FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/00HE/PHI/2019/0037
Property	:	49A St Dominic Park Harrowbarrow Callington Cornwall PL17 8BN
Applicant	:	Wyldecrest Parks (Management) Limited
Representative	:	David Sunderland Estates Director
Respondent	:	Anthony Turner and Alex Dexter and the Respondents listed in the Schedule
Representative	:	Anthony Turner for himself and the other Respondents listed in Schedule 1 excluding Mrs Wilson (No 62)
Type of Application	:	Pitch Fee Review
Tribunal Members	:	Judge C A Rai (Chairman) Robert Brown FRICS Chartered Surveyor Michael Woodrow MRICS Chartered Surveyor
Date and venue of Hearing	:	17 April 2019 Bodmin Law Courts Launceston Road Bodmin Cornwall PL31 2AL
Date of Decision	:	16 May 2019

DECISION

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1. The Tribunal orders that the pitch fees for the Respondents be increased by 3.4% from the 1 September 2018.

2. The reasons for its decision are set out below.

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Background

3. Jeff Small of JB & J Small Park Homes made an application, dated 27 November 2018, (the Application), to the Tribunal to determine the new Pitch Fee payable from 1 September 2018, the pitch fee review date, for 49A St Dominic Park, Harrowbarrow, Callington, Cornwall.

4. Prior to the Application a notice of increase together with a Pitch Fee Review Form, in a form compliant with the Mobile Homes (Pitch Fees) (Prescribed form) (England) Regulations [SI 2013/1505] had been sent to the Respondents.

5. On 9 January 2019, following a telephone conversation with the Tribunal office, David Sunderland emailed the Tribunal office and confirmed that the Applicant had completed the purchase of St Dominic Park, Harrowbarrow, Callington, Cornwall, the "Park", on 21 December 2018 and was now the "Site Owner". Mr Sunderland said that he understood that 52 applications had been made to the Tribunal relating to the Park and requested his email be treated as an application under rule 10(3) of The Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 [SI 1169]. "the Rules", for the substitution of the Wyldecrest in place of the original applicant JB & J Small Park Homes.

6. The application was acknowledged and Judge Tildesley OBE, issued Directions dated 25 January 2019 [D1]. The Directions confirmed that the Application had been made within the statutory time limit and that the Tribunal intended to determine the Application without a hearing. The Respondent was directed to provide a signed statement of case, signed witness statements and copies of all documents on which it relied. The Applicant was directed to reply to the Respondent's statement and provide a bundle of documents to enable the determination to be made. Time limits for compliance by the parties with its Directions were stated.

7. On 31 January 2019 Anthony Turner, applied to the Tribunal to vary the Directions [D1]. He confirmed that as well as being a Respondent he also represented many other respondents and sought details of the names of the respondents to all applications originally made by JB & J Small Park Homes in respect of the Pitch Fee Review on the Park.

8. Directions dated 4 February 2019, [D2], were issued by Judge Tildesley OBE granting the application and providing Mr Turner with a list of the other respondents. The Directions, [D2], required that Mr Turner provide written authority from those respondents he represented.

9. On 11 February 2019 Judge Tildesley OBE issued Directions, [D3] in response to further applications from Mr Turner dated 4 February 2019 and 5 February 2019 to vary the Directions,[D1]. He requested an inspection of the Park and an oral hearing. He said that the Respondents believed that they would be able express their positions better as witnesses than by way of paper statements. Mr Turner stated that letters issued by the Applicant to some Respondents to the applications were intended to coerce them into making payments of the increased amount by referring to the differences between the old pitch

fee and the increased pitch fee as arrears. Copies of two letters, one undated and one dated 30 January 2019, both of which had been sent from the Accounts Department of the Applicant were attached. The second letter suggested that a penalty charge would be made if further letters were issued chasing the arrears and referred to a schedule of charges. Mr Turner asked that the Tribunal dismiss the Application on the grounds of contempt for the procedures or that the Applicant be directed to provide a list of all Respondents who had been sent letters similar to those he had produced. Copies of these applications were attached to the Directions, [D3], and the Applicant was directed to respond.

10. On 6 February 2019 Mr Turner sent a letter to the Tribunal which questioned the "bona fides" of the Applicant stating that there was no current licence enabling the Applicant to operate the site. He requested that the Tribunal satisfy itself as to the legal position before moving further with the Application.

11. On 8 February 2019 Mr Turner sent a further application to vary the Directions, to which he attached an email from Cornwall Council which stated that whilst an application for the transfer of the site licence had been made, it remained pending. He suggested that the email implied that the site licence would not be transferred to the Applicant and for that reason Wyldecrest was not entitled to conduct the pitch fee review and seek increased pitch fee payments from the Respondents.

12. On 12 February 2019 the Applicant sent the Tribunal 7 applications, by named respondents, to withdraw from the proceedings.

13. On 14 February 2019 the Applicant sent its response to the Directions, [D3]. It denied that the letter dated 30 January 2019 was sent to any Park residents who were Respondents to the proceedings. The copy provided by Mr Turner had been sent to residents who were not Respondents. It denied the allegation that the Applicant had showed contempt for the Tribunal procedures and said no evidence had been supplied to support the allegation. It suggested that Mr Turner did not represent a large number of the occupiers of the Park and that he was not entitled to sign letters representing himself as Chairman of the Park Residents Association. Mr Sunderland also implied that the Association is not a Qualifying Residents Association under the Act. He confirmed that the application for the transfer of the site licence had not been refused but was being processed; the delay did not affect Wyldecrest being treated as the Park owner from the date of the transfer. He also suggested that Mr Turner's Application was founded on unreasonable allegations, made without evidence, legal advice or argument and was vexatious and that the Tribunal should give consideration to making a costs order and an order that the Respondent be restricted to acting in compliance with Tribunal Directions.

14. On 18 February 2019 Judge Tildesley OBE issued Directions, [D4], consenting to the withdrawal of 7 Respondents.

15. On 15 February 2019 Mr Turner, in response to the Applicant said that he had always complied with the Tribunal Directions also made other points not relevant to this determination.

16. On 19 February 2019 Judge Tildesley OBE made further Directions, [D5], in which he stated that in the absence of evidence of coercion of any of the remaining Respondents he would not direct the Applicant to provide a list of those who had received letters. He directed that the Applicant send any further correspondence regarding the pitch fees to Mr Turner if he represented the occupiers to whom the correspondence was addressed. He attached a list of the occupiers represented by Mr Turner. He directed that he was satisfied with the explanation made by the Applicant regarding the transfer of the site licence and that the Application could proceed to a hearing and he directed the parties to provide the Tribunal with dates to avoid.

17. On 19 February 2019 Mr Turner made a further application to the Tribunal seeking an order that the Respondent provide clear documentary evidence as to the ownership of the Park.

18. Judge Tildesley issued further Directions on 19 February 2019, [D6]. He issued Directions with revised dates which recorded that, since the commencement of the proceedings, he had received a range of applications from the parties, almost on a daily basis, as a result of which his patience was at an end; he directed that no party should make any further applications excepting any which directly impacted upon bringing the proceedings to a hearing: He also directed that:-
    - **a.** Mr Turner was entitled to represent all the remaining Respondents save for the four occupiers of 33, 58, 62 & 66 St Dominic Park;
    - **b.** Communications with all occupiers represented by Mr Turner should be sent to him;
    - **c.** The status of the Residents Association was irrelevant in relation to the current proceedings;
    - **d.** Mr Turner was not able to provide a "without prejudice" statement of case and must resubmit it without that reference and within the stated timescale; and
    - **e.** The precise arrangements regarding ownership of the Park were not relevant to the Application as the original applicant had consented to the substitution of the Applicant in the proceedings and the Tribunal had received satisfactory evidence that the site licence had been transferred to the Applicant.

19. Directions, [D6], were sent to the parties on 20 February 2019 and both parties sent further submissions to the Tribunal. Mr Turner replied to the Applicant's Response to Directions,[D3], on 21 February 2019.

20. On 22 February 2019 the Applicant applied to vary the Directions, [D5], on the grounds that the Park Residents Association was not a Qualifying Residents Association within the Act and also suggested that the membership list for the Association was fraudulent.

21. On 24 February 2019 Mr Turner responded to the Applicant's Application dated 22 February 2019.

22. On 26 February 2019 Mr Turner responded to the Applicant's Application dated 25 February 2019.

23. On 25 February 2019 the Applicant made an application for an Order that the Respondent's statement of case be struck out or that he removed all references to "without prejudice" and that this be done within 14 days.

24. On 14 March 2019 the Applicant applied for an Order that the Respondent would not be entitled at the Hearing to rely on (i) any documents not provided to the Applicant in accordance the Directions [D1], and (ii) evidence of "witnesses" for which no witness statement, compliant with those Directions, had been served.

25. In a letter dated 29 March 2019, sent to the parties on that date, the Tribunal notified the parties of the Hearing date time and venue.

26. The Respondent replied to the Applicant's last application on 4 April 2019.

27. The Tribunal notified the Applicant that Judge Tildesley OBE having considered its application dated 14 March 2019, had decided it should be dealt with as a preliminary point prior to the commencement of the hearing.

28. A bundle was provided by the Applicant for the use of Tribunal at the Hearing but although pages are numbered, the numbering is not continuous and therefore references used in this decision may be to page numbers within particular sections.

The Inspection

29. The Tribunal members attended the Inspection. Mr Turner was present but did not accompany the Tribunal members on their inspection of the Park. Mr Sunderland was present and accompanied the Tribunal with Mr Morwell Naeve, Mr Biddick and Mr Dexter. The Tribunal members were shown the main road within the Park, the boundary/bank at the top of the Park on which trees appeared to have recently been cleared or lopped, two banks evidencing settlement or slippage situate above different pitches. They also were given access through locked gates to the sewerage plant. They saw the electricity meter boxes. Mr Cordier showed Mr Woodrow and Mr Brown a new path which he had laid at the back/top of his pitch.

30. Following completion of the inspection Judge Rai spoke to Mr Sunderland and Mr Turner together and informed them that she wished to speak to them both before the commencement of the Hearing.

The Hearing

Preliminary matters

31. In a meeting between the Tribunal and Mr Sunderland and Mr Turner before the Hearing, Judge Rai reminded both of the number of applications to the Tribunal each had made on behalf of the Applicant and Respondent after the date of the original Application and before being notified of the Hearing Date. Mr Sunderland said that although 26 current applications to the Tribunal relating to the pitch fee review were outstanding, the Hearing only related to the application made in respect of 49A St Dominic Park for which Mr Turner and Mr Dexter were Respondents. The case reference number for the Hearing is specific to that case. It was the only application set down for a hearing.

32. Judge Rai accepted that although the Tribunal had clearly intended to join all the applications relating to St Dominic Park, the multiplicity of other applications made by the parties had apparently diverted it from so doing. That omission could be corrected before the commencement of the Hearing. It was agreed that the 25 other current respondents would be joined as Respondents to these proceedings. It was established that Mr Turner represented all the joined respondents save for Mrs Wilson of 62 St Dominic Park. Mr Sunderland agreed to check his records and to confirm that he agreed with those listed as Respondents after the Hearing. Judge Rai agreed to request confirmation of the names of the Respondents to be joined at the beginning of the Hearing so any Respondents present at the Hearing could confirm if they still wished to be joined into the proceedings.

33. It was also agreed, that as recorded in the Application, the date of the last pitch fee review, prior to that to which the Application relates, was 1 September 2015. The Application relates to the pitch fee review due on 1 September 2018.

34. Judge Rai told both parties that she was aware of the previous decision made in February 2013 by the Residential Property Tribunal, relating to the pitch fee increase due on 1 September 2012 at the Park, and that it had found that there had been decrease in amenity. The pitch fee increase in 2012 was less than it would have been had the relevant RPI increase been applied to calculate that review. Both she and Mr Woodrow had been members of that Tribunal. She explained to Mr Turner that any evidence in his statement which related to alleged loss of amenity for the years preceding 1 September 2012, to which that decision related could not be taken into account again because of paragraph 18 (aa) of Chapter 2 of Part 1 of Schedule 1 to the Act and on that basis she did not want Mr Turner to present any evidence about alleged losses of amenity occurring before that date.

35. The Tribunal also asked Mr Sunderland to agree to any Respondent present at the Hearing, who had expressed a wish to do so, making an oral statement. Judge Rai explained that although written witness statements had not been provided to the Applicant and oral submissions could not be treated as evidence because Mr Sunderland would have no opportunity to cross examine the person making the statement, the Tribunal considered it appropriate for any Respondent, attending the

Hearing, to be given the opportunity to address it. Mr Sunderland agreed to the request and asked if Mr Morwell Naeve could also address the Tribunal, to which both the Tribunal and Mr Turner agreed.

36. Finally Judge Rai asked Mr Sunderland if he still wanted the Tribunal to deal with his last application, dated 14 March 2019, as a preliminary issue; Mr Sunderland confirmed he did not.

37. Judge Rai also explained she was very keen to conclude the oral Hearing that day as it was in the interests of both parties, taking into account the age and mobility of some of the Respondents and that Mr Sunderland had travelled a considerable distance to attend. Both parties agreed to co-operate with the Tribunal to assist it in achieving that objective.

38. At the beginning of the Hearing Judge Rai explained to the parties and those present that following preliminary discussions between the Tribunal, Mr Sunderland and Mr Turner, it had been agreed that all the respondents currently represented by Mr Turner would be joined into the proceedings as Respondents; together with Mrs Wilson, No 62 who was the only other respondent to an application before the Tribunal for the review of a pitch fee on the Park. [It is noted that although three other Respondents were not represented by Mr Turner when Judge Tildesley OBE made Directions [D6] it appears that the occupiers of 33, 58 and 66 were represented by him on the date of the Hearing].

39. She said it was clear that Judge Tildesley OBE had intended to join all the current cases with the Application made in respect of Mr Turner and Mr Dexter's pitch fee but had been diverted from so doing by the number of other applications submitted to him by Mr Turner and Mr Sunderland between 27 November 2018, (the date of the Application) and 29 March 2019 (the date the Tribunal notified the parties of the date of the Hearing). Both parties had agreed to the applications being consolidated and determined collectively by the Tribunal on the basis of the evidence provided in the Bundle and at the Hearing.

40. Judge Rai directed that 25 other Respondents cases be consolidated with the Application to be heard which related to Mr Turner and Mr Dexter in accordance with Rule 6(3) of the Rules.

<u>The evidence and submissions</u>

41. Both parties also confirmed that it was agreed that the notice of increase in the pitch fees was made in compliance with the Act.

42. Mr Turner said that whilst all the Respondents had received the notice of increase, none had responded or indicated their disagreement to the proposed increase because the Smalls, the previous Park owners were at that time well aware of all their complaints regarding their collective dissatisfaction with the way the Park was maintained so there was no need to respond. He said that the Smalls, historically, had never responded to correspondence. Following the transfer of the Park the Applicant had written to all the residents.

43. Mr Turner had apparently offered to agree a 1% increase in the pitch fee albeit on a "without prejudice" basis. Mr Sunderland said that Mr Turner's offer was for the Respondents to pay the increase from 1 January 2019, and not from the date of the pitch fee review, (which was 1 September 2018). He interpreted that as an attempt to change the pitch fee review date. Mr Turner denied this. Whatever the basis of the offer, it had been subsequently withdrawn.

44. Mr Turner stated that the current Applicant was not entitled to receive any increased pitch fees relating to a period prior to it becoming owner of the Park as this part of the pitch fee, if due, should have been paid to the previous owner.

45. The Tribunal explained that it was for the Respondent to persuade the Tribunal to depart from the presumption that the Applicant is not entitled to a pitch fee increase in accordance with the increase in RPI and referred Mr Turner to paragraphs 18 and 19 of Chapter 2 of Part 1 of the Schedule to the Act. The Tribunal told him that he needed to explain what deterioration had taken place and referred him to paragraph 18 which would enable him to refer to any deterioration in the condition and any decrease in the amenity since the date on which the paragraph came into force but only in so far as it had not already been taken into account previously. [The amendments to the Act came into force on 26 May 2013].

46. Mr Turner referred to the sewerage plant. The bundle contains a copy of an email from Jeff Small dated 22 May 2017. The plant was due to be replaced in January 2018. His agents RED had apparently made an application for planning permission. The plant is not functioning properly and the disrepair is of concern to all the residents on the Park.

47. Later in the Hearing it was suggested that the Applicant had not been told about the ongoing problems with the sewerage plant and that the previous owner may not have disclosed the correspondence between its agent and Mr Turner.

48. Mr Turner referred to the newsletter, a copy of which is at pages 71 – 72 of the bundle. He said this was evidence that the residents of the Park had been working together to improve the appearance of the Park. Mr Turner said that if residents themselves carry out maintenance works it saves costs for the Park owner.

49. He referred the Tribunal to emails at page 75 of the bundle which he said identified the maintenance issues raised with the previous owner's agent. [Page 75 is a copy of an email from Mr Turner to Graham Payne (RED) dated 24 July 2017 in which he refers to water consumption, reconciliation of the sewerage charges against advance payments and outstanding ground works.]

50. Mr Turner also described the Applicant writing to residents inviting them to settle the pitch fee review, which letter also implied that Wyldecrest would make an application for an award of costs if they failed to settle, as a threat. A copy of a letter undated and redacted, as to the

name of the recipient, had been emailed to the Tribunal by Mr Turner on 4 February 2019. It came from the accounts department of Wyldecrest Parks but the address for correspondence was Shelfside (Holdings) Ltd in West Thurrock. The registered office for the Applicant was shown in the footer to the letter as Harrow in Middlesex. Mr Turner referred to the threat as "coercive control". [A copy of similar letter is at page 52 & 53 of the bundle].

51. Mr Turner stated that notwithstanding the starting point for a review of the pitch fee is the change in RPI since the date when the pitch fee could last have been reviewed, other factors than those referred to within the Act, can influence the Tribunal when determining the review.

52. Mr Sunderland said the Pitch Fee does not include payment for services and referred the Tribunal to paragraph 29 of Chapter 2 of Schedule 1 of the Act; which is the interpretation clause which defines "pitch fee" as **"the amount which the occupier is required by the agreement to pay the owner for the right to station the mobile home on the pitch and for 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"** [Tribunal's emphasis].

53. Mr Sunderland maintained that no evidence of any reduction in amenity since the last pitch fee review had been provided by the Applicant. He said that any works undertaken in December of 2018 could not have been done in anticipation of the current hearing. The Tribunal can only take account of the condition of the Park on the day it inspects.

54. Mr Sunderland said that Cornwall Council has not issued notices to the owner regarding the sewerage system and that the problems with the sewerage system do not impact on the amenity of the Park. He referred to the Kenyon case and distributed copies of the case to the Respondent and the Tribunal. In that case Martin Rodger QC, Deputy President of the Upper Tribunal, had stated that the presumed increase should only be displaced by "weighty issues". He also referred to the decision in Scatterdell Park.

55. Mr Sunderland said that if improvements are carried out following an appropriate consultation, these could be translated into pitch fee increases. He said no evidence had been provided which demonstrated a reduction in the amenity of the Park. General maintenance has been carried out.

56. Some of the Respondents made statements which are summarised below:-

    a. **Michael Butler, (No 75),** said that he had received a letter giving notice of the 3.4% increase and then a letter from the Applicant threatening a costs application if he did not agree. He is unhappy with the procedure.

b. **Mary Martin, (No 42),** said that she has lived on the Park for ten years. She considers herself to be a "vulnerable old lady" who is "up against" a vast organisation; she referred to it as a "wheeze to make money". The majority of the residents don't want to encounter troublemakers. Threats have been made against Mr Turner. The reason she won't pay the increase is that Wyldecrest are letting down the residents. [She came across as genuinely feeling threatened by the letters received from Wyldecrest.]

c. **Derek Cordier, (No 43),** has lived on the Park for 22 years. He said that there had been various changes in ownership. The Smalls took over in 2008 when the park was "OK". The Residents Association was formed in 2010. It has always been a Qualifying Association. No regular maintenance was carried out by the Smalls; they had no dedicated workforce but used "random" contractors from time to time. Residents always supported Mr Turner. Maintenance was never good. He believes that the cost of this maintenance is included in the Pitch Fee. The Smalls employed RED whose workers were engaged for one day a fortnight. One of the residents cut most of the grass. Tree surgery was carried out on 21 December 2018. There has been very little regular site maintenance for years. The residents have always undertaken it themselves. They are not coerced into doing this.

d. **Colin Biddick, (No 70),** has lived on the Park since 2007. When the Smalls took over it went "downhill". The sewerage system needs regular checks which have not recently been undertaken; the residents have themselves tried to deal with subsidence. RED were not good. The Residents Association do everything legally and those Respondents represented by him are 100% behind Mr Turner.

e. **Deb Lyon, (No 78),** moved on to the Park during the summer of 2012. Her reasons for not agreeing to the increase are broken promises relating to the slippage which has worsened over the years. This is impacting on her pitch and garden and she is fearful of the consequences if the ground collapses. The Park is not kept in good order. Mr Morwell Naeve cuts verges and grass. He gives a great deal of his own time to assist with improvements in the Park. The Trees need attention . The meter sheds are in very poor condition. The main box is rotting. It has never been repaired or improved. Residents are concerned about the loss of amenity areas and the Wyldecrest reputation combined with a fear of change.

f. **Sisters, Yvonne Edgerton and Sylvia Crossley, (No 71),** have lived on the Park for 12 years. Their home is above the slippage. They fenced their pitch. They had been told that Mr Morwell Naeve was obtaining estimates for remedial work but the Park has been sold.

g. **Sheila Tarrant, (No 32),** has lived in the Park for 30 years. She said that the changes are "horrendous". The maintenance of the

sewerage plant is very important; it is the major issue. There are other lesser niggles. She considers that the Wyldecrest letters are threatening. Residents are being bullied and feel neglected.

57. Sonia McCall wanted to speak. She explained that she was not a resident but from the Park Home Owners Justice Campaign. Mr Sunderland objected so she was not heard.

58. **Colin Morwell Naeve** spoke explaining that he is resident on the Park, but not a Respondent. He said he was the park manager having taken over in 2017. He checks the sewerage plant daily. At the beginning of 2018, following a meeting with RED, it was agreed a replacement was needed. The Environment Agency had investigated sludge discharging downstream by putting dye into the system but it came out well beyond the fence which indicated that the discharge in the stream had not come from the sewerage plant. He said the plant is unpleasant and has been vandalised. Cleaning it is difficult. He was annoyed when the sale was announced. RED had misled him. He is aware that surveys and preparatory work had been undertaken by RED which he understood to have been in anticipation of the replacement of the sewerage plant. He believes that Wyldecrest did not know that the system was defective when it bought the Park. Their area manager has recently visited the Park and pump engineers are scheduled to visit. He considers that two new holding tanks are needed. The two existing tanks both leak into the filtration bed.

59. He produced the newsletters during the Smalls ownership. He was assisted by friends. He was harassed by some Park residents when carrying out maintenance work. He has removed trees and replanted hedges and trees. He cannot work during July because it would disturb nesting birds. He wants improvements to the Park to be made. A quotation was obtained by RED for the repair to the subsiding bank. It will cost between 10 – 25 thousand pounds. He does not believe that Wyldecrest has seen the quotation. The electric houses will be repaired eventually. Wyldecrest did not undertake a property survey.

60. In response to a comment from Sheila Tarrant who questioned if Mr Morwell Naeve was the "Park Manager" Mr Sunderland said he did not want to give him a "title" because on site mangers get abused. He referred to Mr Morwell Naeve as an unpaid armchair manager who looks after the Applicant's interests. He does what is asked of him. His letters are received with hostility and some residents will not converse with him. It is a difficult Park which has been neglected for years. He said Wyldecrest is not comparable to the Smalls. He supports Mr Morwell Naeve who relays information to him. He is very concerned by the way some residents treat him. Residents should speak directly to him. He said he wanted to make improvements to the Park

61. Mr Turner said that some of what has been said is untrue. The Residents Association was properly constituted in 2010 and he is Chair. He is well supported by the residents and has advised residents on this Park and on others, without charging them. The Association holds regular meetings, residents participate in considered discussions and examine

all options. No contrary evidence has been put forward. His aim is to protect the residents. He works across a number of parks and the problems this Park has with the site owner is common.

62. Mr Sunderland reminded the Tribunal that:-
   a. The Respondents are unhappy but they have not made submissions which are sufficient to displace the presumed increased in pitch fee which is in accordance with the mechanism set out in the Act.
   b. General malaise is not a legal reason to depart from the presumption of a RPI increase. No evidence has been supplied of a reduction in the amenity of the Park.

63. Whilst he accepted that the condition of the Park is poor, it is the same as it has been in previous years and has not deteriorated. It was open to the Respondents to make the Tribunal application but none did. He referred again to the Kenyon case in which the Judge stated that "weighty matters" had to exist to displace the presumption of a RPI increase in the pitch fee.

64. Mr Turner said the Applicant's only justification for the increase is the statutory presumption. Account should be taken of other factors. In his written statement he suggested that it would be appropriate to infer guidance from the Landlord and Tenant Act definition of reasonableness applicable to determining if service charges payable to a landlord are in respect of reasonable costs. [He had referred to section 19 of the Landlord and Tenant Act 1985]. He did not explain why it would be possible to apply that interpretation to the wording within the Act but just suggested that it was a factor to which the First Tier Tribunal might take account. He also said that although payment of the pitch fee is a contractual obligation it is not an absolute requirement to pay. If the Park Owner has omitted to comply with his obligations the occupier must be entitled to break the contract and pay less on account of that breach or non-compliance. He referred to the contractual right of "set off", suggesting that the occupiers were entitled to set off breaches by the Park owner against payment of their pitch fees and that the Tribunal should consider awarding them compensation. Cleaning the Park and tidying it up would not compensate for failings in maintenance which existed since 2010. The failing sewerage plant is the most fundamental issue.

65. He also referred to the case of <u>Charles Simpson Organisation v. Martin Redshaw</u> but provided an incorrect reference to the case and no copy.

66. He also mentioned the Wyldecrest schedule of charges, set out in a letter at page 42 of the bundle which he said could add 2% to the Pitch Fee. He was referring to the charge of £2.50 for a cheque payment. He suggested that a resident could pay 16 separate charges if they paid monthly pitch fees and quarterly service charges by cheque.

67. Mrs Wilson, (No 62), was not present at the Hearing. She has not provided a written statement of her case and the Tribunal has received no evidence from her as to why she did not agree to the pitch fee review.

The Law

68. The relevant legislation pertinent to this application is reproduced in Schedule 2. The definition of pitch fee in paragraph 27 of Chapter 2 of the Schedule to the Act has been reproduced in paragraph 52 above.

69. Both parties referred to case law but only Mr Sunderland provided the tribunal with a copy of **Wyldecrest Parks Management Ltd v Kenyon and others [2017] UKUT 28 (LC**), (the Kenyon case) Reference was also made to the **Britaniacrest Case v Bamborough and another [2016] UKUT 144 (LC)** (the Britaniacrest Case) and the case of **Vyse v Wyldecrest Parks Management Ltd [2017] UKUT 24 (LC)** (Scatterdell Park).

70. It is worth noting that decisions in the Kenyon Case and Scatterdell Park, although made by different judges, were made at very similar times and each judge was able to read the others preliminary judgement prior to issuing their own judgement.

71. In the Kenyon Case Martin Rodger QC, Deputy President of the Upper Tribunal (Lands Chamber) considered what questions should be asked when implementing a pitch fee review and identified three. He explains this in paragraphs 32 and 33 of his judgement.

72. The Act states that a pitch fee will be reviewed annually as at the review date. (Paragraph 17(1)). It can only be changed with the agreement of the occupier or if the Tribunal makes an order determining the amount of the new pitch fee. (Paragraph 16). Either the occupier or the owner can apply to the Tribunal. The Act provides time limits. Although in this case the parties agree that the procedure set out in the Act was followed correctly and the application made by the previous owner was in accordance with the Act, it is appropriate to refer to the relevant procedure should an occupier wish to make an application to the Tribunal, since it impacts on the content of the Respondent's statement of case.

73. That procedure is set out in in paragraphs 17(4) and 17(5) of the Act. The occupier may make such an application at any time after the end of the period of 28 days beginning with the review date....so in relation to these proceedings after the **29 September 2018**....but no later than three months after the review date so before **2 December 2018.**

74. Paragraph 20(1) states the presumption that the pitch fee will increase or decrease by a percentage which is no more than the percentage change in the RPI since the last review date. During the 12 month period applicable to this review the RPI had risen by 3.4% and this is the increase which the Application seeks should be applied to the existing pitch fees to determine the new pitch fees.

75. Paragraph 18 sets out the factors to which "particular regard" must be had when determining the amount of the new pitch fee. The pertinent part of the paragraph is (1)(aa) ...... "any deterioration in the condition, and any decrease in the amenity, of the site or any adjoining land which is occupied or controlled by the owner <u>since the date on which this</u>

paragraph came into force (in so far as regard has not previously been had to that deterioration or decrease for the purpose of this sub-paragraph)". The Tribunal can take account of improvements carried out since the date of the last review and also (ab) "....any reduction in the services that the owner supplies to the site, pitch or mobile home, and any deterioration in the quality those services, since the date on which this paragraph came into force (in so far as regard has not previously been had to that deterioration or decrease for the purposes of this sub-paragraph)". [The underlining is the Tribunal emphasis].

76. The decisions in the Kenyon case and Scatterdell Park both refer to it being possible for the Tribunal to take into account other factors which are "weighty factors". The cases, despite exploring the extent of the provisions of the Act and its limitation, also stress that the amendments to the Act were intended to bring stability and certainty to those pitch fee reviews which cannot be determined between parties by agreement.

Reasons for its Decision

77. This Application was made because the Applicant seeks to increase the pitch fee by 3.4% being the applicable increase in the retail price index (RPI) since the last pitch fee review date. The Respondent disagrees and seeks a reduction of 1% in the pitch fee. The Respondents have not explained in detail why they disagree with the increase save but to suggest that there has been a deterioration in the condition of the Park and a decrease in amenity. The reasons put forward in the Respondents written statements are summarised below:-
    a. The timing of the Application was intended to disadvantage the Respondents because the original site owner sold the site which interfered with the Respondents making an application;
    b. The condition of the Park has deteriorated and/or the amenity of the Park has decreased;
    c. The agreement to pay pitch fees is contractual and the Applicant has breached the contract by not maintaining the Park properly or at all; and
    d. The Tribunal can take into account factors other than those set out in the Act and should do so in this case.

78. The Respondents, did not make an application to the Tribunal after receiving notice of the pitch fee increase. Mr Turner said that had the premises not changed hands, the Respondents would have applied for a reduction in the pitch fee. His amended statement of case, [Pages 1 – 13, immediately after the divider between the Applicant's documents and the Respondents documents, in the Bundle], states that the proposed increase is unjustified and that we seek a reduction in the prevailing fees of 1%. [Pages 1-2]. "We ask the Tribunal to note that had the premises not changed hands and the Application retained by the former ownership, we would have made a counter-application for a reduction in the same sum of 1% and we do not accept that the change in ownership makes any material difference to that position".

79. However on the basis of the evidence before it, not disputed by Mr Turner, the Park was transferred to the Applicant in late December. Had the Respondents wished to challenge the review and apply to the

Tribunal they would have to have made an application **before the Park** was transferred to the Applicant. For those reasons the Tribunal does not accept Mr Turner's submissions regarding a Respondent application carry any weight.

80. Mr Turner has sought to demonstrate that there has been deterioration in the condition of the Park and a reduction in the amenity on account of:-
    a. Neglect and a failure to maintain the condition of the Park because of the site owners omission to carry out regular maintenance;
    b. Failure to keep the sewerage system working satisfactorily; and
    c. Failure to address subsidence in at least two identified areas of the Park which have resulted in some residents becoming and remaining fearful that their pitches and homes may suffer consequential damage.

81. Although, save for that provided by Mr Turner, no written statements were supplied by other Respondents, oral statements made by several Respondents during the Hearing demonstrated to the Tribunal that letters sent to them by the new Park owner upset them. Some felt threatened notwithstanding that the letters may have been in a "standard" form and were sent after the date of the Application. All agreed that the condition of the Park had deteriorated over a period of years but mostly during the period it was owned by the previous owners, the Smalls.

82. RED, (Real Estate Director Limited), the company appointed by the Smalls to manage the Park, do not appear to have carried out regular maintenance. According to Mr Morwell Naeve, who at the invitation of the Applicant, also made an oral statement at the Hearing, RED misled him in relation to its promise to carry out renewal or repairs to the sewerage plant.

83. Copies of emails exchanged between Mr Turner and Cornwall Council in September 2018 have been included within the bundle. However these postdate the notice of increase. There is no survey of the condition of the sewerage plant or indeed any material evidence as to its condition when the Act was amended and the current sections came into force. Furthermore, as admitted by the Respondent, a previous decision of the Tribunal in 2013 allowed a downward adjustment to a proposed RPI pitch fee increase in reliance upon a decrease in amenity. Regard cannot be had to those deteriorations or decreases again since all subsequent pitch fee reviews would have reflected that reduction.

84. Mr Turner did not put forward arguments attempting to distinguish between the deterioration or decreases which the previous Tribunal took into account when making the 2013 decision. The amendments to the Act came into force on 26 May 2013.

85. Instead he referred to the fact that the Tribunal is entitled to have regard to other factors and is not restricted from only having regard to the factors particularly set out in paragraph 18 of Chapter 2 of the Schedule to the Act.

86. In response Mr Sunderland referred to the Kenyon case, and stated that Martin Rodger QC Deputy President of the Upper Tribunal had referred, in that case, to the fact that the presumption that a pitch fee would increase in line with RPI should only be set aside by a weighty factor. He suggested although he accepted that the Park was not in a well maintained condition, that condition had not changed for many years on account of the identified neglect. Therefore no evidence of deterioration in the condition or a decrease in amenity or another weighty factor which the Tribunal should take into account had been provided which might have enabled it to depart from the presumed increase linked to the change in the RPI.

87. He also mentioned that the Respondents had made no applications themselves, nor actually responded to the notice of increase or explained why they were not prepared to agree to it.

88. In the Britaniacrest Case the Tribunal identified that the statutory framework for pitch fee review is shaped by three basic principles.
    a. Pitch fees may be reviewed annually;
    b. Pitch fees cannot be changed unless the change is agreed or unless following an application, the FTT "considers it reasonable for the pitch fee to be changed", and makes an order determining the amount of the new pitch fee;
    c. Unless it would be unreasonable, having regard to the factors set out in section 18(1), there is a presumption that the pitch fee will change by no more that the percentage fluctuation in RPI since the previous review date (20(A1)).

89. In that case, the Tribunal made it clear that whilst the factors set out in paragraph 18 must be taken into account in every case these are not the only factors which might be relevant to a change in the pitch fee. The presumption of the change being limited to an increase or decrease in line with RPI might be displaced.

90. In the Kenyon Case the Tribunal stated that pitch fee review provisions give rise to at least three questions:-
    a. The pitch fee can only be changed if the appropriate judicial body " considers it reasonable for the pitch fee to be changed". (paragraph 16(b));
    b. What was the status of the factors set out in paragraph 18(1) to which "particular regard" is to be had?
    c. What is the relationship between paragraphs 16(b) and 18(1)?

91. What that Tribunal was exploring is, starting with the presumption of a RPI increase, how strong was it and in what circumstances should other factors displace or rebut it.

92. The Tribunal also considered Judge Alice Robinson's decision in Scatterdell Park, which appeal was heard following the appeal in the Kenyon case but which decision Martin Rodger had already read before he issued his decision in that case in which he particularly drew attention to two of her considerations. She had said that, although the First Tier Tribunal may not alter the amount of a pitch fee unless it considered it to be reasonable to do so, the issue of reasonableness was not of itself a consideration for the Tribunal. "It is not open to the FTT simply to decide what it considers a reasonable pitch fee to be in all the circumstances. Reasonableness has to be determined in the context of the other statutory provisions".

93. The second of Judge Alice Robinson's considerations offered guidance in relation to the relative weight to be given to the RPI presumption when weighing it up against any other factors which could be taken into account in determining the pitch fee increase. In paragraph 50 of her decision, Judge Alice Robinson said that for the RPI presumption to be displaced the other consideration must be of considerable weight. "If it were a consideration of equal weight to RPI then, applying the presumption, the scales would tip the balance in favour of RPI. Of course it is not possible to be prescriptive as to precisely how much weight must be attached to an "other factor" before it outweighs the presumption in favour of RPI".

94. Applying the statutory requirements and also having regard to the case law in which the Upper Tribunal has provided further helpful guidance, the Tribunal has concluded that in this case:-

    a. On their own admission the Respondents did not attempt to explain why they would not agree to the proposed pitch fee increase;
    b. Neither did any Respondent apply to the Tribunal to dispute it;
    c. Mr Turner has referred to the problems with the sewerage plant and Mr Morwell Naeve expressed an opinion that it needed to be replaced. No written evidence indicating the period over which it has needed to be replaced or the timeline during which the disrepair or deterioration took place has been provided. No copy of a condition survey has been produced. Oral submissions, although without evidential status, not having been produced in accordance with any of the Tribunal Directions simply underlined that the condition of the Park and the sewerage system have been unsatisfactory for many years and almost certainly since before the current provisions of the Act came into force in 2013;
    d. Mr Morwell Naeve refers to estimates for rectification of the subsidence having been obtained either by RED or the previous site owners but no documentation has been provided by the Respondents or disclosed by their representative Mr Turner;
    e. No copies of relevant correspondence with the Environment Agency documenting problems or a recent deterioration in the sewerage system have been provided, just copies of random emails, some of which postdate the last pitch fee review date; and
    f. Some of the evidence provided by Mr Turner was unclear in that he refers to services although the Tribunal believes he meant

maintenance of the Park and he sought to suggest that the FTT can take into consideration "reasonableness" when considering the amount of the proposed increase in the pitch fee.

95. The Tribunal accepts that the presumption that the pitch fee should be increased in line with the increase in the RPI index over the relevant period shall apply. No evidence of factors within paragraph 18 to which it might have regard have been provided. It is satisfied that it has not received any evidence supplied by the Respondents in accordance with the multiplicity of Directions issued by the Tribunal which amount to "weighty matters" sufficient to displace that presumption.

96. Having considered Scatterdell Park the Tribunal is satisfied that it contains clear guidance as to why the Tribunal cannot take into account consideration of whether the amount of the pitch fee increase is, of itself, reasonable.

97. The Tribunal orders that the Pitch Fees for the Respondents at the Park be increased by 3.4% from the 1 September 2018. Any Respondent who has continued to pay the original pitch fee since that date must pay the difference to the Applicant. It is for the Applicant to apportion any part of that payment due to the Smalls in accordance with any agreement made between them when the Park was sold.

98. Its order is applicable to all of the Respondents, including Mrs Wilson, although it is acknowledged that she was not represented by Mr Turner.

99. It is not clear to the Tribunal if letters have been issued by the Applicant to any of the Respondents regarding arrears of pitch fees. The Tribunal confirms that no Respondent is in arrears if they have continued to pay the pitch fee due before the service of notice of increase. The difference between the current pitch fee and the reviewed pitch fee becomes payable 28 days after the decision is issued. [Paragraph 15 (11) Chapter 2 of the Schedule to the Act].

100. Whilst not pertinent to its decision, the Tribunal has noted what Mr Turner stated in relation to the schedule of charges which the Applicant will apply to certain payments and late or overdue payments. This is contained in the copy letter, produced at page 43 of the Bundle. Whilst it may be regrettable that the number of rural branches of banks are diminishing, it is understandable that site owners may wish to streamline payment procedures and also try to minimise costs and exposure to scams. It is therefore possible that changes to the banking practices and systems, whether or not considered to be progress, might result in cheques becoming obsolete.

101. It would be appropriate for Mr Turner and the Residents Association to help occupiers within the Park avoid incurring costs for payments by cheque by assisting them to utilise other payment methods which will not attract charges.

Judge C A Rai (Chairman)

Schedule 1

List of Joined Respondents

Pitch Number in Park	Names
15	Mr and Mrs Carter
17	Mr Murray
21	Mrs Rattenbury
23	Mr and Mrs Yorke
24	Mr Tuck
26	Mr and Mrs Roberts
28	Miss Lyon
31	Mr Measey
32	Mr Tarrant
33	Mr Walker
34	Mr and Mrs Gee
36	Mr Yates
41	Misses Keeley
42	Mr and Mrs Martin
43	Mr and Mrs Cordier
45	Mr and Mrs Travail
46	Mr Turpin and Miss Williams
49	Mr Daldy
54	Executors Hardy
58	Executors Vaughan
62	Mrs Wilson
66	Mr and Mrs Wright
70	Mr and Mrs Biddick
71	Mr Crossley and Miss Egerton
72	Mr Dixon
75	Mr and Mrs Butler

Schedule 2

Extracted paragraphs from Mobile Homes Act 1983 as amended Schedule 1 Part I Chapter 2

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 *court* [appropriate judicial body], on the application of the owner or the occupier, considers it reasonable for the pitch fee to be changed and makes an order determining the amount of the new pitch fee.

17
(1) The pitch fee shall be reviewed annually as at the review date.
(2) At least 28 clear days before the review date the owner shall serve on the occupier a written notice setting out his proposals in respect of the new pitch fee.
[(2A) In the case of a protected site in England, a notice under sub-paragraph (2) which proposes an increase in the pitch fee is of no effect unless it is accompanied by a document which complies with paragraph 25A.]
(3) If the occupier agrees to the proposed new pitch fee, it shall be payable as from the review date.
(4) If the occupier does not agree to the proposed new pitch fee--
(a) the owner [or (in the case of a protected site in England) the occupier] may apply to the *court*[appropriate judicial body] for an order under paragraph 16(b) determining the amount of the new pitch fee;
(b) the occupier shall continue to pay the current pitch fee to the owner until such time as the new pitch fee is agreed by the occupier or an order determining the amount of the new pitch fee is made by the *court* [appropriate judicial body] under paragraph 16(b); and
(c) the new pitch fee shall be payable as from the review date but the occupier shall not be treated as being in arrears until the 28th day after the date on which the new pitch fee is agreed or, as the case may be, the 28th day after the date of the *court* [appropriate judicial body's] order determining the amount of the new pitch fee.
(5) An application under sub-paragraph (4)(a) may be made at any time after the end of the period of 28 days beginning with the review date [but*, in the case of an application in relation to a protected site in England,* no later than three months after the review date].
(6) Sub-paragraphs (7) to (10) apply if the owner--
(a) has not served the notice required by sub-paragraph (2) by the time by which it was required to be served, but
(b) at any time thereafter serves on the occupier a written notice setting out his proposals in respect of a new pitch fee.
[(6A) In the case of a protected site in England, a notice under sub-paragraph (6)(b) which proposes an increase in the pitch fee is of no effect unless it is accompanied by a document which complies with paragraph 25A.]
(7) If (at any time) the occupier agrees to the proposed pitch fee, it shall be payable as from the 28th day after the date on which the owner serves the notice under sub-paragraph (6)(b).
(8) If the occupier has not agreed to the proposed pitch fee--

(a) the owner [or (in the case of a protected site in England) the occupier] may apply to the *court* [appropriate judicial body] for an order under paragraph 16(b) determining the amount of the new pitch fee;
(b) the occupier shall continue to pay the current pitch fee to the owner until such time as the new pitch fee is agreed by the occupier or an order determining the amount of the new pitch fee is made by the *court* [appropriate judicial body] under paragraph 16(b); and
(c) if the *court* [appropriate judicial body] makes such an order, the new pitch fee shall be payable as from the 28th day after the date on which the owner serves the notice under sub-paragraph (6)(b).
(9) An application under sub-paragraph (8) may be made at any time after the end of the period of 56 days beginning with date on which the owner serves the notice under sub-paragraph (6)(b) [but*, in the case of an application in relation to a protected site in England,* no later than four months after the date on which the owner serves that notice]………
[(9A) A tribunal may permit an application under sub-paragraph (4)(a) or (8)(a) *in relation to a protected site in England* to be made to it outside the time limit specified in sub-paragraph (5) (in the case of an application under sub-paragraph (4)(a)) or in sub-paragraph (9) (in the case of an application under sub-paragraph (8)(a)) if it is satisfied that, in all the circumstances, there are good reasons for the failure
to apply within the applicable time limit and for any delay since then in applying for permission to make the application out of time.]
(10) The occupier shall not be treated as being in arrears--
(a) where sub-paragraph (7) applies, until the 28th day after the date on which the new pitch fee is agreed; or
(b) where sub-paragraph (8)(b) applies, until the 28th day after the date on which the new pitch fee is agreed or, as the case may be, the 28th day after the date of the *court* [appropriate judicial body's] order determining the amount of the new pitch fee.
[(11) Sub-paragraph (12) applies if a tribunal, on the application of the occupier of a pitch in England, is satisfied that--
(a) a notice under sub-paragraph (2) or (6)(b) was of no effect as a result of sub-paragraph (2A) or (6A), but
(b) the occupier nonetheless paid the owner the pitch fee proposed in the notice.
(12) The tribunal may order the owner to pay the occupier, within the period of 21 days beginning with
the date of the order, the difference between--
(a) the amount which the occupier was required to pay the owner for the period in question, and
(b) the amount which the occupier has paid the owner for that period.]

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 *court* [appropriate judicial body], on the application of the owner, has ordered
should be taken into account when determining the amount of the new pitch fee;
[(aa) in the case of a protected site in England, any deterioration in the condition, and any decrease in the amenity, of the site or any adjoining land which is occupied or controlled by the owner since the date on which this paragraph came into force (in so far as regard has not previously been had to that deterioration or decrease for the purposes of this sub-paragraph);
(ab) in the case of a protected site in England, any reduction in the services that the owner supplies to the site, pitch or mobile home, and any deterioration in the quality of those services, since the date on which this paragraph came into force (in so far as regard has not previously been had to that reduction or deterioration for the purposes of this sub-paragraph);]
(b) [in the case of a protected site in Wales,] any decrease in the amenity of the protected site since the last review date; *and*
[(ba) in the case of a protected site in England, any direct effect on the costs payable by the owner in relation to the maintenance or management of the site of an enactment which has come into force since the last review date; and]
(c) [in the case of a protected site in Wales,] the effect of any enactment, other than an order made under paragraph 8(2) above, which has come into force since the last review date.
[(1A) But, in the case of a pitch in England, no regard shall be had, when determining the amount of the new pitch fee, to any costs incurred by the owner since the last review date for the purpose of compliance with the amendments made to this Act by the Mobile Homes Act 2013.]
(2) When calculating what constitutes a majority of the occupiers for the purposes of sub-paragraph (1)(b)(iii) each mobile home is to be taken to have only one occupier and, in the event of there being more than one occupier of a mobile home, its occupier is to be taken to be the occupier whose name first appears on the agreement.
(3) In a case where the pitch fee has not been previously reviewed, references in this paragraph to the last review date are to be read as references to the date when the agreement commenced.

20
(1) There is a presumption that the pitch fee shall increase or decrease by a percentage which is no more than any percentage increase or decrease in the retail prices index since the last review date, unless this would be unreasonable having regard to paragraph 18(1) above.
[(A1) In the case of a protected site in England, unless this would be unreasonable having regard to paragraph 18(1), there is a presumption that the pitch fee shall increase or decrease by a percentage which is no more than any percentage increase or decrease in the retail prices index calculated by reference only to--
(a) the latest index, and
(b) the index published for the month which was 12 months before that to which the latest index relates.

29
In *this Schedule* [this Chapter]--
……………………………;
"pitch fee" means the amount which the occupier is required by the agreement to pay to the owner 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;

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.