FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference:	CHI/00HE/PHI/2021/0031, 0033 - 0037, 0090-0093, 0096, 0100
Premises:	Various Properties at St Dominic Park, Harrowbarrow, Callington, Cornwall PL17 8BN
Applicant:	Wyldecrest Parks (Management) Ltd
Representative:	David Sunderland Estates Director
Respondents:	Mr & Mrs Carter and others (see list below)
Representative:	Mr A Turner
Type of Application:	Mobile Homes Act 1983, Schedule 1, paragraph 16 – Determination of pitch fee
Tribunal Members:	Judge A Cresswell
	Mr M Woodrow MRICS
Date and venue of Hearing:	12 April 2022 by Video
Date of Decision:	21 April 2022

DECISION

List of Respondents

Mr & Mrs Carter	15
Mr & Mrs Chapman	18
Mr and Mrs Hallett	29
Mr and Mrs Gee	34
Mr and Mrs Martin	42
Mr and Mrs Cordier	43
Mr and Mrs Trevail	45
Mr Turner and Mr Dexter	49A
Mrs Hanson	61
Mr and Mrs Taylor	68
Mrs Crossley and Miss Edginton	71
Miss Lyon	78

The Applications

1. On various dates in October and November 2021, the Applicant, the site owner, made applications to the Tribunal for the determination of a pitch fee for the pitches for the year from 1 September 2021. Mr Turner and Mr Dexter made an application on 15 November 2021 but, for convenience and to avoid confusion, they are described as Respondents within this Decision.
2. The Tribunal makes it clear that it considered only those matters declared by the parties to be issues and, of those, only those matters relevant to its jurisdiction and only those matters relevant to the year in question.

Summary Decision

3. The Tribunal has determined that the pitch fee for that period and from that date should be as shown in the below schedule:

Property	Current Pitch Fee £	New Pitch Fee £	Date of New Pitch Fee
Mr & Mrs Carter 15	148.84	151.74	1 September 2021
Mr & Mrs Chapman 18	131.42	133.98	1 September 2021
Mr and Mrs Hallett 29	135.89	138.54	1 September 2021
Mr and Mrs Gee 34	135.89	138.54	1 September 2021
Mr and Mrs Cordier 43	135.89	138.54	1 September 2021
Mr and Mrs Trevail 45	135.89	138.54	1 September 2021
Mr Turner and Mr Dexter 49A	135.89	138.54	1 September 2021
Mrs Hanson 61	135.89	138.54	1 September 2021
Mr and Mrs Taylor 68	135.89	138.54	1 September 2021

Mrs Crossley and Miss Edginton 71	135.89	138.54	1 September 2021
Miss Lyon 78	135.89	138.54	1 September 2021

4. The Applicant is ordered to pay the sum of £20 to Mr Turner in reimbursement of fees. Mr and Mrs Martin are ordered to pay the sum of £20 to the Applicant in reimbursement of fees.

Inspection and Description of Property

5. The Tribunal did not inspect the Park but saw photographs and read descriptions and saw the Park on publicly accessed websites. One member had visited the park in relation to earlier Decisions.

Directions

6. Directions were issued on various dates.
7. The Tribunal directed that the parties should submit specified documentation to the Tribunal for consideration.
8. This Decision is made in the light of the documentation submitted in response to those directions and the evidence and submissions made by the parties at the hearing. The Tribunal heard oral evidence from Mr Turner of Plot 49A and Mr Sunderland, the Applicant's Estate Director.
9. At the end of the hearing, the parties confirmed that they had been able to say all that they wished to say to the Tribunal.
10. Directions issued on 22 December 2021 had required Mr and Mrs Martin of Plot 42 to

    By 14 January 2022 the Respondent must advise the Applicant whether s/he agrees with the increase or opposes it. If the increase is opposed the Respondent must send the Applicant:

    a statement setting out why the proposed increase is not accepted, together with any documentation, including relevant correspondence, which supports the Respondent's case

    any signed witness statements of fact upon which the Respondent relies.

    A copy of your written agreement under the Mobile Homes Act 1983 (if you have one).

11. Those Directions were accompanied by a Statement on Tribunal Rules and Procedure, which made it clear that the Directions were **formal orders** of the Tribunal and that they must be **complied with**. Failure to comply may result in the Tribunal refusing to hear the defaulting party's case and ordering that party to pay costs.
12. Mr and Mrs Martin failed to comply with the above Direction. This was pointed out to the Tribunal and to their representative, Mr Turner, by an email from the Respondent of 14 January 2022, but no action was taken by Mr and Mrs Martin to remedy the situation.
13. Mr Turner accepted that any fault was his. He argued that Mr and Mrs Martin had always been opposed to the increase in Pitch Fee.
14. The Tribunal notes that the Respondents Joint Statement of Case specifically does not relate to Mr and Mrs Martin both because it predates the date when they should have responded to the Direction and because their case number is specifically not included.
15. Taking account of all of the above, the Tribunal has determined that Mr and Mrs Martin are now barred from taking further part in the proceedings in accordance with Rule 9 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. This is on the grounds that they have failed to co-operate with the Tribunal such that the Tribunal cannot deal with the proceedings fairly and justly.
16. Mr Sunderland also raised an issue in relation to compliance with the Directions by Mr and Mrs Carter of Plot 15. He said that Directions of 11 November 2021 had required them to

    9. By 15 December 2021 the Respondent must advise the Applicant whether s/he agrees with the increase or opposes it. If the increase is opposed the Respondent must send the Applicant:

    a statement setting out why the proposed increase is not accepted, together with any documentation, including relevant correspondence, which supports the Respondent's case

    any signed witness statements of fact upon which the Respondent relies.

    A copy of your written agreement under the Mobile Homes Act 1983 (if you have one).

17. Mr Sunderland submitted that there was no statement of case, only a witness statement.
18. The Tribunal noted that Mr Neil Carter had submitted a document entitled St Dominic Park Pitch Fee Renewal Proposal 2021 dated 10 December 2021, setting out his objections to the Pitch Fee increase. Mr and Mrs Carter's case number was not specifically included on the Respondents Joint Statement of Case.
19. The objections by Mr and Mrs Carter were clear from the document submitted. It is acceptable as being a statement of the kind required by the Directions, such that the Tribunal finds there to be no breach. If there was a breach, the Tribunal waives it under Rule 8(2).

The Law

20. The law is contained in Mobile Homes Act 1983. Under Section 4, a Tribunal has jurisdiction to determine the issue of Pitch Fee. The Tribunal can decide if it is reasonable for the pitch fee to be changed and whether it is unreasonable for the fee to increase or decrease in accordance with the relevant Retail Prices Index for the relevant period and has regard to all of the relevant evidence, but particularly to the factors detailed in Paragraph 18 of Schedule I, Part 1 of Mobile Homes Act 1983, as amended.
21. The Tribunal is required to determine whether the proposed increase in pitch fee is reasonable. The Tribunal is not deciding whether the level of pitch fee is reasonable.
22. Pitch fee is defined in paragraph 29 of Part 1 of Schedule 1 of the 1983 Act as:

"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, sewerage or other services, unless the agreement expressly provides that the pitch fee includes such amounts."

23. The Tribunal is required to have regard to paragraphs 18, 19 and 20 of Part 1 of Schedule 1 of the 1983 Act when determining a new pitch fee. Paragraph 20(1) introduces a presumption that the pitch fee shall increase by a percentage which

is no more than any percentage increase or decrease in the RPI since the last review date.

24. Two decisions of the Upper Tribunal, where the increase sought was above RPI, provide guidance: **Wyldecrest Parks (Management) Ltd v Kenyon** [2017] UKUT 28 (LC) and **Vyse v Wyldecrest Parks (Management) Ltd**, [2017] UKUT 24 (LC).

25. In **Vyse v Wyldecrest Parks (Management) Ltd**, HHJ Alice Robinson said as follows:

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

26. In **Wyldecrest Parks (Management) Ltd v Kenyon**, Judge Martin Roger QC established the following principles in respect of reviews of pitch fees:

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

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

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

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

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

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

27. Paragraph 20 of chapter 2 of Part 1 of Schedule 1 to the Act provides that the presumption is that the pitch fee shall increase or decrease in proportion to the movement in the RPI. The increase or decrease in the pitch fee can be greater, however, if the presumption would produce an unreasonable amount. Paragraph 18 of chapter 2 specifies certain matters to which there must be paid particular regard in determining the amount of the new pitch fee.

28. The Tribunal has a wide discretion to vary the pitch fee to a level of a reasonable pitch fee taking into account all of the relevant circumstances, including factors not connected to improvements, and the increase in RPI in the previous 12 months is important, but it is not the only factor which may be taken into account. Factors not encompassed by paragraph 18(1) may nevertheless provide grounds on which the presumption of no more than RPI increases (or decreases) may be rebutted. If another weighty factor means that it is reasonable to vary the pitch fee by a different amount, effect may be given to that factor.

29. There is advice for the Tribunal about other factors in **Vyse v Wyldecrest Parks (Management) Limited** (2017) UKUT 0024 (LC):

50. If there is no matter to which any of paragraph 18(1) in terms applies, then the presumption arises and it is necessary to consider whether any 'other factor' displaces it. By definition, this must be a factor to which considerable weight attaches. If it were a consideration of equal weight to RPI, then, applying the presumption, the scales would tip the balance in favour of RPI. Of course, it is

not possible to be prescriptive as to precisely how much weight must be attached to an 'other factor' before it outweighs the presumption in favour of RPI. This must be a matter for the FTT in any particular case. What is required is that the decision maker recognises that the 'other factor' must have sufficient weight to outweigh the presumption in the context of the statutory scheme as a whole.

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

30. The amount of the pitch fee rests solely on what the occupiers agree or the First-tier Tribunal determines to be reasonable on the annual review.
31. In **Charles Simpson Organisation Ltd v Redshaw** (2010) 2514 (CH), Kitchen J advised: *"In my judgment, the word "amenity" in the phrase "amenity of the protected site" in paragraph 18(1)(b) simply means the quality of being agreeable or pleasant. The Court must therefore have particular regard to any decrease in the pleasantness of the site or those features of the site which are agreeable from the perspective of the particular occupier in issue."*
32. The relevant statute law is set out in the Appendix below.

The Agreed Background

33. The Tribunal has been supplied with some of the Written Statements under the 1983 Act.
34. The Statements provide for a review of the pitch fee each year on 1 September. There is no issue raised about the date of review.

35. The Applicant gave notice of a proposal to increase the pitch fee on 16 July 2021 in line with a 3.9% increase in RPI. There is no issue taken as to the timeliness of the notice, whether appropriate notice was given or the appropriate rate to apply.
36. The Respondents acknowledge that the percentage claimed by the Applicant is no more than the retail price index since the last review.

The Dispute

The Respondents

37. The Joint Statement to the Tribunal was wide ranging. The Tribunal notes only those submissions relevant to the issues before it and which relate to this specific Park.
38. The Applicant advertises that its parks have live-in managers. This is largely false, whilst the most basic of maintenances were and remain undertaken by skeletal turnover of people who travel from site to site and do their best to fulfil their roles, often in difficult to impossible circumstances.
39. The Applicant has already agreed in its application that there have been no improvements to the site. The position seemingly adopted by the Applicant is threefold:

    Firstly: That the implied term that allows the Respondents to keep their homes on the park is the presumption that the pitch fee shall increase annually by the RPI, but in their application were also obliged to concede that this is the 'starting point' in a statutory provision that the fees should increase.

    Secondly: That they have not been given any reasons for declining the increase

    Thirdly: That because some of the Respondents have previously sought to oppose proposed increases, that this constitutes "unreasonable behaviour" against which their alleged costs and application fees should be recovered.

40. In reply to the first assertion, they refer to the determination of (Judge Elizabeth Cooke: para 9: UT(LC) in Case No LRX/139/2019) which states....

    "A presumption cannot be interpreted as giving the site owner an entitlement to an increase in line with the RPI, although it has come to be regarded in that light."

41. Furthermore, in challenging the proposal in accordance with para 18 (1) nor is there a need to provide an exhaustive list of matters that may justify departure from the presumption, only that "*particular regard is to be paid to the matters set out*". this being the same interpretation applied by the Respondents who seek such regard.

42. In reply to the Applicant's second position, there are two considerations. The first is the guidance set out in pitch fee reviews in the consolidated implied terms, effective 26th May 2013. This states:

> "*If the occupier does not agree to the proposed new pitch fee they 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 shall be'*

43. This is also the same interpretation applied by the Respondents.

44. In this, the resident is under no obligation to notify the site owner of their decision and whilst it could well be said that it might be helpful to do so, the Applicant has been more than well aware of all the reasons for disagreeing the proposal, where Mr Best visited the site having already instructed then unauthorised works and Mr Sunderland was remotely overseeing the same that have given rise to much of this dispute, to which can be added the position that complaints and associated correspondence sent to Mr Sunderland are habitually disregarded or their receipt flatly denied. Residents have made repeated complaints to persons employed by the Applicant delegated to undertake repairs but who need the authority to undertake the work but that is not then provided. Therefore, to suggest that no explanation has been given for opposing the proposal is a manufactured argument now being used to claim 'unreasonable behaviour' and to falsely support warnings of costs, the objectives of which are transparent.

45. The crux of this dispute is that on the one hand, the Applicants rely upon the presumption of increase and deny that there are grounds for this to be challenged.

46. On the other hand, the Respondents believe that the Applicant's failures to meet their contractual obligations in properly maintaining the common areas or the services infrastructure that serve the site do not justify the increase proposed and importantly, that the removal without any given notice of significant long-term amenities (later referred) justifies a reduction in prevailing fees. In the

demolition of amenities without any notice, this reflects the reasons (above referred) that the Applicant declines to acknowledge the roles of QRA's, enabling them to disregard and evade the provision that an owner must consult on any proposed changes to operating and maintaining the site.

47. The park has been in gradual deterioration since it was acquired by Messrs Smalls in 2008. However, since its acquisition by the Applicant in December 2018, that decline has further escalated and a number of Respondents have set out their own complaints for the period now under review. There has been increased general shabbiness, vacant pitches that the Applicant does not maintain and are left intentionally vacant for later back-filling after the council advised them that they should not continue with their plans to install c.13 new homes on unauthorised land (upon which 5 new homes were eventually conceded) and so exceed the licensed numbers: unrepaired damage to parts of some roadways due to the use of heavy industrial plant, failed lighting that can take many months to be repaired and some common areas of the site that continue to resemble a long-abandoned compound, together with repeated water leaks that flooded some pitches, left for weeks before they are repaired and neglect in flood preventions that have required a number of residents to themselves dig out channels on land owned by the Applicant to divert cascading rainfall away from their homes. Throughout the period under review, the Applicant's focus has instead been upon the preparations of ground-works for new homes, an exercise that at St. Dominic Park commenced September 2020, involving the removal of the expansive green amenity area enjoyed by the occupiers since the park first became used as caravan site in c.1950s and throughout all times since, that amenity now entirely demolished and irreplaceable for the purposes previously enjoyed. (see Glade below).

48. In September 2020, the Applicant also commenced the demolition of 16 garages, most of which were rented out to residents. The garaging had been in situ for decades and were used either for the garaging of cars or for storage and had become a paid for amenity referred to by the Applicant at the time many homes were sold and for some residents, a factor in their then decision making. Occupiers were given 28 days to remove all contents with no alternative storage offered, most renters then required to dispose of goods that they had intended to keep or find other storage facilities at significantly higher costs.

49. Named and signed as 'The Glade', during the period subject to this review, this has become the overriding issue for most occupiers who purchased their homes with such common amenities in mind. It was a place consisting of woodland and open and easy access to the river, to sit, to socialise, providing easy wheelchair access for those who wished to be close to the water and enjoy their surroundings. However, with no notice to anyone at all, the Applicants brought in contractors and demolished swathes of healthy mature trees and their roots. The metal forming the garage roofs and the trunks of the trees were removed from site for re-use elsewhere or sale, whilst dumpers, tractors, diggers, JCBs, and other heavy plant was used to bury the breeze blocks, that formed the 16 garages, what remained from perhaps 30-40 mature trees and other debris, in what became a landfill site intended to accommodate the 13 new homes, none of which at the time had been authorised, even though deposits were being taken from numerous people who were not informed of the position. Throughout the period commencing early September 2020 to December 2021, residents were subjected to the almost daily deafening noise of heavy plant, excavations followed by remedial excavations, banging, scraping and the dumping of debris, including by other contractors not engaged on the site, the earliest time being from 06.15 in the delivery of materials, the latest continually until 21.30 and often throughout weekends, the roadways frequently blocked off with no prior notice, exposed power cables serving new homes running across common areas that at the date of this statement still remain in situ and the invasion for weeks of high levels of dust and dirt, seriously interfering with the enjoyment of residents daily lives.

50. As described, no one was notified of the intention to carry out any of these works, only aware of different prior rumours. Indeed, residents' protests at the demolishing of mature woodland were reported in the local media, responded to by Mr Best, reported to have said "*The residents were concerned unnecessarily, partly due to certain members of the park community awakening fears of plans that did not exist*", adding that the company had "*in excess of 80 plots*" *so had no need to clear land for development as those leading the protest at the site had claimed*." As the evidence from the site visit will reveal, this was a blatant lie, where he had himself already instructed the unauthorised development take place and Mr Sunderland was daily overseeing it. The consequences were that

once the land had been cleared, save for uncontrolled weeds, large parts of it afterwards became a barren area used for the dumping of piles of soil and debris after disturbing resident wildlife but encouraging the rats that bred in the location of the untended sewerage plant that then invaded other occupied areas.

51. Whilst accepting that one Tribunal's Decision cannot be binding on another Tribunal, the Respondents highlight the Decision in BIR/44UE/PHI/2011/0002, where the Tribunal concluded a loss of amenity, taking account of the following factors: at this conclusion included: *The disruption caused by the erection of more than one new home in the year in question and the apparently haphazard way in which the works were undertaken. The fact that the new homes erected were larger than the homes previously on the site resulting not only in a physical loss of amenity space and greenery but also in an increasingly 'cramped' feeling to the whole site.*

52. During the process, four permanently allocated home-numbered car parking spaces were removed without any notice to the affected residents to create one larger pitch, also breaching approved planning controls but about which the council has done nothing and although the buyers of the intended new homes later pulled out, the plot was then used to site an old static caravan to accommodate people whose new homes at the park or other of their sites not been delivered, were not what they ordered and had in the meantime become effectively homeless, at least one resident at St. Dominic needing to provide heating appliance and others overseeing their welfare. One new home was sited that intruded into the roadway, the applicants then creating a chicane that imposes since potential risks upon users.

53. It is generally accepted that "amenities" in property refer to benefits derived from both the tangible and the intangible benefits generated and received through the exercising of rights to occupy a property. The Respondents submit that tangible benefits include the proper management of the premises in question and that where not properly managed, this has a direct effect upon the enjoyment of the site and the costs payable by the ownership in its management of those premises.

54. The Applicant cannot viably dispute that St. Dominic Park is seriously mismanaged, - intentionally so, so as to minimise their costs and maximise their profits and whilst this is the purpose of any business, do so with no other considerations in mind and who first, or eventually, adopt the same or similar

template at all acquired sites - this being to locate areas of land upon which they can cram in as many new homes as possible, whether amenity land, green belt or other in common use, pre-sell those homes on pitches to buyers often duped, followed by the often botching of services infrastructures undertaken by those who are frequently unqualified. Although this benefits their business, it is frequently in outright defiance of their contractual obligations under the MHA.

55. There is no communication between the Applicant and residents unless associated to monetary demands or nonsenses and the occupiers are largely treated with outright contempt. Within the period under review, letters have been issued advising all residents that pets are not permitted, contradicting the long-standing Park Rules that are filed with the LA whilst at the same time selling new homes to people who do have pets. Residents have received bills for sewerage services that, albeit small in numbers, provide no explanation of the service alleged to have been rendered, later inquiries revealing that these were for emptying the tank 18 months previously of which no-one has any recollection, the recipients not knowing whether the account was invented by private arrangement with a third party or simply delayed for unexplained reasons, those accounts also covering charges for contradictory periods in the same invoices.

56. It is acknowledged that the Tribunal may have some difficulty in placing themselves in the same position as the occupiers. However, the events described above each and all have negative impact upon the enjoyment of the park, where residents live in uncertainties as to what might or not happen next and are justifiably suspicious of any move or silence, a position that adversely affects the well-being of the more frail, including the mental health of some, where one problem created by the Applicant follows another, each and all a direct consequence of the Applicant's gross mismanagement and attitudes - falsehoods then disguised by purported reasonableness and smooth well practiced tongues.

57. A reduction in pitch fee should be the result of the permanent loss of amenity detailed above.

58. The small number of Respondents does not reflect the general concerns of the Occupiers as to the loss of amenity.

59. The **Carters** argue that far from any improvements or maintenance to St Dominic Park, in the two years or so since the WPM acquisition, the condition of the Park has in fact deteriorated. Minimal to zero maintenance, not as promised "live-in

Park Manager", no fit and proper person nominated, or appointed. In fact, there has been noticeable degradation of the Park, and actual removal of amenities. A Club House, renovated by residents at WPM suggestion, was arbitrarily closed down, two small grassland meadows, protected under covenant from development for residents' amenity were closed off, and one has subsequently been trashed by being utilised for access by additional homes.

60. Safety and security has been compromised by lack of any maintenance to badly corroded lighting standards, none of which has a working top mounted globe as per design, but where unsuitable bulkhead lights have been bolted in place as a stop gap, many of which are frequently unlit, leaving substantial areas of the park dark and unsafe to our elderly residents at night. At least two of the lighting standards are so badly corroded at the base that there is a danger of collapse and unshielded cabling being shorted to the metal work.

61. Then there is the amenity green space having been wiped out to make spaces for additional homes to be sited. Initially perfectly healthy mature trees were cut down, ostensibly for safety reasons as they were "diseased", and as per the Chairman of WPM stated in an article in the Cornish Times, "*the site had been cleared to improve the residents' amenities, and that there was no likelihood of additional homes being placed there, this was just a rumour being put about by disaffected residents*." Three new houses have now been sited, with no planning permission granted, and where even a hazardous "chicane" was created in the roadway, as otherwise, any home sited there, would actually be too close to the roadway! While the rest of this area remains a rubbish tip, with zero landscaping, electricity power supply is accessed to these homes by a completely exposed mains cable, which also crosses the roadway in an unprotected gulley, simply tarmac backfilled, as is the water supply, both of which constitute something of a safety hazard. A number of garages, available to residents, were demolished at minimum notice from this same area, which in severe conditions is something of a flood plain as the Morden Stream flows alongside. Because these new houses did not have the legal and promised distance of three metres from the boundary, being the stream, stone gabions have now been placed in the stream, reducing the width, and further increasing the flood hazard.

62. There is little or no ongoing maintenance or repair to the site roadway, which continues to deteriorate. Such site maintenance as does take place seems to

consist of minimum grass cutting and hedge trimming. Several homes on the upper bank were severely affected by the floods of December 2020, as no drainage exists, or is planned, to protect from the agricultural run-off which cascades down the bank, thus causing the flooding. Finally, the stench from the sewage treatment facility, which was condemned several years ago, is becoming increasingly unpleasant in the hotter summer months, not to mention being hazardous as it runs off into the stream.

63. So, taking into account that the residents of St Dominic Park are a predominantly elderly and somewhat vulnerable demographic, and bearing mind what has been listed above, where are the maintenance and the improvements to the site, and the care for the welfare and wellbeing of the residents with which to justify the proposed increase in the 2020/21 Site fees, to which the residents objections are raised?

64. The **Chapmans** are objecting to the ground rent increase this year, the main, but not the only, reason being the continuing lack of maintenance on the park since the increase last year.

65. They have lived there for over 35 years, under 4 different park owners, and have never seen some parts of the park in the poor state they are in at present, in particular the section where the new homes have been installed. This area was known as the Glade, and was used by residents for "get togethers" following the closure of the community centre. They lost the use of this lovely area when it was obliterated to make way for the new homes.

66. Some disruption was expected in the placing of the new homes but the volume of noise and mess was not anticipated. The mess left behind there for many months has been further added to and the area is now a total mess and a discredit to the park.

67. One of the fields which residents used is now a dumping ground for all manner of rubbish from the development, including rubble, wood, plastic, metal, soil etc, and due to the uprooting of bushes, trees and greenery the sewerage treatment works is now clearly visible. This area does not give a good impression of the park.

68. There was damage done many months ago to a section of road by machinery used in the installation of the homes and this has been left unrepaired. One side of the former community centre has old fire extinguishers, their casings

and a smashed door dumped there. They have been there many months and are visible from the road.

69. They have a badly corroded lamp post in their garden. This was bought to the attention of the former resident park manager before he moved off the park. He said he would inform Lee Webb and that there were plans to cap the street lights. Nothing happened, the same as when Lee was later told about it.
70. The park is a lovely place to live but the maintenance is sadly lacking.
71. The **Halletts** complain that in the ten years they have lived on the park they have never seen such poor maintenance, roads being damaged by the constant construction vehicles being used to develop more Park homes.
72. The loss of amenities with the loss green spaces that were used by the residences for picnics, general get togethers. Trees have been cut down leaving wild live without natural habitat.
73. Live electric power cable lying on ground with no thought of Health and safety, trenches cut across the road and never repaired correctly.
74. The **Gees** complain that there is no longer a resident site manager as stated when contacting the company by telephone. Also, when needing assistance regarding maintenance problems there seems to be no one available to answer the relevant extension.
75. One of the two fields to be used for leisure and dog walking is no longer available, and is now being used to dump rubbish. A large grassed area near to the stream has been transformed into a barren area of concrete and hard core, to accommodate a number of new homes. Several trees have also been removed, contrary to the current trend to plant more trees to assist in preventing global warming.
76. The road to exit the park has been altered to accommodate the extra new pitches at the bottom of the park. This now has a very tight "S" bend, which passes very close to some pitches and cars, parked in their allocated parking places. Due to the work being carried out on the new pitches, this part of the road is constantly covered in dust and rubble.
77. Lack of sufficient maintenance. There are very few drains and some of them are blocked, with weeds growing out of them. Also, the entrance to the park,

immediately off the lane, has brambles and weeds against the walls, covering the name of the park.

78. There was a pitch clearance on number 33 in January this year. A water leak followed and continued for several weeks before a solution was found, only to start again a few weeks later. There was an accumulation of mud on the road at the rear of their home, causing the water to flood the path at the back of their pitch and that of number 32. Weeds were also allowed to grow abundantly in the mud both behind and at the side of their pitch. There is also a parking place at the back. Anyone getting out of a car would have to step into two inches of slippery mud. This was not attended to until October this year (2021).

79. The **Cordiers** complain that the Park has gone downhill so far, it will never be the same as when they first came there 25 years ago. The site was then run by Bob Cowels from Helston, this park was his pride and joy, every weekend he was here with a gang of men, they worked tirelessly from 7 am till 5pm Saturday, 8am to 4pm Sunday, this park was spotless.

80. The second owners, the Small family, started the downhill rot. They were here from 2008 till 2018, didn't seem to care about the state of the park at all. Wyldecrest took over in December 2018 and the place has now turned into the local dump. Yes, they cut the grass, trim the hedgerows but they then get the petrol blowers out and blown all over the place even into people's gardens, couldn't care less.

81. They don't bother to re-paint the white lines etc, or paint the edges of any steps, Mr Cordier paints the steps down to their gate from the car park, otherwise it could be a death trap in the winter or dark nights. The outside light above the steps was out for nearly 2 months and after countless asking it was switched back on, this happened because the electric in the clubhouse was turned off by electricians as it appears it was deemed unsafe but they or someone turned it back on just to get the steps light back on, so that begs the question, is the electrics safe in the old clubhouse or not?

82. Rubbish left around the old clubhouse, well this place is now a workshop it is believed, they don't appear to have anywhere else to have one, but it's a dump for tools etc, all sorts of rubbish is left lying about, a lot a of it blown about by the wind drops all over the place, even in our garden.

83. The sewage stinks most times of the day even well into the evening, on warm summer nights you have to have the windows & doors closed, environment agency states there is nothing wrong, (they need to come and live here for a few months). The drain at the end of their car park keeps blocking up, especially when it rains heavy, and is unblocked by Mr Cordier.
84. The noise they all have to suffer is the constant building noise from the new homes that are being erected. Now when this land was first being worked on, trees being felled for a start off, the whole park confronted the workmen (stopped them from working for a few hours), the police arrived, the local press were there and it is believed it was the press who got in touch with the site owner, Mr. Alfie Best. He stated that nothing underhand was going on, just clearing the site a bit, to make a better amenity area for the site residents, what a pack of lies that was, already 3 new homes are occupied and they haven't even got full planning permission for them, and now they have just exceeded the amount of homes that there is supposed to be on the park, 81 homes is all there is supposed to be yet now number 82 has arrived and maybe new residents could be in before Christmas.
85. All the while this work goes on, they get no messages as to when roads will be closed or blocked, and have to make their own decisions whether to use the exit road to come in or on the in road to go out, the biggest and most annoying point is when they bring a new home in, between the houses at the start of the entrance to the site, again they are not told so a lot of people miss out on doctors, hospital and clinic appointments, some of these they have been waiting months for.
86. So, an increase in rent, no it's just not right for all the hassle they have to put up with from Wyldecrest, since they've owned the park.
87. The **Trevails** complain that although the site has been cleared of weeds etc when doing the final clear up they use a blower which blows the debris everywhere they have steps and it makes an almighty mess or the debris is left where it is.
88. Between Monday and Friday there is a continued noise caused by preparing for the New Properties this is week in week out. We came here to have a bit of peace having worked from the age of 14 until 67 not a lot to ask, no

attempt is made to quieten it down in fact dare they say the opposite, more noise the better.

89. Also, the act of taking away residents' parking spaces to make way for crowding the new properties together was disturbing

90. Furthermore, the new properties have taken away their recreation meeting place.

91. Mrs **Hanson** says she is not prepared to accept the pitch fee review as she has experienced considerable nuisance in connection with the site next door, No. 62, as well as massive changes on the park. Not only have the residents lost the use of the club house but also the pleasure of enjoying some green areas by the stream. They have also lost many lovely trees.

92. In addition, she has lost her car parking space which is causing a lot of trouble for people visiting her. They are urged not to park on the road to avoid problems for emergency vehicles, so her necessary visitors have to find a space which is not easy.

93. No.62 became empty some years ago and she had to live next door to an overgrown site and a crumbling property. In August 2020 the unit was demolished and eventually the whole site was cleared including 4 car parking spaces, one of which was hers. In October 2020, a small unit was put there and housed people waiting for homes to be completed: also as a restroom for workmen. That has now gone. She appreciates that in time it may be improved but that does not give her a parking space.

94. At no time had she been informed that any of this would happen. She thought the site owner should give notice of any additions or amendments he proposes.

95. The **Taylors** say that they came to the Park in March 1997 and it was a beautiful place with lovely green areas and trees until purchased by the Applicant. They have destroyed it, taken away the communal grass area for more homes and they lost the use of a field where they used to exercise their dogs.

96. The field is full of rubbish.

97. The area where the garages used to be looks like a bomb site.

98. **Mrs Crossley and Miss Edginton** point to a problem in their back garden where requests for a repair to a dangerous situation were fruitless,

causing them to seek a remedy at their own expense. Then in summer 2021, the Applicant put in a retaining wall, but failed to honour its promise to backfill. A council employee attended and recommended backfilling; they sent this to the Applicant, which has not responded. This means they are still unable to use the land at the rear of the property and cannot allow their 5-year old grandson unsupervised access.

99. They were given 28 days to vacate a garage they were renting. They had to throw away a lot of their possessions stored there due to damp damage due to poor repair of the garage. No proposals were made for replacement facilities. The space has been used for new homes.

100. The lamp post outside their home is in a serious state of disrepair, something inherited by the Applicant. Not one of the main lights in the park work, only the secondary lower lights work.

101. Loss of green space to meet, chat and walk dogs is a serious issue for the elderly without transportation, particularly as the club house has been condemned.

102. **Miss Lyon** complains that the arrival of new homes without notification has caused ingress and egress to be blocked for up to 3 hours, meaning her cleaner and visitor were unable to visit.

103. There has been loss and wilful destruction of green, trees and river bed and wildlife. The once green tree lined level accessible amenity area has become a muddy, dusty, noisy, dangerous area to pass with live electrical cables running across the road and heavy plant machinery to avoid. The roadway is altered so as to leave a badly angled narrow way out.

104. There is a loss of garage/storage unit as they were demolished.

105. She makes the same complaint as Mrs Crossley and Miss Edginton about the retaining wall between their 2 properties.

The Applicant

106. The Applicant says that the contents of the Respondents' statement reflects the personal dislike of the Applicant and their representative by Tony Turner and has little to do with the matter before this Tribunal that being the pitch fee review for the relevant pitches.

107. There is also a short statement from each of the Respondents (except Mr and Mrs Martin) which is relevant to this review.

108. In respect of Tony Taylor's statement: It is noted that the Respondents do not dispute the method of proposing the pitch fee meets with the requirements of implied Term 17 or that the correct RPI that being for June 2021 of 3.9% is correct or that the review is solely a proposal in line with the RPI and nothing more. The forms were duly signed by an employee representative of the Applicant.

109. This is not a "conflict" as promoted by Tony Turner; the Applicant has proposed an inflationary increase pitch fee review in line with the Implied Terms of the Mobile Homes Act and as the Respondents have not agreed the review in accordance with paragraph 16, the Tribunal is being asked to determine the level of pitch fee from 1st September 2021 and nothing more.

110. It is noted that Tony Turner asserts that "*the park has been in gradual deterioration since it was acquired by Messrs. Smalls in 2008"*. Consideration has already been given to this deterioration on the last pitch fee review prior to ownership (c. 2014). At the point the Applicant took ownership (September 2018 review) and in the 2019 review, both of which the Tribunal determined the pitch fee as proposed. The 2020 review was agreed by all residents.

111. The Applicant is aware that the park was acquired in a run-down condition and is gradually making improvements to bring it up to standard. It is not the case as suggested by Tony Turner that there have been no improvements simply that the Applicant has declared that there have been no improvements in accordance with Implied Term 24 that should be taken into consideration in the pitch fee review.

112. The garages were derelict and removed. As pointed out, they were paid for over and above the pitch fee and do not form part of any agreement under the Mobile Homes Act and therefore could not form part of a pitch fee review. Tony Turner himself complained in the 2019 review that they were an eyesore and used this as an objection to accepting the review. This therefore is, based on his submissions in 2019 an improvement. Likewise, the trees in this area were lawfully removed as Tony Turner described them

as an eyesore. There is no contractual requirement to provide this area for recreation.

113. There may have been temporary disruption whilst carrying out works to site additional homes however this is the nature of a mobile home park and to be expected. Any disruption was temporary, no dates were given of the disruption and in any case any temporary disruption has now ended.

114. In relation to negative impact on the enjoyment of the park the Applicant would submit that this is likely to be caused in the main by the climate of fear and dislike of the Applicant created by Tony Turner amongst the residents to further his own ends and does nothing to foster good relationships between Residents and Site Owner.

115. There is no allocated parking on St Dominic Park and no contractual requirement to have a specific space on the communal parts of the park which under the Implied Terms is available to all Residents as part of their pitch fee. Regardless Tony Turner has not provided any evidence in relating to allocated parking to which the Applicant is unaware there was any issue.

116. The Tribunal is reminded that in accordance with Chapter 2 of Part 1 of Schedule 1 to the Mobile Homes Act 1983 ("The Implied Terms") paragraph 16, the Pitch Fee can only be changed either by agreement or by the Tribunal. As the Respondent has not agreed the proposal, the Applicant had no other option than to make this application,

117. At Paragraph 20 of the Implied Terms, there is a statutory presumption that the pitch fee shall increase annually by RPI. That was the only increase proposed.

118. The Upper Tribunal in **Wyldecrest Parks (Management) Ltd v. Kenyon & others** [2017] UKUT 0028 (LC) and **Vyse & others v. Wyldecrest Parks (Management) Ltd** [2017] UKUT 0024 (LC) found that under Implied Term 20 the starting point for any pitch fee review is an increase in line with RPI.

119. Regard however must be given to Paragraph 18 which lists matters which the Tribunal must have particular regard to when determining the level of pitch fee and the UT determined that regard can also be had to other weighty matters however the weight of any matter that consideration is given

to must be greater than the weight of the statutory provision in order to outweigh the statutory provision of an RPI increase.

120. In summary, the Respondents appear to claiming Implied Term 18(1)(aa) deterioration in the condition and decrease in amenity of the Site, 18(1)(ab) reduction in services that the owner supplies to the site and other weighty matters not clearly specified.

121. In relation to 18(1)(aa) and 18(1)(ab) any deterioration should be in so far as regard has not been had in previous years. Although it is the Applicant's submission that there has been no reduction in condition, amenity or services, The Tribunal determination in CHI/00HE/PHI/2019/0037 **Wyldecrest V. Turner** 16th May 2019, regard has previously been made to any reduction in amenity of the site on St. Dominic Park and found in CHI/OOHE/PHI/2019/0200 **Wyldecrest V. Turner** where similar allegations were made that there had been no reduction in amenity.

122. As a result, the Tribunal is asked to determine that the pitch fee for 18 St Dominic Park should be as proposed which is an increase in accordance with the latest RPI.

123. In respect of the Respondent Statement from the **Chapmans**: It is denied that there has been no maintenance - maintenance and improvements to the site are ongoing and carried out where required. However, no specific detail has been provided and how this would impact on the amenity of the site for the Respondents or impact on a pitch fee review.

124. It is noted that the Respondent agrees that some disruption is necessary in the placing of new homes and averred that any disruption would only have been necessary.

125. A number of minor maintenance issues have been brought up but it is not known or evidenced whether this is historic or has now been dealt with as Lee Webb left several months ago.

126. The Respondents, the **Carters** have made a number of points in the witness statement much of which expresses a personal dislike of the Applicant but bears no relevance to the considerations of a pitch fee review and in the Applicant's submission carry little or no weight in that regard. In response to the points raised, the following submissions are made:

127. The public profile of the Applicant although to their credit has no bearing on a Pitch Fee Review.

128. Out of 80+ residents on St. Dominic Park 12 occupiers have not agreed the review for September 2021, not over 40 as suggested. It is not the case that anyone was intimidated into agreeing the increase as alleged; 34 Applications made by the Applicant's Representative Tony Turner were withdrawn and the pitch fees agreed with no involvement of the Applicant. This application however is to determine the level of pitch fee for the relevant pitches and other allegations made in relation to other residents are of no relevance to this Application.

129. Maintenance is carried out on an ongoing or regular basis as required and is coordinated by the Park Manager, Area Manager and Cornish Maintenance team. No specific details are given as to what has not been done which is a contractual requirement therefore this cannot be taken into consideration or responded to in any detail; it is just a general unsubstantiated claim. There is no contractual requirement under the Mobile Homes Act to have a "live in Park Manager" and given the harassment and intimidation the previous manager was subjected to by residents nor is it feasible given the Health and Safety obligations of the Applicant. There is no evidence of the removal of amenities and no contractual obligation to provide a Club House. There is no contractual requirement to provide grassland or meadow and it is not known what areas the Respondent claims have been closed off or what loss of amenity this has caused to the Respondents as they have made no submission as to any personal impact that has been caused to them. It is agreed that development has taken place on the park for 3 new homes however it is an inevitable part of living on a mobile home site that every time a new home is erected some disruption will occur in the short term. In the long term however this will improve the amenity of the site. An application was made to Cornwall Council under The Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020 on 1 S1 July 2021 which the Council has failed to determine; the Applicant is already deemed Fit and Proper for over 40 parks across the country however this has no bearing on a pitch fee review.

130. The lighting on the park meets with the requirements of the site Licence and contractual agreements under the Mobile Homes Act.

131. It is clear that the Applicant is not happy with improvements being made on the park however it is not a reason to displace the inflationary increase in pitch fee. It should be noted that dying trees and derelict garages which were removed to improve the condition of the site formed part of a dispute against the pitch fee in September 2019 by the Respondent's Representative CHI/OOHE/PHI/2019/0200 **Wyldecrest v Turner** who argued that whilst the trees and garage remained in situ they were an eyesore and a reason to dispute the pitch fee review.

132. The age demographics of other residents on the park and how they may have been impacted by weather or other events is of no relevance to the pitch fee review for No. 15 St Dominic Park.

133. In relation to any other weighty matters, there is nothing complained about which either has relevance to a pitch fee review or carries any weight.

134. It is further noted that the Respondent, who agreed the pitch fee proposal for the last two years during the Park ownership of the Applicant, has made no contact with the Applicant to draw to their attention any concerns but instead appear to have used the pitch fee review as an opportunity to air their concerns; this it is submitted is an abuse of process.

135. Given that the Applicant has had no other option than to make this application to determine the pitch fee, it is submitted that it is just and reasonable to make an order under Rule 13(2) for the Respondent to reimburse the Applicant with the application fee.

136. In response to the **Halletts**, it is denied that there has been no maintenance - maintenance and improvements to the site are ongoing and carried out where required. However no specific detail has been provided and how this would impact on the amenity of the site for the Respondents or impact on a pitch fee review.

137. A number of minor maintenance issues have been brought up but it is not known or evidenced whether this is historic or has now been dealt with.

138. The Respondents have stated "these are just a few problems which made us decide to object to the rent increase" but have provided no further details therefore no other matters can be taken into consideration by the Claimant and responded to.

139. In response to the **Gees**, there is a Site Manager, Area Manager, sales Manager and Maintenance team which covers the site. There is no contractual requirement to have a "resident site manager"

140. There is no specific detail provided as to what is claimed to be no longer available and what contractual right there would have been to this therefore the Applicant is unable to respond further.

141. The roads meet with the conditions of the Site Licence and are maintained as required.

142. It is denied that there has been no maintenance - maintenance and improvements to the site are ongoing and carried out where required. However no specific detail has been provided and how this would impact on the amenity of the site for the Respondents or impact on a pitch fee review.

143. It is noted that there was a water leak which has now been repaired.

144. In response to the **Cordiers**: The Respondent has made a number of points in the witness statement much of which expresses a personal dislike of the Applicant but bears no relevance to the considerations of a pitch fee review. No specific detail has been provided and as to how it is considered that a number of annoyances amount to a reduction in amenity and the submission carry little or no weight in that regard.

145. In response to the **Trevails**, the Respondent confirms that maintenance is carried out in clearing weeds etc.

146. The Applicant is unaware of mess on steps and it is not clear if this is historic or remains. Certain amount of noise is to be expected on a mobile home park for the stationing of mobile homes and any noise made would only have been what was necessary. No dates or times have been provided as to when the noise was made however there the Applicant avers that there is currently no development taking place.

147. Parking provisions meet with Site Licence conditions and the question of parking has not previously been raised.

148. It is not known what recreation meeting place is being referred to or what contractual term the Respondent refers to. New homes have been sited on the lawful caravan site for which planning consent exists; there is no area which has planning consent for recreational purposes.

149. In response to **Mrs Hanson**, it says there was no contractual requirement to have a club house which was opened by the residents for the residents about 2 years ago and had to be closed because a certain resident reported it to the Fire Officer and it was

deemed a fire risk. Further it is not known what green areas are being referred to or what contractual term. It is agreed that change has taken place however this is to make improvements to the park and the tired infrastructure which was inherited by the Applicant.

150. There is no contractual right to any specific parking space except on an occupier's Pitch. The Implied Terms define that a pitch fee allows all occupier's the use of all communal parts of the site and there is sufficient parking to meet the conditions of the Site Licence. Regardless the Applicant was previously unaware of any specific issue in relation to parking for the Respondent.

151. It is noted that the plot next door became overgrown but now has a new home on it and is fine. The Tribunal is reminded that homes are owned privately and the responsibility of maintaining pitches lies with the occupier. This is not the responsibility of the Applicant.

152. Parking provisions meet with Site Licence conditions and the question of parking has not previously been raised.

153. In response to the **Taylors**, the Respondent's statement is not in agreement with the Respondent's representative Tony Turner's statement. The Respondents suggest that the park was a beautiful place until the Applicant came along yet Tony Turner states that it has been run down by the Smalls since 2008 and in c.2014 a pitch fee reduction was granted by the Tribunal for a reduction in amenity.

154. The Applicant does not agree with the Respondent's statement which seems to reflect a biased view of the Applicant who avers that there have been improvements to the site brought about by any changes and no contractual breach has been put forward.

155. In response to **Mrs Crossley and Miss Edginton**, it says that under the Implied Terms, it is the occupier's obligation to maintain the pitch and any fences and outbuildings enjoyed with it and the mobile home. Therefore the issues mentioned are in fact the responsibility of the occupier. Regardless as stated by the Respondents that the wall has been like this for a considerable time and has been improved by the site owner recently; this point was argued in refusing the September 2018 review which the Tribunal determined should be revised as proposed. Any contractual matters which the Respondents mention are unsupported by evidence and not the matter for a pitch fee review.

156. The rent of a garage is not part of the agreement under the Mobile Homes Act; a separate payment was made for the rental of the garage, which was removed due to

being derelict and complaints from the Respondent's representative Tony Turner, which has now ceased. The garage cannot therefore form part of the pitch fee review. No request has been received for the erection of a shed or similar on the pitch from the Respondents.

157. The club house, which was opened about 2 years ago by the residents for the residents was closed following a visit from the Fire Officer; there is no contractual requirement to this nor unspecified green space which is claimed to be used for walking dogs - it is not known if the Respondents have dogs and - therefore cannot be a reduction in amenity as they are not a contractual rights.

158. In response to **Miss Lyon**, it says it is expected that on a mobile home park there will be some disruption during the work to site new homes. No dates, times or details are given however any disruption would be kept to a minimum and it would appear that the disruption was temporary and is concluded.

159. Trees were lawfully removed following complaints in regard to being unsightly and many dead or dying. The inclusion of trees is not a contractual requirement.

160. Maintenance and improvements are ongoing and due to the lack of detail it is not known if what has been mentioned is ongoing or completed however there is insufficient or no evidence to support that there has been reduction in amenity.

161. The road meets with the conditions of the site licence.

162. No details of a retaining wall are provided and the Applicant is unable to respond to this however under the Implied Terms the occupier is responsible for fences etc. enjoyed with the pitch or the home.

The Tribunal

163. There was no suggestion made by the parties that any considerations in paragraph 18 of Schedule 1, Part 1 applied here.

164. For the purposes of the 1983 Act, the issue is not the actual condition of the park, nor indeed the actual amenity of the park. While the Tribunal might accept that the park has not always been maintained to a standard which the Respondent might reasonably expect, it has to consider whether there has been any deterioration/decrease in the condition or amenity of the park in the relevant period and, if it did so find, whether it would thereby be unreasonable for the pitch fees to be increased on the basis of the agreed increase in the retail prices index.

165. The contention of the Respondents related particularly to the disruption caused by the works to demolish the garage block, remove trees and access to green areas to prepare the ground to create additional pitches.

166. Despite there being a huge number of pages here, some 1,824, there was very little evidence. Apart from Mr Turner, none of the Plot Occupiers attended the hearing. None of the individual statements made by the Respondents contained a statement of truth. The only part of the objections, insofar as they were relevant to the issues before the Tribunal, for which there was any form of detail provided in the form of photographic evidence, related to the works in the south eastern corner of the Park and the removal of trees.

167. There was evidence of the disruption caused by the works described above. Apart from what was said in the documents referred to above, there were also photographs and an admission by Mr Sunderland that the works had created what he called a temporary loss of amenity. He did not dispute that access to what had been some of the green land had effectively been removed from the common area available to the Pitch Occupiers.

168. The Tribunal notes that the works took place over the whole year. The photographs exemplify how disruptive the whole works must have been for those on site, involving, as it did, the use of heavy machinery and lorries, the noise, dust, dirt and loss of accessible common parts. The Tribunal has no hesitation in agreeing with Mr Sunderland that this represented a loss of amenity.

169. Whilst in written representations Mr Turner had relied upon the demolition of the garages, in oral submissions he accepted that this was irrelevant to the question of the Pitch Fee. He accepted that they had been in a dilapidated state for some time and their state had been a factor raised by him in an earlier Decision at a hearing on 16 March 2020, when he had also complained about the state of adjacent weeds.

170. The Tribunal also heard submissions about car parking spaces too. Unfortunately, the submissions of Mr Turner were neither clear nor consistent. He told the Tribunal that some Occupiers who had spaces attached to their pitches had lost them and then been given replacements, but it was not at all clear to the Tribunal where the spaces had been

originally or where the replacements were situated. Mr Turner said that maybe one of the Occupiers had lost her space.

171. He also told the Tribunal that maybe 3 or 4 visitor spaces had been removed, more likely 3.

172. As Mr Sunderland pointed out, there was no reference to parking spaces outside the pitches in the Pitch Agreements and the Site Licence simply recorded that *There shall be within the site suitably surfaced car parking spaces*.

173. Mrs Hanson does not detail the status of the car parking space to which she refers and she was not in attendance to ask her.

174. There was no evidence before the Tribunal which could lead it to conclude that there was ever an insufficiency of visitor parking spaces.

175. The decrease in amenity represented by the works and the loss of green space is a serious matter.

176. Mr Sunderland referred the Tribunal to a quotation from an Upper Tribunal case relating to Scatterdells Park, where Martin Rodger QC is quoted as saying "*Contrary to paragraph 5 of the applicant's statement of case it does not follow that a temporary loss of amenity cannot reasonably be the basis of a curtailment of the RPI increase in pitch fees. Such curtailment need not have a permanent effect*." and *"It is therefore open to the First-tier Tribunal on the next review to adjust the appropriate increase to reflect the fact that a temporary disruption, which justified restricting the 2012 increase, is no longer relevant."*

177. Mr Sunderland was suggesting to the Tribunal that it could find against the Pitch Fee increase this year based upon a temporary decrease in amenity, yet revisit this on a subsequent review. The Tribunal was not persuaded that this was something for it to consider. First of all, the transcript of the Upper Tribunal case in question was not provided so that the Tribunal was unable to see the quotation in context and secondly the quotation appeared to be directed at a subsequent Tribunal Decision and thirdly, this case involves a permanent loss of amenity (the green land) as well as a temporary decrease of amenity (the effect of the works).

178. Drawing the balance reflecting its considerations and findings expressed above, the Tribunal determined that the pitch fees should

increase, but only by one half of the sum sought. The Tribunal could not apply any form of scientific assessment on the basis of the evidence before it, and is conscious that the sums involved are relatively small, but believes, doing the best with the information available to it, that this is the fairest and most reasonable outcome to reflect its findings of fact.

Rule 13 Costs and Fees

179. Any application for costs should be served upon the other party and the Tribunal within 28 days after the date on which this Decision was sent to the parties and should detail the actual costs claimed, for what they are claimed and be accompanied by relevant receipts for expenditure. Any response by the other party must be sent to the party applying for costs and the Tribunal within 21 days of receiving the application. The Tribunal would, thereafter, consider the application on the papers.

Fees

180. Rule 13(2) Tribunal Procedural (First Tier Tribunal) (Property Chamber) Rules states that a Tribunal may make an order requiring a party to reimburse any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.

181. In **Cannon v 38 Lambs Conduit LLP** (2016) UKUT371 (LC), the Upper Tribunal ordered the reimbursement of fees where *the tenants have succeeded on the principal substantive issue.*

"Reimbursement of fees does not require the applicant to prove unreasonable conduct on the part of an opponent. It is a matter for the tribunal to decide upon in the exercise of its discretion, and (as with costs orders) the tribunal may make such an order on an application being made or on its own initiative."

182. Whilst the test to be applied under Rule 13(2) requires no analysis of whether a person has acted unreasonably, when all that is recorded above is weighed in the balance, the Tribunal finds that it would be appropriate to order the Applicant to reimburse Mr Turner and Mr Dexter with the fees paid by them and for Mr and Mrs Martin to reimburse the Applicant with the

fee paid by it. There appears to the Tribunal to have been no other viable option open to Mr Turner and Mr Dexter to resolve the issues save by making their application to the Tribunal, and the efforts by the Applicant in the case of Mr and Mrs Martin were unnecessary given their failure to partake in the proceedings. The Applicant is ordered to pay the sum of £20 to Mr Turner in reimbursement of fees. Mr and Mrs Martin are ordered to pay the sum of £20 to the Applicant in reimbursement of fees.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk 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.

APPENDIX

Mobile Homes Act 1983, as amended
Schedule 1, Part 1:

16

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

(a) with the agreement of the occupier, or

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

17

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

(2) 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) [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 [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 [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 [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* [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 [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 [appropriate judicial body] under paragraph 16(b); and

(c) if the [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 [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 [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);]

[(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]

[(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.

19

[(1)] When determining the amount of the new pitch fee, any costs incurred by the owner in connection with expanding the protected site shall not be taken into account.

[(2) *In the case of a protected site in England,* when determining the amount of the new pitch fee, no regard may be had to any costs incurred by the owner in relation to the conduct of proceedings under this Act or the agreement.]

[(3) *In the case of a protected site in England, when* [When] determining the amount of the new pitch fee, no regard may be had to any fee required to be paid by the owner by virtue of--

(a) section 8(1B) of the Caravan Sites and Control of Development Act 1960 (fee for application for site licence conditions to be altered);

(b) section 10(1A) of that Act (fee for application for consent to transfer site licence).]

[(4) *In the case of a protected site in England, when* [When] determining the amount of the new pitch fee, no regard may be had to any costs incurred by the owner in connection with--

(a) any action taken by a local authority under sections 9A to 9I of the Caravan Sites and Control of Development Act 1960 (breach of licence condition, emergency action etc);

(b) the owner being convicted of an offence under section 9B of that Act (failure to comply with compliance notice).]

20

[(A1) *In the case of a protected site in England, unless* [Unless] this would be unreasonable having regard to paragraph 18(1), there is a presumption that the pitch fee shall increase or decrease by a percentage which is no more than any percentage increase or decrease in the retail prices index calculated by reference only to--

(a) the latest index, and

(b) the index published for the month which was 12 months before that to which the latest index relates.

(A2) In sub-paragraph (A1), "the latest index"--

(a) in a case where the owner serves a notice under paragraph 17(2), means the last index published before the day on which that notice is served;

(b) in a case where the owner serves a notice under paragraph 17(6), means the last index published before the day by which the owner was required to serve a notice under paragraph 17(2).]

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

29 In [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;