FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/18UE/PHI/2023/ 0024, 0025, 0026, 0027, 0028, 0029, 0030, 0031, 0032, 0033, 0034, 0035, 0036
Property	:	3, 5, 6, 9, 12, 13, 21, 22, 30, 31, 32, 36, 37 Berrynarbor Park, Sterridge Valley, Ilfracombe, Devon, EX34 9TA
Applicant	:	Wyldecrest Parks (Management) Ltd
Representative	:	Mr D Sunderland
Respondent	:	3- Ms D Finch 5- Mr and Mrs Gleeson 6- Mr and Mrs Ryan 9- Mr and Mrs Bath 13- Mr D Hopper 21-Mr and Mrs Gordon- Wilson 22- Mr and Mrs Pocock 30- Mr A and Mrs L Hughes 31- Mr P and Mrs P McKinnon 32- Mr and Mrs Stone 36- Mr L Findon 37- Mr C and Mrs J Caswell
Representative	:	Mr R Gordon-Wilson
Type of Application	:	Review of Pitch Fee: Mobile Homes Act 1983 (as amended)
Tribunal Member(s)	:	Judge J Dobson Mrs J Coupe FRICS Mr L Packer
Date of Hearing	:	25th July 2023
Date of Decision	:	6th September 2023 Corrected 25th September 2023

Corrected DECISION

This Decision is corrected pursuant to rule 49 of The Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013, to correct clerical errors and accidental slips. In respect of the latter, the Tribunal had inserted the CPI figure for October 2021 and not the RPI figure for that month and intended to calculate the figures using that index. Both the incorrect index used and the calculations arising from it are therefore accidental slips.
The amended matters are shown underlined (the original incorrect text has been deleted).

Summary of Decision

1. **The Tribunal determined that the pitch fee for the year beginning 1st January 2023 and for each of the relevant pitches should be changed.**

2. **The Tribunal determined that the condition of the Park had deteriorated and the amenity had decreased and regard has not previously been had to that.**

3. **The Tribunal determined that the pitch fee for each pitch should be reduced to the level of the pitch fee for the year beginning 1st January 2021.**

4. **The Tribunal determines the reasonable pitch fee for the relevant payable on 1st of the month with effect from 1st January 2023 to be as follows:**

Pitch 3	**£126.38**
Pitches 5 and 6	**£126.37**
Pitches 9, 13, 36 and 37	**£143.80**
Pitches 31	**£153.24**
Pitches 22, 30 and 32	**£158.59**
Pitch 21	**£200.32**

5. **The Applicant shall bear the application fee paid, of £20.00 per application.**

Background

6. The Applicant has been the owner of Berrynarbor Park since 2020. The Respondents are the owners of park homes sited on the listed pitches. The Respondents are entitled to occupy the pitches under agreements of various dates, most recently 2018 (but commonly around or about 2004) and including assignments of agreements entered into by previous occupiers of relevant pitches. Nothing turns on the precise dates. Previous occupiers are shown by available documents to have occupied from mid- 1994.

7. Berrynarbor Park ("the Park") commenced operation in the 1990s. It was owned by Mr and Mrs Crocket until 2018 and then by Mr Henry Simmons or a company operated by him until the sale to the Applicant.

8. 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 was not provided but there was no dispute that one exists.

9. A Pitch Fee Review Notice in the form the Applicant uses with the prescribed form detailing the proposed new pitch fee and calculation of it was served on each of the Respondents, each dated 16th November 2022 [106- 209], seeking an increase by an amount which the Applicant says represents an adjustment in line with the Retail Prices Index ("RPI") from 1st January 2023 onwards. The fees were expressed as monthly sums. The Respondents did not agree to the increase.

10. The RPI was 14.2% taking "the RPI Adjustment", as described, as the percentage increase in the RPI over 12 months to October 2022. No recoverable costs or relevant deductions were applied. No services are included in the pitch fee**.** Additional charges are made for water, sewerage, gas and electricity, as set out in the Written Statement, i.e., agreement, for occupation of each pitch.

11. The current pitch fee payable as from 1st January 2022 and the new monthly fee sought in respect of given ones of the twelve pitches relevant in this case ("the Pitches") were as follows:

3	£133.96 to £152.98
5 and 6	£133.95 to £152.97
9, 13, 36 and 37	£152.43 to £174.08
31	£162.43 to £185.50
22, 30 and 32	£168.11 to £191.98
21	£212.34 to £242.49

Procedural History

12. The Applicant site owner sought the determination of the pitch fee payable in respect of the twelve above listed pitches (plus one more, the owner of which then agreed the fee) on 30th January 2023, submitting the relevant application [106- 209]. The procedural history of these applications was somewhat more involved than usual and the Tribunal considers it merits setting out a little of that, without seeking to recount all of the previous sets of Directions in detail.

13. The applications in respect of 5 and 13 were, in the event, progressed first by the Tribunal. Directions were given first on 27th March 2023, including listing a fact- find hearing in respect of the date of the pitch

fee review and identifying two potential legal issues, which issues the Tribunal indicated it was considering seeking to transfer to the Upper Tribunal. The fact- find hearing subsequently took place and the Tribunal found that the correct pitch fee review date is 1st January of a given year in respect of pitches 5 and 13, issuing an Interim Decision to that effect, which rendered the second potential legal issue not relevant.

14. The wider question of the increase in pitch fee remained in need of determination, subject to there being a valid notice- the first potential legal issue as identified. The Tribunal determined that it would not seek the transfer of that question alone to the Upper Tribunal and would determine any argument as to the validity of the notice before seeking to determine the pitch fee if then appropriate. Those determinations were intended to take place at a final hearing listed on 13th June 2023 in relation to the two pitches. However, on 8th June 2023, the bundle received for that hearing was considered and another query was identified, also relating to the Pitch Fee Review Notice, in respect of which the Tribunal wished to receive evidence and hear any submissions if the parties wished to make any. The Tribunal considered, given the imminence of the hearing, that there to be no practical alternative but to adjourn the hearing so that the matters could be addressed by the parties if and as appropriate. The Tribunal vacated the hearing and indicated that the Tribunal would give directions for progress in all of the cases.

15. The Tribunal noted that it did not know, beyond the legal points it had identified, the nature of the issues to be resolved, including the extent- if any- to which they differed from one pitch to the next and equally whether any points which the Respondent's sought to make related to the condition of the park and necessitated a site inspection by the Tribunal. No inspection had been provided for. It was said that the parties may apply if relevant. No application was made.

16. The Applicant has submitted a PDF determination bundle comprising 592 pages, which was copied to the Respondents. That included the applications and other documents for each pitch relevant and a number of photographs of the Park.

17. 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. 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.

18. Subsequent to the hearing, the parties provided a number of previous decisions of the First Tier Tribunal, as mentioned below.

19. 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.

The Hearing

20. The application was heard on 25th July 2023 at Havant Justice Centre. The Judge sat at Havant and all other participants attended remotely.

21. The Applicant was represented by Mr Sunderland. The Respondents were represented by Mr Gordon-Wilson, one of the park home owners. The essence of the Respondents' objection to the proposed increase was asserted deterioration in the condition of the Park, comprising a number of elements and primarily a consequent of lack of maintenance, and decline in amenity. The Applicant essentially denied that the condition of the Park was unsatisfactory and that there were any breaches by it and further argued the Respondents' requirements to be unreasonable.

22. The Tribunal received oral evidence first from Mr Richard Gordon-Wilson on behalf of the Respondents and then from Mr David Sunderland on behalf of the Applicant, in addition to the matters stated by them in their statements or similar [510 – 518 and 495- 509] respectively. The statement of case of the Respondent lacked a signature by Mr Gordon- Wilson or anyone else. Mr Gordon- Wilson relied on the email sending it [510] but in any event confirmed the truth of the contents when giving oral evidence. That was sufficient.

23. Mr Sunderland initially said that he did not wish to ask any questions of Mr Gordon- Wilson and relied on his written submissions. The Tribunal did ask a number of questions. Mr Sunderland then decided that he did wish to cross- examine Mr Gordon- Wilson. He did so at length. The cross- examination was somewhat aggressive, which was not a productive approach to take. In the course of that, Mr Sunderland accused Mr Gordon- Wilson of interfering with the sewage system for the Park. That was a serious allegation to make. There was nothing remotely sufficient by way of supportive evidence which provided a proper basis on which to make it.

24. Mr Sunderland also asserted after his detailed cross- examination that he had been ambushed by additions to Mr Gordon- Wilson's written case in his oral evidence in response to questions by the Tribunal. The Tribunal unhesitatingly rejects that. Whilst, it is correct to say that Mr Gordon- Wilson gave a small amount of detail in respect of some factual matters, there was no new strand to the Respondents' case. The additional detail was nothing which came out of the blue and raised matters which had not been indicated already in the written case or otherwise fell outside of that which might be reasonably expected when

oral evidence is given. Advocates must expect to deal with matters and Mr Sunderland's experience in such cases as this is considerable.

25. Mr Gordon- Wilson also asked some questions of Mr Sunderland, as did the Tribunal to a modest extent. Mr Sunderland's personal knowledge of the Park was limited- he told the Tribunal when questioned, that he had visited the site once, and primarily to discuss planning matters with the Applicant's legal advisors. The Applicant produced no witnesses with knowledge of the site. That, all else aside, meant that the Applicant had little to offer in response to the factual evidence of Mr Gordon- Wilson on which much of the case turned. Whilst part of the Applicant's case was that the Respondent's criticisms of the state of the Park were either unfounded or did not result in a reduction in amenity of the Park, the Respondent's descriptions of the state of the Park from time to time and photographic evidence were not challenged by contrary evidence. The unsurprising effect of that is addressed below.

26. The Tribunal does not seek to set out the oral evidence received at length in this part of the Decision and instead records it where relevant to discussion of the issues below.

27. Mr Sunderland additionally asserted that he had been unable to produce witness evidence because the Tribunal's Directions had only allowed for a brief reply. The Tribunal observed and maintains that there was no restriction on providing witness evidence. The Applicant chose to provide a detailed response in submissions and was clearly capable of having obtained witness statements had it wished to.

28. The Tribunal also received oral closing submissions from Mr Sunderland and from Mr Gordon-Wilson. Those from Mr Sunderland in particular addressed the contended applicable law.

29. Mr Gordon-Wilson was very clear that the Respondents did not seek to take any point with regard to the Pitch Fee Review Notice or the prescribed form. The Tribunal also returns to that below. The case which the Respondents did run was in essence that the condition of the Park has deteriorated and that there had been a reduction in the amenity enjoyed by the home owners.

30. The Tribunal is grateful to Mr Sunderland and Mr Gordon-Wilson for their assistance in this case.

The Inspection

31. The Tribunal concluded during the course of the hearing that, notwithstanding the undoubted usefulness of the photographs provided, it would be assisted by an inspection of the Park. The Tribunal decided to undertake that inspection on the day after the hearing, so that matters from the hearing were fresh. The Tribunal explained in the hearing that the Tribunal would not wish to speak to

anyone whilst undertaking the inspection, to which no contrary suggestion was made.

32. The inspection commenced at approximately 1.00pm and finished at approximately at 3.00pm and was undertaken in some detail, as the length of the inspection indicates. The Tribunal found that the inspection was of considerable assistance in establishing first- hand the current condition of the Park, in identifying its likely condition prior to 1st January 2023, and in considering the contrast with the condition of the Park in the past as revealed by the photographic evidence and the accepted evidence of Mr Gordon- Wilson. It is important to identify that the Tribunal spoke extremely briefly to a resident near to the "Copse" as termed, who simply inquired as to the nature of the Tribunal members' visit to the Park. She was given a brief explanation that the members were members of the Tribunal and were undertaking an inspection but she did not appear to be aware of the proceedings. The Tribunal also saw another person, who did not ask.

33. As explained further below, the condition of the Park is by no means dreadful. The pitches themselves were well- maintained. The trees, shrubs and grassed areas and the general original landscaping scheme are still apparent. However, they are not controlled and are significantly affected by brambles, weeds and grasses and what the Tribunal finds to be a general lack of maintenance. Despite that, there were sufficient hints remaining for the Tribunal to identify the condition the Park is said to have previously been in.

34. The entrance area to the Park includes an area of grass immediately facing the entrance, to the edge of part of which area is situated a short fence. The area includes a pond, to which the Respondents made reference in their case. The Tribunal found that area was intended to provide a pleasant entrance to the Park and to reflect the wider Park. The latter of those still applies, but not as a positive.

35. As identified by the Respondents, the pond is largely hidden by vegetation. Whilst the Tribunal infers it was intended as an attractive feature at the Park's entrance, the pond is no longer visible except from behind. In itself, that is arguably a good thing. The pond is covered by a green layer, which as far as could be seen looked quite thick. The pond is visually very unattractive, indeed distinctly unpleasant, and hard to identify as being a pond, save that the Tribunal knew approximately where to find it. The overgrown vegetation around it is similarly so and widens the area by a few feet in all directions (the pond itself is fairly small).

36. The grass appeared recently cut. In contrast, the fence was in poor condition. What may have been intended to be a hedge by it is full of briars. The trees have straggled growth consistent with not having been cut back for a couple of years.

37. The impression given to the Tribunal from the area immediately seen on entering the Park, and the Tribunal is quite sure to any other visitor, is that the shrubs and plants are not well- tended and the Park well kept, much as the short grass indicates some effort to have been made.

38. To the left as the Park is entered is a short, paved path which then leads to more of a country path running by the side of the road and providing access to the remainder of the village. To the other side of the path is a utility area, which the Tribunal perceived but did not see was relevant to the sewage system. The paved path is the area shown on photographs produced by the Respondents as having been affected by sewage. There was no sign of difficulty with sewage on the date of the inspection. It should be added that there was no other visible evidence of any sewage problem.

39. On the right side of the entrance as the park is entered is a wider tarmac area and a garage, behind which are marked parking spaces. There are two roads running through the Park, as the plans had shown, which do not meet up at their far end. Both start near the entrance, running either side of the area just described. At the end of the upper one is a flight of steps leading to the field. The field is heavily populated by brambles and ragwort but the Tribunal understands that field does not form part of the Park.

40. It is the lower road on which the Park office is situated. Boat- shaped planters by the park office have peeling paint and are only identifiably occupied by soil and weeds. There is a straggling bush by them. The area also contains a dead tree. There are bushes and other vegetation opposite but unkempt, which is reflected by the condition of the greenery to the upper side of that lower road (pitches are on the other side). That is straggly and again infested with well- established brambles and weeds.

41. A little along from that office is an area which has been described by the Respondents as, at least formerly, an amenity area, called by them “the Copse”. The Copse was accessible by moving a red plastic barrier and carefully accessing something of a path and pushing through.

42. There was nothing of an obvious amenity area. The canopy of vegetation made the roughly circular area accessed dark and most of it was otherwise very overgrown, with weeds several feet high. It was possible to identify that the area may have been more open in the past if those were not allowed to grow and the trees kept trimmed. The Tribunal consider it unlikely that the area would be used for the individual reading that the Respondents contended it had been. It would be wholly unsuitable for use for barbeques because of the weeds and other vegetation. The area was not pleasant to be in.

43. At the end of the other, lower, road is the extension to the Park, with several new pitches to one side, some occupied, and to the other side was an area which had visibly been dug out. That was apparent from

the steepness of what was in effect a wall of soil and the lack of vegetation. The presence of a digger (not in use) by the bank was an unnecessary emphasis of the matters. The area contained debris, including broken concrete and felled tree trunks.

44. Just beyond that is a shed/ garage used for other storage (and open at the time of the inspection) and then a very overgrown area littered with debris. It is right to say that is not visible (save perhaps to the end new pitch) unless a resident walks to that edge of the Park, but it does remain part of the Park. A further and similar area exists a little further on.

45. The pitches themselves do not immediately appear to fit with those on the remainder of the site, being in a straight row and rather stark. The Tribunal was mindful some of that may be ameliorated over time with planting and the pitches are a contrast rather than unsightly in themselves.

46. There is a grassy and largely stepped path and borders running between the two roads and giving access to each, although for most of its length running roughly parallel with the lower road. The stepped areas are edged with wood, in various places obviously rotten, or concrete. The brambles and other weeds to the lower side were particularly well established and notable around and through what appeared to have been deliberately planted landscaping shrubs. The brambles climbed to at least head height through the bushes, with thick branches. Grassy weeds and cow parsley reached four feet tall. Hydrangea to one side of the path grew well into what appeared to be the intended width of the path.

47. The Tribunal of course saw the condition of the Park as at 26th July 2023, which is nearly seven months after the date from which the new pitch fee is payable and eight and a half months or so from the date of the pitch review notice. The Tribunal is mindful that the inspection can only demonstrate the condition on the date the inspection took place and does not of itself identify the condition of the park on any other date.

48. For that, an assessment is needed of the matters seen in the inspection in the context of the other evidence, which is returned to when the Tribunal makes findings of fact below.

49. It is rather stating the obvious to say that the inspection gave the Tribunal little of use in respect of Autumn and Winter leaf clearance. It was too early in the season for Autumn leaf fall to have occurred. Insofar as there was anything noted of relevance, it was only that some of the shrubs/ trees appeared to be evergreen. However, only a minority.

50. The Tribunal found the condition of the Park to be consistent with having been maintained until recent years and then not well- cared for,

allowing loss of shape of the landscaping plants and trees and the considerable growth of weeds. The Tribunal pauses to observe, as returned to below, that tallies with the Respondents' case.

51. The Tribunal adds that its impression about the condition of the landscaping and vegetation, accepting that the ability to see the future goes some ways beyond the Tribunal's other abilities, is that the Park is on the cusp of getting out of hand and that the amount of work to remedy that may potentially require largescale removal of brambles, weeds and similar and perhaps some re-planting. The impact of that may be considerable beyond the current condition. The Tribunal does not seek to express any more specific opinion, considering that to be beyond its expertise. Nevertheless, whilst the condition of the Park is that it is not sufficiently cared for, it is not yet irretrievably bad with sufficient time and effort being applied, significant though that will need to be.

The relevant Law and the Tribunal's jurisdiction

52. 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. 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. The implied terms in respect of the pitches involved in this case are included in the bundle [429- 435].

53. Pitch fee is defined in paragraph 29 of Part 1 of Schedule 1 of the 1983 Act as:

> "The amount which the occupier is required by the agreement to pay to the owner for the right to station the mobile home on the pitch and for use of the common areas of the protected site and their maintenance, but does not include amounts due in respect of gas, electricity, water, sewerage or other services, unless the agreement expressly provides that the pitch fee includes such amounts."

54. The principles governing a pitch fee increase are provided for in paragraphs 16 to 20 inclusive of Schedule 2 to the Act. The procedure is provided for in paragraph 17. 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.

55. 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.

56. 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.

57. 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."

58. The owner may apply to the Tribunal for an order determining the amount of the new pitch fee (paragraph 17. (4)). The Tribunal is required to then determine whether any change (increase or decrease) in pitch fee is reasonable and to determine what pitch fee, including the proposed change in pitch fees or other appropriate change, is appropriate.

59. 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 perceived reasonableness of that agreed pitch fee in any wider sense or of the subsequent fee currently payable at the time of determining the level of a new fee.

60. 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 when determining whether to alter the pitch fee and the extent of any such change were specified.

61. Paragraph 18 provides that:

> "(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) any 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.
....."

62. "Regard" is not, the Tribunal considers, the clearest of terms and the effect of having such regard is left to the Tribunal. Necessarily, any such matters need to be demonstrated specifically. "Particular" emphasises the importance and strength of the regard to be had.

63. As amended by the 2013 Act, paragraph 18 and paragraph 19 set out other matters to which no regard shall be had or otherwise which will not be taken account of.

64. 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."

65. For reasons which will 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.

66. 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. 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). .....

23. ..... 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."

67. Two sets of factors which may mean that the RPI presumption does not apply were identified- the paragraph 18(1) factors and other factors.

68. In *Shaws Trailer Park (Harrogate) v Mr P Sherwood and Others* [2015] UKUT 0194 (LC), the Deputy President reiterated that "the overarching consideration" for the FTT is whether "it considers it reasonable for the pitch fee to be changed".

69. Those paragraphs therefore emphasise that there are two particular questions to be answered by the Tribunal. The first and "overarching" one is whether any change in the pitch fee at all is reasonable, where unless it is reasonable for there to be change, there is no change at all. The second is about the amount of any new pitch fee, which includes applying the presumption stated in the 1983 Act where that arises- which it may not given the effect of paragraph 18(1). Account must also be taken of other factors where appropriate.

70. In *Britanniacrest Limited v Bamborough* [2016] UKUT 0144 (LC), the Upper Tribunal (albeit in the context of whether the increase could be greater) it was said about the presumption:

"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."

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

"33. We therefore agree ..... 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."

72. 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 lastly the presumption discussed above.

73. With particular regard to paragraph 18, the Upper Tribunal explained as follows:

> "24. ..... paragraph 18(1)(ab) requires the FTT to have regard to any reduction in services which the owner supplies to the site, the pitch or the individual home. That is consistent with the pitch fee being payment for a package of rights provided by the owner to the occupier, including the right to stain a mobile home on the pitch and the right to receive services. Where such services are reduced, or the quality diminishes, the Act requires that reduction or deterioration to be taken into account (presumably as a factor justifying either a reduction in the pitch fee or a smaller increase than would otherwise be allowed)."

74. The ability to determine that there should, assuming there to be any change at all, be a lower increase or indeed a reduction where appropriate is clearly identified. The Tribunal considers that the comments of the Upper Tribunal apply just as much to condition and amenity as they do to services, there being nothing in the Act to support dealing with one differently to the other.

75. In the Upper Tribunal (Lands Chamber) decision 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.

76. It was 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."

77. That serves to emphasise, lest such emphasis be required, that there are two sets of potential factors, the paragraph 18(1) factors on the one hand and other factors on the second hand. The Judge repeated that the pitch fee can only be changed if the Tribunal considers it reasonable for there to be a change and the "particular regard" to be had to the matters in paragraph 18(1)

78. Later, and significant in the context of this group of applications, it was explained that given the wording and structure of the provision, paragraph 18(1) factors arising cause the RPI presumption not to arise. In the absence of such factors, it does arise. The judgment in *Britanniacrest* that a reduction or smaller increase in pitch fee may be justified by paragraph 18(1) was quoted.

79. The Judge made the following statements which make the position clear, as follows:

"48. ..... If, having regard to a factor to which paragraph 18(1) applies, it would be unreasonable to apply the presumption then the presumption does not arise."

and:

"To use the example ..... paragraph 18(1) would not apply. Therefore, the presumption in favour of change in line with RPI would apply."
and also:

"The presumption of change in line with RPI did not arise because the FTT considered it unreasonable applying what the FTT believed to be paragraph 18(1) (ba)."

80. The Upper Tribunal identified 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."

81. The above underlining is the Tribunal's emphasis to highlight the different effect of the two different types of factors.

82. The Upper Tribunal discussed in *Vyse* about "other factor[s]" at some length and explained that such other factor(s) must be sufficiently weighty if they are to rebut the presumption (assuming that there are no paragraph 18(1) factors and the presumption has then arisen) in light of the statutory scheme.

83. In the course of the hearing, Mr Sunderland made a number of references to the need for deterioration in condition and decline in amenity to be weighty in order to rebut the RPI presumption. It was explained that the Tribunal did not accept that to be correct and that the contention was not an accurate statement of the above case law. The Tribunal considers that Mr Sunderland's submission sought to conflate the requirement in respect of other factor(s) with that for paragraph 18(1) factors.

84. The Tribunal sought to ensure that Mr Sunderland either explained why the Tribunal's view of the law was incorrect or explained his arguments in the context of the correct legal position. In the event, Mr Sunderland objected to the Tribunal seeking to pause his submissions on the premise of the law being as he was suggesting and continued to present his case on the basis of it. Given that the Tribunal was unpersuaded that its identification of the correct legal test was wrong, that approach did not assist. It should be added that Mr Sunderland had previously set matters out in writing for the Applicant [for example 508/509] which appeared to identify the correct test.

85. It follows that the Tribunal rejects the submission that deterioration in condition and decline in amenity need to be sufficiently weighty in order to rebut the RPI presumption, as other factors must, because if

paragraph 18(1) factors make it unreasonable the presumption has not arisen. The strength of the effect of the paragraph 18(1) factors if the pitch fee is to be changed and in determining the level of any changed pitch fee then appropriate is a different question.

86. The Judge in *Vyse* also carefully set out why RPI was used, rather than seeking to consider every element of costs individually. With regard to the latter, it was said:

> "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."

87. 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.

88. It is worthy of brief reference that the Upper Tribunal summarised six propositions derived from the various previous decisions with regard to the effect of the implied terms for pitch fee reviews. However, the Tribunal does not consider it necessary to set them all out, having explained the relevant ones above. The Tribunal does note item v., which reflects the judgment in *Vyse* about the effect of paragraph 18 on the RPI presumption, stating as follows:

> "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."

89. The Upper Tribunal has returned to matters related to pitch fees in other more recent cases, Deterioration in the condition and amenity of the site was referred to in *Wickland (Holdings) Limited v Ameila Esterhuyse* [2023] UKUT 147 (LC) as recently as 30th June of this year. However, the displacement of the presumption of a rise in the pitch fee in line with RPI was because of the weight to be given to one or more other factors and not the matters within paragraph 18, so that save for affirming that deterioration is that since 2014 when the provision came into force and not only that since the last pitch fee review (paragraph 23), the judgment contains nothing directly additionally relevant for these purposes.

90. The Tribunal considers the net effect is that if paragraph 18(1) factors apply to render an increase in line with RPI unreasonable, the level of the new pitch fee is an open one subject to application of case law and the statutory scheme.

91. As the Tribunal identified in the hearing and Mr Sunderland accepted, if the presumption of an increase by RPI does not arise then the effect is that the Tribunal needs to consider the appropriate level of pitch fee absent that presumption. That does not mean that the pitch fee should not necessarily change but if a change is appropriate, there is no specific steer as to what that change should be. It is right to say that where the presumption has been rebutted a pitch fee which has increased to reflect the rise in RPI may still be reasonable- the one matter of the presumption itself being rebutted does not necessarily lead to the other.

92. The Tribunal must still do that which it is required to do and determine the level of pitch fee that is reasonable. The pitch fee will be the amount that the Tribunal determines, including whether there should be any change at all from the current pitch fee at the time and, if so, to what level, taking account of the relevant matters.

93. In respect of deterioration in condition and decline in amenity and as expressed by Martin Rodger KC in the Upper Tribunal when considering an appeal of a First Tier Tribunal decision in the case with reference CAM/26UC/PHI/2013/0004 (also involving the Applicant, together with Vyse and others), the question is not whether deterioration in condition or decline in amenity will continue for all time but rather whether there has been such deterioration or decline at the relevant time. He stated:

> "it does not follow that a temporary loss of amenity cannot reasonably be the basis of a curtailment of the RPI increase in pitch fees. Such curtailment need not have a permanent effect"

and

> "It is therefore open to the First-tier Tribunal on the next review to adjust the appropriate increase to reflect the fact that a temporary disruption, which justified restricting the 2012 increase, is no longer relevant."

94. The Tribunal has careful regard to those comments being made in a decision granting permission to appeal and not in a final decision of the Lands Chamber. The Tribunal is mindful that a different decision could have been reached with the benefit of full argument and in the event of a final decision being made, which would then have been binding on this Tribunal assuming the determination of the issue to form part of the basis of the decision in the case. However, it is a short and simple statement and hence clear.

95. The Tribunal also considers such an approach to be entirely consistent with the statute and the statutory scheme.

96. The question in respect of paragraph 18(1) factors found is whether they render it reasonable for the RPI presumption not to apply- and then their effect on the level of pitch fee, including whether that should change and, if so, in what manner. That allows for both factors which are not sufficient for it to be reasonable for the presumption not to apply and for there to be factors which do render it unreasonable for the presumption to apply. That requires the Tribunal to consider the significance of the factors and enables the Tribunal to apply its judgment and expertise to those matters.

97. The extent to which any deterioration and/or decline is temporary forms part and parcel of that. It may be that deterioration and decline is sufficiently temporary and sufficiently easily remediable that the significance of the matter is modest. Or it may be that there is an extent of decline and deterioration that, remedial or not, that is sufficient for the presumption not to arise and the pitch fee to alter not at all or in another manner. The answer will inevitably differ from one case to the next.

98. The Tribunal is content that Parliament left those matters to the expertise of the Tribunal, buttressed by its opinion being consistent with the view expressed by the Deputy President of the Lands Chamber. Further that if Parliament had intended that only permanent deterioration and decline should prevent the RPI presumption arising or otherwise dictate the appropriate level of pitch fee determined, then when enacting wide- ranging law in respect of mobile homes and pitch fees, the Tribunal is confident it would have so stated.

99. It follows that whilst Mr Sunderland argued that temporary reductions should not impact on the pitch fee, the Tribunal rejects such a sweeping assertion. The effect of any deterioration or decline being in whole or part permanent or temporary is addressed below.

100. It also follows, the Tribunal considers, that whilst inevitably anything other than an increase in the pitch fee by RPI not only reduces the amount payable for the immediate year but for subsequent years, subject to resolution then of the relevant issues with site (which may then amount to improvement, in which regard the Tribunal notes that a consultation process may be required, or just effectively reinstatement), that is a factor for the Tribunal to weigh. It may well be that considerable weight is appropriate, although that must inevitably be balanced by the other considerations. It does not limit matters which render it appropriate to determine that an RPI increase should not apply to only permanent deterioration and decline.

101. It should be recorded that the parties did not make reference to all of the above case authorities, although Mr Sunderland did refer to *Vyse* and *Esterhuyse*. 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 additional submissions on those elements of the law from the parties in this instance.

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

103. For completeness, the Tribunal does not identify anything in the case authorities which adds anything to the definition in the 1983 Act of "condition" or indeed any other term within paragraph 18(1) save for "amenity". In respect of "amenity", in *Charles Simpson Organisation Ltd v Redshaw* (2010) 2514 (CH), Kitchen J explained:

> "In my judgment, the word "amenity" in the phrase "amenity of the protected site" in paragraph 18(1)(b) simply means the quality of being agreeable or pleasant. The Court must therefore have particular regard to any decrease in the pleasantness of the site or those features of the site which are agreeable from the perspective of the particular occupier in issue."

Cases received subsequent to the hearing

104. As touched on above, the parties submitted, subsequent to the hearing, previous decisions of this and other regions of this Tribunal by email. Where those involved the Applicant, reference is made to "the Applicant", being accurate both in respect of those cases and in this.

105. The Applicant provided the following:

i) A decision of the Welsh Residential Property Tribunal in RPT/0047/02/23, RPT/0048/02/23 and RPT/0049/02/23 regarding Middletown Residential Park, Middletown, Welshpool. Amongst the park home owners' arguments was that there had been a general lack of maintenance and/or a reduction in services and amenities, starting when the previous site owner purchased. The Applicant argued that a lack of maintenance is not a reduction in amenity of a park unless it is a 'weighty matter' which outweighs the statutory presumption of a CPI (as applied in Wales but only from very recently in England) increase- the argument also advanced in this case. A breach of contract was also denied. The Tribunal did not, with the benefit of an inspection, find a deterioration of decrease in the condition or amenity.

ii) A decision of this region in CHI/00HE/PHI/2022/0065 in respect of Little Trelower Park, Trelowth, St Austell, another case involving the Applicant. That decision was given on the papers. The essence of the pitch occupiers' case was that they objected to the increase of the pitch fee because they felt that the services provided by the Applicant were inadequate or of poor

quality and that their attempts to get repairs carried out had been difficult and not wholly successful. The Tribunal found that the Respondents had not, on balance, demonstrated those matters.

iii) BIR/44UE/PHI/2022/0019-31 in respect of Marston Edge, Lower Quinton, which did not involve the Applicant. One of two issues related to whether there had been a reduction in the amenity of the site since 2021. Another First Tier Tribunal decision was quoted and which expressed the view that the law required that a deterioration in condition or amenity must be long- standing or permanent (but see the Upper Tribunal's contrary decision about that set out above). It was said that the deterioration in condition and amenity was insufficient to displace the presumption of RPI increase.

iv) A further case from the Midlands Region, being BIR/17UD/PHI/2022/0009 in respect of Riverdale Park, Staveley. That states the law as being that for paragraph 18 factors to displace the RPI presumption, they must be of equal weight (with which this Tribunal does not agree, considering that fell into the error of conflating two separate provisions), although it did identify that the question was not the actual condition or amenity but whether there has been deterioration in condition or decline in amenity. Issues identified in opposing the pitch fee increase had included lack of or poor maintenance infrastructure and poor aesthetics but there was a lack of particularisation and a number of matters were not deterioration or decline, such that the pitch occupiers failed to make out their case sufficient to displace the presumption.

v) Additionally, the decision in MAN/00EM/PHI/2017/0004 regarding 46 Bridgend Park, Wooler. The park home owners alleged a significant decline in the standard of maintenance, amongst other assertions. The Tribunal referred to the term "amenity" but then considered "amenities". Nevertheless, the Tribunal found the site maintained to a good standard and found no loss of amenity and reduction in service. No specific reference was made to whether there was deterioration in condition.

106. The Respondents referred to a decision in CHI/00HE/PHI/2021/0031, 0033 - 0037, 0090-0093, 0096, 0100 Various Properties at St Dominic Park- in which the park home owners opposed an increase in the pitch fee because of deterioration of the park and alleged that the Applicant's focus has been on preparations for new homes. An area called "the Glade" used for socialising had been removed and an area had been used for dumping of debris. Other assertions were stridently made. It was said that in the two years since ownership by the Applicant the condition of that park had deteriorated. The Applicant asserted that that park was acquired in a run-down condition. Arguments as to the

limits of contractual requirements were made. The Tribunal allowed an increase but not that sought by the Applicant (in that case and this), on the basis of disruption caused by works, which was the only matter it found sufficiently evidenced.

107. The Tribunal has read those cases but, whilst the Tribunal respects the decisions made in the particular instances, if not always agreeing about the state of the law, they do not provide any binding authority and rather applied what were considered to be the relevant parts of authorities to the facts of those cases as found on the quality of the evidence provided. To that extent, it might be said that the case go to demonstrate the significance of the facts found in the case before the Tribunal. A letter from the Tribunal to park home owners in a case explaining about terms used was also provided but does not require quoting or comment.

Findings of Fact

108. In light of the matters noted at the inspection and the evidence received, the Tribunal makes the following findings of fact. The Tribunal does so principally by taking each of the specific matters raised by the Respondents in objecting to the pitch fee in turn except where capable of being effectively combined, with headings to identify each.

109. Before doing so, the Tribunal records that it accepts the Respondents' basic assertion that the Park is a small rural one and has been planted with a range of shrubs and trees. Further that there is a minimum age requirement for residents of fifty years old. The Tribunal additionally accepts that the Park has been awarded a Gold David Bellamy Conservation Award for a period between 2002 and some time around or about 2018 or a little more recently.

110. The Tribunal also notes that the Respondents asserted that they had proposed to challenge the increase for 1st January 2022. The chance to do that has of course long since passed and the pitch fee has been payable at level for 2022. Mr Gordon- Wilson asserted in the Respondent's case that Mr Paul Hancox, described as the UK Parks Operations Manager, promised in December 2021 in response to complaints made by park home owners that deterioration of the Park would be addressed by fortnightly grounds maintenance but that promise has not then been fulfilled. The Applicant has called no evidence from Mr Hancox to refute the assertions, which are therefore accepted. The Applicant also called no evidence from whoever is or has been the more immediate manager of the Park. Mr Sunderland was unable to tell the Tribunal who that is.

Grounds maintenance and gardening, Autumn and winter leaf clearance and Ornamental pond

111. The Tribunal concluded that the condition of the Park has declined from that previously enjoyed by the residents. Further, that a major reason is that the level of grounds maintenance and similar was both quite a distance from the level previously enjoyed and some way from adequate, leading to the decline from the Park's former condition.

112. The Tribunal considers that there is something of an overlap between the ground maintenance item and the separately stated pond and leaf items and that separate treatment is unwieldy and unnecessary.

113. The Respondents set out in their written case with a table comparing matters prior to purchase of the Park by the Applicant with matters after that- in respect of each item raised by them not just this item. In respect of this item, that asserts that two wardens/ gardeners were contracted to work up to twenty hours per week throughout the year, including grass cutting, maintenance of shrubs and leaf clearance, together with road gritting and drain clearance. Subsequently, the owner prior to the Applicant reduced the staffing to one permanent warden/ gardener who was contracted to work twenty- four hours per week. It is not suggested that was insufficient, at least during the subsequent two years, so to the later part of 2020.

114. The Tribunal finds from the time spent and awards received- and from the Respondent's case more generally- that the Park was in something of a pristine condition up to at least 2018, as evidenced by the David Bellamy Award referred to above. Nevertheless, the Tribunal finds that is the circumstance in which the Respondents entered into agreement and took up occupation of their pitches.

115. There is ample to identify that the site was once very well- cared for and that a good deal of time and trouble was taken with landscaping. Mr Gordon- Wilson stated that he had lived at the Park since 2018 and that the Park was very well maintained both then and until the Applicant took over, so 2020. The Tribunal considers that the condition of the Park as seen provides ample corroboration for that evidence, which is accepted.

116. The maintenance works will have included, maintenance of the pond- the Tribunal accepts the Respondents' case that it was previously maintained and the vegetation around it kept neat. Mr Gordon- Wilson said the pond had, when he moved to the park, contained fresh water and a fountain, being cleaned out and dredged once each year, combined with the rockery surround being repointed to stop water seeping out. There are the matters identified at the inspection which revealed the nature of the earlier landscaping of the Park. The clear and cogent evidence of Mr Gordon- Wilson and the previous awards which all provide good support for that.

117. The Applicant provided no evidence of any contrary condition of the Park at the time of purchase or any earlier date. There was no evidence adduced of any survey at the time of purchase or other evidence of what

it received about the condition of the site. It advanced no evidence to contradict the evidence of Mr Gordon- Wilson about those matters

118. The Tribunal accepts the Respondents' case that this is a high-maintenance Park, particularly maintenance of the previous and longstanding very high standard. The Tribunal finds that the Park would require a considerable number of hours spent on gardening and related maintenance on a regular basis in order to remain in an attractive condition. It will of course take that much more time- a good deal of it- to return to the Park to the condition it previously enjoyed, as identified above. However, as just stated, at such time as it is returned to that condition, it will not remain in such condition without significant effort on a very regular basis.

119. The Tribunal considers from inspecting the Park, from considering the communal areas and vegetation and from its experience that the amount of time which the Respondents state was spent by the previous owner of the Park/ employees on maintenance is very likely to have been correct, given what it saw at its inspection of the trees, shrubs and other greenery on the Park. That evidence is accepted.

120. Hence, the Tribunal accepts that up to twenty hours each week was historically involved by two employees and was required. The Tribunal does nevertheless note that "up to" allows amply for lower amounts of work and that there is very likely to have been differing levels of work at different points in the year. The work is additionally indicated to have encompassed matters which may be undertaken by the Applicant which are not of a maintenance nature.

121. The Tribunal notes that the Respondents did not identify any clear consequence of Mr Simmons employing one person for twenty- four hours, although the Tribunal notes that the period of his ownership was relatively short. In any event, that amount of time is far beyond that identified as expended by the Applicant, which the Tribunal accepts.

122. The Tribunal finds that the site owners will have incurred significant levels of expenditure in landscaping the Park and ensuring the continued pristine condition of that. The Tribunal infers that the expenditure will have needed to be met from sources of income derived from the Park and that the main and regular one will have been the pitch fees, such that the level of the pitch fees must have taken account of that amongst the expenses of operating the site and ensuring an acceptable level of profit accruing to the owner.

123. In contrast to the position up to 2020, the Tribunal finds that the extent to which the brambles have grown into other vegetation and out generally and the extent to which other flora has grown which the Tribunal does not consider was intentionally planted indicates that there has been inadequate attempt to control such matters for at least two Springs and Summers, 2022 and 2023.

124. The Tribunal is mindful that brambles, invasive weeds and similar can grow quickly. The Tribunal has little doubt that some of the growth has occurred this Spring and Summer and the visual effect has increased during that time. However, given the extensive nature, the Tribunal considers it inherently implausible that some such vegetation did not become established at least the year before (2022) and more likely in 2021 considering the evidence available.

125. Mr Gordon- Wilson in evidence stated that the level of maintenance has declined markedly since 2020. He described no work being undertaken to bushes and none to trees except where they fell down, that the grass was allowed to grow to eighteen inches and that there were rows of cut grass on the grassed areas. The Tribunal accepts the Respondents' assertions that grass was allowed to grow until it seeded and was that when the grass was cut, the cuttings were then left on the surface to rot, turn black and hinder the new grass beneath, to use the Respondent's words. However, the Tribunal is unable to discern the extent of the issue and the locations involved to give more than passing weight to the particular point.

126. Further corroboration was found in the emails within the bundle sent by the Respondents to the Applicant [519- 521], which complained about the decline in the condition of the Park in 2021, and additionally in the photographs taken [522- 534]. There was no reason for the Tribunal to consider any of the contents to be incorrect. Mr Sunderland also did not challenge the accuracy of the contents of any of the emails or photographs and indeed the Applicant offered no contrary evidence.

127. The marked decline includes the pond by the entrance. Mr Gordon-Wilson said that there had been no maintenance since the Applicant purchased the Park, allowing a thick layer of algae and grass to start growing. He described the change as from a lovely feature to an ugly eyesore [photographs 557-560].

128. The Tribunal notes the evidence of Mr Gordon- Wilson that the condition of the Park has improved in 2023, such that the Tribunal will not have seen it at its worst when it inspected. The Tribunal has no reason to disbelieve that evidence either. Mr Sunderland put to Mr Gordon- Wilson, who agreed, that the grass was now cut and tidy. However, Mr Gordon- Wilson explained that the Park had been "blitzed" by a team of three a few weeks prior to the hearing who undertook grass cutting and strimming, such that the Park looked better after than it had since three years ago (2020). He accepted the grass to be in good condition but not the Park more generally, in particular the bushes, which he described as overgrown. The Tribunal need not repeat its findings about that.

129. The parties were on all- fours that recent work had been undertaken. Hence the Tribunal finds that, for example, the recent grass- cutting was not reflective of the position in previous years and elements of the condition were worse in and prior to October 2022.

130. Given the level of decline, the Tribunal also accepts the Respondent's evidence that the amount of work undertaken during the time since purchase by the Applicant has been a fraction of that- Mr Gordon Wilson said "virtually nothing". The Tribunal infers that necessarily, the level of cost of maintenance work has been a fraction of the previous level, there being no sensible basis on which to reach any other view and sufficiently obvious connection between the amount of work and the cost of work for the inference to properly be drawn.

131. The Tribunal does not ignore the evidence that in June 2022, the Applicant contracted with a grounds maintenance contractor, which undertook some work. However, the Tribunal notes the unchallenged evidence that the contractor worked for one day every two weeks for only two months. The Tribunal accepts that is likely to have been sufficient to attend to grass cutting and edge strimming but little if anything else. The Tribunal finds the contract price will have reflected the limited extent of the work and the overall expense will have been significantly limited by the short- term nature of the contract.

132. The Tribunal further accepts the Respondents' case that the previous owners arranged for leaf clearance in the Autumn and Winter, that evidence being cogent and unchallenged. The Tribunal further accepts their case that the Applicant has not undertaken that work, absent any evidence or even assertion that it has. Further, the Tribunal accepts that the work undertaken in 2022 amounted principally to a person using a leaf blower, which cleared the leaves to the side but that as the leaves were not then removed, they blew around again when there was wind. The Tribunal notes that leaves were removed in Spring.

133. The Tribunal finds that there would consequently have been leaves on the grassed areas and in and amongst the vegetation and further on the roadways, steps from the lower road to the higher one and on other paths. The Tribunal finds that the leaves will have detracted to an extent from the visual amenity, not least when the leaves started to rot. In principle, that could have created a hazard of falls to an extent that could and should have been avoided. The Tribunal has noted photographs produced [534-536 and 561- 564] in addition to the other evidence. However, the Tribunal is mindful of the nature of the site. The Tribunal finds that it is likely that there were always some such leaves- the site owners otherwise having to be involved in a constant exercise of clearing- but to a reduced extent up to 2020. The Tribunal finds this item to be of relatively modest importance in the context of the other items.

134. The Tribunal also notes that the Respondents' case was that some park home owners had maintained areas adjacent to their individual pitches. The Tribunal did not make any specific note in that regard at the inspection, which is not to say that there may have been no evidence of any but rather that the Tribunal was not considering the Park pitch by pitch but at a broader level ample for the purpose of this case and was

very cautious about considering any area which it considered may have be part of a demised pitch.

135. The Applicant may, and indeed the evidence strongly indicates does, fail to appreciate the previous standard of maintenance, the effort that went into that and the impact on the pitch fee but the resident's willingness to pay it. An attempt to turn that into criticism of the Respondents, and repeatedly suggest Mr Gordon- Wilson to be unreasonable as to his expectations for the Park in respect of this element and others, which the Tribunal finds the Applicant wrong about, can only be firmly rejected.

136. The Tribunal notes that the Applicant to failed to provide any evidence whatsoever of the time that it has spent on the Park. The evidence of Mr Sunderland, whilst accepting that he had no involvement with the day to day running of the Park, that grass cutting and maintenance is carried out regularly is rejected. Indeed, given his lack of involvement and the lack of documentation, the Tribunal cannot identify any proper basis on which he could have given that evidence. He did accept, to more credit, that he was not aware of the shrubs on the Park- he remembered foliage but had not been attending to look at it.

137. In respect of both this item and the others, Mr Sunderland failed to identify what he could give evidence about from his own knowledge, when he relied on documents and what those were, to what extent he relied on information from anyone else. He gave oral evidence of having visited the site but in connection with development and gave no indication that he had considered the matters which the Respondent raise. The Tribunal finds he did not consider them, beyond at least the last one. The weight which can be given to the evidence of Mr Sunderland in respect of any element is consequently light at best. It will come as little surprise that the Tribunal accepts the Respondent's evidence when weighed against that not only in respect of this item but also the other items below.

138. The Tribunal does not make any finding as to the amount of time which should be spent on maintenance once the condition of the Park is restored. That goes beyond the Tribunal's remit.

<u>The Copse</u>

139. The Respondents contended this to be a "special and valued area created as a feature" and that access to it was blocked. The Tribunal considers that it merits separate treatment to the wider grounds elements. Mr Gordon- Wilson described it as an ornamental copse and a place to sit or to have gatherings such as barbeques, although the extent of that use was far from clear. It was said that there were water pipes under the area with water meters at one side. Mr Gordon- Wilson said in oral evidence that it was one feature that caused the Park to win its awards. However, the Tribunal noted that no other evidence about why awards were merited was provided, so noting about the relevance

of the Copse compared to other elements, so the Tribunal does not find that particular point proved.

140. The condition was said to have deteriorated and the Tribunal had no difficulty in finding that to be correct comparing the other evidence with the condition at the time of the site inspection, including evidence of grounds maintenance more generally. It was implausible that condition had only started to arise in recent months.

141. It will be appreciated from the information set out above about the inspection that the blocking was by a small movable plastic barrier and that the Tribunal was able access the area during the inspection, although that is not to say the access was pleasant or lent itself to any use of the area by residents. The Tribunal finds access to be possible but clearly not encouraged by the Applicant. Mr Sunderland put to Mr Gordon- Wilson that was for sound health and safety reasons, attracting the response "not for three years", a point the Tribunal accepted.

142. The Tribunal accepts that the level of amenity provided was reduced, although the Tribunal was unable to be satisfied of the level of significance of that and so weighs the matter to the extent is considers appropriate as part of the wider condition of the Park and maintenance.

Septic Tank Sewage System

143. This item was considered by the Tribunal to be less clear.

144. The Respondent's case was that the tank system is an old three- thank system which Mr Gordon- Wilson said that they had been told by a previous warden originally served only seven lodges and touring caravans. In any event, they asserted that it used to be maintained by the site owners and wardens, including being checked each week and completely being drained and serviced every twelve to eighteen months. In addition, Mr Gordon- Wilson in oral evidence described the clean water being pumped to a soakaway situated in a field 40 metres above the Park.

145. The Respondents said that the system had only been partially emptied by the Applicant and had not addressed such that it was constantly breaking down and overflowing. He described leaking of sewage into the surrounding area, access road and footpath by it. The Respondents referred to photographs showing what they asserted to be spillage. The Tribunal clarified the allegation of "constantly", which Mr Gordon-Wilson said meant regularly or frequently. He was adamant that the Applicant has been made aware. It was asserted that the system deteriorated such as to be unfit for purpose.

146. There were also communications from the Respondents to the Applicant and the Council and local Member of Parliament. The Tribunal finds it implausible that the communications would have been

sent if the Respondents had not been experiencing difficulties along the lines set out. However, the Tribunal lacks the evidence to make findings about the exact cause of such problems, which Mr Gordon- Wilson could not provide clear evidence of. As Mr Sunderland, put to him, Mr Gordon- Wilson has no relevant qualification.

147. The Applicant in contrast contended that the tank system was regularly serviced maintained and emptied. Mr Sunderland said in oral evidence that the system had broken down on only small number of occasions and had been repaired, although as noted above the Applicant had declined to provide any documentary evidence of that repair work or other maintenance whatsoever and Mr Sunderland failed to demonstrate that he had any first- hand knowledge on which to make any comment. The Respondent's case was accordingly very weak.

148. In particular Mr Sunderland asserted in the Applicant's reply that the small number of breakdowns accepted had been "diagnosed" as mainly caused by "what is being put in the system" (e.g., wet wipes). There was no evidence as to who had given that diagnosis, most obviously in any written document, nor their expertise to do so. There was inadequate evidence for the Tribunal to accept the assertion.

149. The Tribunal finds that the Applicant has by a large margin failed to prove its assertion that Mr Gordon- Wilson in particular had tinkered with the system and put anything unsuitable into the waste system. Mr Sunderland said that he had been told by "the team on the ground" but gave no more than that. He avoided questions about whether the Applicant had any evidence. It was abundantly clear that the Applicant lacked the evidence to sustain anything remotely like the allegation made. The allegation is unhesitatingly rejected on the evidence.

150. The Tribunal finds that the Respondents were correct in their case, supported by photographs [549-553], that there had been leaking and overflow and finds the cause to have been inadequate maintenance by the Applicant. All else aside and accepting the unchallenged evidence that the system worked well prior to the Applicant's purchase, it is implausible that the Respondents did anything different coinciding with the Applicant having purchased and far more likely that the inadequate maintenance demonstrated of the grounds was accompanied by reduced maintenance of the sewage system.

151. The Tribunal found no evidence of an ongoing problem with leaking and spillage at the inspection and could not conclude that there were ongoing difficulties by July 2023, although of course that significantly post-dated the pitch review date. The Tribunal did not find the system to be unfit for purpose and would have required specific evidence of that in order to make such finding.

Fresh Water Supply

152. The Respondents' case is that there is a holding tank and the water gradually feeds down and that the previous Park owners had the water in the holding tank tested annually for quality and had the tank and filter cleaned and serviced to ensure clean drinking water was being supplied to all the homes on the Park. The Tribunal accepts the unchallenged evidence that the quality of water was, prior to the Applicant's purchase, good. The water is, or at least was, used for washing and for drinking. The water company provides water to the tank and the water is then the responsibility of the Applicant it was said, which was not disputed. The Tribunal did not obtain any useful information from the inspection, as explained above, and so makes no specific finding as to the condition of the supply as at late July 2023.

153. However, the Tribunal accepts the powerful evidence of the Respondents, not least the photographs [554-556], that there is black residue left on baths and basins and otherwise material in the water. Mr Gordon- Wilson couldn't recall when the black residue started to be seen but was clear that the level of maintenance reduced when the Applicant purchased. The Tribunal infers that the quality of the water declined from late 2020 to late 2022, coinciding with a reduction in maintenance.

154. The evidence of Mr Gordon- Wilson, which the Tribunal accepts, is that the quality of water varies and tends to be worse in bad weather, the water quality particularly being an issue in Winter months, to the extent that the residents (or at least some of them) regard it as unusable. He described that otherwise there be just a few "smudges". He described reporting the issue to the manager and sales director on the telephone but then not further as there was seemingly no point.

155. The Applicant offered no evidence to gainsay that. Mr Sunderland challenged those and other oral reports asserted by Mr Gordon- Wilson on the basis that much had been put in writing by the Respondents. However, the Tribunal was not persuaded that the Respondents only reported in writing and that the reports stated by Mr Gordon- Wilson had not been made. It accepted the oral reports said to be made, accepting the cogency of the evidence of Mr Gordon- Wilson and the weak contrary evidence.

156. The Tribunal finds the provision of usable, including potable, water to be a very essential element of the utility services which are supplied to the residents and an important element of the amenity of the Park. The Tribunal finds the lack of a consistently usable water supply from approximately 2021 and the impact of that to have a significant impact on amenity.

Roadside Drains

157. The Tribunal saw the area where the drains were said to have led to pooling water and was able to identify that it would be significantly inconvenient if the path was covered with unclean water.

158. The Respondents asserted that there are collector baskets beneath the grill of the drains, designed to collect leaf and other debris, which used to be removed, emptied and cleaned by the warden/ another person on behalf of the original owner and particularly in Autumn and Winter. They asserted the Applicant does not deal with that even annually.

159. The Applicant raised nothing specific to refute any of that, which the Tribunal finds to be correct. The Tribunal finds that debris collected will have accumulated, subject to rotting and that leaves and debris which may have been collected will have been unable to because of debris already present and is likely to have collected nearby or been blown around to elsewhere.

Grit

160. The Respondent's case was that the roads and paths were regularly gritted in appropriate conditions until the Applicant purchased the Park and have never been gritted since except to the extent attended to by the residents. Mr Gordon- Wilson said that slopes and bends in particular used to receive attention, with grit bins also being supplied for the residents to use.

161. Mr Gordon- Wilson said that the grit boxes were empty and that the park home owners had given up notifying the Applicant as it fell on deaf ears. That and the previous evidence was cogent and consistent with the attention given to other areas of the Park. However, the Tribunal finds that the effect would be limited to particular times of year and weather conditions and only for as long as those lasted.

Unauthorised Development

162. The Tribunal re-iterates that it is dealing with findings of fact and not the legal question of authority for the development to which the Respondents refer. The description is used simply because that is the title given by the Respondents and for clarity of the point to which reference is made.

163. The Tribunal has addressed the physical look of the area in which development has taken place or is apparently intended to take place. The area dug out is of no discernible use in its present condition. The Tribunal perceives that the bank was previously a grassed slope with vegetation but can make no specific finding on the evidence. The Tribunal finds from the photographs and other evidence that the area much looked the same in late 2022 as it did at the inspection. The evidence of Mr Gordon- Wilson and the photographs [583-584] were consistent with the Tribunal's inspection

164. Mr Sunderland's evidence that if there is rubbish, it will be cleared but he could not say when that might be. It was apparent that he had little knowledge of that which he sought to give evidence about. That said,

the Tribunal re-iterates that it cannot be seen on the site save from the new pitches opposite it and so the Tribunal finds it is knowledge of the presence of the area rather than any other identifiable impact which impacts on the majority of the residents.

165. Mr Gordon- Wilson explained something of his perspective in respect of planning and related matters, particularly the number of pitches he says the licence allows (forty- four), lawful development sought prior to the Applicant's purchase for eight more and the twenty- two extra the Applicant has at least considered developing. There was evidence about the approach of the Council from both witnesses and something of a dispute on the matters. The Tribunal established that there was a lack of planning documentation in the bundle. There were communications between the Respondents and others [571-583].

166. However, whilst the planning point has taxed the parties, the Tribunal does not consider it necessary to make any factual findings in respect of such matters, condition and amenity under the 1983 Act being different to considerations for the planning authority. The Tribunal has only considered the condition and amenity of the Park and on the evidence of that at relevant times.

167. The Tribunal finds that it the area were restored or any alternative and attractive outcome is achieved, the impact on the condition of the Park and on the amenity may dissipate. However, that is a matter for the future and not one of fact during the period relevant to the Tribunal.

General matters

168. For the avoidance of doubt, the Tribunal finds that there have been no improvements (none were asserted).

169. The Tribunal has considered whether the matters found have impacted on certain of the Respondents to an identifiably greater or lesser extent than others. The Tribunal notes that it does not have specific evidence of the extent to which any given Respondent may have sought to use the Copse, for example. However, the Tribunal finds that the Grounds Maintenance and related elements, the water supply and the septic problems in particular are most likely to have affected all of the Respondents to an approximately similar extent and that any modest distinction does not create any substantive distinction between them for the purpose of this case. (The Tribunal does not speculate on whether it may have been, or would indeed ordinarily or ever be, appropriate to seek to make a distinction between each one of the group of park home owners if there had been a distinction.)

Application of the law and those findings of fact

170. 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.

171. The Notice in the form used by the Applicant, and prescribed form proposing the new pitch fee for each pitch were served more than 28 days prior to the review date of 1st January 2023. The Application to determine the pitch fee made on 30th January 2023 was within the period starting 28 days to three months after the review date.

172. The Tribunal is satisfied that the Applicant has complied with those 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.

173. The Tribunal makes no determination about the form of Pitch Fee Review Notice or the prescribed form as served by the Applicant on the Respondents, given that the Respondents were so clear that they wished to take no point in relation to those, in this particular Decision. If the Respondent had taken any points, the Tribunal would have determined them.

174. The Tribunal is mindful of what have been described as the honourable traditions of expert tribunals and the entitlement of the Tribunal to take points of its own motion where it determines it appropriate for that to be done. The Tribunal is particularly mindful that the validity of the Pitch Fee Review Notice and form is relevant to whether the Tribunal has any jurisdiction to determine a pitch fee.

175. The Tribunal noted that the Applicant, perhaps unsurprisingly, argued that the Notice and form were valid and that the Tribunal consequently possessed jurisdiction to determine the pitch fee for each relevant pitch. The Tribunal considered the answers to the points identified earlier in the case to be somewhat less than clear cut ones, not least the legal effect of any failings if there were any, and ones which would be far better determined, if they are to be, in a case in which the Tribunal has the opportunity to hear argument on both sides.

176. The Tribunal therefore proceeds on the footing that it has jurisdiction and that nothing about the Notice or form as served prevent that. The fact that it does so proceed should not be treated as any implicit- and certainly not any explicit- acceptance of the Applicant's arguments nor any indication as to the determination which the Tribunal may have made in the event that it had considered that the points should be further taken by it.

177. The Tribunal regards this approach as the appropriate one in these particular circumstances, although not wholly satisfactory. Indeed, the Tribunal considers that there are matters which ought to be considered in another suitable case.

178. The Tribunal unhesitatingly determines that the factors in paragraph 18(1) of the Act apply in light of the facts found by the Tribunal. The Tribunal has found there to be a deterioration in the Park as a matter of

fact. The Tribunal determines that there has been a deterioration in condition and a decline in amenity in the terms set out in the 1983 Act.

179. The Tribunal has touched upon lack of definition of the term "condition". It is apparent that Parliament did not consider there to be a need to define it. The only logical conclusion to be drawn from that is that it is intended to be given its everyday meaning. The Tribunal regards that as unproblematic.

180. The Tribunal adopts the judgement of Kitchen J. with regard to the term "amenity", so "the quality of being pleasant or agreeable" and consideration of "the pleasantness of the site". Amenity is in that regard a different matter to "amenities", by which it might well be intended to refer to facilities.

181. The Tribunal determines that both the physical condition of the Park has deteriorated and that pleasantness of the Park has in consequence declined. Further, the deterioration and decline is such that it is not reasonable for the RPI presumption to apply.

182. The Tribunal determines that on the basis of its findings as to the grounds and maintenance (including the condition of the land on which development has taken place and around it including the bank) and the pond, the copse and the sewage and water systems. The Tribunal does not determine that in respect of leaf clearance, gritting, drains or whether development was unauthorised- and so not because of every one of the points the Respondents argued- sufficient was demonstrated to conclude that they went far enough to amount to deterioration in the condition of the Park.

183. The Tribunal is mindful that deterioration in condition and decline in amenity are not the same thing and that there may be one without the other. The Tribunal determines that the presence of leaves rotting and or slippery and any need for care and lack of gritting and consequent presence of ice would reduce pleasantness of the Park whilst present and so cause decline in amenity for such periods. However, the Tribunal considers that adds very little in the context of this case.

184. The most immediate consequence of the above determination is that the presumption of a pitch fee increase by the level of RPI as set out in paragraph 20 does not arise at all.

185. The questions are rather the first one of whether there should be any change from the pitch fee for 1st January 2022 onward and then if so, what that change should be, absent the presumption, in light of the findings made by the Tribunal.

186. Mr Sunderland put matters to a fair extent on lack of breach of contract by the Applicant. He asserted that the implied terms did not provide for any standard of condition of the Park and contained no agreement about matters such as gritting roads or there being a requirement to

have shrubs (by way of examples). He argued that there was no breach by the Applicant in the event of any failure to keep the Park in the condition sought by the Respondents.

187. The Tribunal is not determining a claim for breach of contract and the 1983 Act makes no reference to it in respect of pitch fee reviews. The 1983 Act does not, for example, state that a decline in condition must be one actionable as a breach of contract in order to be relevant to the pitch fee review. The 1983 Act is expressed as being concerned with the fact, or otherwise of a decline in condition (to keep with that example) and not any legal consequence regarding matters outside of the pitch fee review process.

188. The Tribunal determines that its task as laid down in the 1983 Act is to determine whether as a matter of fact there has been, for example, a deterioration in condition or reduction in amenity. That is the task which the Tribunal undertakes.

189. The Tribunal notes that the Written Statements do imply a term about the condition of the Park very generally, namely that the site owner will:

> "maintain in a clean and tidy condition those parts of the protected site including access ways, site boundary fences and trees which are not the responsibility of any occupier of a mobile home stationed on the protected site;"

190. The Tribunal observes that nowhere in a written statement would it be usual to find any detail with regard to the condition of the Park nor an attempt to identify the amenity enjoyed by the residents. The implied terms in particular are targeted towards basic legal rights of the park home owner and are implied into every agreement. They do not- and could not possibly manage to- address the specific condition of any given site at the time of each and every agreement being entered into.

191. Specific matters, beyond the layout of the pitch itself, which relate to the physical nature of the Park are not mentioned. Yet plainly that is relevant to all concerned. The location of grass and other garden areas, the location of other communal areas and the existence and condition of trees and shrubs are far beyond the scope of a Written Statement but are elements of the Park and any other site and of inevitable significance to those whose home is on the Park.

192. The fact that the written statements and implied terms are not designed to address that and do not address that, does not render such physical matters anything like irrelevant for parties. It does mean that the written statement and the contents of the implied terms provide only limited assistance in relation to it, including the relevance of it to the Tribunal's current task.

193. There is also a stated right to quiet enjoyment of the mobile home and the pitch but that is in line with quiet enjoyment of other properties not enjoyment as the word might be more usually used and not related to enjoyment of the Park, thereby assisting not at all in this instance.

194. Nevertheless, insofar as the implied terms does assist, the assistance is provided to the Respondents and not to the Applicant. As amply found above, the parts of the Park not the responsibility of any occupier of a pitch are not in what could reasonably be described as a tidy condition. Factually, even that relatively low bar is not cleared by the Applicant. As to the contractual effect of that, the Tribunal makes no determination, being beyond the scope of this case.

195. More importantly, the 1983 Act does not put the question to be answered as whether there has been a deterioration in the condition and/ or decrease in the amenity such that the Park is not in a clean and tidy condition. Those additional words are absent.

196. Simply, the question posed in respect of pitch fee review is whether there has been a deterioration in condition and/ or decrease in amenity. That necessarily requires considering the condition and amenity at the relevant time as compared to that which the park homeowners previously enjoyed (subject to limits of the date of the enactment and matters considers in previous reviews).

197. It necessarily follows that the condition both as at the time of the pitch fee review and as at any relevant previous date are to be considered. That is returned to below.

198. Mr Sunderland also argued in respect of the Respondents' case about the digging out of part of the bank at the end of the lower road that was not relevant because there was no breach of planning requirements.

199. The Tribunal does not consider such breach of planning requirements or lack of it is the relevant test for a similar reason to the content of the implied terms not being. The 1983 Act says nothing about whether the Applicant or other site owner is in breach of planning or similar as being relevant to the amenity or condition to be considered. The Tribunal is confident that if the 1983 Act required the question of breach of planning and similar to be considered, there would be either explicit reference to that or at least some clear indication, which the 1983 Act lacks.

200. Any compliance with planning or lack of it is also the subject of enforcement by a body other than the Tribunal under provisions in which the Tribunal is not involved. There are rules and there is law, including caselaw, with which the Tribunal is not familiar. The Tribunal may know, insofar as documents are produced, whether the planning authority intends to undertake enforcement or other action. However, that may well be all that it knows. It would not be appropriate, the

Tribunal considers, for it to be expected to, or to attempt to, assess whether there may be any breach.

201. In contrast, adopting the approach that whether there has been reduction in condition or amenity rests on matters of fact enables the Tribunal to determine that and in doing so apply the expertise it holds.

202. The Tribunal consequently applies the facts found utilising its expertise. The Tribunal re- iterates that it determined there to be a deterioration in the condition of the Park and a decline in the amenity and to an appreciable extent.

203. The Tribunal has found the evidence to support the condition of the Park having for many years and until at least 2018 been very good and with maintenance of a high standard. A high level of amenity resulted. It is that high level from which deterioration and/ or decline is to be assessed, not some notional level of the acceptable extent of condition and amenity.

204. Mr Sunderland in effect suggested that the Respondents sought too high a standard and were unreasonable in doing so. The Tribunal does not accept that. The Tribunal determines that what the Respondents expected was a condition of the Park and a consequent level of amenity which reflected that which had previously existed and which their pitch fees had reflected, which the Tribunal repeats is the base level for the purpose of determining deterioration and decline.

205. The Tribunal consequently needs to consider the effect of the findings made and whether those render an increase to reflect RPI (absent a presumption) reasonable and otherwise what effect they do have.

206. The Tribunal carefully considered whether the appropriate approach was to leave the pitch fee at its current level and simply not to apply any increase. That is to say that the answer to the over-arching question of whether the pitch fee should change at all may be that it should not.

207. The Tribunal also notes that the Respondents sought only that there should be no increase in pitch fee. Nonetheless, the Tribunal is required to come to its own view as to the appropriate level of fee, as an expert Tribunal. The Tribunal determined that determining a pitch fee at 2022 level was not the appropriate approach to take.

208. The Tribunal determined that the fee should change.

209. The Respondent would of course, in the event of a lack of change, have received a fee below the level that it sought for the period 1st January 2023 onward if the Tribunal had adopted that course and, insofar as it incurred costs, it would have had to bear the increase in those costs from an unchanged level of pitch fee. That is not an irrelevant factor, but it is not considered nearly sufficient to dictate the answer.

210. It has been identified above that the presumption of a change being a rise to reflect the increase in RPI does not arise. The Tribunal determines that a rise in pitch fee to reflect the rise in RPI would plainly be unreasonable, in light of the findings of fact made as to the deterioration and decline in condition and amenity.

211. The Tribunal has considered the possibility of a lower increase in the pitch fee than by the increase in RPI. The Tribunal concluded that is not appropriate given the extent of the deterioration and decline identified and concluded that the change in the pitch fee should not be one of an increase. However, the Tribunal also concluded that merely making no increase in the fee does not sufficiently recognise the degree of deterioration which has occurred.

212. In light of the degree of decline identified by the Tribunal and the relative condition of the Park as compared to that found to have existed in previous years, and the impact on amenity, the Tribunal determined that there should be a reduction in the level of pitch fee. The Tribunal determines that the change to the pitch fee by way of a reduction to it is appropriate. The Tribunal is mindful that the result will be that the Applicant will have an even lower fee income, but again whilst recognising that not to be irrelevant, the Tribunal does not consider it determinative and rather to only be one of the factors to weigh. The Tribunal has considered carefully the potential ongoing impact on income with great care and given that due weight but that does not outweigh the effect of the deterioration and decline.

213. The Tribunal determines that the reasonable fees for the respective pitches for 2023 are the fees as they stood for the year commencing 1st January 2021.

214. The Tribunal has found that the Park was in a very good condition in 2020 and previously. The Tribunal considers that the condition of the Park then declined due to reduction in ongoing maintenance, to the condition seen in July of this year (albeit accepting that to post-date the pitch fee review date) and on the way the condition as at late 2022. The Tribunal determines that the initial decline will have appeared to have been a relatively modest one. The Park will not in the first instance have been as pristine and the vegetation will have been less controlled.

215. However, the Tribunal also considers that it will have taken time for brambles and weeds to take hold and grow and that it will have taken a time for them to become more established and obvious. The Tribunal infers that the condition will have started to deteriorate but to a modest degree and the decline in amenity will have been relatively minor. Similarly, the condition of the water and sewage systems will have declined over a period of time.

216. The continued lack of sufficient maintenance has enabled the plants and shrubs to lose shape to a greater extent and enabled the brambles and weeds to become established and invade other vegetation. It will

have enabled the pond area to become overgrown and the algae to start to form. The Tribunal is mindful that the pond is small and a negative not a positive but only a small part of the overall scheme.

217. The Tribunal considered that by the end of the summer of 2021, the decline will have been identifiable and that as at 1st January 2022, the home owners had suffered a not insignificant decline in the condition of the park and had done so primarily because the Applicant had significantly reduced the amount of maintenance undertaken and the level of maintenance work.

218. The Tribunal has no doubt that providing the level of maintenance and creating the condition of the Park which existed prior to 2021 would have involved considerable expense. In contrast, in substantially reducing the level of maintenance, the Applicant was found to have significantly reduced the level of cost.

219. Therefore, a large amount of the cost which had been met by previous pitch fees was no longer being incurred by the Applicant at all. In that regard, the question was not the one of considering the increase in cost for maintenance and whether that cost had increased to the extent of RPI or assuming always such an analysis would have been an appropriate one to undertake. Rather, the work and services for which the Applicant was paying had significantly fallen. Cost which has previously been incurred simply was no longer relevant.

220. The Tribunal determined that even the 2022 pitch fee therefore sought an increase by RPI where identifiable portion of that which had been provided prior to or at the time of the 2021 pitch fee review and had been taken account of was no longer occurring. The Applicant had therefore essentially received a significant windfall in increasing the pitch fee from the level in 2021 when an identifiable portion of that which it had paid for in 2021 or earlier was no longer being paid for in the first place.

221. The Tribunal concluded that the last time which the park was in satisfactory condition was in or about late 2020, as explained above. Costs for such services as the Applicant paid for from gardening contractors or similar would have been likely to have increased as compared to the 2021 levels but the amount of such services paid for has substantially reduced. The Tribunal considers that even the pitch fee level as a January 2021 may be generous to the Applicant.

222. The Tribunal considers that the amount that the Applicant is likely to have saved by the significantly reduced level of service substantially exceeds any increase in the cost of the level of service which has continued to be provided, although that does not form the basis for this decision. The Tribunal is mindful that the case authorities have identified a broad approach is to be taken and the question is not one of totting up all the site owner's costs and the increase or reduction in them in any precise terms. Such an exercise would be likely to be

onerous, not least in evidencing all such costs and considering those. In any event, it has been explained (in *Sayer*) that equating costs with charge would be a misconception.

223. The Tribunal should therefore take a broader approach to the question of reasonableness and applying the provisions of the 1983 Act. The Tribunal considers it clear, both from the wording of the 1983 Act itself and the observations made in *Britanniacrest* (see above) that the 1983 Act does not preclude a reduction in the level of pitch fees. The fact that decline and deterioration are relevant must enable the Tribunal to reduce fees in consequence of that where the Tribunal determines it appropriate to do so.

224. Weighing the relevant matters together, the Tribunal therefore concluded that returned to the level as at January 2021 was the most appropriate and that the change to the pitch fee to reduce the fee to that level that was the correct approach to take.

225. The Tribunal notes the RPI for October 2021 was 6.0%. The Tribunal infers that the pitch fee for each pitch was increased by that percentage in January 2022 pursuant to a proposed increase in a Notice in November 2021, which is to say that the Notices were not served late and applied the appropriate RPI figure. There is no contrary evidence and any other approach having been taken would be surprising.

226. It follows that the pitch fees from January 2022 were 106.0% of the fee from January 2021. Accordingly, the fees in January 2021 will have been as follows:

3	£133.96 / 106 x 100 = £126.38
5 and 6	£133.95 / 106 x 100 = £126.37
9, 13, 36 and 37	£152.43 / 106 x 100 = £143.80
31	£162.43 / 106 x 100 = £153.24
22, 30 and 32	£168.11 / 106 x 100 = £158.59
21	£212.34/ 106 x 100 = £200.32

227. Those are therefore the fees determined by the Tribunal to be reasonable for the particular pitches identified and which are payable per month from 1st January 2023 onward on the 1st of each month.

228. It may be that the Applicant will now address the condition of the park and that at a future date it returns to the level enjoyed by the residents in say late 2020. It may be that in due course the Applicant can therefore at justify an appropriate increase. However, that is a matter of a speculation about the future and not something of assistance at this immediate time. If the Applicant were in contrast to remove the shrubs on the basis of them not being specifically required in the Written Agreement, there may be permanent deterioration in condition and decline in amenity with ongoing effect on pitch fees.

229. The Tribunal re-iterates that it considers that the question is not whether there is deterioration and decline which is capable of remedy- but not repeating the previous observations about that. Hence the deterioration and decline has impacted in the above manner.

230. For the avoidance of doubt, the Tribunal does not determine there to be any factors other than the condition of the Park and the level of amenity which are sufficiently weighty to be relevant to the level of change over and above the above factors in this instance.

Costs/ Fees

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

232. It will be appreciated that the pitch fees have been changed. It will also be appreciated that in the absence of agreement by the Respondents, the Applicant was compelled to apply to the Tribunal if it sought a change to the level of the pitch fees. However, it is inescapable that the outcome was that the pitch fees have been reduced and have been reduced because of significant failings being found with the maintenance of the Park. It would be optimistic of the Applicant to expect that it might recover the fees paid in those circumstances.

233. The question of who has won and who has lost is not the entire answer. Nevertheless, any reader will inevitably conclude that the Applicant has lost. Whilst not the entire answer, the outcome is inevitably a relevant consideration. The Tribunal considers that the weight of other factors is also against the Applicant recovering the fees.

234. The Tribunal refuses the Applicant's applications for recovery of the application fees.

235. The Applicant has intimated that it wishes to apply for orders for costs against the Respondents pursuant to rule 13. If that remains the case, the Applicant will need to make such an application and directions will then be given to progress that. It is unnecessary for the Tribunal to say any more about the matter at this time.

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.