FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/00HY/PHI/2022/0163
Property	:	74 Trowbridge Lodge, West Ashton Road, Trowbridge, Wiltshire, BA14 6DL
Applicant	:	Tingdene Parks Limited & Redlane Sites Limited
Representative	:	Mr Wood Ryan & Frost Solicitors
Respondents	:	John Skinner and Susan Skinner
Representative	:	
Type of Application	:	Review of Pitch Fee: Mobile Homes Act 1983 (as amended)
Tribunal Members	:	Judge J Dobson J Coupe FRICS
Date of Hearing	:	2nd May 2023
Date of Decision	:	30th June 2023

DECISION

Summary of Decision

1. **The Tribunal determines that the reasonable pitch fee for 74 Trowbridge Lodge, West Ashton Road, Trowbridge, Wiltshire, BA14 6DL is £2324.26 with effect from 1st October 2022.**

2. **The Respondents shall reimburse the Applicant for the application fee paid, being £20.00.**

Background and procedural history

3. On 16th December 2022, the Applicant site owner applied [2-7] for a determination of a revised pitch fee of £2,362.20 per year payable by the Respondents with effect from 1 October 2022 in respect of 74 Trowbridge Lodge, West Ashton Road, Trowbridge, Wiltshire, BA14 6DL ("the Pitch").

4. Trowbridge Lodge ("the Park") is a protected site within the meaning of the Mobile Homes Act 1983 ("the 1983 Act"). The definition of a protected site in Part 1 of the Caravan Sites Act 1968 includes a site where a licence would be required under the Caravan Sites and Control of Development Act 1960 if the exemption of local authority sites were omitted. The licence [46- 53] is dated 8th July 2019 and (it was indicated in the hearing- see below) currently allows for 34 pitches.

5. The Respondents are entitled to station their park home on the Pitch by virtue of an agreement under the 1983 Act entered into on 16th August 2019 [19-45], which includes the statutory implied terms referred to below.

6. A Pitch Fee Review Notice with the prescribed form proposing the new pitch fee was served on the occupiers dated 28th July 2022 [8- 18], proposing to increase the pitch fee by an amount which the Applicant says represents an adjustment in line with the Retail Prices Index ("RPI").

7. Section 4 of "The Pitch Fee Review 2021" document contained a calculation for the proposed new pitch fee. The calculation was expressed as a formula of (A)+(B)+(C) – (D) where
   (A) is the current pitch fee,
   (B) is "the RPI Adjustment",
   (C) is the recoverable costs, and
   (D) is the relevant deductions.

8. The current pitch fee at that time was £2,112.96. The RPI was 11.8% taking "the RPI Adjustment", as described, as the percentage increase in the RPI over 12 months for June 2022. No recoverable costs or relevant deductions were applied. No services are included in the pitch fee. Additional charges are made for water, sewerage and electricity.

9. The Respondents did not agree to the increase.

10. On 2 February 2023, the Tribunal issued Directions [53- 57] providing a timetable for the exchange of documentation leading to submission of a bundle by 10 March 2023.

11. The Tribunal directed that the application be dealt with on the papers. The parties did not request an oral hearing, nor did they object to a determination on papers. However, the Tribunal has undertook a review of the documentation and decided that an oral hearing is necessary. In light of the disputes as to facts, the Tribunal considers that there was no proper alternative to arranging an oral hearing.

12. The Applicant has submitted a determination bundle comprising 71 pages, which was copied to the Respondents.

13. Whilst the Tribunal makes it clear that it has read the bundle, the Tribunal does not refer to all of the documents in detail in this Decision, it being impractical and unnecessary to do so. Where the Tribunal does not refer to pages or documents in this Decision, it should not be mistakenly assumed that the Tribunal has ignored or left them out of account.

14. Insofar as the Tribunal does refer to specific pages from the bundle, the Tribunal does so by numbers in square brackets [ ], and with reference to PDF bundle page- numbering. The page numbering of the bundle itself and the numbering of the pages of the PDF were one out throughout, which the Tribunal observes is liable to cause confusion and should be avoided.

15. This Decision seeks to focus on the key issues. The omission to therefore refer to or make findings about every statement or document mentioned is not a tacit acknowledgement of the accuracy or truth of statements made or documents received. Not all of the various matters mentioned in the bundle or at the hearing require findings to be made for the purpose of deciding the relevant issues in this application.

16. There has been a longer delay in this Decision being produced than the usual and longer than the target date. It is only appropriate to sincerely apologise to the parties for the delay since then and for any frustration and inconvenience arising. The Tribunal does so.

The relevant Law and the Tribunal's jurisdiction

17. One of the important objectives of the 1983 Act was to standardise and regulate the terms on which mobile homes are occupied on protected sites.

18. All agreements to which the 1983 Act applies incorporate standard terms which are implied by the Statute, the main way of achieving that standardisation and regulation. In the case of protected sites in England the statutory implied terms are those in Chapter 2 of Part 1 of Schedule 1 to the 1983 Act.

19. The principles governing a pitch fee increase are provided for in paragraphs 16 to 20 inclusive. The procedure is provided for in paragraph 17, which also makes reference to paragraph 25A.

20. A review is annual on the review date. In respect of the procedure, paragraph 17(2) requires the Owner to serve a written notice ("the Pitch Review Notice") setting out their proposals in respect of the new pitch fee at least 28 days before the review date. Paragraph 17(2A) of the 1983 Act states that a notice under sub-paragraph (2) is of no effect unless accompanied by a document which complies with paragraph 25A. Paragraph 25A enabled regulations setting out what the document accompanying the notice must provide. The Mobile Homes (Pitch Fees) (Prescribed Forms) (England) Regulations 2013 ("The Regulations") did so, more specifically in regulation 2.

21. The Mobile Homes Act 2013 ("the 2013 Act") which came into force on 26 May 2013 strengthened the regime. Section 11 introduced a requirement for a site owner to provide a Pitch Review Form in a prescribed form to the occupiers of mobile homes with the Pitch Review Notice. The provisions were introduced following the Government" response to the consultation on "A Better Deal for Mobile Homes" undertaken by Department of Communities and Local Government in October 2012. The 2013 Act made a number of other changes to the 1983 Act.

22. In terms of a change to the pitch fee, paragraph 16 of Chapter 2 provides that the pitch fee can only be changed (a) with the agreement of the occupier of the pitch 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."

23. Consequently, if the increase in the pitch fee is agreed to by the occupier of the pitch, that is the end of the matter. There is nothing for the Tribunal to determine and hence the Tribunal has no jurisdiction. If the occupier does not agree, the pitch fee can only be changed (increased or decreased) if and to the extent that the Tribunal so determines.

24. The owner may then apply to the Tribunal for an order determining the amount of the new pitch fee (paragraph 17. (4)).

25. The Tribunal is required to then determine whether any increase in pitch fee is reasonable and to determine what pitch fee, including the proposed change in pitch fees or other appropriate change, is appropriate. The original pitch fee agreed for the pitch was solely a matter between the contracting parties and that any change to the fee being considered by the Tribunal is a change from that or a subsequent level. The Tribunal does not consider the reasonableness of that agreed pitch fee or of the subsequent fee currently payable at the time of determining the level of a new fee.

26. 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. The implementation of those provisions was the first time that matters which could or could not be taken into account were specified.

27. Paragraph 18 provides that:

> "18(1) When determining the amount of the pitch fee particular regard shall be had to-
> (a) any sums expended by the owner since the last review date on improvements .....
> (aa) and deterioration in the condition, and any decrease in the amenity, of the site .....
> (ab) 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 (insofar as regard has not previously been had to that reduction or deterioration for the purposes of this sub- paragraph.
> ....."

28. Necessarily, any such matters need to be demonstrated specifically. As amended by the 2013 Act, the paragraph and paragraph 19 set out other matters to which no regard shall be had or otherwise which will not be taken account of.

29. Paragraph 20A(1) introduced a presumption that the pitch fee shall not change by a percentage which is more than any percentage increase or decrease in the RPI since the last review date, at least unless that would be unreasonable having regard to matters set out in paragraph 18(1) (so improvements and deteriorations/ reductions). The provision says the following:

> "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 not more than any percentage increase or decrease in the retail price index calculated by reference only to-
> (a) the latest index, and
> (b) index published for the month which was 12 months before that to which the latest index relates."

30. For reasons which may be apparent from the headline decision but will in any event almost certainly become apparent from the discussion of the application of the law below, the Tribunal considers it appropriate to set out elements of the judgments of a number of case authorities, doing so in significantly greater detail than usual in a case involving a pitch fee review.

31. A detailed explanation of the application of the above provisions is to be found in a decision of the Upper Tribunal in *Sayer* [2014] UKUT 0283 (LC), in particular at paragraphs 22 and 23 in which it explained about the 1983 Act and the considerations in respect of change to the pitch fee.

32. Notably the Deputy President, Martin Rodger KC said as follows:

> "22. The effect of these provisions as a whole is that, unless a change in the pitch fee is agreed between the owner of the site and the occupier, the pitch fee will remain at the same level unless the RPT considers it reasonable for the fee to be changed. If the RPT decides that it is reasonable for the fee to be changed, then the amount of the change is in its discretion, provided that it must have "particular regard" to the factors in paragraph 18(1), and that it must not take into account of the costs referred to in paragraph 19 incurred by the owner in connection with expanding the site. It must also apply the presumption in paragraph 20(1) that there shall be an increase (or decrease) no greater than the percentage change in the RPI since the last review date unless that would be unreasonable having regard to the factors in paragraph 18(1). In practice that presumption usually means that annual RPI increases are treated as a right of the owner.
>
> 23. Although annual RPI increases are usually uncontroversial, it should be noted that the effect of paragraph 20(1) is to create a limit, by reference to RPI, on the increase or decrease in the pitch fee. There is no invariable entitlement to such an increase, even where none of the factors referred to in paragraph 18(1) is present to render such an increase unreasonable. The overarching consideration is whether the RPT 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."

33. Those paragraphs therefore emphasise that there are two particular questions to be answered by the Tribunal. The first is whether any increase in the pitch fee at all is reasonable. The second is about the amount of the new pitch fee, applying the presumption stated in the 1983 Act but also other factors where appropriate (although the case pre-dated the 2013 Act changes).

34. In *Shaws Trailer Park (Harrogate) v Mr P Sherwood and Others* [2015] UKUT 0194 (LC), it was succinctly explained that:

> "A pitch fee is defined by paragraph 29 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 the use of the common areas of the site and their maintenance."

35. Whilst it may seem unnecessary to set out just what a pitch fee actually is, the Tribunal considers there to be some merit in doing so.

36. The Deputy President also again explained the position in terms of determining pitch fees:

> "23. Where a new pitch fee is not agreed, the overarching consideration for the FTT is whether 'it considers it reasonable for the pitch fee to be changed' (para 16(b)."

using wording the same as that within paragraph 23 of Sayers.

37. Martin Rodger KC continued:

> "24. Paragraph 20 introduces a presumption that the pitch fee will vary within a range set by the change in the retail prices index in the twelve months before the review date. In practice, the RPI increase is not treated as a range but as an entitlement, and the increase is usually the most important consideration in any pitch fee review."

38. In *Shaws* it is quoted, the Tribunal notes, that Lord Wilson when delivering judgment in the Supreme Court in *Telchadder v Wickland Holdings Limited* [2014] UKSC 57 noted that approximately 85,000 households live in mobile homes on approximately 2000 sites governed by the 1983 Act and that a substantial proportion of those occupiers are elderly. The Government estimated the same figure in 2022 (see below).

39. In *Britaniacrest Limited v Bamborough* [2016] UKUT 0144 (LC), the wording used by the Upper Tribunal was that:

> "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 factors it ought to take into account"

40. The Upper Tribunal went on in *Britaniacrest* to suggest that it could have expressed itself better in *Sayers*- and the Deputy President was again on that Tribunal, one of two members- and then continued (albeit in the context of whether the increase could be greater):

> "31. ...The fundamental point to be noted is that an increase or decrease by reference to RPI is only a presumption; it is neither an entitlement nor a maximum, and in some cases it will only be a starting point of the determination. If there are factors which mean that a pitch fee increased only be RPI would nonetheless not be a reasonable pitch fee as contemplated by paragraph 16(b), the presumption of only an RPI increase may be rebutted.....
>
> 32. ..... If there are no such improvements the presumption remains a presumption rather than an entitlement or an inevitability."
>
> Adding as relevant in that case:
>
> "If there are other factors- not connected to improvement- which would justify a greater than RPI increase because without such an increase the pitch fee would not be a reasonable pitch fee then they too may justify an above RPI increase....."
>
> although not suggesting that a pitch fee including a lower than RPI increase should be approached any differently to that.

41. Other potentially relevant factors were mentioned and then it was said:

> "33. We therefore agree with the basic submission advanced on behalf of Britaniacrest by Mr Mullan, namely, that the FTT 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, and that the increase in RPI in the previous 12 months is important, but it is not the only factor which may be taken into account."

42. More generally, the Upper Tribunal identified three basic principles which it was said shape the scheme in place- annual review at the review date, in the absence of agreement, no change unless the First Tier Tribunal considers a change reasonable and determines the fee and the presumption discussed above.

43. The Tribunal mentions that the Upper Tribunal in *Britaniacrest* did not withdraw the observations made in *Shaws* and quoted above and indeed the emphasis on the reasonable level of pitch fee and the RPI increase in the last 12 months being important but not put at a higher level than that was maintained.

44. The Upper Tribunal (Lands Chamber) decisions in *Vyse v Wyldecrest Parks Management Ltd* [2017] UKUT 24 (LC) HHJ Robinson adopted the above approach, albeit to a rather different situation to this one and in relation to passing on site licence fees. It was said

> "It is to be noted that, other than providing for what may or may not be taken into account for the purpose of determining any change in the amount of the pitch fee, there is no benchmark as to what the amount should be still less any principle that the fee should represent the open market value of the right to occupy the mobile home."

45. It was further re-iterated that:

> "the factors which may displace the presumption are not limited to those set out in paragraph 18(1) but may include other factors."
>
> And later that where factors in paragraph 18(1) apply, the presumption does not arise at all, given the wording and structure of the provision, and in the absence of such factors it does.

46. The Upper Tribunal identified that a material consideration as a matter of law it "does not necessarily mean" that the presumption should be displaced. Further explanation was given in paragraph 50 that:

> "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."

47. And in paragraph 51, the Upper Tribunal continued:

> "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. 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."

48. In addition, referring to the presumption, as termed, of change in line with RPI, it was said:

> "56. ..... In my judgment there is good reason for that.
>
> 57. 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 submission of Mr Savory 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."

49. Nevertheless, and recognising that the particular question which had been discussed was matters arising which did not fall with paragraph 18(1) because of a failing which had caused no prejudice, the Upper Tribunal also observed:

> "58. ..... In circumstances where the 'other factor' is wholly unconnected with paragraph 18(1), a broader approach may be necessary to ensure a just and reasonable result. However, what is just or reasonable has to be viewed in the context that, for the reasons I have already given, the expectation is that in most cases RPI will apply."

50. The final of the several parts of the judgment in Vyse itself quoted by the Tribunal is the following:

> "64. The pitch fee is a composite fee being payment for a package of rights provided by the owner to the occupier, including the right to station a mobile home on the pitch and the right to receive services, *Britanniacrest* (2016) paragraph 24. ..... Not all of the site owner's costs will increase or decrease every year, nor will they necessarily increase or decrease in line with RPI. The whole point of the legislative framework is to avoid examination of individual costs to the owner and instead to apply the broadbrush of RPI. Parliament has regarded the certainty and consistency of RPI as outweighing the potential unfairness to either party of, often modest, changes in costs."

51. HHJ Robinson quoted a passage from the decision of the High Court in *Charles Simpson Organisation Limited v Martin Redshaw & another* [2010] 2514 (Ch) (CH/AP/391) refusing permission to appeal a decision of the County Court where Kitchin J referred in paragraph 21 of that judgment to a change in the RPI providing, "a starting point for the determination of the appropriate increase or decrease in the pitch fee".

52. That said and given the determination that the reasons of the County Court Judge were correct, it merits mention that the rise and fall in the RPI was described as "the benchmark". In addition, Kitchin J did not address other factors which may make the reasonable pitch fee one which departs from an increase to the extent of a rise or fall in RPI but there is nothing to suggest that he intended the approach to be anything different from the judgements of the Upper Tribunal in its several subsequent decisions and it will be appreciated from the date of the High Court judgment that it pre-dated the 2013 Act. There were many decisions reached before the 2013 Act was passed but that Act amended the 1983 Act in terms of provisions relevant for the purpose of this case and so this Tribunal does not consider they much assist.

53. In *Vyse*, other case authorities were also referred to and quoted, although it is not necessary to address all of those in this Decision. The reference in Sayers to RPI being a "limit" in the absence of other factors provided for was repeated.

54. The decision of the Upper Tribunal in *Wyldecrest Parks Management Limited v Kenyon and others* (LRX/103/2016) was given relatively contemporaneously, a decision which also related specifically to site licence fees, referring to *Vyse* and other case authorities quoted above. The Tribunal does not consider it necessary to quote as extensively from that judgment.

55. However, it is worthy of reference that in paragraph 31 it was said about the provisions in the 1983 Act that

> "The terms are also capable of being interpreted more purposively, on the assumption that Parliament cannot have intended precisely to prescribe all of the factors capable of being taken into account. That approach is in the spirit of the 1983 Act as originally enacted when the basis on which new pitch fees were determined was entirely open."

56. The Upper Tribunal also addressed the question of the weight to be given to other factors than those in paragraph 18(1) at paragraph 45 of its judgment quoting paragraph 50 in *Vyse* (see paragraph 40 in the Decision above). The RPI presumption not being lightly displaced was emphasised and paragraph 57 of *Vyse* quoted.

57. The Upper Tribunal went on to summarise six propositions derived from the various previous decisions with regard to the effect of the implied terms for pitch fee reviews as follows:

"(1) 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.

(2) 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.

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

(4) With those mandatory consideration 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.

(5) 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.

(6) 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."

58. This Tribunal repeats its understanding that reference to increase above RPI reflects the facts of *Kenyon* and changes below that level are to be approached in the same manner.

59. Martin Rodger KC, the Deputy President, then made observations about the reference in the statute to a presumption. In particular, he observed:

"…… the use of a "presumption" as part of a scheme of valuation is peculiar".

60. He concluded his discussion of the law with the following, reflecting the observation in previous judgments:

58. ……. I adhere to my previous view that 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."

61. It merits noting that whilst *Vyse* refers to a "presumption" of an RPI increase (or decrease), that is not quite the same as the term used in *Sayer* "usually means" or "a starting point" as used in *Charles Simpson* or indeed the "strong steer" in *Britaniacrest,* which it will be seen mentioned a presumption but then went on to repeat that sometimes it will only be the

starting point. That said in Kenyon, the term presumption as used in the 1983 Act was referred to, and indeed as a "strong presumption".

62. As noted above, the cases mentioned were primarily concerned with instances where the site owner sought to increase by more than RPI or, in the case of Charles Simpson, the primary issue was whether there should be a decrease. The facts are not by some distance the same as this case, as discussed below.

63. The Tribunal considers nevertheless that the cases all sought to take the same approach and the different terms used did not seek to affect the approach taken. The Tribunal considers what that leaves is that there is a presumption, as the best of the words used to choose, but a rebuttable presumption and does not mean that the pitch fee determined will necessarily be on reflecting the change in RPI.

64. The strong presumption of an increase or decrease in line with RPI is an important consideration. However, as referred to in the case authorities above, a presumption, where applicable is just that. Even in the absence of factors contained in paragraph 18, the Tribunal shall take account of such other factors as it considers appropriate and give such weight to those factors as it considers appropriate, it being a matter of the Tribunal's judgment and expertise, in the context of the statutory scheme, to determine the appropriate weight to be given. There is no limit to the factors to which the Tribunal may have regard.

65. It is, and must be, a matter for the individual Tribunal to determine whether there are other factors and the weight to give them, including determining whether that is sufficient to rebut the presumption or not. It is for the party who wishes to do so to seek to rebut the presumption, raising matters which may do so. If in so taking account and weighing, the Tribunal considers that those other factors are of sufficient weight then the presumption is rebutted.

66. If there are matters which rebut the presumption, that is to say matters which mean that the given presumption should not apply, the case needs to be proved generally.

67. The pitch fee, will be the amount that the Tribunal determines taking account of any relevant matters, including any appropriate change determined from the current pitch fee at the time. That may still be the amount sought to be charged by the site owner or may be a different amount.

68. It should be recorded that the parties did not make reference to any of the above case authorities. However, they are established ones on matters involved in this case and the Tribunal is required to apply the law and take account of decisions relevant to the decision to be made in this case. The Tribunal concluded on balance that it did not require the assistance of submissions on the law from the parties in this instance.

69. In respect of any factual matters in dispute, the Tribunal determines those on the balance of probabilities.

The Hearing

70. The application was heard on 20th April 2023 at Havant Justice Centre. The Tribunal and the Respondents attended in person: the Applicant's representative and witness appeared remotely.

71. The Applicant was represented by Mr Wood, solicitor. The Respondents represented themselves, predominantly through Mrs Skinner.

72. The Tribunal received oral evidence from Mr Jeremy Pearson on behalf of the Applicant and Mrs Skinner on behalf of the Respondents, in addition to the matters stated by them in their statements or similar [66- 71 and 58-65] respectively. As noted in the statement of Mr Pearson, strictly the document from the Respondent was not a statement of evidence but rather more a statement of case and lacked any signature, but it was treated by the Applicant as one and the Tribunal considers sensibly so. The Tribunal also treats the documents as the statement of case and/ or other statement. For the avoidance of doubt, the Respondents provided a document which continued a little onto the second page and was accompanied by communications between the parties.

73. Mr Pearson was questioned by the Respondents, the Tribunal and by Mr Wood by way of re-examination. Mrs Skinner was able to explain the Respondents case and was than cross- examined by Mr Wood and questioned by the Tribunal, finally being given the opportunity to clarify any matters if required.

74. The Tribunal is grateful to all of the above for their assistance in this case.

75. Whilst there were no photographs in the bundle, the Tribunal had seen three photographs sent to the Tribunal by email back in February 2023. The Respondents sought to refer to them in the course of cross-examination of Mr Pearson at which time the Tribunal noted that they had not made it into the hearing bundle. Mr Wood in cross-examination queried receipt of them by the Applicant but it was said that the photographs were emailed to Ms Wilde, who had been dealing with matters for the Applicant. Whilst there was no specific evidence of the sending, neither did that the Tribunal have reason to doubt the assertion to be correct.

76. The Tribunal did not inspect the Pitch or the Park more generally. Given the photographs (which did not in the event add a great deal to the case) and particularly given that matters raised had apparently been attended to- see below- it was not necessary to inspect in order to the determine the matters remaining for determination. If there had been more significant and ongoing issues which the Tribunal considered would be visible on an inspection and could not have been dealt with by the provision of

photographs or video, the Tribunal anticipates that it would have taken a different approach.

Procedural matters

77. The Respondents' right to station their mobile home on the pitch is governed by the terms of their Written Agreement with the Applicant and the provisions of the 1983 Act.

78. The Notice and prescribed form proposing the new pitch fee were served more than 28 days prior to the review date of 1st October 2022. The Application to the Tribunal to determine the pitch fee made on 16th December 2022 was within the period starting 28 days to three months after the review date. The form indicated that the Applicant had applied the RPI of 11.8% % applying the RPI figure published in June 2022.

79. The Tribunal is satisfied that the Applicant has complied with the procedural requirements of paragraph 17 of Part 1 of Schedule 1 of the 1983 Act to support an application for an increase in pitch fee in respect of the pitch occupied by the Respondents.

80. The Tribunal therefore turns to the question at the heart of the case, namely the level of proposed increase of the pitch fee.

Consideration of the parties' cases and findings of fact

81. The Tribunal does not set out the parties' cases at length in advance of discussion of the relevant issues. The cases were set out in writing, supplemented by recorded oral evidence and submissions. The Tribunal refers to the relevant parts of the parties' cases in its consideration of the individual items below.

82. However, by way of explanation of the layout of the remainder of this Decision, there were a series of narrow challenges to the proposed new pitch fee by the Respondents and also a wider challenge. The Tribunal addresses those in sequence. In extremely brief summary, none of the specific points raised, the narrow challenges, were determined to assist the Respondents in respect of the proposed new pitch fee. However, the more general points, the wider challenges, raised interesting issues and did assist the Respondents to an extent.

83. The Applicant stated in its application that no money had been spent on improvements to the site, which might therefore have gone to justify a greater increase in the pitch fee than otherwise appropriate. The Applicant also stated that there had been no deterioration in the condition of the site, any decrease in the amenity of the site or relevant adjoining land and no reduction in the services supplied to the Park or the Pitch or any deterioration in the quality of those and hence none of the matters in paragraph 18 (1) would apply. The Respondents did not agree with that latter statement.

Specific issues raised by the Respondents

84. The Respondents' case was that there had been a reduction in services and/or a decrease in amenity of the site. The Respondents said that they understood that an increase had to be justified by work done to the Park, although that is not in fact correct, and asserted that little had been done. They suggested that insofar as matters had been attended to, implicitly relatively recently, that had followed residents refusing to pay the increase.

85. The reductions in services and/or a decreases in amenity were said to be as follows:

(1) Loss of the site office, which is no longer manned
(2) Site manager hours considerably reduced and works from home
(3) Handyman/ gardener no longer employed and employment of contractors to undertake work previously undertaken by
(4) Potholes patched on an ad hoc basis and uneven
(5) Additional gravel to parking areas promised but not appeared
(6) Signs state CCTV but a spate of burglaries and discovered no CCTV
(7) Documents required by the site licence to be displayed are missing

86. Given that paragraph 18(1) specifically requires that "particular regard shall be had" to reductions and deterioration amongst other matters, the above items and the additional matters addressed below them in this part of the Decision are significant if the Respondents' case is made out about any of them.

87. The Tribunal takes each element raisedin turn, setting out the essence of the parties' cases and the Tribunal's determinations. Before doing so, the Tribunal records that the Respondents asked Mr Pearson about a visit to the Park by him in January 2023 and asserted he was there a long time. However, nothing specific was revealed. In response to a question from the Tribunal, Mr Pearson said that he attended every 4 to 6 months as there was no ongoing development work.

(1) <u>Loss of the site office, which is no longer manned-</u>

88. Mr Pearson denied that the office has been lost or that it was no longer "manned". He asserted that there continues to be a site office and there continues to be a site manager, who is contactable, but simply tends to work from home- which is on the Park- rather than from the office itself. He stated in oral evidence that signs give the mobile telephone number of the manager on which he is so contactable.

89. In response to cross- examination, Mrs Skinner said that they accepted the above but considered it is harder to go and knock on someone's door when not knowing their working hours.

90. The Tribunal understood the point made by the Respondents but found Mr Pearson's evidence to be cogent and determined that there was not the

evidence of reduction in the services supplied to the Park or the Pitch or any deterioration in the quality of those demonstrated by the Respondent.

(2) Site manager hours considerably reduced and works from home-

91. Mr Pearson accepted that the hours of the manager had been reduced. He clarified in oral evidence that occurred in January 2023. However, he explained that was because part of the function of the manager has been sales- related, setting out the tasks involved. Mrs Skinner accepted that in oral evidence. Implicitly, although it must be said not explicitly, the Applicant's written position was that the hours worked by the manager on the remaining tasks was in line with the time that he had spent previously. In oral evidence, Mr Pearson said that the manager was available the same amount of time.

92. The Tribunal found no evidence that the amount of time spent by the manager on tasks other than sales had reduced and no evidence that there was a consequent impact on the quality of service provided to the Respondents. The manager working from home, on the Park, was not determined to add anything else to the Respondents' case.

(3) Handyman/ gardener no longer employed and employment of contractors to undertake work previously undertaken by-

93. In respect of this matter, the Applicant's position as expressed by Mr Pearson was that there had been a gentleman who undertook works on the Park such as grass- cutting, hedge maintenance and other regular maintenance works. However, he was employed by a contractor and that whilst that particular gentleman had ceased work, there continued to be contractors employed to undertake the required tasks. The tasks were still therefore undertaken, simply not by the particular person.

94. The Respondents referred to the gentleman as being employed, suggesting they believed him to have been directly employed by the Applicant. There was indication of why they so believed and nothing to suggest that the position as explained by Mr Pearson was incorrect. In a similar vein whilst they asserted that grounds were maintained but other matters not dealt with, it was unclear what it was that they contended had been dealt with and which was no longer dealt with. No specific example was given.

95. The Tribunal accepts that the particular person no longer undertakes works and can understand how a particular person undertaking regular tasks may have become known to the occupiers and easily identified as present on site, that the occupiers may have become used to him and that they now note his absence. Equally, that other contractors who the occupier are less used to and who may change may be less identifiable. Hence the Tribunal can understand how it may feel to residents that the service has not only altered, as plainly it has in terms of personnel, but also reduced.

96. However, the Respondents did not point to any tangible reduction in the services supplied to the Park or the Pitch or any deterioration in their quality. The Tribunal therefore determines that whilst there is a perception of such, on the evidence provided there has been no actual reduction.

(4) Potholes patched on an ad hoc basis and uneven-

97. The Respondents asserted that the roads look like a patchwork blanket and are difficult for anyone with mobility issues to walk on. They also asserted more generally that the residents have struggled to get repairs completed and asserted there to be a "general feeling" that the Applicant is not interested in the resident's concerns. As will be immediately apparent that allegation was somewhat general and imprecise, which is not to criticise the Respondents but is intended to highlight that it is for them to prove their case. In oral evidence, they accepted works but said holes had been insufficiently filled by inferior workmen.

98. The photograph of an area of road within the park shows just, namely an area of one road. There is in the foreground evidence some patching of the tarmac surface, partly the Tribunal considers likely arising from pipes, cables or similar being installed- the manhole cover to the side may or may not be significant. There is another apparent rectangular patch. It is difficult to identify if there are other patches along the road, which is partly covered by puddles of water. Whilst both the patching and the presence of water- suggesting depressions in the road- are less than perfectly attractive, they are hardly uncommon. It is not identifiable on the photograph that the particular are of road would be difficult to walk on. It is possible that there are worse areas of road but the Tribunal has little doubt that the Respondents will have chosen an area they considered may support their point and so it is unlikely to be one of what they regard as the better areas.

99. Mr Pearson's evidence with regard to this point was that potholes are monitored and are periodically repaired. He said in oral evidence that when he or others who visited saw potholes, they instructed the relevant team to repair. He said that during the previous year there had been a problem with the materials used by the Company's contractors, so in effect accepting there had been a problem along the lines of that described by the Respondents. However, he said that had been resolved. More generally, he contended that work was undertaken in a timely manner.

100. Again, the Tribunal was unable to identify any direct evidence of any loss of amenity to the Park or deterioration in service level, save for the temporary problem described by Mr Pearson, which the Tribunal does not consider takes the Respondents anywhere in demonstrating a deterioration in the condition of the site or any decrease in the amenity of the site in the manner required. Whilst the patching of roads detracts from their look, the Tribunal was unable to determine there to be any other impact.

(5) Additional gravel to parking areas promised but not appeared

101. The Respondents referred to additional gravel to cover mud to general parking areas.

102. It was said by the Applicant that additional gravel was added to the particular part of the park known as Dingle Dell but not as successfully as intended. However, it was also said that has been addressed by use of romsey stone. Mr Pearson said in oral evidence that the parking and roadways were not tarmac but compacted stone and also that they were 40 years old, hence patching and repairing was required. He said work had been undertaken in 2022.

103. The Tribunal finds that there was a short- term effect to parking areas, which was then attended to. The Tribunal determines that the Respondents have failed to demonstrate any relevant deterioration in the site arising from any temporary issue with the area in question. The Tribunal also notes that the asserted age of the roadways would strongly suggest that they have not looked perfect for a very long time.

(6) Signs state CCTV but a spate of burglaries and discovered no CCTV-

104. One of the photographs provided by the Respondents showed the entrance sign, which stated on it towards the bottom "CCTV IN OPERATION".

105. The Respondent's position was that they had believed there to be CCTV and they asserted that the existence of CCTV was relevant to their decision to purchase their home.

106. In contrast, the Applicant's case with regard to this item was that there had only ever been signs stating that there was CCTV and as a deterrent and that the Respondents had never enquired as to whether there actually was CCTV. Mr Pearson explained very clearly that there had never been any CCTV on the Park, which evidence the Tribunal accepted finding that there had indeed been no such CCTV.

107. The fact that persons who ought not to be on the Park had taken it upon themselves to enter the Park was not a matter of amenities or services in respect of the Park, but rather an entirely separate and very regrettable matter. Whilst the Tribunal fully understands that any presence of persons who ought not to be present on the site will have been worrying for the Respondent and other residents and will have caused them to consider to a greater extent than perhaps otherwise the security on the Park, those matters are not ones which the Tribunal can consider in this case.

108. More generally, it was said that the Applicant had stopped access from the new housing estate from which it was considered the persons had come by planting shrubbery and erecting fencing. The Tribunal noted that might arguably be an improvement but not argued by the Applicant to be one and of a very limited nature in any event, reducing the ability of people who

ought not to be on the Park anyway to access it but not altering the Park itself.

109. The Respondents were unable to gainsay the Applicant's case that the lack of CCTV was simply the position which had always existed and so failed to demonstrate that there was impact on amenities or services.

(7) Documents required by the site licence to be displayed are missing

110. Mr Pearson noted in his statement that it was not clear which ones of what he said to be 17 required notices were missing from the Park's notice board. He added that the site licensing officer had not identified any issue and that the documents were available at the Park office (subject the Tribunal assumes to any potential need to contact the manager for assistance).

111. The Tribunal determines that if there was a failing on the part of the Applicants the Respondents have failed to demonstrate any. In any event, the Tribunal does not regard this matter as being a deterioration in the condition of the site or any decrease in the amenity of the site or to impact on services and so does not consider that it impacts on the pitch fee.

Additionally-

112. Further to that list of matters, the Respondent asserted there to be swathes of derelict pitches left empty and other pitches crammed in and referred to a need to improve the electrical supply in order to obtain planning permission. They also said that residents had been required to pay for sewage works as sewage was backing up into their homes. Reference was made to bollards having been knocked down and repaired but the Respondents suggested that repair reflected them not paying the increased pitch fee (and the Tribunal understands citing the condition of the Park).

113. Mr Pearson made some general comments in response in his statement about there being areas of the Park which are awaiting development, although he denied that they were derelict and said that they are kept tidy. There was no other evidence available. He also said that bollards had been straightened where necessary and painted in 2022- there was no hint that their knocking down was anything to do with the Applicant. He contended that any issues with sewage were a consequence of people flushing items down toilets which ought not to be. Other matters were touched on but not directly relevant.

114. There is some hint of support for the Respondents' position that some areas of the Park are less attractive than there might be arising from the reply of the Applicant [63] to a letter from the Respondents [61 and 62] which accepted that the Applicant was waiting on a planning decision and "which does in the interim make certain areas of the park less attractive" but there was insufficient evidence whether that meant less attractive than the

areas had been and so there was some deterioration in condition- if to a rather unclear extent- or whether the comparison was with other, more attractive, areas of the Park. The Tribunal found insufficient support for the Respondents' case to impact on the outcome.

115. There was no evidence of ongoing issues. There was no evidence at all as to the cause of any sewage problems or the solutions to them. Mrs Skinner said in oral evidence that there had been bollards in the greenery- from which the Tribunal understood they has been removed from position and deposited on the grass or plants- but in any event it was said those had since been taken away. The Tribunal did not receive evidence on which it could determine there to be any failing on the part of the Applicant in that regard.

116. There was nothing that the Tribunal regarded as demonstrating a deterioration in the condition of the site or any decrease in the amenity of the site for the purpose of the 1983 Act.

117. Nevertheless, and before moving on, the Tribunal makes it clear that it accepted the evidence of Mrs Skinner that there had been some matters requiring attention at the park. The Respondents should not form the impression from the Tribunal's determinations as to their specific points, that the Tribunal disbelieved them. In the event of sufficient evidence of ongoing issues it may be that there would be an impact on the new pitch fee.

Wider matters raised

118. The Respondents case was expressed more generally as follows:

> "We appreciate that our agreement with Tingdene permits them to increase pitch fees in line with RPI but our argument is that it is unrealistic, unethical and unjustified to increase it by such a huge amount. This also substantially raises the fee increase for years to come, of course, since the fees are increased annually."

119. The first point is therefore about the appropriateness of an increase at the rate of the increase in RPI for the given year. The second is about the cumulative effect.

120. The Respondents also commented that many residents of the Park are very elderly and have health and mobility issues.

121. The Respondents concluded their written case by stating

> "Tingdene have a responsibility to their residents to ensure that they receive value for their monthly fees and we do not feel that is the case here".

122. The Respondents expressed similar sentiments in their reply to the pitch fee review notice [64]. They expressed their second paragraph as:

> "Whilst we appreciate that the rate of inflation has risen sharply. Over the past few months, providing you with a contractual recourse to increase the fees accordingly, we do not accept that this means we should all suffer a corresponding rise in the pitch fee. You are fully aware of the general age range of your residents and I cannot imagine that any of them are in a position to afford such a draconian increase, at a time when we are suffering many other charges on our limited incomes".

123. The last paragraph makes further criticism:

> "We do not agree that there is justification for increasing our fees to such an iniquitous level".

124. The Respondents therefore suggest that consideration should be given to the nature of the residents of the Park and the nature of their incomes and argue the increase in the pitch fee and the level of the proposed new pitch fee not to be reasonable.

125. In oral submissions, Mrs Skinner said that the 11.8% increase was not justified or ethically fair. It was also mentioned that there is no standard pitch fee across the Park and that the fee depends on the land occupied and how new the home is, not that those matters are directly relevant for these purposes.

126. The Applicant said nothing about any of the above matters in their written case, whether the application form, necessarily in advance of the Respondents written case in these proceedings but having received the Respondent's reply to the review notice, or to the statement of Mr Pearson following receipt of the Respondent's written case. Nevertheless, the Applicant was not precluded from responding to any relevant matters in its oral case at the hearing.

127. The Tribunal made enquiries in the hearing in broad terms as to the financial and general position of the Respondents, given comments made in the Respondents' case. The Tribunal sought to learn more about the Respondents and matters which may impact on them in respect of the site. Mr Skinner is 80 years of age and Mrs Skinner 66 years old, due to retire from work in the Autumn.

128. In the event there was nothing of that which impacted on this Decision. In particular, whilst the Tribunal sought some information as to the Respondent's finances, the Tribunal does not consider it necessary to set out the answers provided in this Decision. The Tribunal appreciates that the individual financial position of the occupiers of a given pitch is not one of the identified relevant considerations under the 1983 Act, a point Mr Wood made in closing, and it is difficult to identify how it might carry sufficient weight to otherwise be an appropriate factor which might rebut the wide RPI presumption.

129. The Respondents also referred to the majority of residents being pensioners and that many are vulnerable- although it must be noted that there was no actual evidence of either of those characteristics.

130. More pertinently, the Tribunal enquired of Mr Pearson why the pitch fee had been increased by the level of RPI.

131. The Respondents had put to Mr Pearson in the hearing as their first question whether he considered that the increase was fair. His reply was that there was a presumption of the fee rising by RPI "and that's all we have done". He added in response to another question from the Tribunal about why the maximum amount within the RPI presumption and he replied that he did not believe that there was a reason not to.

132. Mr Pearson stated, in reply to a subsequent question from the Respondents, that the Applicant's costs have also gone up. He said that fuel costs, labour costs, materials costs have gone up. No specific information was provided at that stage.

133. In response to the Tribunal seeking better information, a little more was said. Mr Pearson said that the Applicant's costs had gone up, that the Applicant felt some of the pain and that there was a link to inflation. He said that "it just so happens RPI is what the legislation has chosen".

134. The Tribunal pressed Mr Pearson whether he asserted that the Applicant's costs had increased by 11.8%. He replied that steel cost had increase by 200%, wood by 30% and wages by 15%.

135. Mr Pearson was unable to provide any specific basis for an increase at the rate of RPI. There was no indication of the particular relevance the increases in costs of the specific materials mentioned by Mr Pearson had to the costs of operating the Park. Mrs Skinner picked up on in closing comments that the substantially increased cost of steel may have quite some relevance to production of park homes or to development but those are different to the operation of the Park and there was no explanation how increased cost of steel impacted on the operation of this Park. It was noted that an increase in wages of 15% across two years would not at first blush equate to 11.8% further to the increase in RPI the previous year. Mr Pearson conceded in respect of labour that it was very difficult to justify how that related to a 11.8% increase.

136. In response to re- examination by Mr Wood seeking to deal with matters arising from Mr Pearson's answers about cost, Mr Pearson repeated his evidence that costs have "certainly been increasing". He said that only last month the prices of aggregates such as gravel and tarmac had risen but he said that he could not give other specifics, much as he said some increases had been astronomical.

137. Mr Wood asked whether the increases were more or less the same as the RPI. Mr Pearson could not answer that other than in terms of specific

matters. He said that materials rose above the rate of RPI and that fuel costs had increased, including because there was no longer red diesel.

138. Whilst the Tribunal therefore received some evidence about certain costs incurred by the Applicant generally increasing, some to a significant extent, the Tribunal was left with no indication of the overall effect of increases in the Applicant's costs as a whole and no indication of the relevance of any increases to the costs of operating the Park and so the reasonable level of pitch fee to meet that and provide a level of profit (which exact level is not a matter the Tribunal considers it should venture into) in the event that the Tribunal considered those matters to have relevance in the context of the statutory provisions as identified in the case authorities.

139. The Respondents conceded that costs have been increasing. They did observe that increase in bank charges for borrowing to expand the Applicant's business is not a cost justifying an increase to this pitch fee.

140. The Applicant did not, provide any documentary evidence in this case as to any increase in costs that it had encountered in relation to this particular Park. The Tribunal asked what evidence the Applicant presented of that. Mr Pearson conceded in oral evidence that there was no evidence before the Tribunal of costs increasing. He generally referred to "living costs" and asserted that the Applicant was not obliged to provide evidence of increased costs.

141. That is of course correct- it is a matter for the Applicant as to the evidence it adduces. However, the Tribunal decides matters on the evidence before it rather than seeking to guess what evidence there might have been had a party chosen to provide it. Hence if a party fails to adduce evidence which might have been relevant to its case, it may bear consequences of that, dependent on whether or not it can rely on the presumption in the event.

142. The Respondents specifically asserted that the level of increase was unjustified. The Applicant might in response to that have considered it worthwhile to provide any available justification, for the same reason, namely that it could lose out by failing to do so.

143. Nevertheless, as a matter of fact, the Tribunal has no hesitation in finding, to adopt the words of Mr Pearson in oral evidence, that the Applicant increased the pitch fee by RPI because:

> "On what basis would the presumption not be used …… Why not do it?"

<u>Application of the above to the law</u>

144. As identified above, but it does no harm to be reminded of them, the first question for the Tribunal to determine is whether an increase in the pitch fee is reasonable. The second question is whether the level of the new

pitch fee is one which would increase (in this case) the existing pitch fee by the RPI or is a different level.

145. There were no relevant factors in paragraph 18.1 advanced and said to support a higher sum or indeed any other factors advanced said to be of sufficient weight, so the first element of the second question is that if it is reasonable to increase the pitch fee, the presumption applies of an increase in the pitch fee in line with the level of increase in the RPI. There is also, in light of the determinations about the specific items above, no deterioration of the site or reduction in services and no other matter specified in paragraph 18.1 to which "particular regard shall be had" in respect of any reduction below the level of RPI.

146. The key part of the second question is therefore whether there is some other factor of sufficient weight to rebut the presumption, or other appropriate description as used in the above case authorities, of an increase by RPI. The weight must be enough to deal with a presumption which has been described as strong. It is also not lost on the Tribunal that the formula set out for the calculation of the new pitch fee on the pitch fee review form assumes an increase by the rise in RPI, although of course the way in which that form sets that out cannot alter the statutory provisions or the case authorities to be applied.

Is an increase to the pitch fee reasonable?

147. Whilst there was a lack of documentary evidence and only limited oral evidence from Mr Pearson which identifiably addresses the costs of operating the Park, the Tribunal accepts it as highly likely that the Applicant's costs of managing the park have increased.

148. Mr Pearson was adamant about that and, not least given the candour of others of his answers, the Tribunal has no reason to doubt him. It is abundantly clear from frequent reference on the news and current affairs programmes, and indeed from day to day lives, that various costs have increased and are increasingly.

149. The Respondents in any event did not argue that there ought not to be an increase, indeed it was implicit in much of their case, confirmed by oral evidence, that they accepted that an increase in the pitch fee was reasonable (but for the reduction in services and deterioration which they advanced but which the Tribunal has not accepted). That was not the real battleground in this case.

150. The Tribunal considers the bar for an increase (or decrease in relevant circumstances) is a relatively low one. Whilst no change at all may be appropriate if all circumstances remain entirely the same, the Tribunal considers that if the site owner can point to some change or a change is accepted by the pitch fee occupier, it would be rare that the Tribunal did not find a change to be reasonable.

151. In this instance, the Tribunal is content that an increase in the pitch fee is reasonable for the above reasons and in the circumstances does not consider it necessary to dwell longer on that particular aspect of this case in what is a lengthy Decision where the focus lies elsewhere.

What is the reasonable level of the new pitch fee?

152. The Tribunal reminds itself of the sixth proposition identified in *Kenyon* (and as explained in slightly different but very similar terms n *Vyse*, namely:

> "…… 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"

Or indeed the opposite, being that some other important factor may rebut the presumption and make it reasonable that a pitch fee should be one involving less than an increase by RPI.

153. It is of course the question of an increase below the level of RPI which is the relevant scenario for the Tribunal to consider.

Arguments advanced by the Respondents

Increase at the rate of the increase in RPI for the given year-

154. The case advanced by the Respondents in respect of the first wider point is that the increase should be lower because an increase by RPI was "unrealistic, unethical and unjustified". They specifically refer to the rate of increase in RPI and the extent of the increase in the pitch fee produced by that.

155. The Tribunal pauses to observe that most pitch fee increases are not actively opposed, much as they are often not actively agreed to. Where increases are opposed, the opposition is usually along similar lines to the specific items raised by the Respondent, that is to say there are assertions of specific elements of deterioration to the site, losses of amenity and similar.

156. It is a rarity for there to be an argument raised of broader considerations applying and impact on an increase to the extent of the rise in RPI, certainly about the wider climate- although it is less surprising that such a matter should have been raised a few months ago than it would have been in earlier years, at least within the life of the 2013 Act and the amendments made to the 1983 by that. That point can be left for now.

157. It does, however, merit observing against that background that it is rare for a pitch occupier to specifically raise RPI, that the Tribunal considers this is just the sort of matter into which the Tribunal should be extremely slow to venture, indeed this Tribunal would say should not do at all, unless the argument has been specifically raised by the occupier of the pitch.

158. The most conceptually problematic of the words used by the Respondents is that a rise by RPI is unethical. The Tribunal considers that an attempt to determine the ethics of a given approach would be extremely problematic but is also not an exercise on which the Tribunal needs to embark. Reasonableness is of course at the heart of the Tribunal's determination.

159. The point advanced by the Respondents that the increase is unrealistic is implicitly a comparison of the nature of the increase in comparison to the means of the pitch occupiers to meet that increase. In effect, it is argued that it is unrealistic to believe that such occupiers will be able to pay it without undue other impact on them, in effect.

160. As the Tribunal has noted above, it is not appropriate to base the level of increase, assuming one, of a pitch fee on the financial circumstances of the individual pitch occupier. That would require an individual assessment of the appropriate level of increase in each individual case, an improperly time consuming and administration heavy process for sums of money which, whilst greater where RPI is higher, are relatively low.

161. The Tribunal could not properly consider the question of whether the pitch fee and the increase in that is realistic for the occupiers of this Park more generally, even if it wished to. As noted above, there is no evidence of the characteristics of the occupiers. The Tribunal can take a relatively well-educated guess from its experience of park home cases, but it declines to guess. In any event, in broad terms this feeds into the much wider point made about RPI and the sort of level of increase produced by that, more specifically the level of increase in this instance.

162. It has been identified above that the Applicant failed to justify the RPI increase to any extent other than identifying the presumption that such an increase is permitted. The Applicant in contrast was clearly explained in evidence to have increased the pitch fee by RPI because the presumption was that there would be a rise by RPI (absent factors permitting more) and hence it had adopted that perceived maximum. Save for some particular examples of increases in the costs of materials and wages referred to above, the Applicant did not specifically seek to otherwise justify the increase in the pitch fee. Assuming that justification of the increase and consequent fee was required, the Applicant failed to.

163. Mr Wood in closing properly advanced the argument that the legislation refers to RPI and he said does so for convenience, RPI being the cost of a basket of goods and more convenient than listing individual goods to take account of. That loosely reflects the points identified in *Vyse* that:

> "The whole point of the legislative framework is to avoid examination of individual costs to the owner and instead to apply the broadbrush of RPI."

164. The Tribunal has carefully noted that, and the "good reason" for the reference to RPI. However, the Tribunal has also noted that is not the end

of the matter because, as explained in *Vyse* amongst other cases, the presumption is rebuttable and RPI may be only part of the story.

165. Nevertheless, the current time is one in which RPI has increased sharply from the levels seen until as recently as 2021. It is the level of increase caused by the percentage rise in RPI which the Respondents assert call into question the reasonableness of a pitch fee rise at the level of RPI. They use other terms but that is the essence of their wide case when put into the terms of the 1983 Act.

166. In terms of the rise in RPI, the Tribunal notes that as at Spring 2020, just after the start of the Covid-19 pandemic, RPI stood at approximately 2.1%. By the following year it had risen a little to 2.9%. By 2022 when the pitch fee under consideration was sought by the Applicant, RPI peaked at 13.8%. In May 2023, albeit after the date of the pitch fee being sought, it still remains high at 11.3%.

167. The very sharp rise in the level of RPI produces RPI increases in 2022 being a percentage which has not been seen previously since 2013 and indeed a significantly longer time. Indeed, it is far more than any such previous rise.

168. Two considerations arise.

169. The first is whether that the relatively large increase in RPI is a relevant "other factor" which can therefore be considered. The second is whether, assuming the first to apply, it is a factor the weight to be given to which is sufficient to rebut the presumption of a percentage rise in the level of the pitch fee to the extent of that increase in RPI. In both instances that is applying the Tribunal's judgment and expertise to determine the appropriate weight to be given to such factors.

170. The Tribunal determines that the answer to those questions is that yes, the relatively large increase in RPI is a factor which can be considered. Further, yes, it is a factor of sufficient weight that the presumption of a rise in line with RPI is rebutted.

171. The Tribunal does not operate in a vacuum, it is inevitably well aware of the wider world. The frequent reference on the news and current affairs programmes that costs have increased significantly and are increasing significantly has been mentioned above.

172. The Tribunal is similarly aware that wages and still more so pensions and welfare benefits are generally increasing below the rate of inflation, by which the Tribunal means the CPI, which has been the measure used by the UK Statistics Authority since 2013- see further below. Hence, there is a general cost of living issue experienced by most people in the country at the current time and there was in Summer and Autumn 2022.

173. The Tribunal adds that it is also aware, having dealt with many pitch fee increase cases and with a particularly large number of applications this

year, that there are site owners which are seeking smaller increases in the pitch fee. That is not to say, of course, that all site owners should- costs and a myriad other relevant circumstances and considerations are bound to vary. The Tribunal refers to the matter not for that reason but rather to make it clear that the Tribunal does not consider that the extent to which pitch fees on other sites have or have not been proposed to increase in line with the rise in RPI is a relevant factor in this case.

174. The Tribunal is additionally very much aware of the Mobile Homes (Pitch Fees) Act 2023 ("the 2023 Act"). Following the commencement date of that Act just two days ago on 2nd July, the presumption in respect of pitch fees has become that any change shall not, subject to paragraph 18(1) or other factors of sufficient weight, exceed the Consumer Prices Index ("CPI") rather than the RPI. The over-arching question of reasonableness will remain the same.

175. The Tribunal finds it instructive to consider matters generated in relation to the introduction and passage of the Bill. For the avoidance of doubt, the Tribunal does not do so with a view to affecting the construction and/ or application of the 1983 Act but merely as a source of information about the general position in terms of RPI increases and the very recent departure from that.

176. The Bill was originally introduced as a Private Member's Bill but with the support of the Government and with the Explanatory Notes written by the Department for Levelling Up, Housing and Communities ("DLUHC"). It is the Library Briefing for the House of Lords from which the Tribunal noted the continued estimate number of park homes in England as 85,000 as referred to above, although the Briefing indicates that it obtained the figure from a DLUHC paper named "The impact of a change in the maximum park sale commission: Executive Summary" issued on 16th June 2022.

177. The Act, as it has become, reflects a commitment as far back as 2014 by the government to alter the provision in respect of pitch fees from the RPI. As is widely recognised the RPI used to commonly be referred to and be the basis for inflation figures and so on but has not been in widespread use for several years, ceasing to be the measure used by the UK Statistics Authority as mentioned above. RPI is therefore the cost of a basket of goods but not the basket generally used. In Wales, a separate Act to the 2013 Act was introduced that same year, the Mobile Homes (Wales) Act 2013 which replaced reference to RPI with CPI.

178. It is notable, and far from irrelevant, that the CPI produces, or at least so far has produced, a lower rate of increase than does the RPI. The CPI figure for June 2022, the complete month before the Notice served by the Applicant was 8.1%: RPI was 11.8% as the Applicant set out in the Notice. (By September 2022, immediately before the new pitch fee is payable CPI was 10.1%: RPI was 12.6%.) The different at the time of the Notice was therefore 2.7%, a difference which is at about or greater than the rise in

RPI itself in total for some of the previous years from 2013 onwards and not far short of the remainder.

179. To put it another way, pitch fees increasing at the rate of RPI increase beyond the usual method of calculating inflation (and do so year on year with cumulative effect as returned to below). That differential was relatively small between the time of the Government commitment and 2021, such that there may have been little imperative to tackle the issue. However, the difference has increased considerably in 2022 and RPI is far higher than previous years.

180. It was said in the Explanatory Notes the following:

> "As the RPI rate is generally higher than CPI, mobile home owners, the majority of whom are elderly, became increasingly concerned that their incomes which generally increase by CPI would not keep pace with the rise in the pitch fees."

181. In any event the Library Briefing records that when the Government launched a consultation in 2017, 96% of residents supported a change to CPI and all site owners favoured continued use of RPI. Neither side of that is perhaps particularly unexpected. Nevertheless, the Briefing records that in 2018, the Government conclusion was that "CPI is the most appropriate inflationary index". Hence, the Tribunal perceives, the support for the Bill and assistance provided. It is said that the Bill was also introduced in 2020 and 2021 but did not progress due to lack of Parliamentary time. In 2023, that time was found.

182. The Tribunal notes that very little was said about the Bill in Parliament, particularly in the House of Commons, apparently because there was no opposition and nothing to debate, such that it passed all stages in a single day. When introducing the Bill to the House of Lords, Lord Udny- Lister said of the Bill, amongst other things, that:

> "The Bill will also make a positive contribution towards addressing the costs of living crisis that many people in this country face, including of course park home residents."
>
> And later:
>
> "……. The aim of this Bill is to ensure that the many vulnerable park home residents on low incomes are struggling at this critical time……."

183. The final comment in the House of Lords, by Baroness Scott as Under-Secretary of State at the Department for Levelling Up, Housing and Communities was along similar lines, being that the Bill:

> "is one step in making a much-needed change to the lives of all park home residents. When enacted, it will help residents with cost of living pressures by changing the inflationary index used in pitch fee reviews from RPI to the lower CPI. This will mean that pitch fee increases and residents' income will be subject to the same measures of inflation,"

184. Lord Udny- Lister also made the point mentioned above that:

> "RPI is generally higher than other inflationary indices and is no longer used as a measure of inflation",
>
> continuing by making various observations about effects of rises in line with RPI. A number of other interesting comments were made in the short debate regarding park homes and residents of them, although not relevant to this Decision.

185. As the Tribunal understands matters, in fact incomes are generally increasing below CPI as well, although nothing specific turns on that here.

186. The Tribunal is mindful that there can be confusion as between the two indices. The Tribunal notes that the letter from the Respondents quoted above refers to the rate of inflation. In the ordinary course that would most obviously mean a rise in the measure used to calculate inflation when discussed in the media or in political circles, that is to say the CPI. However, the Tribunal perceives that the Respondents conflated that with the RPI applicable to pitch fees (at least at that time).

187. The Tribunal refers to the above not specifically because of the change to the use of RPI but because of the effect that a rise in this pitch fee in line with the increase in RPI currently has and the level of pitch fee proposed in consequence of that and the recognition that 2022 onward has produced a cost of living crisis, as termed above, such that the level of pitch fees, produced by an increase in those if increased in line with the rise in RPI, is recognised as an unusual and acute- "critical"- problem.

188. Whilst for many years the rise in inflation, by which the Tribunal means CPI, and indeed the rise in RPI had been relatively very modest, the Tribunal considers that the extent of the rise in RPI and the uniquely high rate of increase in RPI as at July 2022 onwards, at least during the life of the 2013 Act, is such that the Tribunal determines it is an other factor which can and should properly be considered.

189. Further, because the increase is at so proportionately significant a level and the contrast to the level in previous years from 2013 onwards is a matter of such considerable significance, the Tribunal considers that it is of sufficient weight that in itself it rebuts the presumption of a change to the pitch fee to increase it at the level of the rise in RPI.

The cumulative effect-

190. The Tribunal now turns in rather shorter terms to consider the impact of the second wider point made by the Respondents, namely the fact that the increase in the pitch fee by RPI would raise the fee "for years to come".

191. The pitch fee for 1st October 2022 onwards as determined by the Tribunal is necessarily the existing pitch fee as and when the Applicant

serves the next Pitch Fee Review Notice. Consequently, if the pitch fee for the following year is to increase, the presumption will be of a change to reflect the rise in CPI- RPI having been replaced as the relevant index- for the twelve months to June 2023 from the level in June 2022 with the increase being from the figure for the 1st October 2022 fee.

192. It may be that the CPI rate of increase is falling. The figures for the 12 months until May 2023 as produced by the Office for National Statistics was 8.7%, so down a little from the figure for the 12 months to September 2022 but above the figure for June 2022, reflecting a further rise in 2022 before any fall continuing to have an effect on figures across a 12- month period. The Tribunal of course itself sought out the above statistics in the immediately preceding paragraphs and those in respect of the rises to June and September 2022, although they are readily and publicly available from the Office for National Statistics or similar. The Tribunal expects that analysis of them is also available but does not consider it appropriate to seek any such, which analysis may be open to disagreement. The Tribunal considers that rate of increase reducing is quite different from actual prices reducing- prices are not reducing, they are simply increasing more slowly.

193. The Respondents are correct to say that the pitch fee for 1st October 2022 will have an ongoing impact. Indeed, that is not only for the following year but also for every later year, the later pitch fees all being affected by the level of the existing fee at the time which will itself have been affected by previous levels of fee.

194. The issue is that a rise by the unusually, since 2013 at least, high level of RPI in June 2022 would fix the base level at or based on that rate in future years and so the pitch fee occupiers would continue to bear that.

195. The Tribunal considers that this wider point is of less significance than the first one if taken in isolation, because future pitch fees will always start from previous ones, but of course it cannot be so taken in isolation because it so firmly is tied in with the first wider point. The Tribunal accordingly considers that this second wider point adds weight to the first.

196. The Tribunal notes that there is no need as such for that additional weight because the presumption has already been rebutted. However, if the first point alone had left matters close to, but not over, the line, this second one would have carried it over.

197. <u>Effect of the rebuttal of the presumption</u>

198. Having determined that the presumption of an increase of the percentage rise in RPI has been rebutted, the inevitable next question to answer is what level of pitch fee does the Tribunal determine appropriate?

199. The answer of course to Mr Pearson's question about an increase in the pitch fee to the maximum of the rise in RPI, "Why not do it?", the presumption having fallen away, would be because such a pitch fee is not reasonable, if indeed it is not.

200. The Tribunal pauses to make clear that a rebuttal of the presumption is just that. The presumption no longer applies. That does not determine that a pitch fee which has increased to reflect the rise in RPI cannot be reasonable. One does not necessarily lead to the other. It can only be right that the site owner can still obtain an increase at that level if such an increase can be demonstrated to be reasonable. The Tribunal considers that the site owner must demonstrate the reasonable level of pitch fee sought. More generally, the parties need to seek to persuade the Tribunal of another level of pitch fee as the reasonable level.

201. The Tribunal must of course still do that which it is required to do and determine the level of pitch fee that is reasonable.

202. Plainly there may well be instances where an increase of RPI may be reasonable and demonstrably justified. A site owner may consider the costs of operating the given park, identify that those have increased at the level of RPI or greater and reach a reasonable decision to increase the pitch fees of the pitches on the sites by the amount of the RPI, explaining that to the Tribunal such that the increase is specifically justified, and the resulting pitch fee found to be at the reasonable level.

203. The Applicant on its evidence has not undertaken that exercise. It has not made any decision that an increase by the level of RPI is justified financially- the Applicant may simply be covering its increased costs, may be experiencing a reduction in income in real terms or may be making a greater profit. The Tribunal has no way of knowing that on the case presented. It merits repeating that the Applicant had the opportunity to do that- it received the Respondents' case and knew what was said- and was hardly taken by surprise. It is therefore its own affair if it does not address such a point.

204. There is something of an overlap between reasonableness as now considered and justification raised by the Respondents. The Tribunal is mindful of Mr Wood's argument in closing about RPI and the basket of goods as effectively contending an increase at the level of the rise in RPI reasonable and the Tribunal must consider that, even where the presumption does not apply. However, the Tribunal considers that if a rise by RPI is no longer a presumption, a rise by RPI making the pitch fee nevertheless reasonable and without any information about actual costs, is not a viable argument and the Tribunal does not accept it. The Tribunal reminds itself that some increases in costs were said by Mr Pearson to be higher, if of unclear relevance, but others were indicated to be lower, such as wage increases, with no clarity as to overall increase for this Park.

205. The Applicant has failed to demonstrate that a pitch fee with an RPI increase on the previous pitch fee is reasonable.

206. The Applicant has not but of course the Tribunal has accepted that a higher level in very general terms is reasonable. Neither have the Respondents demonstrated any specific level of pitch fee to be reasonable.

Neither of the parties have provided anything persuasive about a levtel of pitch fee as the reasonable level.

207. It was put to the Respondents by Mr Wood that no alternative percentage had been provided by them, which they accepted. They said that if the increase had been 6% they would have been very happy with that and they suggested other residents would have been singing the Applicant's praises. The Tribunal considers it implicit in that last comment that a 6% increase would have been seen as quite a generous approach for the Applicant to take. Mr Wood described the selection of that percentage as sticking a finger in the air.

208. It is equally implicit that 6% is unlikely to be the figure which is objectively reasonable and that the balance of probabilities is that the reasonable level of pitch fee is higher than the previous pitch fee by a greater percentage.

209. As noted in *Vyse*, there is no market as such and so no market level for pitch fees.

Should there be an increase at the level of the rise in CPI ?

210. The 2023 Act is now in force. That was a few weeks in the future at the time of the decision being made, much as some time has passed before its issue, but was on the horizon back then. However, the effect is not retrospective, in the same way that legislation rarely is and so does not apply to this pitch fee.

211. In the absence of anything documented from the Applicant to work with and with only general indications of increase in the costs of matters the relevance of which to the operation of the Park is unclear, but with a 6% increase implicitly not creating a reasonable level of pitch fee, the Tribunal is left with the reasonable pitch fee being on balance a figure somewhat above 6% but not demonstrated to be 13.8% or thereabouts.

212. As it happens, the CPI figure of 10.1% is very close to midway between the figures advanced by the parties and is the only tangible measure available falling between those. The Tribunal is acutely aware that a pitch fee increased from the current pitch fee to the extent of the rise in CPI may be seen as being too convenient a figure to adopt, not least where the Bill which has become the 2023 Act was some months from being tabled at the time of this Pitch Fee Review Notice. Equally, the Tribunal notes that the basket of goods and services which is considered in calculating CPI is not particularly well suited to demonstrating the increased costs to a business such as the Applicant and so the reasonable level following rebuttal of the presumption, much as it is the measure Parliament has implemented as the maximum to which the presumption itself applies for pitch fee reviews for the last 2 days and hereafter.

213. Nevertheless, the Tribunal has carefully considered the question of what level of increase in the pitch fee is appropriate in order to arrive at the

reasonable pitch fee and in doing so has applied its expertise and taking matters in the round, the Tribunal considers that a pitch fee which increases by 10% as compared to the existing pitch fee produces the reasonable figure for the new pitch fee. There being no specific reason to apply exactly the CPI figure at this time, the Tribunal takes a slightly broader brush approach with a rounder percentage increase.

214. The Tribunal also observes, whilst not relevant to this particular decision, that it by no means follows that future increases in pitch fees to reflect any rise in CPI will as a matter of course be reasonable. The test will remain following the 2023 Act that which it has been, save for the substitution of CPI for RPI. The over- arching consideration will remain whether any increase in the level of pitch fee sought is reasonable and, if so, the appropriate level for that fee, having weighed any relevant factors and departing from the presumption if any of those have sufficient weight to rebut it, albeit necessarily any influence arising from the difference between RPI and CPI will no longer be relevant.

Reasonable pitch fee

215. The Tribunal therefore determines the reasonable pitch fee for 74 Trowbridge Lodge from 1st October 2022 to be £2324.26.

Costs/ Fees

216. 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) pursuant to rule 13(2) of The Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013.

217. The Applicant has sought reimbursement of the application fee of £20.00.

218. Whilst the Tribunal has reached the conclusion set out above, nevertheless the Applicant has achieved an increase in the pitch fee and the specific points raised by the Respondents were successfully responded to by the Applicant. That said, the Respondents have been successful with their wider arguments to an extent, albeit that whilst those arguments have exercised the Tribunal at some length, they were the smaller part of the case prior to this Decision.

219. The Tribunal considers by a narrow margin and identifying arguments which could reasonably take the answer either way that it is appropriate on balance to direct the reimbursement by the Respondents to the Applicant of the application fee paid, being £20.00.

Right to Appeal

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

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision. Where possible you should send your further application for permission to appeal by email to rpsouthern@justice.gov.uk as this will enable the First-tier Tribunal to deal with it more efficiently.

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.