FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/29UK/PHI/2022/0042 CHI/29UK/PHI/2022/0013 CHI/29UK/PHI/2022/0011 CHI/29UK/PHI/2022/0029
Property	**:**	Plots 6, 12, 15, and 35 of Wickens Meadow Park, Rye Lane, Dunton Green, Sevenoaks, Kent, TN14 5JB
Applicant	**:**	Wyldecrest Parks (West) Limited
Applicant's Representative	**:**	Mr Sunderland
Respondents	**:**	See schedule attached
Respondents' Representatives	**:**	Mr Oakley (of Counsel) (for Mrs Truzzi-Franconi); and Mrs Truzzi-Franconi (acting as representative for the other Respondents)
Type of Application	**:**	Pitch Fee Review- Mobile Homes Act 1983.
Tribunal Member(s)	**:**	Judge J F Brownhill Mr M J F Donaldson FRICS Ms Jayam Dalal
Date and venue of Hearing	**:**	Hybrid video hearing conducted at Havant Justice Centre 26th July 2022
Date of Decision	**:**	24th August 2022

DECISION

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1 Where numbers appear in square brackets [] in the body of this decision, they refer to pages of the *digital bundle* before the Tribunal.

2 These are four linked applications for the determination of new pitch fees for 2022 for 4 park homes situated on a site at Wickens Meadow Park, Rye Lane, Dunton Green, Sevenoaks, TN14 5JB. The Applicants are the site owners. The Respondents are the occupiers of the 4 pitches on the site.

The hearing

3 The Tribunal conducted a remote hybrid video hearing of the applications on the 26th of July 2022. Mr Sunderland took part in the hearing remotely by video. Mr Oakley (Counsel) for Mrs Truzzi-Franconi and a number of the Respondents (Mrs Truzzi-Franconi; Mr Capon and Mr E Peacham) attended the hearing in person.

4 Mr Sunderland pointed out that he had not received prior notice that Counsel was attending today and he suggested that this was in breach of Rule 14 of the Tribunal Procedure (First Tier Tribunal)(Property Chamber) Rules 2013.

5 Mr Oakley submitted that Rule 14(2) required written notice of a representative's name and address to be provided if a representative was appointed. Mr Oakley argued that it was his instructing solicitor who had been appointed as representative, and the Applicant had been previously provided of notice of their appointment in these proceedings. Indeed he referred to there being a number of items of correspondence between Mr Sunderland and Mr Oakley's instructing solicitor. Mr Sunderland did not argue otherwise.

6 Further and in any event Mr Oakley referred the Tribunal to Rule 14(5) which provides:

> "At a hearing a party may be accompanied by another person whose name and address has not been notified under paragraph (2) but who, with the permission of the Tribunal, may act as representative or otherwise assist in presenting the party's case at the hearing."

Mr Oakley invited the Tribunal to give him the relevant permission pursuant to this paragraph in so far as this was required.

7 Having clarified with Mr Oakley that he only represented Mrs Truzzi-Fanconi, the Tribunal gave him permission, in so far as this was required, to appear before

the Tribunal for Mrs Truzzi-Franconi. The Tribunal considered that the Applicant was not prejudiced by such grant of permission (Mr Sunderland didn't seek to argue otherwise) and considered that Mr Oakley's submissions may well assist the Tribunal.

The Applications before the Tribunal

8 The Applicants made applications to increase the pitch fee on four plots on the site as follows:

Address	Page reference of the notice of proposed pitch fee and the review date specified in notice	Review date in agreement or commencement date	Old pitch fee	Proposed new pitch fee specified in the notice	RPI increase proposed as part of new pitch fee	Share of local Authority licence fee proposed as part of new pitch fee
Plot 6	[8] 01/01/2022	[149] 01/02/xx	£110.34 pcm	£117.77 pcm	6% = £6.62	£0.814
Plot 12	[62] 01/01/2022	[129] 01/01/xx	£130.11 pcm	£138.73 pcm	6% = £7.81	£0.814
Plot 15	[44] 01/01/2022	No written agreement	£110.34 pcm	£117.77 pcm	6% = £6.62	£0.814
Plot 35	[26] 01/01/2022	[160] commences 09/11 [160][161]	£111.00 pcm	£118.47 pcm	6% = £6.66	£0.814

		Review date specified 01/01 [161]				

Inspection

9 There was no inspection of Wickens Meadow Park (hereinafter referred to as 'the site') as the Tribunal considered that this was not required in order to fairly and appropriately determine the live issues in the applications. No party objected to this course nor requested that the Tribunal inspect the site.

A preliminary point

10 At the outset of the hearing the Tribunal raised a preliminary point with the parties, in particular Mr Oakley (for Mrs Truzzi-Franconi) and Mr Sunderland (for the Applicant) concerning the application in relation to plot 6.

11 Paragraph 17 of Chapter 2 of Schedule 1 of the Mobile Homes Act 1983 provides:

> (1**) The pitch fee shall be reviewed annually as at the review date**.
> (2) At least 28 clear days before the review date the owner shall serve on the occupier a written notice setting out his proposals in respect of the new pitch fee.
> (2A) In the case of a protected site in England, a notice under subparagraph (2) which proposes an increase in the pitch fee is of no effect unless it is accompanied by a document which complies with paragraph 25A.
> (3) If the occupier agrees to the proposed new pitch fee, it shall be payable as from the review date.
> (4) If the occupier does not agree to the proposed new pitch fee—
> (a) the owner or (in the case of a protected site in England) the occupier may apply to the 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 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) .....
.....[provisions relating to late service of pitch review notice].....
(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." (emphasis added)

12 Paragraph 29 of Chapter 2 of the Mobile Homes Act 1983 (hereinafter referred to as 'the 1983 Act) gives the following definitions:

> *"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;
>
> ....
>
> ***"review date"*** **means the date specified in the written statement as the date on which the pitch fee will be reviewed in each year, or if no such date is specified, each anniversary of the date the agreement commenced**.
>
> ....." (emphasis added).

13 The Tribunal took the parties to the following documents in the bundle and provisions of the relevant legislation:

a. The written agreement for plot 6 [149 of the digital bundle] did not give a commencement date – para 3 of the written agreement was left blank. Nor was there a commencement date at [152] stated to be part of the express terms of the agreement.

b. The express terms of the agreement [152] did however state at paragraph (1)(i) " 'The Review Date' shall mean the First day of Feb in each year, and the First Review Date shall be the Review Date next ensuing."

c. However the notice of increase served and relied on by the Applicants [8] gave a review date of 01/01/2022 and stated that this was the date

that the proposed pitch fee was to take effect from. It explicitly stated that the last review date had been 01/01/2021.

14 It appeared to the Tribunal that an incorrect review date had been given.

15 The Tribunal invited the parties comments on this point as it seemed to the Tribunal that although it wasn't a matter which had been taken by or on behalf of Mrs Truzzi-Franconi in the current proceedings (nor apparently in previous pitch fee review proceedings brought before a different First Tier Tribunal), it was a matter of jurisdiction as it appeared to relate to the fundamental validity of the notice of increase relied on in relation to plot 6. The Tribunal gave the parties a short adjournment to consider this point.

16 On the resumption of the hearing Mr Sunderland made oral submissions pointing out that no objection had been raised by Mrs Truzzi-Franconi or her Counsel in relation to this date previously. He stated that this was the third or fourth time that Mrs Truzzi-Franconi had not agreed to the increase in her pitch fee. Mr Sunderland suggested that "…under the implied terms the review date can be the date of the previous one." And that previously the review date had been 01/01. Mr Sunderland continued that if the Tribunal were of the view that the notice wasn't valid because of this point then he would serve a late review notice and the parties would end up back before the Tribunal again. The Tribunal offered Mr Sunderland a (second) short adjournment in which to consider this point again, accepting that it hadn't been raised previously. He declined, stating that there was "…very little I can do if the truth be told." He agreed that if the review date was incorrect then the notice was not valid. Later in his submissions to the Tribunal Mr Sunderland suggested that given the 2020 pitch fee review had been from 01/01/2020, had he served a notice for 2021 or 2022 with 01/02/xxxx as a review date that would likely have been objected to.

17 Mr Oakley (for Mrs Truzzi-Franconi) submitted that Mrs Truzzi-Franconi's position was that the review date was 01/02 of the relevant year and therefore the notice pertaining to 2022 proposed pitch fee relied on by the Applicants was invalid.

18 The Tribunal took some time to discuss the issue before resuming the hearing and giving a brief oral explanation of its decision. The Tribunal rejected Mr Sunderland's argument that the agreement's implied terms allowed the review date specified in and relied on in a pitch fee review notice to be one which had previously been used even if it wasn't either the commencement date of the agreement or the specific review date specified in the agreement. The terms of the Act, and resulting implied terms, clearly defined what the review date was, and it was not referrable to or reliant on the date used in a previous year. This is for obvious reasons, including in situations where a late review notice is served and if valid when any resulting increased pitch fee would take effect from.

19 There was not, in the Tribunal's view an agreement between the parties to vary the written agreement, or pitch review date. A lack of objection to the use of a particular date in one year that an increased pitch fee would be paid from a

particular date in that year, that did not, *without more*, vary the terms of the written agreement or vary statutorily implied terms for future years. The way in which a pitch fee can be increased is limited and is governed by statute (Paragraph 16 of Schedule 1); it can only be increased if the site owner follows the process set out in paragraph 17 and then only if the parties agree or the FTT considers it is reasonable for the pitch fee to be changed and makes an order determining the new fee. That statutory process lays down the procedure for identifying the review date. It is a prescribed process to be followed every year in which a change in the pitch fee is sought. If it is not followed then the site owner may encounter no difficulty, say for example if the proposed fee is agreed by the occupier, but if it is not, an application to the Tribunal would need to follow and at which point the validity of the notice served will be an issue.

20 While the Tribunal accepted that in relation to pitch fees for 2021 the date of 01/01/2021 had been used as the review date for plot 6 without any argument being raised ([195] in the digital bundle, and paginated by hand as '98' in a circle). The Tribunal did not consider that this, of itself, resulted in the review date being changed for 2021 or subsequent years. Just because the use of that date hadn't been disputed in the previous year did not of itself result in its use in later years being valid or in compliance with the statutory provisions. It couldn't be said, in the Tribunal's view, that just because Mrs Truzzi-Franconi had not raised this point in 2021 or 2020 she was now bound to accept the 01/01 as the correct review date subsequently.

21 The Tribunal was not satisfied on the basis of the evidence before it that the previous use of 01/01 as a review date, meant that this varied the review date to be used under the statutory provisions. The evidence before the Tribunal did not suggest that there had been a variation of the agreement such as to change the review date to 01/01 – rather that this was something which had occurred without any of the parties particularly addressing their minds to it. There had been previous proceedings before the FTT (and indeed the Upper Tribunal) concerning an earlier the pitch fee review for plot 6 (for 2018, see CHI/29UK/PHI/2018/0033-0041) – however the issues before the Tribunal on that occasion related to different substantial matters (concerning increases in pitch fees connected with improvement works). The review date used was not, the Tribunal understand, a live issue in those proceedings .

22 Mr Sunderland argues that he was stuck either way: had he used the 01/02/2021 as the review date a point could have been taken based on previous years use of the 01/01 date and if he used 01/01 then this didn't comply with the written agreement or statutory provisions. The Tribunal noted that had he been concerned about this the Applicants could of course have served two notices on Mrs Truzzi-Franconi, protectively and without prejudice to each other covering both dates. The evidence before the Tribunal did not suggest that the parties had intended at any stage to vary the review date specified in the notice, rather the 01/01 had been used without either party actually addressing their minds as to whether this was the correct date; perhaps understandably given that other plots did appear to have a review date of 01/01 specified.

23 The Tribunal considered that the reference to 01/01 on the pitch fee review notice was more than a mere typographical error; it did, in the Tribunal's view, affect the validity of the notice served. It could not be said that by looking at the

notice a reasonable recipient would know that the review date intended was actually 01/02. Indeed that was not the position the Applicants sought to argue. Indeed their intention was to implement any change in the pitch fee from the 01/01 date.

24 The Tribunal found that the review date specified in the notice relied on by the Applicants for plot 6 re Mrs Truzzi-Franconi was wrong; it was neither the commencement date of the agreement nor the review date expressly specified in the agreement. This meant that the pitch fee review notice for plot 6 was invalid.

25 The Tribunal therefore dismissed the application in relation to plot 6 and Mrs Truzzi-Franconi. It is of course still open to the Applicants to serve a late review notice now for 2022 pitch fees for plot 6 in accordance with the provisions of the 1983 Act.

Other preliminary matters

26 The Tribunal then discussed with parties who was to speak for the Respondents of the remaining applications (plots 12; 15; and 35). Mr Oakley asked for permission to remain in the hearing as an observer. The Tribunal indicated that he didn't need the Tribunal's permission to remain in the hearing as it was being held in public.

27 Mr Sunderland pointed out that in fact Mrs Truzzi-Franconi had previously indicated that she was representing the other Respondents (i.e. the residents of plots 12; 5; and 35). He referred to Mrs Truzzi-Fanconi's correspondence of 28/05/2022, and the Tribunal noted the Applicant's statement at [74] paragraph 5 referring to this.

28 The Tribunal again clarified Mr Oakley's position in this regard and he orally confirmed that he had only been representing Mrs Truzzi-Franconi in her personal capacity as a Respondent. He was not representing her in relation to her capacity as representative for plots 12; 15; and 35. Nor was he instructed by the occupants of plots 12, 15 and 35. Mrs Truzzi-Franconi indicated that she remained the representative for the occupiers of plots 12, 15, and 35. The Tribunal proceeded on this basis.

29 Mr Sunderland, had, the day before the hearing (25/07/2022) at 14.01 hours sent to the Tribunal, and the Respondents' representatives (being Mrs Truzzi-Franconi and Mr Fraiel (solicitor) a copy of another FTT decision, Wyldecrest v Levicount dating from 15/05/2015. In his covering email Mr Sunderland indicated that he *may* refer to that decision during the course of the hearing.

30 Neither Mr Oakley, nor any of the remaining Respondents had seen this decision and had not, prior to the start of the hearing had an opportunity to read it. The Tribunal's clerk ensured that a copy was provided to them and the Tribunal adjourned briefly again to give the Respondents time to consider the authority provided by Mr Sunderland. The Tribunal gave Mrs Truzzi-Franconi time to discuss this with the two other Respondents who had attended and Mr Oakley who remained present.

31 At the resumption of the hearing Mrs Truzzi-Franconi applied for an adjournment of the applications for plots 12, 15, and 35 so that they could be heard together with any new application made relating to plot 6 (Mr Sunderland having indicated that he intended to serve a new pitch fee renewal notice on her re plot 6 with the different review date) and because they had not had sight of the authority provided by Mr Sunderland before the hearing.

32 The Tribunal refused the application for an adjournment. The issues before the Tribunal remained the same as those identified previously and which the parties had prepared for. Mrs Truzzi-Franconi had the benefit of Mr Oakley sitting next to her and the Tribunal indicated that it would give her additional time to discuss any issues and make submissions as seemed appropriated. Further it was not clear at that stage whether in fact Mr Sunderland intended to rely on the Wyldecrest v LeVicount decision at all and if so to what extent. Nor was it clear when any new pitch fee review notice might be served on Mrs Truzzi-Franconi (and there was no guarantee that one would be) so any adjournment would potentially be for a number of months or an indeterminate period. The Tribunal considered that it was fair, proportionate, in the interests of justice and in accordance with the overriding objective to proceed to determine the remaining applications before it.

33 The Tribunal discussed with the parties a number of other preliminary matters, including:

a. The review notice for plot 35 [26] appeared to be addressed incorrectly, referring to "Mr Bob and Mrs June and Mrs Hall". The Tribunal accepted that this was a typographical error and that the notice's meaning was clear to a reasonable recipient – namely that it was intended to be addressed to Mr Bob and Mrs June Hall (Mr and Mrs Hall); see Mannai Investment Company Limited v Eagle Star Assurance [1997] UKHL 19. The Tribunal found that this was a valid notice.
b. The application to the Tribunal in respect of plot 15 [39] did not correctly specify the address correctly at section 2 as no pitch number was given. However at section 3 of the application, on the same page the correct address was given, and it was sufficiently clear which plot the application related to. Also it was of note that this relation to the application form for the Tribunal and not the review notice itself.
c. The Tribunal did query why the application submitted re plot 15 referred to the Respondent as Mr Peacham, yet the review notice served [44] was addressed to Mr and Mrs Peacham. The Tribunal heard from Mr Peacham that his wife had unfortunately died two years previously. No party argued that the error referring to Mrs Peacham on the face of the review notice rendered it invalid and the Tribunal accepted that the notice was valid; it was clear to the reasonable recipient that the notice was addressed to Mr Peacham as occupier and the reference to Mrs Peacham was no more than a typographical error which didn't affect the validity of the notice.

The proposed new pitch fees

34 As detailed above the Applicants proposed increased pitch fees for plots 12, 15 and 35 by:
   a. Adding an RPI increase of 6%; and
   b. Adding a further £0.814pcm in relation to cost of the local authority annual licence fee.

35 The Respondents indicated that they did not object either to the RPI increase of 6%, or to the additional charge concerning the local authority licence fee. Rather their concern was that they understood their pitch fee to include any charges for water, and yet the Applicants had now started levying a separate water charge, in addition to their pitch fee.

36 The Tribunal considered each of the three matters in turn:

37 There are a number of Upper Tribunal authorities which clearly explain the mechanism to be used and approach to be adopted by the First Tier Tribunal when dealing with this type of pitch fee applications. Of particular note are:
   a. Vyse v Wyldecrest Parks (Management) Limited [2017] UKUT 24;
   b. Re: Sayer [2014] UKUT 0283; and
   c. Wyldecrest Parks (Management) Limited v Kenyon LRX/103/2016.

   The Tribunal and parties referred to the three authorities during the course of the hearing.

38 The process of reviewing a pitch fee is governed by Schedule 1 to the 1983 Act. If the review of a pitch fee is not agreed, there must be an application to the FTT (the Tribunal) who will undertake a determination. Paragraphs 18, 19 and 20 of Schedule 1 to the 1983 Act set out the approach to be adopted in those circumstances. It is not a comprehensive code, but identifies certain matters of relevance (paragraph 18) and matters which cannot be taken into account (paragraph 19). The effect of paragraph 20 is that the pitch fee will remain the same unless the Tribunal find it reasonable for the fee to be changed. If they conclude it is reasonable to change the fee, the Tribunal has a discretion as to the amount of the change, having regard to the matters detailed in paragraph 18 and not taking into account those factors referred to in paragraph 19. Paragraph 20 contains a rebuttable presumption that the change will be no more than the percentage change in RPI calculated over a 12 month period.

39 At paragraph 39 of Vyse (ante), the Upper Tribunal refer to three basic principles identified in previous cases that shape pitch fee reviews:

   "…: annual review, no change without agreement unless the FTT considers it reasonable and determines the amount of the new pitch fee and the presumption of change in line with RPI. It continued:

   > "These three principles…. do not provide a benchmark by reference to which a new pitch fee is to be determined, such as the amount which might reasonable be expected to be agreed as the pitch fee in the negotiation of a new pitch agreement in the open market. The FTT is given a very strong steer that a change in RPI in the previous 12 months will make it reasonable for the pitch fee to be changed by that amount, but is provided with only limited guidance on what other matters are

relevant and that annual RPI increases are not the beginning and end of the determination, because paragraphs 18 and 19 specifically identify matters which the FTT is required to take into account or to ignore when undertaking a review." "

40 The Upper Tribunal continued at paragraph 43 "First, when considering any change in the pitch fee, the FTT is not bound to apply RPI because the presumption does not apply if "this would be unreasonable having regard to paragraph 18(1)", paragraph 20(A1)."

41 At paragraphs 22 and 23 in Sayer (ante), it was held by the Upper Tribunal:

"....It [*the Tribunal*] must also apply the presumption in paragraph 20(1) that there shall be an increase (or decrease) no greater than the percentage change in the RPI since the last review date unless that would be unreasonable having regard to the factors in paragraph 18(1). In practice that presumption usually means that annual RPI increases are treated as a right of the owner.

23 Although annual RPI increases are usually uncontroversial, it should be noted that the effect of paragraph 20(1) is to create a limit, by reference to RPI, on the increase or decrease in the pitch fee. There is no invariable entitlement to such an increase, even where none of the factors referred to in paragraph 18(1) is present to render such an increase unreasonable. The overarching consideration is whether the RPT [*the Tribunal]* considers it reasonable for the pitch fee to be changed; it is that condition, specified in paragraph 16(b), which must be satisfied before any increase may be made (other than one which is agreed). It follows that if there are weighty factors not referred to in paragraph 18(1) which nonetheless cause the RPT to consider it reasonable for the pitch fee to be changed, the presumption in paragraph 20(1) that any variation will be limited by reference to the change in the RPI since the last review date may be displaced."

42 The undisputed evidence before the Tribunal was that the relevant RPI increase, calculated in accordance with the provisions of paragraph 20(A1) of Schedule 1 to the 1983 Act was 6% (see [77]).

43 The Respondents did not argue that there should be no increase to the pitch fee. The Tribunal considered that it was reasonable for the pitch fee to be changed.

44 The Tribunal then needed to consider the amount of such change and whether it must apply the presumption in paragraph 20(1) of Schedule 1 that the increase should be no greater than the percentage change in the RPI since the last review date unless that would be unreasonable having regard to the factors in paragraph 18(1).

45 In considering the factors set out in paragraph 18(1) the Tribunal noted that there was no reliance by any party on any improvements, deterioration or reduction in services as influencing the level of pitch fee for 2022.

The cost of the Local Authority licence fee.

46 In addition to the 6% RPI increase the Applicants also sought an increase of £0.814 (i.e. 81pence) per month to be added to the pitch fees as a result of the cost of the local authority licence fee. The local authority licence fee was £391. The Tribunal heard evidence that there were 40 mobile homes on the site, so the Applicants had calculated each plot's respective share as £391 /40 = £9.77. Divided by 12 (to obtain a monthly figure) = £0.814pcm.

47 While the Respondents did not object to the inclusion of this sum, the Tribunal considered the proper basis on which such a sum could be included, mindful that it was being asked to exercise its discretion to impose a pitch fee including such an amount.

48 Mr Sunderland confirmed in his oral evidence, when asked by the Tribunal, that there were 40 homes on the site and that all 40 were occupied by those covered by the 1983 Act. He indicated that there might have been one empty pitch but he didn't seek to make any adjustment in relation to that and the Applicants would "…take the risk on that…", if they couldn't recover 1/40th in relation to that one empty pitch then the other occupants would not be prejudiced by this.

49 The Applicants' documentary evidence before the Tribunal consisted of:
   a. [78] a partial copy of a licence dated 20/08/2020 – only pages 1 to 9 of the 13-page document had been provided;
   b. [87] a copy of an invoice for £391 dated 04/04/2022; and
   c. the Applicants' statement [76] paragraph 15, that this £391 fee was the first charge levied by the local authority for the relevant licence.

50 In response to questions from the Tribunal Mr Sunderland clarified the position (and the Tribunal accepted his evidence in this regard) :
   a. The invoice dated 04/04/2022 was the first invoice the Applicants had received for a charge for a local authority licence;
   b. Though the invoice was dated in 2022 in related to charges for the 2021 licence;
   c. The Applicants had obtained a licence in 2021, but had not been billed for it until the 04/04/2022 invoice (i.e. the Applicants were billed late by the local authority); and
   d. There was nothing the Applicants could have done to change this – it was the same issue the Applicants had had in relation to another site in 2014.

51 It is clear that the pitch fee may be changed by more than the relevant RPI increase. Paragraphs 18 and 19 of Schedule 1 to the 1983 Act set out some of the factors which can and cannot be taken into account in this regard. But it is clear that (see paragraph 45 of Vyse (ante) that "…the factors which may displace the presumption are not limited to those set out in paragraph 18(1) but may include other factors." These were referred to by the Upper Tribunal in the Sayer (ante) case as 'weighty factors not referred to in paragraph 18(1) which nonetheless cause the ..[Tribunal]… to consider it reasonable for the pitch fee to be changed, the presumption in paragraph 20(1) that any variation will be limited by reference to the change in the RPI since the last review date may be displaced."

52 Initially Mr Sunderland sought to argue that this increase in relation to the Local Authority licence fee could be included in the pitch fee pursuant to paragraph 18(1)(ba) of Schedule 1 of the 1983 Act.

53 Paragraph 18(1)(ba) provides that when determining the amount of the new pitch fee particular regard shall be had to …:

> "(ba) ….any direct effect on the costs payable by the owner in relation to the maintenance or management of the site of an enactment which had come into force since the last review date…"

54 The Upper Tribunal has previously considered such an argument, indeed in a decision involving the Applicants (Vyse v Wyldecrest Parks (Management) Limited [2017] UKUT 24). There the local authority introduced a site licence fee for the 2015 calendar year initially this was £200 and a proportion of it was included in the pitch fee from a review date of 01/12/2014. However for the 2016 calendar year the licence fee was increased to £300.The site owner wished to include the increase in that fee within the pitch fees under the December 2015 pitch fee review.

55 The ability for a local authority to charge for a site licence arose as a result of changes made by the Mobile Homes Act 2013 – that enactment having come into force BEFORE the last review date being considered.

56 The Upper Tribunal held (paragraph 44):

> "I agree with the parties that the increase in the site licence fee is not a matter which may be taken into account pursuant to paragraph 18(1)(ba). Whether the increase is the effect of an enactment or not, the relevant enactment, the 2013 Act, has not come into force since the last review date. The 2013 Act came into force on 1 April 2014 and the last pitch fee review date was 1 December 2014. Further, although the increase was caused by the 2013 Act in the sense that that legislation introduced the right to charge a fee and a requirement that the fee be charged in accordance with a policy (ss.5A and 10A of the 1960 Act as amended), the proximate cause of the increase is the application of the policy which in my judgment is too indirect to fall within the words "any direct effect on the costs… of an enactment". Were it otherwise, any cost which could
> eventually be traced back to legislation would fall within sub-paragraph (ba). That would run contrary to the clear indication of a temporal restriction on what may be taken into account namely that the cost has arisen pursuant to legislation which has come into force since the last review date.
>
> 45. The second point which is clear from the previous decisions and again was not contested by the parties is that the factors which may displace the presumption are not limited to those set out in paragraph 18(1) but may include other factors. The issue which arises in this case is whether they may include a factor for which some provision is made in paragraph 18(1), but paragraph 18(1) does not apply.

.....
46. ..... it would appear.... That a factor may only displace the paragraph 20(1) presumption if it is not a factor dealt with in paragraph 18(1).
.....
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.
.....
57. I have had the opportunity to consider the draft Tribunal decision in Wyldecrest Parks Management Limited v Kenyon and others (LRX/103/2016) (Martin Rodger QC, Deputy President). In my judgment this provides a good example of an 'other factor' relating to site licence fees which are dealt with in s.18(1) to which regard should be had when considering a pitch fee review. In that case the local authority did not publish a fees policy and therefore could not lawfully charge a site licence fee until after the first review date which followed the coming into force of the 2013 Act. Accordingly, paragraph 18(1)(ba) did not apply. In those circumstances the FTT held that it could not have regard to the new site licence fee payable by the site owner when determining the amount of the pitch fee. However, the amendments to the 1983 Act plainly envisaged that particular regard should be had to the introduction of the site licence fee when considering the amount of the pitch fee. It was not the site owner's fault that the local authority had delayed proper implementation of the site licence fee legislation.....

55. In these circumstances, in my judgment the increase in site licence fee was an 'other factor' to which the FTT in this case could have regard when determining the amount of the pitch fee. The fact that the Explanatory Notes to the 2013 Act state that RPI changes would apply to the site licence fee after the first year does not detract from this. The notes do no more than point out, rightly, that after the first year the presumption of change in line with RPI will apply. It does not prevent the FTT from taking into account any increase (or decrease) in the site licence fee as an 'other factor' when considering whether the RPI presumption is displaced.

56. However, a note of caution is necessary. The fact that an increase or decrease in the site licence fee is an 'other factor' and therefore a material consideration as a matter of law when considering whether the presumption of change in line with RPI is displaced does not necessarily mean that it should displace the presumption.
....."

57 On the facts of the current case involving Wickens Meadow the Tribunal found that it was clear that the local authority licence fee did not and could NOT fall within the ambit of paragraph 18(1)(ba) of Schedule 1 of the 1983 Act; the relevant enactment which allowed a local authority to charge for a licence had not come into force since the last pitch fee review in January 2021.

58 Was it though a weighty 'other matter' which could be taken into account? It was clear it had been considered as such in Wyldecrest Parks Management Limited v Kenyon (ante). In his discussions with the Tribunal Mr Sunderland submitted that the local authority licence fee was a weighty matter and should be taken into account in this way. The Tribunal agreed. The 1983 Act plainly envisaged that particular regard should be had to the introduction of the site licence fee when considering the amount of the pitch fee. It was not the site owner's fault that the local authority had delayed proper implementation and associated billing re the site licence fee. In particular the Tribunal took note of the Upper Tribunal's comments at paragraph 58 in Kenyon (ante) "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. The additional cost of the annual site licence in the first year of its introduction is such a factor." That was also, in the Tribunal's view, the position on the current facts.

59 This was a new cost to the Applicants as site owners; the Tribunal accepted that it was the first year of such an additional cost. The evidence before the Tribunal did not suggest that the Applicants were at any way at fault. Absent express provision otherwise, the pitch fee was the only way by which a site owner could recover their administration costs – which now included the site licence fee. The fact that this was the first time the fee had been charged, that there was no objection to its inclusion by the Respondents (and the Tribunal noted that Mr Oakley had initially opened Mrs Truzzi-Franconi's case by explicitly accepting that such charge was to be included in the 2022 pitch fee), and the amounts involved all pointed, in the Tribunals view, in favour of displacing the presumption that any change in pitch fee should be limited to the RPI change only.

60 On the basis of the evidence before it the Tribunal considered that the paragraph 20 presumption was displaced, and that it was reasonable to (and would be unreasonable not to) increase the pitch fees by the RPI 6% increase plus the additional £0.814pcm connected to the local authority licence fee.

What charges are included in the pitch fee?

61 The Respondents' real argument before the Tribunal was that they were of the view that the pitch fee included all charges for water and that no separate charge should be levied by the Applicants in relation to this.

62 The Tribunal were mindful that the application before them was a pitch fee review application, and not consideration of whether any separately levied water charges were payable. However, the Tribunal considered that as part of its consideration of the pitch fee review, it was able to consider what was included within the pitch fee. Indeed the Tribunal took note that in the case of Sayer

(ante), a pitch fee review application, the Upper Tribunal had considered the Respondent occupier's objection concerning the basis of payment for water supplied to the pitches.

63 The issue of water charges at the Wickens Meadow site had been the subject of proceedings before the FTT previously, and included some of the same parties. The Respondents had included within the bundle before the instant Tribunal a copy of a decision of the FTT dated May 2019 [163] concerning the issue of water charges. They sought to rely on that decision as setting out the correct position in relation to water charges.

64 Mr Sunderland was at pains to assure the Tribunal he did not seek to dispute that in 2019 the FTT (the Tribunal) had found that in all 9 cases before them, the pitch fee had included water charges "I don't dispute that". The Tribunal noted that the decision had not been appealed.

65 Without seeking to repeat the detail of the Tribunal's findings in that case, the conclusions, in so far as relevant to the issues before the Tribunal and concerning water charges, are as follows:

a. Re plot 6 [178] paragraph 36(a) the written agreement for plot 6 deliberately excluded any obligation for the occupier to pay the owner a water charge.
b. Re plot 12 [174] paragraph 30 the Respondent had accepted that the written agreement showed the costs of water (and sewage/sewerage) was included within the pitch fee and Mr Sunderland stated they would not be charged for water and sewerage.
    i. In the current proceedings the written agreement appeared at [124] and at [130] was an express term that water charges were included within the pitch fee.
c. Re plot 15 there was no written statement of terms or written agreement in relation to this plot ([175] para 30(b)). The Tribunal concluded [179] paragraph 36(d) there was no evidence that the pitch agreement (whether oral or written) included any obligation to pay a separate water charge.
d. Re plot 35 [174] paragraph 30 the Respondent had accepted that the written agreement showed the costs of water (and sewage/sewerage) were included within the pitch fee and Mr Sunderland stated they would not be charged for water and sewerage.
    i. In the current proceedings the written agreement appeared at [161] and specifically states that the pitch fee includes charge for water

66 That Tribunal concluded that [189] para 68 "None of the occupiers are liable to pay the owner separate charges for water …under their respective pitch agreements."

67 This Tribunal though not bound by that decision, considered it of considerable weight as setting out the position re water charges at the time and after specific

argument. The Tribunal also noted that neither party sought to dispute what that Tribunal found at the time.

68 The Tribunal had specified regard to paragraph 21 of Sched 1 part 2 of the 1983 Act which required the occupier to (a) pay the pitch fee to the owner and (b) pay to the owner all sums due under the agreement in respect of water (and other). And paragraph 29 of schedule 1 of part 2 of Act expressly defines pitch fee as *not* including amounts due in respect of water *unless* the agreement expressly provides that the pitch fee includes such amounts (emphasis added).

69 The Tribunal agreed with the findings of the previous Tribunal that in relation to plots 12, and 35 that the written agreement expressly defined the pitch fee as including any charges for water. There was therefore no ability for the Applicants to otherwise seek to charge occupiers for water.

70 In relation to plot 15, there was no written agreement, and there was the Tribunal agreed with the previous Tribunal, no agreement (oral or written) by which any obligation to pay for water charges was imposed on the occupier.

71 While the May 2019 decision of the FTT was not appealed, in the current proceedings Mr Sunderland referred in the Applicants reply [75] para 9 and 10 to a decision of the Upper Tribunal concerning this site which he said supported his position. Mr Sunderland stated that the Upper Tribunal decision "…retrospectively changed the agreed pitch fee figure for 2020 and it was agreed by all the Respondents, by their instructed Solicitor, that the pitch fee for 2020 was amended retrospectively by agreement."

72 Mr Sunderland did not provide a copy of that Upper Tribunal decision within the bundle, but he did include an email exchange between him and the solicitor after publication of the Upper Tribunal decision; this appears at [88] in the bundle.

73 The Tribunal took judicial notice of the Upper Tribunal decision Mr Sunderland referred to in this regard, being Wyldecrest Parks (Management) Ltd v Truzzi-Franconi and others [2020] UKUT 0142 (dated 28/04/2020). That decision related to the pitch fees to be applied for 2019 on the site and specifically addressed whether the RPI increase in 2019 was to apply to a sum of £6.31per annum which had been added to the pitch fee for 2018 in relation to improvement works. The Upper Tribunal decision did not concern water charges as part of the pitch fee.

74 Mr Sunderland argued that while the FTT in its May 2019 decision had found that water charges were part of the pitch fee, things had 'moved on' since then. The Respondents rather argued that the position was still as detailed by the FTT in its May 2019 decision.

75 Mr Sunderland did not dispute that the Applicant was now levying separate water charges on the occupiers (and had done so after May 2020 and in 2021). He said that things had moved on since the May 2019 FTT decision relying on the following points:

a. After the 2019 decision, came the 2020 pitch fee review. "What we did, respecting the decision of the Tribunal, accepting the water was included in the pitch fee, but given the OFWAT rules [about being a water reseller]….we follow the OFWAT guidance… in 2020 we reduced the pitch fee for the Respondents in 2020 so they had a lower pitch fee and paid the water separately and that was accepted by all the Respondents. In the course of 2020 the Upper Tribunal gave its decision on the 2019 pitch fee review [appeal], that impacted on the 2020 review."
    i. The Upper Tribunal's decision is dated 28/04/2020
b. Mr Sunderland referred to [88] an email from May 2020 between him and Mr Fraiel solicitor for the Respondent occupiers in the Upper Tribunal appeal. That email stated that the occupiers had paid £3.78 to date (a reference arrears) and would agree to a further increase of 21p in light of the Upper Tribunal decision to be applied from January 2020. There was no specific reference in that email exchange to any adjustment removing an element of the pitch fee for water charges.
    i. In later correspondence with the occupiers the Applicants referred to the Upper Tribunal decision being in relation to the "…element for improvements added to your pitch fee.." and that Mr Fraiel had agreed the 2020 pitch fee figure in line with the Upper Tribunal decision [200] (also paginated by hand with the number 103 within a circle).
c. The Applicant now charges the occupiers separately for water.
d. Mr Sunderland stated at one point that paragraph 21 of the implied terms showed that water and pitch fee charges were separated out.
e. He argued that if water charges were included as part of the pitch fee then the Applicant would be in difficulty given the OFWAT provisions which applied to water resellers.
f. He said that on the site of 40 plots, 31 had paid water charges separately, and only the 9 who had been part of the 2019 FTT proceedings had not because of the FTT's decision concerning water charges.
g. Mr Sunderland's position was, by paying the 2020 pitch fee, which had had £0.13 deducted to reflect the Applicant's assessment of water charges, the occupiers had accepted that their pitch fees no longer included water charges and therefore these could be levied by the Applicant separately.

76 From the information before the Tribunal both in terms of documentary evidence in the bundle, and having heard oral evidence from the parties, the Tribunal found:
a. [199] In November 2019 the Applicant wrote to the occupiers on the site, including the Respondents stating that further to the FTT's decision on the section 4 application (see page [163] in the digital bundle - this is the May 2019 FTT decision), that the 2019 pitch fee included the cost of water. The letter went on to state that this position "…goes against the recommendation of OFWAT for the resale of water. Following the introduction of the maximum resale price provision in 2006, it is recommended by OFWAT that where water is included within a pitch fee, it should be separated. This will avoid the inadvertent breach of the Maximum Price Provision." The letter continues stating that the Applicant had, further to the Tribunal's section 4 decision, decided to

"…remove the price of water from your pitch fee and charge for this separately". The letter goes onto say that £0.13 had been deducted from the pitch fee to this end. And that the cost of water would be charged in accordance with the OFWAT regulations for resellers. Included with that letter was the pitch fee review notice effective for 2020. A copy of which appears at [191][192] to [194]

i. The Tribunal note that no explanation was given as to how £0.13p figure was arrived at.
ii. During the hearing Mr Sunderland stated that 13p pcm was calculated "…on the basis of our supply bills in the preceding 12 month period divided by 40, then divided by 12."

b. [205] The Applicant sent separate letters to occupiers in or around November 2019 imposing a monthly water charge then expressed to be £0.13pcm.
    i. It wasn't clear on what basis this figure had been arrived at.

c. It was not clear to the Tribunal whether Mr Fraiel had had sight of these 2019 letters before the May 2020 email [88]. What was however clear to the Tribunal was what was being agreed in those emails was the impact of the Upper Tribunal's decision on the 2020 pitch fee review. There was no specific agreement in the emails relied on that water charges had been deducted from the pitch fee and would thereafter be charged separately. The agreement related to the impact of the Upper Tribunal decision on the 2020 pitch fees, not a specific agreement concerning any changed basis for the 2020 pitch fee figures in any other respect.

d. That the occupiers before the instant Tribunal had not agreed with the Applicant's approach of separating off water charges and charging for them separately. There was correspondence in the bundle before the Tribunal showing rather than agreeing and paying the separate water charges, in fact these charges had not been paid by the occupiers, and the Applicant had been forced to write to them as a result of arrears in this regard [203] (also paginated by hand as '106' within a circle); referring to arrears of £522 in the case of Mr and Mrs Hall being the balance of "…pitch fee and water from 2020 to date." The Tribunal also heard oral evidence as to arrears during the hearing from Mr Capon.

e. The Tribunal found that this was not a situation of the residents having paid the water charges since their imposition by the Applicants in 2020 in an agreed variation to the terms of their agreements. Indeed the most Mr Sunderland sought to argue really was that the occupiers had not objected in 2020, and hadn't sought to dispute it specifically at the time. On that basis he suggested the occupiers had agreed with the changes. The Tribunal did not accept that that was the reality of the position. There was evidence before the Tribunal that the Respondent occupiers were in arrears of their water charges having specifically not paid them.

f. At [99] the Respondents set out what they had understood or 'believed' the position to be in relation to water charges after the November 2019 correspondence: that the water charge was included within their pitch

fee but the RPI increase had not been applied to that element, that it had been separated out, and that once the RPI increase had been applied then the 13p water charge was added back in and this aggregate sum was the pitch fee they were charged. There was clearly some confusion on the Respondents' parts in this regard, as this was not what the Applicant had done. The Respondents stated at [99] they had been disputing since 2017 the position in relation to water charges and their pitch fees and in her oral submissions on behalf of the Respondents Mrs Truzzi-Franconi stated "…we always believed our agreement states water charges are included in the pitch fee, and all [we] wanted to do was stick to that and [the written] agreement and the Tribunal decision [that water charges could not be separately levied]."

g. That while £0.13pcm had been deducted from the pitch fee as apparently reflecting water charges in November 2019, in 2021 the water charge levied by the Applicants was some £27.95pcm [197] (also paginated by hand as '100' within a circle) and in 2022 was intended to be £23.82pcm [198] ((also paginated by hand as '101' within a circle). This was clearly a very significant increase.

77 The Tribunal referred the parties to the Upper Tribunal decision in Sayer (ante) which specifically dealt with water charges being considered as part of a pitch fee. That decision specifically considered the same argument being relied on by Mr Sunderland concerning OFWAT guidance and the Water Resellers Order. The Tribunal offered the parties a short adjournment to have time to read that decision before proceeding with submissions on this point, in particular pointing out paragraphs 36 to 39 of that decision. Mr Sunderland expressly indicated that he was able to reply without needing that time. In order to ensure that the parties were all aware of the specific comments of the Upper Tribunal in this regard the Tribunal read out the relevant paragraph of the decision during the hearing.

78 Without seeking to set out all of the relevant parts of the Sayer decision (ante) the Tribunal considered the following to be of particular note. In that case Mr Sayer argued that the pitch fee included a charge for the supply of water but that the RPI increase could not be applied to that part of the pitch fee because of the Water Resale Order 2006. In fact in Sayer while the written agreement provided expressly for separate charges for water (i.e. they were not included in the pitch fee) in practice over many years no separate charge had in fact ever been levied for water and the cost of water was in fact reflected in the pitch fee. At paragraphs 36 to 42 the Upper Tribunal stated:

"There is no evidence of any express agreement between Mr Sayer and the Park owner, or between any other occupier and the Park owner, that the contractual entitlement to levy a separate water charge should be varied and replaced by the treatment of water as part of the total consideration for which the pitch fee was payable, but in practice that is the system which operated by the time Mr Sayer acquired his pitch. In the absence of any express agreement to the contrary, and given the informality of the arrangement, it would in my judgment be open to either Mr Sayer or PCSW to require that the original contractual bargain be implemented thereby allowing charges for water to be collected in addition to

the pitch fee. I agree with the RPT that no variation of the agreement would be required to achieve that result, since it is what the parties originally agreed. As the pitch fee has already been reviewed on the assumption that it provides consideration for both the pitch itself and the water supplied to it as well as any other services and amenities, it would be necessary for the party wishing to revert to the strict contractual position to give notice of that requirement so that the pitch fee could be adjusted appropriately at the next review date, with the introduction of water charges taking effect at the same time.

37. In my judgment it is not possible to identify a separate element of the pitch fee which represents the consideration for the supply of water. As matters have evolved over time a single fee has become payable for all of the benefits received by the occupier under the agreement. The only additional charges which have been referred to are those for gas and electricity. The whole pitch fee has come to be paid for the totality of the rights, benefits and services received under the agreement and it would not be legitimate to attempt to isolate a charge for a particular element of that total consideration. In particular I do not think it would be legitimate to assume, as Mr Sayer does, that the water component of the pitch fee can be ascertained simply by apportioning the water bill paid by the Park owner amongst all those who receive their water from the same metered supply. As the RPT recorded, the water bill has increased at a faster rate than RPI with the result that the water bill has consumed a greater proportion of the pitch fees collected by the site owner over the years. Mr Sayer himself recognised this in his submissions to the RPT. He is recorded as submitting that no increase at all was allowable in the element of the pitch fee referable to water charges "so that in time it might come to consume entirely the whole pitch fee and destroy the profitability of the site owner's business".

38. In my judgment the RPT was correct to approach the effect of the 2006 Order on the basis that water was not charged for separately. On that basis I do not consider that the 2006 Order applies to the supply of water by the site owner to Mr Sayer. Mr Sayer is not a "purchaser" within the definition in paragraph 5 of the 2006 Order because he does not buy water from the site owner in the manner contemplated by the Order. Mr Sayer receives water in return for payment, but he does so only as part of a wider bargain which includes the right to station his mobile home on the pitch (together with any other rights and services conferred by the agreement) in return for which he pays a single undifferentiated and indivisible pitch fee. It is impossible to apply the maximum charge provisions of paragraph 6 of the Order to such an arrangement.

39. I do not consider that the statement on the OFWAT website, on which Mr Sayer relied, is a comprehensive statement of the law (which it does not purport to be) rather than a statement of good practice, and I do not consider that it applies to arrangements in which water is received as part of the services for which the pitch fee is payable without any separate amount being attributed to it.

40 ..... The only charge is the single pitch fee for the totality of the services provided. It is a misconception to equate the costs incurred by the site owner with a charge to the occupier.

41. For so long as water charges continue to be subsumed into the pitch fee the effect is that the Park owner is restricted to the RPI increase in the pitch fee irrespective of the increase in the cost to it of supplying water to the Park. Correspondingly, the owner is not required to provide the information which would be required by the 2006 Order if a separate charge was levied.

42. As I have already suggested, it seems to me likely that either party could inform the other that, with effect from the next review date, they wished to revert to the strict terms of the agreement, with a separate charge being made for water in addition to the pitch fee. If that course is taken by either party, it is to be hoped that they will reach agreement on an appropriate adjustment of the pitch fee to reflect the new separate charging arrangement. If agreement cannot be reached it is likely that the First-tier Tribunal would have to consider whether the change in the basis on which water was supplied (albeit that it was a return to the basis originally intended) was sufficient in itself to make it reasonable for the pitch fee to be changed from the next review date."

79 Mr Sunderland responding to this point relied on the LeVicount decision (CHI/29/UB/2015/0001) he had provided the day before the hearing. The Tribunal did not consider it was appropriate to place any particular weight on that decision:

a. It was a decision of the FTT (First Tier Tribunal) dated 15/05/2015 decided on the papers and without the benefit of oral argument;
b. The FTT referred there to the OFWAT guidance and Water Resale Order but made no reference to the Upper Tribunal's decision in Sayer dated 24/06/2014 (and therefore published prior to the FTT's decision in LeVicount);
c. The Tribunal preferred rather to rely on the Upper Tribunal's decision in Sayer as setting out a more thorough examination of the relevant issues, and as this was an Upper Tribunal decision it was therefore binding on the current Tribunal.

80 The Respondents sought and were given a brief adjournment before making closing submissions, including submissions on the LeVicount case relied on by the Applicants.

81 The Tribunal made the following further findings and reached the following conclusions:

a. That the Respondents' written agreements provided, in relation to plots 12, and 35 (plot 6 was no longer before the Tribunal that application having been struck out) that the pitch fee included any charges for water'. The implied terms did not alter this.
b. That written agreement had not been varied by the agreement of the Respondents;
c. The Respondents had not, by their actions in relation to the 2020 pitch fee review process agreed to pay separate water charges going forward. The situation was not the same as that referred to in Sayer (ante) where a practice, not in accordance with the written agreement, had arisen and been in place for many years such as to require notice to be given to

change that established practice and revert to the strict contractual terms of the agreement.

d. The facts referred to above did not, the Tribunal found, suggest that the Respondents had agreed that their water charges would be billed for separately. The May 2019 decision made it clear that the relevant occupiers should not be billed for water separately to their pitch fee. They had not paid the separately levied water charges and there were arrears on their accounts from 2020 relating to non-payment of the water charges levied.
e. Paying the 2020 pitch fee, did not, in the Tribunal's view result in a change or variation to the written terms of their agreement; while they may have paid the 2020 pitch fee (reduced by £0.13p) there could not have been said to be an express agreement or 'meeting of minds' between the parties that this meant, as the Applicant now sought to argue, that separated water charges would be levied.
f. The Tribunal accepted the Respondents' submission that reading [192] and [199] they had understood the £0.13 was subtracted from the pitch fee, the RPI increase applied to the remainder and the £0.13 was then added back in. They had not expected a separate charge to be levied for water and so when it was, they had not paid it, believing that the water charges were included in their pitch fee.
g. In relation to plot 15 there was no written agreement nor any other obligation on the occupier to pay water charges, so water charges could not be charged for separately to the pitch fee.
h. The Applicant's actions in reducing the pitch fee by £0.13 in 2020 did not without more, mean that the Respondents had agreed that water charges could thereafter be levied separately.
i. In relation to the Applicant's decision to deduct £0.13pcm in relation to water charges as part of the pitch fee. It still wasn't clear to the Tribunal how or on what basis the £0.13pcm had been arrived at: while Mr Sunderland referred to the figure being based on charges for the preceding 12 months, that £0.13pcm had then increased to a monthly charge of £27.95pcm [197] in 2021 and £23.82pcm in 2022 [198]. The Tribunal agreed with the Upper Tribunals view in Sayer that one cannot try to identify the water charges component of the pitch fee by apportioning the water bill paid by the site owner amongst all those who receive their water from the same metered supply, it appeared that that was what the Applicants had sought to do when identifying £0.13 to be deducted in 2020.
j. The 2006 Water Reseller Order did not apply on the current facts;
k. The Respondents were not "purchasers" within the definition of the 2006 Order because they did not buy water from the site owner in the manner contemplated by the Order. The Respondents received water in return for payment, but only as part of a wider bargain which included the right to station a mobile home on their respective pitches (together with any other rights and services conferred by the agreement) in return for which the Respondent paid a single undifferentiated and indivisible pitch fee. It was not possible to apply the maximum charge provisions of paragraph 6 of the Order to such an arrangement.
l. The Applicants were not water resellers to plots 12, 15, and 35.

m. The OFWAT guidance did not require the Applicant to try to separate out of the indivisible pitch fee some amount representing water charges.

Conclusions

82 Where then did that leave the Respondents and the current applications before the Tribunal?

83 The application in relation to plot 6 was struck out (or dismissed), the pitch fee review notice relied on being invalid.

84 The Tribunal found that the pitch fees in relation to plots 12, 15, and 35 should be increased in accordance with the terms of the pitch fee review notices served by the Applicants, and the increased pitch fees were to have effect from 01/01/2022, namely the pitch fees were now;

a. Plot 12 £138.73pcm
b. Plot 15 £117.77pcm; and
c. Plot 35 £118.47pcm

85 To that extent therefore the Applicants were successful in their applications re those plots.

86 What of the impact of the Tribunal's decision that the pitch fees for plots 12, 15 and 35 included charges for water? The Tribunal considered inviting the parties to make submissions on this, and/or see whether an agreement could be reached in this regard in light of the Tribunal's decision. However, in deciding against this course the Tribunal noted:

a. Mr Oakley had at the beginning of the hearing invited dialogue with the Applicant on the topic of the water charges. This was summarily rebuffed by Mr Sunderland.
b. Mr Sunderland told the Tribunal that it was "…impossible for me to deal with [the Respondents] sensibly." And later that "I am unable to resolve any matters with these occupiers without coming to a Tribunal" and
c. Mr Sunderland told the Tribunal "I can't go back re 2020… it's impossible."

87 It seemed unlikely given the history between the parties on this topic that an adjournment to try to reach an agreement would serve any useful purpose.

88 The Tribunal considered whether any further or other adjustment to the pitch fees effective from 01/01/2022 was required in light of the Applicants having deducted £0.13 from the 2020 pitch fees purportedly in respect of water charges. However no adjustment on this basis had been detailed or suggested in the 2022 pitch fee review notices or since. Further and in any event the Tribunal considered that its restating of the position re water charges being included within the pitch fees was not of itself, given the history and matters referred to above, sufficient to make it reasonable for the pitch fee to be changed from the 01/01/2022 review date other than by reference to the 6% RPI increase and the additional sum of £0.814pcm in relation to the local authority licence fee.

89 The Application before the Tribunal asked for a determination of pitch fees in the sums therein specified. There was no request to make any further or other adjustment in relation to the water charges point.

Reimbursement of fees

90 The Applicant had also made an application for the reimbursement, by each of the Respondents, of the £20 application fee paid.

91 Rule 13 (2) of the Tribunal's Procedural Rules provides that the Tribunal may make an order requiring a party to reimburse to 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. As Mr Sunderland submitted, the Tribunal may make such an order if it considers it just to do so.

92 Mr Sunderland argued that the Tribunal should make such an order on the basis that:

a. He was unable to resolve any matters with the Respondent occupiers without the intervention of the Tribunal;
b. The Applicant was applying for pitch fees to be increased by the relevant RPI figure and an amount for the local Authority licence fee. The Respondents did not in fact argue that that was unreasonable. Indeed they didn't challenge such an increase; and
c. The Respondents had despite this chosen not to agree the pitch fee increases and therefore the Applicant had had no option but to apply to the Tribunal.

93 The Respondents resisted such an application stating that they considered the Applicant's behaviour in seeking to levy water charges separately, after the 2019 FTT decision to "not be reasonable", and that they were "…only trying to point out what is in our agreements."

94 The Tribunal refused to make an order in relation to the reimbursement of fees.

95 The Tribunal noted that the Respondent occupiers were not obliged to agree with the pitch fee increases specified in the review notices. There was a strict statutory regime which governed how pitch fees could be increased. That required the Tribunal to consider the validity of the notices served and process followed as well as exercising its discretion as to the amount of any pitch fee increases. The Respondents were entitled to require the Applicant to apply to the Tribunal and for the Tribunal to go through that process, using its expertise to assess the reasonableness of the pitch fee increase sought and exercise its discretion as to the level of increase.

96 Further on the facts of the current applications there was a significant issue between the parties as to what the pitch fee covered: did it include water charges or not? The Respondents had made their position clear in this regard, including at [91] in Mrs Truzzi-Franconi's email of 29/04/2022 and the Respondents' argument set out at [99]. They were, given the history between these parties, entitled to air those concerns before a Tribunal in relation to the 2022 pitch fees.

97 The Tribunal had also concluded that the pitch fee review notice relied on in relation to plot 6 was invalid.

98 For all these reasons, no order requiring reimbursement of fees would be made.

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

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.

Judge J Brownhill
24TH August 2022.

Schedule of Respondents

1) Mrs Truzzi-Franconi
   6 Wickens Meadow Park

2) Mr S Capon and Mrs H Bailey
   12 Wickens Meadow Park

3) Mr E Peacham
   15 Wickens Meadow Park

4) Mr R Hall and Mrs J Hall
   35 Wickens Meadow Park