updated and accurately metered electricity statements) and in her written statement she explained that a proportion of the amount shown on the electricity summary had been calculated and deducted for the park's general use, in particular the site lighting, using the number of streetlamps on site and looking at the winter and summer usage, the lighting hours and the wattage of the bulbs. In oral evidence to the tribunal she explained that the bulbs are light-sensitive and of low wattage but they come on at night and that the landlord's electricity supply is not used for other services. She was asked why she had not supplied any actual bills which would have been helpful and she explained that her electricity is paid by monthly direct debit at the standard rate. She said she thought the site lighting would cost more than she had deducted but she was claiming £800 for the electricity for the sewerage plant. She did not give any evidence about the cost per kilowatt or what rates applied to the site supply.

53. In their statement for the tribunal, Mr and Mrs Lister point out that there was no paperwork in support of the electricity costs provided at the time of the pitch fee review and the estimate had only been provided by the applicant with her papers for the tribunal hearing. Mr and Mrs Lister dispute the £800 claimed. They say that there are two air pumps operating 24 hours a day 365 days of the year rated for electrical consumption purposes at 170 W each. This is 8160 W per day for the two pumps and

multiplied by 365 days gives 2,978,400 W in one year 2978.40 kW. They say a kilowatt cost is 0.17892p and the annual cost for two pumps is 2978.40 kW multiplied by 0.17892P equals £532.90, which they suggest is probably the actual cost rather than the £800 claimed by the applicant. (The tribunal notes that in the estimate of usage supplied by the applicant, the estimated costs are £1047.09 and if that total is divided by the 6085.71 kilowatt hours it gives a total of 0.17205 per kW hour). They refer to photographs of the sewerage treatment plant in the evidence (in fact exhibited to Mr and Mrs Culpeper's statement at exhibit 23) showing that the power consumed by the pump is 170 W. Mr and Mrs Lister are concerned that the £800 being claimed also included costs of the streetlights and the applicant's usage in her office and the mobile home that was used when she stays at the park (number 15).

54. The applicant stated that the electricity supply for number 15 is not part of the landlord supply and is billed separately and that she had called upon the assistance of Richard Hand of the Leasehold Advisory Service to assist her in calculating the figure for running the sewerage treatment plant. She says that she and Mr Hand agreed that the fairest and simplest way was to calculate the cost of the other continuous annual expense, namely the street lighting, and deduct that cost from the annual electricity cost, although the tribunal note that she did not give any figures in support of such calculations either in written or oral evidence. Mr Haskell argued that the electricity costs for the sewerage pumps should already be included in the pitch fee rather than added on top and there was no mention that it should be a cost met by the residents.

55. Other respondents (Mr and Mrs. Tedstill, Mr and Mrs Newell, Mr and Mrs Whittle, Mr and Mrs Loveridge, Mr and Mrs Viveash, Mrs Taylor, Mr and Mrs Ridgway and Mrs Williams) repeat the information about the cost of the electricity for the sewerage treatment plant. Mr and Mrs Culpeper in their statement also suggest that the Park Rules (exhibited at Exhibit 5 to their statement) make the applicant responsible for the sewerage treatment plant. This is a reference to rules under the heading "Services" where it states "Your home is connected to a sewage treatment plant for which we hold full responsibility and upon (sic) the entire park is dependent."

56. Mr Hassall submitted that the electricity for the sewerage plant should be covered by the pitch fee and that there was no mention that it should be a cost borne by the residents and he submitted that it was the applicant's responsibility and that the emptying of this should only be once every 12 months.

**The costs of emptying the sewage tank/plant.**

57. Mr and Mrs Newell and Mr Blandford point out that the sewerage plant is not a septic tank that needs periodic emptying but is a bio digester and therefore if installed correctly it should not require emptying on a regular basis as the unit is designed to dispense clean waste water into a stream with the appropriate licence, and to never get full. The applicant confirmed that this was the case, it was a bio digester and she had adopted the previous owner's business plan which included this, when she took over. She pointed out that he had met the costs with uplifts in the gas fees.

58. The applicant said that at times in the past it has been and it may in the future be necessary to empty the tanks more than once a year and that the cost of this has not been included in the pitch fee. Mr and Mrs Lister argue that their written agreement clearly states that sewerage is included in the pitch fee monthly payment and that they have never paid any additional charges in relation to sewerage. Mr and Mrs Newell point out that in their agreement sewage is included in the site fees and they argue that the Hardman case does not apply as their written agreement clearly shows the situation with regard to sewerage fees. Mr and Mrs Ridgway make the same point, as does Mrs Williams.

59. Mr and Mrs Tedstill , Mr and Mrs Culpeper, Mr and Mrs Loveridge, Mr and Mrs Viveash all argue the same point in identical terms where the word sewage has been crossed out in their agreements as an additional fee. They argue that this means that it is included in the pitch fees. Mr and Mrs Whittle make the same contention.

**The gas tanks.**

60. The rental of the two tanks was £50 each and the applicant sought £120 as recoverable costs. She stated that she had been advised to seek these costs through the pitch fee and was following this advice. The respondents all argued in their statements that the gas tanks had been in situ when the applicant bought the park and that their costs were part of the operating costs of the park of which the applicant should have been well aware. They point out that the applicant was previously charging more for the gas supply than it was costing her and she had received the costs of the gas tank rental in this fashion. The applicant has also been wrongly charging vat on this figure previously which she had been obliged to reimburse to the occupiers. These were submissions repeated by Mr Hassall.

**CPI increase.**

61. Attached to the statement of Mr and Mrs Culpeper was a document headed "Scamford Residents Association Register of objection to proposed ground rent increase". This noted a number of objections, dealt with elsewhere in this decision, but in relation to the CPI, it stated that "the CPI is incorrect – it should have been taken from the increase in January for implementation in April – it should be 2.7%." However, during the hearing Mr Hassall was asked about this and he stated that it was not disputed that the applicant had used the correct process and he accepted the figures.

**Deterioration in condition and decrease in amenity.**

62. All of the respondents argued that there had been deterioration in the condition and a decrease in the amenity of the site particularly in relation to those parts of it occupied or controlled by the applicant. In their written statement dated 14 August 2018, Mr and Mrs Lister of 19 Scamford Park stated that street lighting had been out and the solar lamp outside their home had not worked since February 2018 although it was due to be repaired on 20 August 2018. They also referred to a non-functioning

light outside number 20 and a third light covered by weeds and grass on Plot Number 6 that, together with Plot Number 2 was in dire need of tidying up. They further stated that the roads need attention and have deteriorated since the applicant bought the park and that the home stationed at Plot number 15 is in a poor condition detrimental to the park and this is owned by the applicant and used by her when she stays at the Park. They also stated that the general maintenance of the park had declined since the applicant purchased it in December 2015. There was a disused motor vehicle on the park contrary to the park rules and the applicant had deposited garden waste in the vicinity of the gas tanks which is also contrary to the park rules. This was evidence supported by the other occupants and there were photos of these sources of complaint exhibited to the statement of Mr and Mrs Culpeper. The photos showed for example the overgrown surroundings of the vacant plot number six, the rotten woodwork, cracked paintwork and the badly stained wall of the unit at number 15 as well as the disused unroadworthy vehicle.

63. Mr and Mrs Newell in their statement said that the road had deteriorated, the top layer of tarmac had not been laid and the grid outside number 18 is too high which renders it inoperable. They pointed out that a hole had been chiselled into the road to allow water into the grid (drain) but that the road floods if there is heavy rain. They also said that their front lawn and garden was excavated to allow sewerage pipes to be redirected and there had been leakage of sewerage into their garden with the result that the land later sank and became dangerous and they had to call in a local landscape gardener to restore the garden to its original state, paid for by them. On this point, the applicant says that when works were carried out on the main drainage system, the manhole cover in their garden was removed and that they later covered that area with topsoil but did not at any time send any quotations for this to the applicant nor seek reimbursement from her of the costs.

64. Mr and Mrs Viveash of number 4 described additional concerns that they had about the shed which houses the electricity meters situated at the rear of their pitch. They say in their statement that the applicant was going to provide slabs to give access to other occupiers wishing to gain access over Mr and Mrs Viveash's pitch to read their meters but this has not happened. They also point out that the meter shed is leaking badly with high-voltage electricity in close proximity to water and they are concerned that this could be "a lethal combination for us, as the shed in question is extremely near to our bedroom". They suggest that a new roof is required as the existing one was being held on with a concrete block and in addition the floor of the meter shed is very wet. They exhibited photographs demonstrating this. The tribunal of course had also had the opportunity to consider this in our inspection when the floor was wet.

65. The applicant in her written evidence exhibited an email from Mr Hugh Gibbon, a Housing Standards Inspector with Pembrokeshire council, dated 23 August 2018. This referred to a site inspection made by Mr Gibbon 21 August 2018. The email pointed out that one of the corrugated sheets covering the electric meter shed was weathered and nearing the end of its lifespan and it was recommended that it be replaced before it fails completely and compromises the weather tightness of the shed. The applicant stated that when Mr Gibbon and his colleague carried out their

inspection on the 21st of August 2018, it had been raining heavily the night before and the inside of the meter shed was dry. She therefore questioned the authenticity of the photographs. Mr Viveash in evidence told us that the floor was always wet, it could cause a problem and the door wouldn't close.

66. Mr Blandford in his statement confirmed the problems with lamps being out constantly and with the road surface and the tarmac being too low and the drain grid outside number 18 being too high leading to the road flooding in bad weather. He described how when he first moved in puddles formed in the road and previous site owners Mr and Mrs White had made the hole into the drain with a hammer and a chisel although Mr White apparently observed that the drain was too high up the road and should be relocated to be effective. Mr Blandford also stated that at the beginning of August 2018 he checked his electricity meter reading and he was astounded by the state of the roof of the meter cupboard leaking and collapsing. He described there being approximately an inch of water on the floor.

67. Mr and Mrs Ridgway were also concerned about the drain grid outside number 18 which is raised and could be a trip hazard. Mr Ridgway gave evidence that the residents do not block up the hole that has been chiselled into the road to allow the water in, but it does flood badly and has done so since 2012.

68. Mr Tedstill of number 20 detailed in his written statement how his wife is registered as a severely disabled wheelchair user. He said that the road outside requires another level of tarmac for his wife to be able to access on and off the property in her wheelchair. The previous owner of the park promised to make a level access for Mrs Tedstill in 2013 but did not do this before the park was sold to the applicant. Therefore Mr Tedstill installed what he described as a "small cold – laid tarmac ramp" to enable his wife to access their pitch and home, only to receive letters from the applicant. One such was dated 1 August 2018 in which Mrs Barney – Cooper said that the agreement with the previous owner was not brought to her attention when dealing with the sale of the park and that Mr and Mrs Tedstill did not have permission to instruct a contractor to install a tarmac ramp in a common area of the park. The applicant was concerned that this could compromise her in terms of public liability insurance and said that, after she had sought legal advice about this matter "your action to give instruction to place tarmac on a road belonging to me without my knowledge or permission is deemed as an act of vandalism and is a criminal offence." The applicant's letter also talked of obtaining quotations to put the road back to its original condition and to charge Mr and Mrs Tedstill for this.

69. Mrs Williams of number 11 produced a letter dated 25 February 2018 that she had written to the applicant objecting to the proposed pitch fee increase. She complained that there had not been any improvements or maintenance of the park and that she had had to look out of her lounge windows at a transit van that was "rotting" on the pitch next door and did not have any MOT or tax. She said that this spoiled her outlook and enjoyment of the park. Mrs Williams said that she had posted this letter through the site office door and that she had typed the petition referred to earlier. The applicant said that she had not seen this letter before it was produced at the

hearing. In her oral evidence Mrs Williams confirmed that the transit van had been parked outside her living room window for over a year and had spoiled her view.

70. In relation to the allegations, Mrs Barney – Cooper said that the street lighting is fully operational except when the bulbs are out and need to be replaced. She said that the light outside number 19 was in need of a particular part to repair and as the model had been discontinued it took longer than anticipated for her to source this. She said that she had kept the residents aware of this. She said that plot 15 is for her use whilst the park is still under development and she intends that in the future it would be used for the appointed Park manager. She said that her intention was to remove the home that is currently on plot 15 and to replace it with a new home when phase 2 of the development commences. She also said that the maintenance programme and contractor appointed by the previous Park owner has remained unchanged since she took over in December 2015 and she intends to review this when the park is fully developed. She denied that there had been a decline in the maintenance of the park. In answer to the tribunal's question as to whether the maintenance was part of a planned programme or ad hoc she said that the contractor comes in fortnightly to cut the grass and undertake any other maintenance. She did answer that the planned programme of works and the plan for the park is still under development. She said that she plans to resurface the road once the second phase of the development is complete.

71. The tribunal pressed the applicant as to whether or not she considered the vehicle and the condition of the home at plot number 15 to be detrimental to the appearance and amenity of the park? Whilst initially evasive upon this point she did accept that the appearance of number 15 detracted from the amenity of the park and this was being addressed. She said she had talked about replacing it and getting it off the site but she didn't have an active timetable for that and talked of a contractor who had started painting it and stripped it back. She also accepted that the vehicle was detracting from the appearance of the site although she did say she has intentions to renovate the vehicle and have it sign written to advertise the park. When pressed by the tribunal as to whether it was affecting the site detrimentally she accepted that it was and said "I don't like it but you have to crack eggs to make an omelette."

**Conclusion and reasons.**

72. In Hardman, the site owners were seeking to recover additional administrative costs. For example since May 2008 the cost to Hardman of LPG delivered to the park varied between 34p per litre and 47p per litre and the charge to pitch occupiers varied between 49p per litre and 71p per litre. Information given to occupiers about the charges comprised the cost of supply, the charge to the occupiers and a list of matters covered by the difference between those figures which Hardman had described as a service charge. Likewise with electricity, in Hardman the cost of electricity purchased by the site owners between 2008 and February 2013 varied from 9p per unit to 11p per unit. From May 2013 a differential day and night rate which varied from 9.3p to 15p per unit at the day rate, and from 5.9p to 9.3p per unit

for the night rate was in effect. Hardman charged the occupiers for electricity at rates which varied between 12p per unit and 28p per unit between 2008 and 2014, and again regarded the difference between the price they paid and the rate they charged as a service charge element which was intended to recoup their costs of supplying electricity to the communal areas, reading meters, standing charges and meter fees as well as an administration fee, the cost of calling out electricians to resolve problems and the cost of maintaining a computer program to assist with billing. The elements of those charges however were not made clear or identified in invoices delivered to the occupiers.

73. After 1 January 2003 the energy regulator Ofgem set the maximum price at which electricity may be resold as being the same price as that paid by the person reselling it, inclusive of any standing charges. In Hardman, the site owners acknowledged before the First-tier Tribunal the prices that they had charged to applicants had exceeded what was permissible.

74. The costs incurred by Hardman in connection with sewerage included the cost of the permit from the Environment Agency as well as charges by contractors for emptying the tanks and charges for a different contractor for quarterly servicing of the tanks and the cost of electricity required to operate the system. Hardman had set their own quarterly sewerage charges to the occupiers with a view to recouping a contribution towards those expenses.

75. The Hardman case is distinguishable in that respect from Scamford Park because for example in the three elements of recoverable expenses claimed in the pitch fee review here, the applicant is simply seeking to recover the costs that she has been directly charged. She is not seeking to recover any additional "service charge" nor is she, upon her evidence, seeking to charge for her administrative time or any additional administrative expense in dealing with the annual electricity for the sewerage plant, the annual sewerage treatment plant emptying and the annual gas tank rental. The applicant therefore is not charging a separate amount for her handling of matters.

**Electricity costs for the sewage plant and costs of emptying the sewage tank.**

76. Whilst the Court of Appeal decision in Hardman is authority for the proposition that service charge style costs and expenses incurred by the applicant and payment for such service charge style work carried out by her is potentially recoverable as part of the site fee, that is not what Mrs Barney-Cooper has charged or is seeking to recover. However the Court of Appeal also made it clear in paragraph 58 of the judgement (cited in paragraph 42 above) that charges for electricity to operate the sewerage system and to third-party contractors to empty it are communal costs and that expenses for such communal services and costs *"…… are recoverable only in the pitch fee."* The Hardman decision is of course binding upon this tribunal.

77. Since the applicant in this case is seeking to recover precisely the same communal costs as mentioned by the Court of Appeal, namely the electricity to operate the

sewerage system and the charge to third party contractors to empty the sewerage tank, then in accordance with the Court of Appeal's decision in Hardman, such costs are recoverable in the pitch fee. However, with regard to the electricity costs for running the sewerage plant 24 hours a day, every day, the applicant has not persuaded us to the requisite balance of probabilities, that her estimated costs are correct. Whilst the applicant has acted in good faith in seeking the advice of the Leasehold Advisory Service and explained that they assisted her in calculating the amount due, she does not explain what the bills were nor at what rates the electricity was paid and whilst describing the communal lights on site as low wattage, she does not elaborate further. By contrast, the respondents have estimated the costs by using an amount per kilowatt hour and estimating the maximum usage. We prefer the method of calculation of the Respondents- it is the only one before us that is calculated albeit that the figures may not be entirely accurate because we do not know the precise charges for the electricity nor the precise amount used for the sewage plant. However, the lack of precision or more accurate figures is the fault of the applicant who has failed to provide them. Doing the best that we can with the limited evidence before us we therefore find that the costs for operating the electricity on the sewage plant are likely to be nearer the figures suggested by the Respondents, but allowing for some leeway on calculation we determine that the figure for this, to be added to the pitch fee is **£550** for this year and not £800.

78. With regard to Mr and Mrs Culpeper's submission that the Site Rules mean that the applicant is responsible for the costs of the sewerage plant, we disagree. The site rules contain the expression that "Your home is connected to a sewage treatment plant for which we hold full responsibility." In our view this reflects the responsibility to maintain and operate the sewerage treatment plant but this wording does not state and does not mean that the applicant is responsible for meeting all of the costs of maintaining the same.

79. Mr and Mrs Lister, Mr and Mrs Newell and Mr and Mrs Ridgway all have agreements which state that sewage is included in the pitch fee as acknowledged by the applicant. For Mrs Williams too, the sewerage costs are included in her pitch fees. Although the sewerage costs are stated to be £50 when she signed her agreement this figure can be subject to the pitch fee review. For these respondents therefore, the electricity for the sewage plant and the emptying costs are sewage costs which are included in the pitch fee that they are already paying. This is made expressly clear in their agreements and is accepted by the applicant in her application forms to the tribunal. Further the definition of pitch fee in section 62 makes it clear (see paragraph 10 above) that sewage costs will not be included in the pitch fee unless expressly included. For the foregoing occupiers, the sewage costs are expressly included.

80. It is not clear from the evidence what other charges for sewerage, if any, are levied (other than the electricity for the sewage plant and charges for emptying it). However, owing to the differing wording of the various agreements these charges are recoverable under the pitch fee in accordance with the Court of Appeal's decision in Hardman for the rest of the occupiers. Whilst this is not a situation of the Applicant's making (the different wording in the occupiers' agreements) it is a situation that she

has inherited and has to deal with notwithstanding that it leads to complications in practice. What this means is that for those whose agreements expressly include sewage costs in the pitch fee, that they will be paying less overall in their pitch fee than those for whom the sewage costs are additional recoverable costs under the pitch fee.

81. For Mr and Mrs Blandford and Mrs Taylor with their newer style agreements, we consider that although there is a box for the pitch fee which says "£1600 yearly in advance sewage an additional £50 a year in advance" (the words 'in advance' are not in Mrs Taylor's agreement), there is also a box on page 5 of the agreements headed "Additional charges" which says "An additional charge will be made for the following matters.....Sewage payable to the park owners". It is curious that, although there are other additional charges in this box, that it is only the sewage charge that also appears in the pitch fee box on page 4 of the agreements, but as a matter of construction we consider that the sewage is not part of the pitch fee. The pitch fee is not expressed to include sewage and it does say on page 4 in the pitch fee box that sewage is 'an additional £50'. Whilst Mr Blandford and Mrs Taylor both say that their sewage costs of £50 a year are included in the pitch fee this is in fact not borne out by the wording on those agreements. The use of the word "additional" clearly indicates that the £50 is in addition to, or on top of another amount, namely the pitch fee.

82. Mr and Mrs Tedstill , Mr and Mrs Culpeper, Mr and Mrs Loveridge, and Mr and Mrs Viveash argued that the crossing out of the word 'sewage' in 'Additional Charges' Part 1, 9 (b) of their agreements, means that the sewage costs are included in the pitch fee. It does not. There is a clear distinction between this situation and that of, for example Mr and Mrs Newell who, in the same clause have the words "sewage included in site fees". That is clear and unambiguous. In any event, these occupiers are liable to pay the sewage fees in addition to the pitch fees under the implied terms Part lll paragraph 21 (b) of their agreements (see paragraph 11 above).

83. Mr and Mrs Whittle's agreement at 9(b) has the word "Sewage" clearly inserted and not crossed out, as additional charges, and therefore they too are liable to pay the sewage as an additional charge and their statement is incorrect to suggest that the word sewage has been crossed out. The additional electricity and sewage emptying costs therefore can be added as recoverable costs in the pitch fee for Mr and Mrs Tedstill, Mr and Mrs Culpeper, Mr and Mrs Loveridge, Mr and Mrs Viveash and Mr and Mrs Whittle.

**The gas tanks.**

84. In our view the reasoning of the Court of Appeal in paragraph 58 of Hardman also applies here. The gas tanks are a part of a communal service- the provision of the gas supply is, in the storage in the tanks, a communal service before it is supplied to individual pitches and accordingly the rental charge for the gas tanks of £120 is recoverable as an additional cost under the pitch fee rather than under clause 3 (b) as an additional charge. The applicant made it clear that following the Hardman case and her seeking advice, she was no longer charging the occupiers a higher rate for the

gas supply than she was paying for it, and that she had been advised to recover the gas tank costs through the pitch fee. We do not accept the submission on behalf of the respondents that this is a park cost to be absorbed by the applicant, particularly when that is contradicted by their evidence that in fact they had been paying for the tanks in the past, albeit through the higher unit price they had been charged for the gas supply. Accordingly this cost can be properly included as a recoverable cost in the pitch fee.

**CPI.**

85. As indicated above, although in the residents' petition objecting to the increase in the pitch fee they had alleged that the incorrect CPI figures had been used, Mr Hassall for the respondents accepted the CPI figures. For the sake of completeness, the tribunal consider that the correct CPI figures were used in accordance with paragraph 20 of Schedule 2, Part 1, Chapter 2 of the Act which refers to the increase or decrease in the consumer prices index calculated by reference to the latest index and the index published for the month which was 12 months before that to which the latest index relates. It is clear from paragraph 20 (2) that the latest index means the last index published before the day on which that notice of increase of pitch fee is served. In this case the applicant served the notice on the 21 February 2018. She used the CPI figures for January 2018 which were correct since they had only been released on 13 February 2018. (CPI figures for February 2018 were not released until 20 March 2018). The published annual percentage for January 2018 was a 3% increase in the CPI over 12 months.

**Deterioration in condition and decrease in amenity**.

86. Paragraphs 17 – 20 of Schedule 2, Part 1, Chapter 2 of the Act contains the terms of mobile home agreements implied by the Act dealing with pitch fee reviews as set out at paragraph 7 above. Paragraph 18 (1)(b) says that particular regard is to be had to 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 and 18(1)(c) says particular regard is to be had to any reduction in the services that the owners applies to the site of the pitch or mobile home and any deterioration in the quality of those services insofar as regard has not previously been had to that reduction or deterioration when determining the pitch fee.

87. We are satisfied, both upon the evidence of our inspection and the written and oral evidence of the respondents, that the condition of the mobile home at plot number 15, of the meter cupboard and the stationary vehicle owned by the applicant are evidence of both a deterioration in condition and decrease in the amenity of the site. The occupied pitches are all maintained to a high standard and the home at number 15 stands out like the proverbial sore thumb. The park is in an attractive rural location with outstanding country views but for example, as Mrs Williams told us, she was unable to enjoy these with a disused vehicle previously positioned near her pitch and obstructing her views. The home at number 15 has peeling paintwork and rotten wood. We also accept the evidence of the respondents that the state of the surfacing

of the roads is unsatisfactory and this decreases the amenity of the site. The applicant accepted that resurfacing work needs to be undertaken but could only tell us that this was going to be part of her phase 2 works although there was no timetable for the same. We accept the evidence of the respondents that, for example in the case of the drain grid that is placed above the road surface, that the hole drilled into it is insufficient to enable proper drainage, and we accept that there is pooling of water after heavy rain as a result of the poor road surface. We bear in mind too, that the applicant accepted that in relation to the condition of number 15 and the stationary vehicle, that they did constitute a deterioration in condition and reduction in amenity.

**Paragraph 20 Schedule 2, Part 1, Chapter 2 of the Act**

88. This contains the presumption that the pitch fee is to increase or decrease by no more than the percentage increase or decrease in the CPI calculated as set out in paragraph 85 above, *"unless it would be unreasonable having regard to paragraph 18 (1)"*. In other words, when considering the amount of the new pitch fee then particular regard can be had to the deterioration in the condition and any decrease in the amenity of the site which is occupied or controlled by the owner. In our view, given our findings about the deterioration in the condition of pitch number 15, the meter cupboard and the road, and the associated decrease in the amenity of the site, it would be unreasonable to increase the pitch fee by the CPI percentage increase. We consider that the condition of the road is a serious issue, particularly as this has a daily effect upon disabled occupiers such as Mrs Tedstill, and all users in inclement rainy weather.

89. Accordingly we determine that whilst the electricity for the sewerage treatment plant, the sewerage treatment plant emptying costs and the annual gas tank rental costs can be charged as recoverable costs in the pitch fee (save in relation to those occupiers identified above whose sewerage fees are expressly included in their pitch fee) it would be unreasonable for the pitch fees for this year to be increased by the increase in the CPI percentage.

90. **The revised pitch fees will be the previous pitch fee plus the recoverable costs of £15.07 for the sewerage emptying, £8 for the annual gas tank rental and £36.66 (the £550 divided by 15 for the electricity for the sewerage plant) payable backdated to 1st April 2018. Therefore the recoverable costs to be added will be £4.97 per month (£550 plus £226 plus £120 = £896. Divided by 15 = £59.73, and divided by 12 = £4.97), for those occupiers who do not have sewerage costs included expressly in their pitch fees, and an increase of £0.66 per month for those whose sewage costs are already included in the pitch fee. (The latter cost is £120, divided by 15 = £8, divided by 12 = £0.66).**

**Costs.**

91. Under the Residential Property Tribunal Procedures and Fees (Wales) Regulations 2016, regulation 34, a determination of costs made under the Act must not exceed £10,000. The tribunal's power to make a determination on costs derives from paragraph 12 of schedule 13 to the Housing Act 2004. There are only limited circumstances in which costs can be awarded against a party, relating to failure to comply with tribunal directions (which does not apply to any of the parties in this case) or 12(2)(d), namely if a party has, in the opinion of the tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.

92. The applicant contended in general terms that since she did not receive a response to her letters, and the respondents declined to meet with her, she was left with no option other than to apply the tribunal. In our hearing bundles and indeed at the hearing itself, there were numerous allegations and counter allegations, some of them in intemperate language. The applicant was concerned that occupiers had trespassed in an area of danger near the sewerage treatment plant in order to take photographs of it for this case and had asked the tribunal to make orders in relation to the identity of the photographers (which we declined to do). The applicant however also described that malicious complaints had been made about her to the local council and hoax malicious calls had been made to the local police resulting in searches of the park being made with no criminal activity found. She also said that there had been untruths spread about her and her family and defamatory comments posted about her on social media.

93. The respondents in their statements complained in general terms of feeling intimidated by the applicant, that she refused to meet with them as a group, wanting to meet with them individually and not allowing them to have a third party family member or representative present at meetings with her. Many of the respondents indicated that they had sought to react to the proposed pitch fee increase and denied that they had refused to meet with the applicant. They complained of her inflexibility and it was 'the applicant's way or no way'.

94. Mr Hassall submitted that the applicant could have dealt with this matter in a far more logical manner, she could have booked a room and put her case forward to all of the residents and that submitting 11 separate applications to the tribunal was intimidating. He submitted that the applicant was being unreasonable and possibly vexatious. He was highly critical of the applicant's poor communication and felt that improved communications was the main thing to work upon.

95. The applicant said she had picked up upon the point that she should have called a meeting and said that she had never been invited to a meeting of the Residents Association and it was her belief that the pitch fee increase notices should be addressed to occupiers individually not collectively and she was seeking to respect the respondents' privacy. She stressed that she had sought legal advice and felt that

she had no alternative but to apply to the tribunal, but she had incurred legal costs in doing so.

96. As previously indicated, the tribunal does not consider it necessary for the purposes of determining the pitch fee review process, to examine and definitively rule upon the various allegations and counter allegations of who said and did what, about meetings and other matters. However, we are satisfied for the purpose of considering whether a costs order should be made, that none of the parties has acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings. All of the parties conducted themselves in exemplary fashion at the hearing (despite their long held differences of opinion). We do not agree with Mr Hassall, that the applicant was being unreasonable or vexatious by issuing a large number of applications. Whilst the applicant has taken legal advice, she is a litigant in person doing her best to advance her case. Likewise, there is nothing in the respondents' conduct of the proceedings that would come close to the factors required before a costs order could be made. Accordingly there are no grounds to make a costs order against either party.

97. We do agree with Mr Hassall's submissions regarding communication. We are satisfied that, although the applicant may have been seeking to respect the individual privacy of occupiers in wanting to see them on their own, this policy is misplaced and has caused considerable avoidable anguish for the occupiers. If the occupiers wish to discuss matters at a Residents Association meeting with the applicant and in so doing to waive their individual rights to privacy, then that is a matter for them. We recommend to all of the parties that they in effect, wipe the slate clean and start from scratch in terms of their communication and trust with each other. There is currently considerable mistrust and poor communication. For example, the applicant threatening criminal action against Mr and Mrs Tedstill for installing a small ramp to enable wheelchair access to their pitch is in our view entirely misplaced and disproportionate and will inevitably engender mistrust and hurt. Likewise, although we did not see evidence of the same, if there have been social media posts critical of the applicant then this too is unlikely to be conducive to building a positive relationship. That is not to say that genuine grievances or disagreements upon both sides should not be aired, but it should be possible to do so in a constructive and mature fashion.

DATED this 23rd day of April 2019

Richard Payne
CHAIRMAN