FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/45UC/PHI/2023/0039-0043 CHI/45UC/PHI/2023/0045 - 0051
Property	:	1, 2, 8, 12, 14, 19, 20, 21, 22, 23, 24 & 27 Beechfield Park, Hook Lane, Aldingbourne, Chichester, West Sussex PO20 3XX
Applicant	:	The Beaches Management Ltd
Representative	:	Mr David Sunderland
Respondent	:	Mr D & Mrs J Furbear (no.1) Ms D Fray (no.2) Mrs S Fellows (no.8) Mr B Carter & Mrs C Green-Carter (no.12) Mr R Simon (no.14) Mrs J Cox (no.19) Mr P & Mrs J Brown (no.20) Mrs D Rose (no.21) Mr G Mayes-Jones & Ms C March (no.22) Mr & Mrs Edwards (no.23) Mrs L Martin (no.24) Miss S Tipler (no 27)
Representative	:	Ms Caroline March
Type of Application	:	Review of Pitch Fee: Mobile Homes Act 1983 (as amended)
Tribunal Member	:	Judge Tildesley OBE Mr N Robinson FRICS Mr C Davies FRICS
Date and Venue of Hearing	:	Havant Justice Centre 4 September 2023
Date of Decision	:	20 October 2023

DECISION

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Summary of the Decision

1. The Tribunal finds that "The Second Pitch Fee Review Notice and Form" dated 5 December 2023 did not comply with the requirements of paragraphs 17(6b), 17(6A) and 25A(1a) of schedule 1, part 1, chapter 2 of the 1983 Act. The Tribunal, therefore, decides that the Second Pitch Fee Review Form and Notice was void and of no effect with the result that the Respondents were not liable to pay the proposed increase in the pitch fee.

In the alternative if "The Second Pitch Fee Review Notice and Form" was valid:

2. The Tribunal decides that it is not reasonable for the Pitch Fee to be changed in respect of the Respondents' pitches because on the facts the pitch fee is just for the privilege of stationing the mobile home on the site and all the costs normally associated with the pitch fee have been stripped out by the Applicant and recovered by means of additional charges and service charge. The Tribunal is satisfied that the structure of the 1983 agreement for the Park confers considerable benefits on the Applicant whilst disadvantaging the Respondents and as such amounts to a "weighty factor" which displaces the RPI presumption.

The Issues

3. The Tribunal is required to determine two issues in this Application:

   1) Whether "The Second Pitch Fee Review Form Notice and Form" is valid?

      and or in the alternative

   2) Whether it is reasonable for the Pitch fee to be changed in respect of the Respondents' pitches, and if it is, to determine the amount of the new pitch fee?

The Application

4. On 3 February 2023 the Applicant applied for determination of a new level of pitch fee in respect of various mobile homes at Beechfield Park, Hook Lane, Aldingbourne, Chichester, West Sussex PO20 3XX. The Application was signed by Ms Elizabeth Best, a director. The Application named Mr David Sunderland of Wyldecrest Parks (Management) Limited as the representative. A letter of authority signed by Ms Elizabeth Best was subsequently provided in accordance with Rule 14 of the Tribunal Procedure Rules 2013.

5. The Application stated that the Review Date for fixing the pitch fee review was the 1 November and that the Notice of the Proposed New Pitch Fee was served on 7 December 2022.

6. The Application in respect of each Respondent was for an increase in the pitch fee in accordance with the percentage increase of 12.3 for the RPI and is set out below.

Property Site: Beechfield Park, Hook Lane, Aldingbourne, Chichester, West Sussex PO20 3XX						
		Current	Proposed			
Pitch	Date of Notice	Increase	Amount	Date of increase	LAST Review Date	Occupier
1 Beechfield Park	07-Dec-22	£318.78	£357.99	05/01/2023	Wyldecrest 5 11 20	Mr & Mrs Furbear
2 Beechfield Park,	07-Dec-22	£318.78	£357.99	05/01/2023	Harquail Homes	Danielle Fray
8 Beechfield Park	07-Dec-22	£225.26	£252.97	05/01/2023	Harquail Homes	Mrs S Fellows
12 Beechfield Park,	07-Dec-22	£344.12	£386.45	05/01/2023	Wyldecrest	Mr & Mrs Carter
14 Beechfield Park,	07-Dec-22	£419.20	£470.76	05/01/2023	Wyldecrest	Roy Simon
15 Beechfield Park,	07-Dec-22	£318.78	£357.99	05/01/2023		Mrs Sandra Gunn
19 Beechfield Park	07-Dec-22	£317.20	£356.22	05/01/2023	Wyldecrest 5 11 20	Mrs Cox
20 Beechfield Park	07-Dec-22	£318.78	£357.99	05/01/2023	Wyldescret	Mr & Mrs Brown
21 Beechfield Park,	07-Dec-22	£330.36	£370.99	05/01/2023	Wyldecrest	Mr Keith & Mrs Rose
22 Beechfield Park	07-Dec-22	£433.74	£487.09	05/01/2023	Wyldecrest	Ms March & Mr Mayes - Jones
23 Beechfield Park,	07-Dec-22	£536.58	£602.58	05/01/2023	Wyldecest	Mr & Mrs Edwards
24 Beechfield Park	07-Dec-22	£344.12	£386.45	05/01/2023	Wyldcrest	Ms Linda Martin
27 Beechfield Park,	07-Dec-22	£225.26	£252.97	05/01/2023	Harquail Homes	Miss Tipler

7. Mrs Gunn of 15 Beechfield Park agreed to the Review of Pitch fee and her application was deemed withdrawn.

8. The Application in respect of 21 Beechfield Park named Mr Rose and Mrs Rose as the occupiers. Mrs Rose had informed the Applicant on several occasions that Mr Rose had sadly died in 2019 but the Applicant had failed to amend its records which had caused Mrs Rose great distress. The Tribunal amended the Application by deleting the name of Mr Rose leaving Mrs Rose as the sole Applicant.

9. The Application for 21, 23 and 24 Beechfield Park was accompanied by a Pitch Fee Review Notice which was not dated and was in fact a Header to the Prescribed Pitch Fee Review Form. The Notice did not specify the proposed increase in pitch fee and provided no information whatsoever. Below the heading of Pitch Fee Review Notice were the words: "Accompanying this notice is a Pitch Review Form. Please see below".

10. The Pitch Fee Review Form which accompanied the Application for 21, 23 and 24 Beechfield Park contained the following information:

- Named Wyldecrest Parks (Management) Limited as a party.

- The proposed pitch fee would take effect on 1 November 2022 (the review date) and was dated 21 September 2022.

- The document was signed PP Mrs T Cercel.

- The Name and address of the site owner for the purpose of serving notice is given as Wyldecrest Parks Management Limited, Wyldecrest House, 857 London Road, West Thurrock, Grays, Essex, RM20 3AT.

11. The Pitch Fee Review Notice and Form sent with the application for 21, 23 and 24 is referred to in this decision as "The First Pitch Fee Review Notice and Form".

12. The Application for 1, 2, 8, 12, 14, 19, 20, 22, and 27 Beechfield Park was accompanied by a Pitch Fee Review Notice which was not dated and was in fact a Header to the Prescribed Pitch Fee Review Form. The Notice did not specify the proposed increase in pitch fee and provided no information whatsoever. Below the heading of Pitch Fee Review Notice were the words: "Accompanying this notice is a Pitch Review Form. Please see below".

13. The Pitch Fee Review Form named The Beaches Management Limited as a party. The Form was dated 5 December 2022, and gave the date of the 5 January 2023 when the proposed pitch fee would take effect which was later than the review date of 1 November 2023. The Pitch Fee Review Form was signed pp Mrs T Cercel, and gave The Beaches Management Limited, 441 High Street North, Manor Park, London E12 6TJ as the name and address of site owner for the purposes of serving notices.

14. The Pitch Fee Review Notice and Form which was sent with the Applications for 1, 2, 8, 12, 14, 19, 20, 22, and 27 Beechfield Park is referred to in this decision as "The Second Pitch Fee Review Notice and Form".

15. On 26 May 2023 Judge Tildesley OBE considered the applications in respect of 21, 23 and 24 and decided to issue a Minded to Strike Out Notice in respect of "The First Pitch Fee Review Notice and Form" on the following grounds:

    - There was no evidence that the Applicant had supplied a written notice to the occupier setting out its proposals in respect of a new pitch fee in accordance with paragraph 17 (2) of schedule 1 part 1 chapter 2 to the Mobile Homes Act 1983.

    - The accompanying pitch fee review form did not contain the prescribed information as required under paragraph 25A of schedule 1 part 1 chapter 2 to the Mobile Homes Act 1983: it did not name the site owner as specified in the Application and it was not signed by a director of the site owner.

    - There was a conflict as to when the Notice for the proposed increase in pitch fee was served. If the information in the Application form was correct (7 December 2022) then the

date for the new pitch fee to take effect in the pitch review form was incorrect (1 November 2022) (paragraph 17(8)(c)). If the information in the pitch review form was correct then the Application received by the Tribunal was out of time. The Application should have been received no later than three months after the Review Date (1 February 2023 (Paragraph 17(5).

16. The Tribunal invited the parties' representations by 23 June 2023 in the absence of which the Tribunal would strike out the application without further notice.

17. On 26 May 2023 a Legal Officer directed that the Applications for 1, 2, 8, 12, 14, 19, 20, 22, and 27 Beechfield Park would be dealt with on the papers. The Legal Officer required the Occupiers of the Mobile Homes to complete a pro-forma and send that to the Tribunal and the Applicant by 16 June 2023 together with any witness statements and or documents. The Applicant was required to send a response by 23 June 2023. The Legal Officer indicated that the Tribunal would determine the matter on the papers or issue further directions. The Legal Officer required the Applicant to give an explanation for the signing of the Pitch Fee Review Form by pp Mrs T Cercel.

18. On 12 June 2023 Mr Sunderland responded on behalf of the Applicant in respect of the Minded to Strike Out Notice for "The First Pitch Fee Review Notice and Form" in respect of the Applications for 21, 23 and 24 Beechfield Park, and made the following representations:

- The Application form was signed by Director Elizabeth Best and stated that David Sunderland was appointed as a representative. This was sent to the Tribunal and Respondent and complied with Rule 14.

- The incorrect Pitch Fee Review Notice/Pitch Fee Review Form was sent with the application. Please find attached the correct Notice/Form which was served on the Respondent on 5 December 2022 by The Beaches Management. Apologies for this clerical error which was now corrected.

- The information prescribed by Implied Term 17(2) is that the Pitch Fee Review Notice must be accompanied by the information required by Implied Term 25(A). There is nothing in the statute which states what a pitch fee review notice should contain, only that it should be accompanied by the statutory Form which provides the recipient with everything they need to know. This is what has been provided.

- The form has been signed by Mrs T Cercel who is the person within the Accounts Team authorised to sign the form on

behalf of the Site Owner. There is however no requirement under Implied Term 25(A) for the Form to be signed.

19. Mrs March responded for the Occupiers and said:

> "On receiving the Pitch Fee Proposal from Wyldecrest Parks (Management) Ltd dated 21 September 2022 and signed by Mrs T Cercel, the Respondent, through their representative, advised Mrs T Cercel and the Applicant's representative that the pitch fee proposal was not acceptable. The Applicant had until 1 February 2023 to refer to Tribunal. This deadline was not met.
>
> For reasons, known only to the Applicant, another pitch fee proposal was issued from The Beaches Management Limited, signed by Mrs T Cercel, dated 5 December 2022 stating the proposed pitch fee would take effect 5 January 2023 which is much later than the review date in the Respondent's written agreement.
>
> We would like to draw the Tribunal's attention to the fact that the Respondent does not have a written agreement with The Beaches Management Limited, nor does The Beaches Management Limited appear to have any legal or financial connection with Wyldecrest Parks (Management) Ltd according to the recent decision of the First Tier Tribunal in case reference CHI/45UC/PHR/2021/006 between The Beaches Management Limited vs Arun District Council".

20. Judge Tildesley then considered the "Correct Pitch Fee Review Notice and Form" which turned out to be "The Second Pitch Fee Review Notice and Form". Judge Tildesley formed the view that "The Second Pitch Fee Review Notice and Form" did not comply with the statutory requirements. Judge Tildesley then issued on 7 August 2023 another Minded to Strike Out Notice. It was then realised that Judge Tildesley's decision would impact upon all the Applications made in respect of Beechfield Park.

21. On 9 August 2023 Judge Whitney directed that all the Applications in respect of Beechfield Park would be heard together at Havant Justice Centre on 4 September 2023. Judge Whitney explained that the purpose of the hearing would be for the Tribunal to determine the validity of the pitch fee notices served taking account of those matters raised within the notice served in respect of Pitch 23 as though all such matters were set out within these directions. In particular the Applicant was reminded that if it intended to rely upon any witness evidence then such witnesses should attend to be questioned by the Tribunal in determining any questions of fact. Judge Whitney indicated that it would be a question of fact if Ms Cercel was authorised to sign the Pitch Fee Review Form on behalf of the Director of the Applicant company. Judge Whitney also stated that the Tribunal would at the same hearing determine the pitch fee having regard to the parties' representations. In view of the confusion Judge

Whitney permitted the Respondents to file and serve any further evidence and gave the Applicant a right of reply.

22. Mr Sunderland represented the Applicant at the hearing on 4 September 2023. Mr Sunderland was unaccompanied and there were no witnesses present at the hearing. Mr Sunderland supplied (1) a Reply to the Applicant's initial Statement of case dated 6 July 2023 signed by him in the capacity of Consultant; (2) the Applicant's statement to the Minded Notice to Strike Out dated 6 July 2023 which was in Mr Sunderland's name but not signed; and (3) the Applicant's reply to the Notice to Strike Out dated 7 August 2023 which was signed by Mr Sunderland on behalf of the Director for the Applicant company. The Applicant chose not to avail itself of its right to reply to the further evidence submitted by the Respondents because Mr Sunderland said it added nothing to the matter before the Tribunal. Mr Sunderland acknowledged that the Applicant had not provided any witness statements and, therefore, could not adduce evidence. Rule 14 explicitly states that a representative cannot sign a witness statement.

23. Ms March represented the Occupiers at the hearing. Ms March was accompanied by Mr Furbear (1 Beechfield Park), Ms Cox (19 Beechfield Park) Mr Mayes-Jones (22 Beechfield Park) and Ms Robertson who was attending as an observer. The Respondent relied on Forms for the Respondent and Statements of Objection dated 28 June 2023 and signed by each Respondent except Mr Simon, and a Statement representing the views of all the Respondents together with attachments signed by Ms March dated 21 August 2023. The directions of 9 August 2023 permitted the Respondents to file a single joint response.

24. The directions did not require any party to send a combined bundle of documents. The Tribunal decided that it would be in the interests of both parties and to ensure a smooth running of the hearing to put together paginated bundles of the documents supplied by the parties. The Tribunal provided electronically six bundles of documents to the parties prior to the hearing. They were: The Master Bundle comprising the core documents as made in respect of 1 Beechfield Park; the Applicant's Reply to the Respondent's Statement of Objection; Respondent's Reply and Further Evidence, Directions and Case Management Applications; Notice to Strike Out and Replies; and the Core Documents relating to the remaining Respondents.

25. The Tribunal announced at the commencement of the hearing that it would deal with the two disputed issues separately starting with the "Validity of the Second Pitch Fee Review Notice and Form" followed by "Determination of the New Level of Pitch Fee". The Tribunal received the parties' evidence and representations on each issue separately and permitted Ms March and Mr Sunderland to ask questions of each other. The Tribunal allowed the parties to make closing statements. The Tribunal initially indicated that it would

inspect Beechfield Park at the end of the hearing. The Tribunal, however, acceded to Mr Sunderland's representations that the inspection would serve no useful purpose, and decided not to have an inspection.

26. Mr Sunderland raised a preliminary matter in respect of the Application by Mr Simon of 14 Beechfield Park. Mr Sunderland had made a case management application to strike out Mr Simon's application because he had failed to provide a statement objecting to the pitch fee increase in accordance with the directions. Judge Whitney had indicated that the Application would be dealt with at the hearing on 4 September 2023. Ms March responded by stating that Mr Simon was objecting to the Application and was party to the Respondent's Reply and Further Evidence. Ms March explained that it was genuine oversight on Mr Simon's part. The Tribunal decided to defer consideration of the Application until after it heard the evidence in relation to the case.

The Background

27. Beechfield Park is a protected site as defined by Part 1 of the Caravan Sites Act 1968. The Park requires a site licence under Part 1 of the Caravan Sites and Control of Development Act 1960 and is not land in respect of which the planning permission or site licence is expressed to be granted for holiday use or otherwise so expressed or subject to such conditions that there are times of the year when no caravan may be so stationed on the land for human habitation.

28. The Beaches Management Limited is the holder of the site licence which was granted on 18 February 2021 limiting the number of permanent residential caravans to 38. The start date of the site licence recorded on the Public Register of Caravan Parks held by Arun District Council is 22 November 2007.

29. The Respondents supplied a copy of lease between Silver Lakes Property Investments Limited (the Lessor) and The Beaches Management Limited (the Lessee) dated 27 January 2016 granting the Lessee the Demised Premises defined as Beechfield Park subject to and with the benefit of the occupational leases for the Contractual Term from and including 1 January 2016 and expiring on and including 1 November 2067. The lease was granted for the yearly rent of £150 and subject to the Landlord and Tenant Act 1954. Clause 6.15 confirmed that the parties had agreed that the provisions of sections 24 to 28 of the 1954 Act are excluded in relation to the tenancy. This means that the persons who are the lessor and the lessee may agree that the 1954 Act tenancy shall be surrendered on such date or in such circumstances as may be specified in the agreement and on such terms (if any as may be so specified). The Tribunal did not have sight of the agreement under section 38 (1A) of the 1954 Act.

30. The HM Land Registry Title for The Beaches Management Limited revealed that it is subject to a variety of sub-leases for specific pitches.

31. The Respondents also supplied a summary of their searches of HM Land Registry 18 and 19 September 2019 which showed the existence of other "sub-leases" for specific pitches, naming, Silk Tree Properties Limited as the sub-lessor for pitches 1-16, 18-25 and 27 with an expiry date of 1 November 2027; Silver Lakes Mobile Homes Limited as the sub-lessor for pitch 17; and Sussex Mobile Homes Limited as the sub-lessor for plot 26 with an expiry date of 31 August 2046.

32. The Respondents had included correspondence dated 2 July 2018 from Mr Weir, Director of Silver Lakes Property Investments, informing the Occupiers at Beechfield Park that the Company had been sold to Wyldecrest Parks on 29 June 2018. Mr Weir explained that Wyldecrest Parks now owned the freehold of the site. This was accompanied by a letter of the same date from a Kathy Wilson of Shelfside (Holdings)Limited trading as Wyldecrest Parks which advised the Occupiers that Wyldecrest Parks would be responsible for the collection of pitch fees.

33. Best Holdings (UK) Limited are registered as the proprietor with absolute title of the freehold land known as Aldingbourne Caravan Park and Beechfield Park under title number WSX86295. The land is subject to two leases, dated 11 January 2016 and 27 January 2016 with both expiring on 1 November 2067 and registered under title numbers WSX377755 and WSX378096.

34. It would appear that the Applicant is relying on the lease dated 27 January 2016 to meet the definition of Owner for the purposes of the 1983 Act, namely, the person who by virtue of an estate or interest held by him is entitled to possession of the site, or would be so entitled but for the rights of any person to station mobile homes on land forming part of the site, section 5 of the 1983 Act.

35. There is no entry for Beechfield Park on the Register of Fit and Proper Persons held by Arun District Council in accordance with The Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020. On 10 June 2022 the Tribunal dismissed the Appeal of The Beaches Management Limited against the refusal of Arun District Council to register it as a Fit and Proper Person (CHI/45UC/PHR/2021/0002-06). The Tribunal also refused permission to Appeal which was not pursued by The Beaches Management Limited.

36. Mr Sunderland informed the Tribunal that The Beaches Management Limited had made a new application to Arun District Council to be registered on the Fit and Proper Person Register which was still pending. Mr Sunderland advised that The Beaches Management Limited was not committing a criminal offence during the pending of a decision on the new application.

37. The Beaches Management Limited was incorporated as a Private Limited Company on 21 May 2012. The current directors are Christopher John Ball and Elizabeth Best who were appointed on 29 June 2018. The latest accounts filed with Companies House dated 22 April 2022 showed assets to the value of £2,781.00, and that the Company had no employees.

38. The Respondents in their submissions specifically referred to the Tribunal decision (CHI/45UC/PHR/2021/0002-06) which concerned the site owners of five parks, one of which was the Applicant in these proceedings. The Tribunal found at [51]:

> "In these Appeals the Tribunal found that the Applicants were straw companies. They had no employees and no assets. Further the Applicants adduced no evidence of the day-to-day involvement of the directors in the running and management of the respective sites, no evidence of income received from their operations, and no evidence of agreements with third parties for the provision of services. In short, the Tribunal is satisfied that the Applicants were incapable of meeting the rigorous requirements of the 2020 Regulations to be included in the Register of Fit and Proper Persons to manage their respective sites. The evidence also showed that it was in fact the "Wyldecrest Group" which managed and ran the sites. It is not for the Tribunal to speculate as to the reasons why the "Wyldecrest Group" have straw companies as the holders of the licences for the respective sites but what is clear from the evidence is that such arrangements are not compatible with the Fit and Proper Person regime introduced by the 2020 Regulations".

39. The Tribunal asked Mr Sunderland whether the circumstances found by the Tribunal on 10 June 2022 about The Beaches Management Limited remained the same. Mr Sunderland said there was a management agreement in place. Mr Sunderland did not elaborate upon the details of the agreement.

40. The Respondents hold various agreements which entitle them to station their mobile home on Beechfield Park and occupy the mobile home as their sole or main residence.

41. The occupiers at 1, 2, 12, 14, 19, 20, 21, 22, 23, 24 Beechfield Park have written agreements with Wyldecrest Parks (Management) Limited. The dates of those agreements are 13 November 2019 (1); 2 June (2020); 17 August 2019 (12); 7 July 2021 (14); 29 November 2019 (20); 5 November 2020 (19); 5 December 2019 (21); 17 November 2020 (22); 16 April 2021 (23); and 17 August 2019.

42. The above written agreements incorporated "n/a" against "the site owner's estate or interest will end on" (clause 6) and stated "indefinitely" against "the site owner's planning permission for the site will end on" (clause 7).

43. Clause 4 of the Express Terms of the Agreement provides as follows:

> “**4. Your obligations**
> You undertake with Us as follows:
> To pay Us the monthly pitch fee without deduction or set-off (unless legally entitled to it) by equal monthly payments in advance on the first day of each month. This clause will be reviewed in accordance with Clause 10.
> Should our right to charge commission in accordance with Clause 8(b) be removed or restricted by law then We reserve the right to further review the pitch fee in accordance with Clause 10.
> (a) To pay interest on all sums due from You under this agreement which are outstanding more than seven days after the date when they became due. Interest will be charged at the rate of 8% above the base lending rate from time to time in force of HSBC Bank plc from the date when such payment became due to the date of actual payment.
> (b) To pay Us in respect of all charges incurred by You for the supply of electricity, gas, telephone and all other services supplied to the mobile home together with Council tax or such other rate tax or charge which shall be charged to You in substitution for or in addition to it.
> (c) To pay the Estimated Service Charge for each year of the Term in equal monthly instalments, of the reasonable costs and expenditure, including charges, commissions, premium, fees and interest, paid or incurred, or deemed to be paid or incurred, by Us in respect of:
>
> > (i) providing and undertaking the Services, and performing our other obligations in this agreement;
> > (ii) employing the necessary people to perform the Services and our other obligations under this agreement including, but without limiting the generality of the above, remuneration, payment of statutory contributions and reasonable health, pension, welfare, redundancy and similar or ancillary payments, and providing work clothing;
> > (iii) the expense of making, preparing, maintaining, rebuilding and cleaning anything, such as ways, roads, pavements, sewers, drains, pipes, watercourses, party walls, party structures, party fences and other conveniences, used for the Park in common with any other pitches;
> > (iv) administering and managing the Park and preparing statements or certificates of and auditing the expenses incurred in performing the Services;
> > (v) providing and performing any reasonably necessary services for the better and more efficient management and use of the Park and the comfort and convenience of its occupants not specifically mentioned in this agreement;
> > (vi) discharging any taxes, rates, charges, duties, assessments, impositions and outgoings in respect of the Park, including, without prejudice to the generality of the above, those for water, electricity, gas and telecommunications;
>
> If in any year of the Term the amount of the Actual Service Charge incurred by Us is more than the Estimated Service Charge paid by You, We will bill You for the shortfall, and You will pay Us the shortfall within 28 days of the date of the bill.
> (d) To pay all reasonable costs, charges and expenses (including legal costs and surveyors’ fees) incurred by Us in relation to:

(i) any process or proceedings in respect of termination of this agreement (including Our disconnection charge);
(ii) the assignment of the agreement (including our administrative fee);
(iii) in respect of giving effect to or requiring the performance of any of the provisions of this agreement (including legal proceedings);
(iv) Every application made by You for a consent or licence required by the provision of this agreement, whether it is granted, refused or offered subject to any lawful qualification or condition, or the application is withdrawn.
This obligation is subject to your rights under CPR Rule 44.5.

44. Clause 10 of the Express Terms provided as follows:

10. Review of pitch fees
We reserve the right to further review the Pitch fee to take account of changes in legislation (including but not limited to, changes in the rate of value added tax) or maximum rate of commission payable on the sale of your mobile home. We shall deliver to each occupant a written notice specifying the amount of the new Pitch fee and the basis upon which it was calculated. The new Pitch fee will be payable 28 days after the written notice is sent to you.

45. Ms March explained that after purchasing the mobile home with her partner through a local estate agent she was informed by Mr Craig Johnson, the Operations Manager of Wyldecrest, that the lease for their mobile home would terminate in 2027. Mr Johnson said that it would cost £40,000 to buy out the lease from Silk Trees Properties Limited. Mr Johnson offered Ms March and her partner a new 1983 agreement with Wyldecrest (Management) Limited which would have no expiry date provided they agreed to increase the pitch fee from £214.94 per month to £413.87 per month with a review on 1 November. The increase in pitch fee would be in lieu of the payment of £40,000. Ms March and her partner entered into the new agreement as did other occupiers on the site.

46. The Respondents supplied a copy of a letter from Mr Craig Johnson dated 26 September 2018 which confirmed the offer of a grant of an indefinite 1983 Mobile Home Agreement:

"The figures that have been discussed with you were not final figures and were just 'discussed' figures, but the final figures are now as follows.
The cap on this park, with the exception of a few pitches, has been reduced to £270.00. This means that if you chose to take the transfer option for an indefinite 1983 Mobile Home Agreement from us, the Freeholder, the increase in your current pitch fee would be £270.00.
However we have further options now:-
- A £10,000 payment given would then reduce the pitch fee increase to £202.50;
- A £20,000 payment given would then reduce the pitch fee increase to £135.00;

- A £30,000 payment given would then reduce the pitch fee increase to £67.50;
- A £40,000 payment given would result In a ZERO increase.

In all options the RPI will be frozen for 5 years. After that 5 year period has expired any increase in the pitch fee will be through normal RPI rates.
This is final and there will be no change to this".

47. Ms March pointed out that all the agreements with Wyldecrest Parks (Management) Limited were dated after the lease on 27 January 2016 granting the demise of Beechfield Park to The Beaches Management Limited.

48. The occupiers of 8 and 27 Beechfield Park have an agreement with Harquail Homes Limited which commenced on 30 September 2006 which stated that the site owner's estate or interest would end on 1 November 2027. The agreements stated that the "review date" would be the 1 November. The agreements contained effectively the same Clause 4 in the Express Terms as set out in the Wyldecrest agreements above (see paragraph 43 above).

49. Ms March stated that in previous years to The First Pitch Fee Review Notice and Form of 21 September 2022, the occupiers of 1, 2, 12, 14, 20, 21, 22, 23, 24 Beechfield Park had received Pitch Fee Review Forms in the name of Wyldecrest Parks (Management) Limited. Ms March pointed out that Mrs Cox, the occupier of 19 Beechfield Park, had received a Pitch Fee Review Form naming Wyldecrest Parks (Management) Limited as "site owner" in November 2020 but then received a Pitch Fee Review Form in September 2021 naming Silver Lakes Property Investments Limited as the site owner. Ms March stated that the occupiers of 8 and 27 Beechfield Park had received Pitch Fee Review Forms in the past naming Silk Tree Properties Limited as the site owner.

50. Ms March confirmed that all the Respondents had received "The First Pitch Fee Review Notice and Form" dated 21 September 2022. In the case of the occupiers at 1, 2, 12, 14, 20, 21, 22, 23, 24 Beechfield Park, the Form was signed pp Mrs T Cercel and gave the address of the site owner as Wyldecrest Parks Management Ltd, Wyldecrest House, 857 London Road, West Thurrock, Grays, Essex RM20 3AT. In the case of the occupiers at 8 and 27 Beechfield Park the Form was signed pp Mrs T Cercel and gave the address of the site owner as Silk Tree Properties Ltd, 166 College Road, Harrow, Middlesex, HA1 1BH. In the case of the occupier at 12 Beechfield Park the Form was signed pp Mrs T Cercel and gave the address of the site owner as Silver Lakes Property Investments Limited 166 College Road, Harrow, Middlesex, HA1 1BH.

51. Ms March confirmed that on the 5 December 2022 all the Respondents received "The Second Pitch Fee Review Form and Notice", again signed pp Mrs T Cercel but this time giving the address

of the site owner as The Beaches Management Limited, 441 High Street North, Manor Park, London E12 6TJ.

52. A letter under the heading of The Beaches Management Ltd" dated 5 December 2022 accompanied The Second Pitch Fee Review Notice. The letter stated that

> "Please find enclosed a late review notice to replace the existing pitch fee review notice dated 21 September 2022. The previous pitch fee review notice dated 21 September 2022 has been withdrawn and replaced with the enclosed pitch fee review booklet dated 5 December 2022. If you have any enquiries please contact us".

The letter was signed by an indecipherable signature of the Accounts Department. The letter did not name the Directors of The Beached Management Limited and set out the address of Wyldecrest House as the Principal Address.

53. Ms March pointed out that this was the first time that The Beaches Management Limited had contacted the Respondents in its capacity as site owner.

54. Ms March stated that the pitch fee, and the service charge in connection with the Respondents' occupation of their Mobile Homes on Beechfield Park were paid to UK Properties Management Limited.

First Issue: The Validity of "The Second Pitch Fee Review Notice and Form" dated 5 December 2022

55. On the 7 August 2023 the Tribunal put the Applicant on notice that it was minded to strike out the Application on the grounds that it had not complied with paragraph 17(6)b and 17(6A) of schedule 1, part 1, chapter 2 of the 1983 Act. The reasons given were (1) the Applicant had not met the requirement to send a pitch fee review notice which set out its proposals in respect of a new pitch fee, and (2) the pitch fee review form was not in the form prescribed by The Mobile Homes (Pitch Fees) (Prescribed Form) (England) Regulations 2013 SI 2013/1505 in that it was not signed by a director or authorised person[1]. The Notice of Minded to Strike Out gave a detailed explanation comprising 23 pages.

Parties' Submissions

56. Mr Sunderland on behalf of the Applicant made three general submissions on the two alleged flaws in the Pitch Fee Review Form and Notice identified by the Tribunal.

57. First he argued that the Tribunal's focus on procedural points was contrary to the overriding objective of dealing with cases in a

[1] New Regulations (SI 2023/620) came into effect on 2 July 2023.

proportionate manner to the importance of the case and the anticipated costs and resources of the parties. Mr Sunderland pointed out that the Respondents raised no objection to the Pitch Fee Review Notice/Form and were caught in the middle between the Tribunal and the Applicant in relation to points of law to which they would be ill equipped to join in without instructing specialist legal counsel. The costs of which would be disproportionate to the matter of a pitch fee review. Mr Sunderland added that should this Tribunal now determine that the Applicant has not met the requirement to send a pitch review notice which complied with paragraph 17(6) (b), the Tribunal would appreciate that the Applicant would almost certainly seek permission to appeal to the Upper Tribunal. Mr Sunderland stated that in this forum, the Respondents would be listed as parties and they would not be equipped to deal with the complexities of the law. According to Mr Sunderland, it was conceivable that such an appeal would only serve to prolong matters and cause significant anxiety for the Respondents, which the Applicant was keen to avoid.

58. Mr Sunderland asserted that this "whole argument about validity of *The Second Pitch Fee Review Form and Notice* (Tribunal's italics) was a complete and utter waste of time. It has been determined by many Tribunals before, there has been no submission made by the Respondents in relation to the validity of it, it seems to be something that has been picked on by the Tribunal and picked on me perhaps on a personal matter".

59. Mr Sunderland relied on the Court of Appeal decision in *Herron v The Parking Adjudicator and others* [2011] EWCA Civ 905 for the proposition that the test for invalidity is not "Are the irregularities trivial?" but whether there is substantial compliance with the statutory requirements. Mr Sunderland argued that even if there had been procedural defects with the pitch fee reviews the Respondents had not been misled as to their purpose, namely, to increase the pitch fee in line with RPI. If that is so there had been substantial compliance with the requirements rendering "The Second Pitch Fee Review Notice and Form" valid.

60. Turning to the specific defects Mr Sunderland asserted that by stating the words at the top of the page "Pitch Fee Review Notice – Accompanying this Notice is a Pitch Fee Review Form", and then having the fully completed statutory Pitch Form attached was sufficient to meet the statutory requirements of paragraphs 17(6)(b) and 17(6A).

61. Mr Sunderland asserted that the 1983 Act specified no requirements in respect of the form and content of the pitch fee review notice under paragraphs 17(2) and 17(6)(b) which Mr Sunderland said was confirmed by Judge McGrath in the Upper Tribunal decision of *Small v Talbot* [2014] UKUT 0015 (LC).

62. Following the implementation of paragraphs 17(2A) and 25A Mr Sunderland adopted the practice of submitting the pitch review form alone. Judge Edgington in the FTT decision of *Wyldecrest Parks (Management) Ltd v Dracup and others Scatterdells Park* CAM/26UC/PHI/2014/0001 agreed with this practice:

> "The end result is that it appears to be a requirement that a site owner must write out a notice of increase of pitch fee following a review and then complete a form setting out exactly the same information. That could not have been the intention as there would be no point in it. It would not give the receiver any additional information. What was intended here in the view of this Tribunal is that there should be a notice of increase following the review then detailed standard statutory information about pitch fee increases as set out in the prescribed form must also accompany the notice. As it happens the prescribed form has combined the two."

63. Judge Agnew in FTT decision in *Wyldecrest Parks (Management) Limited v Mr Dudley and Mrs Fletcher* (CHI/00HE/PHI/2018/0042) disagreed with Judge Edgington's decision and determined on the correct construction of the legislation that the site owner should serve a pitch review notice accompanied by pitch fee review form. Wyldecrest Parks sought permission to appeal Judge Agnew's decision which was refused by Martin Rodger KC, Deputy President, but on a different ground, namely, that the review process was a nullity because the pitch fee review form contained the wrong review date (LRX/101/2018). The Deputy President declined to deal with the question of whether there should be a separate pitch fee review notice because it would make no difference to the outcome of the application for permission to appeal. The Deputy President, however, added that the Applicant's ground of appeal on whether there should be a separate pitch fee review notice "was well arguable and had a realistic prospect of success".

64. Following the Deputy President's refusal Mr Sunderland stated that he altered his practice and incorporated the words at the top of the Pitch Fee Review Form: "PITCH FEE REVIEW NOTICE followed by Accompanying this notice is a Pitch Fee Review Form. Please see below:" Mr Sunderland stated that Judge Rai approved of this format in the subsequent FTT decision *Wyldecrest Parks (West) Ltd v Dudley & Fletcher* CHI/00HE/PHI/2019/0141. Finally Mr Sunderland relied on the decision of Judge Cooke in *Wyldecrest Parks (Management) Ltd v Mrs Julie Truzzi-Franconi* [2023] UKUT 42 (LC) who described the combined notice and form "an oddity" but took no issue with it.

65. Mr Sunderland submitted that the format of putting "Pitch Fee Review Notice" at the top of the "Pitch Fee Review Form together with the words Accompanying this notice is a Pitch Fee Review Form. Please see below:" satisfied the requirements of paragraphs 17(6)(b) & 17(6A). This was because the Applicant was submitting a separate pitch fee review notice albeit in the same document as the pitch fee

review form. Further there was no statutory requirement in respect of the form and content of the notice and that it would cause confusion if the Applicant put the same information in the pitch fee review notice as in the pitch fee review form.

66. Mr Sunderland's submissions in respect of the signature in part 6 of the Pitch Fee Review Form were (1) there was no requirement for a signature under paragraph 25A of schedule 1, part 1 chapter 2 of the 1983 Act, and (2) the intention of the signature box was primarily to inform the occupiers of the name and address of the site owner for the purposes of serving notices. In respect of the second point Mr Sunderland relied on the FTT Tribunal decision in *Marston Edge Limited v Sandra Andrews and others* (BIR/44UE/PHI/2022/0019-31) which decided that at [42]:

> "The legislation did not preclude an authorised person signing on behalf of the site owner, nor was there a requirement that where the site owner was a company the Pitch Fee Review Form had to be signed by a director or officer of the company. The Tribunal considered the reason for including section 6 on the form and found it was to inform the occupiers of the name and address of the site owner for the purposes of serving notices, to give a date for the Form and, by way of the signature, to verify that the site owner is responsible and liable for the contents of the Pitch Fee Review Form".

67. Mr Sunderland contended that the Applicant had complied with the requirement of section 6 of the Prescribed Pitch Fee Review Form.

68. Ms March stated that the Respondents did not understand why they had received the Second Pitch Fee Review Notice and Form. They believed that it was a desperate attempt by the Applicant to get them to the Tribunal because the Applicant had missed the deadline. Ms March questioned that if the First Pitch Fee Review Notice and Form was a terrible mistake why the Applicant had not withdrawn the notice in respect of all the occupiers and not just the Respondents. Ms March did not accept that the Second Pitch Review Notice and Form was valid.

69. Ms March disputed Mr Sunderland's assertion that The Beacesh Management Limited had held the lease of the Park for 15 years or so. Ms March said she had obtained a copy of the lease which was dated 2016, just two years before Wyldecrest purchased the Park. Ms March pointed out that The Beaches Management Limited had never informed the residents that Wyldecrest were coming in and managing the Park and had not notified them of the involvement and role of UK Properties Limited. Ms March insisted that the first time that The Beaches Management Limited had communicated with them was on 5 December 2022 which was some six years after it had acquired the lease for the Park.

70. Ms March said that the sudden appearance of The Beaches Management Limited was a matter of concern and confusion for all the residents. Ms March said that it was in her first year of occupation that she realised that there was something wrong which led to her discussing with other residents to uncover the tangled web of companies involved on the Park. Ms March pointed out that her written statement was signed by Wyldecrest Parks (Management) Limited. At the time of purchasing the mobile home with her partner Mr Johnson of Wyldecrest told her that the lease with Silk Lakes Property Investments Limited would end in 2027 and that the solution would be a new agreement with Wyldecrest with an increased pitch fee which would be in lieu of the £40,000 to pay off the lease. Ms March added that at the time of the negotiations there was no mention of The Beaches Management Limited. Ms March considered that they had been given misleading information as a result of which pitch fees had doubled or monies taken by the promise of "in perpetuity" or indefinite leases.

Consideration

71. The Tribunal finds the following facts:

a) The Applications for determination of a new pitch fee were in the name of The Beaches Management Ltd and contained a typed signature of Elizabeth Best (not her actual signature) and was dated 3 February 2023 which corresponded with the date the Applications were received by the Tribunal. Elizabeth Best is a director of the Applicant. Mr Sunderland of Wyldecrest Management Limited was named as the representative who had been authorised in writing by the Applicant's directors to act for the Applicant.

b) There were separate Applications for each Respondent. They gave the details of the occupational agreements and a review date of 1 November. The Applications stated that the date of Notice of the Proposed Pitch Fee was served on 7 December 2022.

c) There have been two Pitch Fee Review Notices and Forms sent in respect of the proposed pitch fee for the Respondent's pitches. "The First Pitch Fee Review Notice and Form" was sent on 21 September 2022. The First Pitch Fee Review Form for the occupiers at 1, 2, 12, 14, 20, 21, 22, 23, 24 Beechfield Park, was signed pp Mrs T Cercel and gave the address of the site owner as Wyldecrest Parks Management Ltd, Wyldecrest House, 857 London Road, West Thurrock, Grays, Essex RM20 3AT. In the case of the occupiers at 8 and 27 Beechfield Park the Form was signed pp Mrs T Cercel and gave the address of the site owner as Silk Tree Properties Ltd, 166 College Road, Harrow, Middlesex, HA1 1BH. In the case of the occupier at 12 Beechfield Park the Form was signed pp Mrs T Cercel and

gave the address of the site owner as Silver Lakes Property Investments Limited 166 College Road, Harrow, Middlesex, HA1 1BH.

d) Ms March stated that on receiving "The First Pitch Fee Review Notice and Form" she informed Mrs T Cercel and the Applicant's representative that the pitch fee proposal was not acceptable, and that the Applicant had until 1 February 2023 to refer the matter to the Tribunal which it failed to do. Mr Sunderland said he had no instructions on why the First Review Notice and Form was sent out.

e) On 5 December 2022 the Applicant informed the Respondents that the First Pitch Fee Review Notice and Form had been withdrawn and replaced by the Second Pitch Fee Review Notice and Form which was a late Review.

f) The procedure for "late" pitch fee reviews is dealt with under paragraph 17(8) schedule 1, part 1, chapter 2 of the 1983 Act. This provides that where the Occupier has not agreed the pitch fee the Owner may apply to the Tribunal. Paragraph 17(9) states that an application under sub-paragraph (8) may be made at any time after the end of the period of 56 days beginning with the date on which the owner serves the notice under subparagraph (6)(b) but, in the case of an application in relation to a protected site in England, no later than four months after the date on which the owner serves that notice. The Tribunal finds that the Applicant served "The Second Pitch Fee Review Notice and Form" on 7 December 2022 and that the Application to Tribunal was received on 3 February 2023 which was after the period of 56 days (1 February 2023). The Tribunal is satisfied that the Applications have been made in accordance with the time limits under paragraph 17 (9).

g) The Second Pitch Fee Review Notice was not dated and was in fact a Header to the Prescribed Pitch Fee Review Form. The Notice did not specify the proposed increase in pitch fee and provided no information whatsoever. It did not contain the name and address of the owner. Below the heading of Pitch Fee Review Notice was the words "Accompanying this notice is a Pitch Review Form. Please see below".

h) The Second Pitch Fee Review Notice is showed below as presented in the Combined Document.

PITCH FEE REVIEW NOTICE **Accompanying this notice is a Pitch Fee Review Form. Please see below:** **Pitch Fee Review Form** **[The Mobile Homes (Pitch Fees)(Prescribed Form)(England) Regulations] SI 2013/1505**

i) The Tribunal finds that the Second Pitch Fee Review Notice did not set out the Applicant's proposals in respect of a new pitch fee and did not contain the details required in paragraph 26(3) schedule 1 part 1 chapter 1 of the 1983 Act.

j) The Second Pitch Fee Review Form follows the form prescribed by SI 2013/1505. The parties are named as The Beaches Management Limited and the relevant Respondent. Under section 2 the Applicant gave details of the proposed increase in the pitch fee by providing the current pitch fee and the proposed pitch fee. The review date was given as 1 November 2021. Under section 3 the form states that the proposed pitch fee would take effect on 5 January 2023 which was later than the review date. Under section 4 it gave the current pitch fee and the Retail Prices Index (RPI) Adjustment [calculated from a percentage increase of 12.3%]. There were no other additions to the current pitch fee. Under section 4B the RPI adjustment it stated that "In accordance with paragraph 20(A1) of Chapter 2 of Part 1 of Schedule 1 to the Mobile Homes Act 1983, we have calculated the RPI adjustment as the percentage increase in the Retail Prices Index (RPI) over 12 months by reference to the RPI published for August 2022 which was 12.3%. There were no recoverable costs or deductions. Section 6 Signature of the site owner states in typescript pp Mrs T Cercel. There was no indication who Mrs Cercel was. The form was dated 5 December 2022. The name and address of the site owner for the purposes of serving notices was The Beaches Management Ltd, 441 High Street North, Manor Park, London E12 6TJ.

k) The Tribunal is satisfied that that the information provided by the Applicant in sections 1-5 of the Second Pitch Fee Review Form was correct, and in accordance with the requirements of paragraph 25A.

l) The Tribunal is not satisfied that the Applicant has complied with section 6 of the prescribed form. Section 6 requires the signature of the site owner. The forms included in the evidence had the words in type "PP Mrs T Cercel. Mr Sunderland suggested that the forms had an electronic signature but there was no evidence of that. There was nothing on the face of the form the capacity in which Mrs T Cercel signed the form.

m) The Tribunal would have expected either a director or officer of the Applicant company or a person duly authorised by the Company to sign the form. Mr Sunderland asserted that Ms Elizabeth Best had authorised Ms Cercel to sign the Pitch Review Form on behalf of the Company. There was no witness evidence either from Ms Best or Ms Cercel to substantiate Mr Sunderland's assertion. Judge Whitney was explicit in his directions of the requirement for witness statements.

n) The Tribunal understands from Mr Sunderland and Ms March that Mrs Cercel was a member of the accounts team at Wyldecrest House and presumably employed by UK Property Holdings Limited. Mr Sunderland was prepared to divulge the name of his employer but not of Mrs Cercel because of Data Protection. Mr Sunderland stated that the accounts team dealt with pitch fees and other matters in relation to 100 parks. Each member of the accounts team had responsibility for allocated parks within a specific geographical area. Beechfield Park fell within Mrs Cercel's geographical area of responsibility. Mr Sunderland said that by having the name of Mrs Cercel on the Pitch Fee Review Form it provided a name to whom occupiers could direct their enquiries. Ms March said that Mrs Cercel referred all her queries to Mr Craig Johnson, the Operations Manager for Wyldecrest.

o) The Tribunal asked Mr Sunderland in the hearing to explain the use of "pp" but he was unable to do so. Mr Sunderland stated that he had set up all the processes but had not instructed the use of "pp". Mr Sunderland had asked the Accounts Manager why "pp" was put before the signature and received the answer that they had to put "pp" if they were signing it on someone else's behalf. Mr Sunderland did not believe that "pp" should be there. Mr Sunderland said the signature of the accounts member of staff was to provide a contact for the occupier and to identify the person responsible for recording the posting in the post log.

p) Mr Sunderland stated that The Beaches Management Limited was not part of the Wyldecrest Group. Mr Sunderland said that Wyldecrest did not set up the Company and that Wyldecrest was not responsible for the Corporate structures on the Park.

q) Ms March's understanding of the pitch fee review form bearing the name of Mrs Cercel was that the form had come from Mrs Cercel who was in the accounts department at Wyldecrest Parks. Ms March believed this to be the case because it was the same as all the pitch fee proposals that had come in years previously since Wyldecrest Parks took over the Park.

r) Ms March stated that she did not understand why they received the Second Pitch Fee Review Notice on 5 December 2022. Ms March asserted that the only thing she could think of was that the Applicant had missed the deadline to take us to Tribunal and was, therefore, making a desperate attempt to get us to Tribunal by issuing another one from Beaches Management Limited.

s) The Tribunal is satisfied that the affixing of the name "Mrs Cercel" on the form was for the purpose of providing a point of contact in the accounts department at Wyldecrest House. The Tribunal finds that Mrs Cercel did not sign the document on behalf of the Directors of The Beaches Management Limited.

t) Section 6 of the Second Pitch Fee Review Form is showed below as presented in the Combined Document.

Section 6: Signature of site owner(s)
Signed: PP Mrs T Cercel

Date: 05/12/2022

Name and address of the site owner(s) (for the purpose of serving notices)

The Beaches Management Ltd, 441 High Street North, Manor Park, London ,E12 6TJ

72. The Tribunal summarises its principal findings in respect of the validity of The Second Pitch Fee Review Notice and Form dated 5 December 2022 which are as follows:

a) The Second Pitch Fee Review Notice did not set out the Applicant's proposals in respect of a new pitch fee and did not contain the details as required in paragraph 26(3) schedule 1 part 1 chapter 1 of the 1983 Act.

b) The Tribunal is not satisfied that the Applicant had complied with section 6 of the prescribed form. Section 6 requires the signature of the site owner. The forms included in the evidence had the words in type "PP Mrs T Cercel. Mr Sunderland suggested that the forms had an electronic signature but there was no evidence of that. There was nothing on the face of the form the capacity in which Mrs T Cercel signed the form.

c) The Tribunal would have expected either a director or officer of the Applicant company or a person duly authorised by the Company to sign the form. Mr Sunderland asserted that Ms Elizabeth Best had authorised Ms Cercel to sign the Pitch Review Form on behalf of the Company. There was no witness evidence either from Ms Best or Ms Cercel to substantiate Mr Sunderland's assertion.

d) The Tribunal is satisfied that the affixing of the name "Mrs Cercel" was for the purpose of providing a point of contact in the accounts department at Wyldecrest House. The Tribunal finds that Mrs Cercel was not signing the document on behalf of the Directors of The Beaches Management Limited.

e) There was no evidence to verify that The Beaches Management Limited as site owner was responsible and liable for the contents of the Pitch Fee Review Form.

73. Before evaluating the findings against the relevant law for determining the validity of "The Second Pitch Fee Review Notice and Form" the Tribunal intends to provide an overview of the evolution of the current statutory provisions dealing with pitch fees under paragraphs 16 – 20 of the schedule 1 part 1 chapter 2 of the 1983 Act.

74. Under the first enactment of the 1983 Act the contents of the written statement were regulated by sections 1(2), 2(1) and (2) and Schedule 1 to the Act. Section 1(2) set out the basic requirement requiring the owner to give to the occupier a written statement within three months of making the agreement which (a) specifies the names of the parties, (b) particulars of the land on which the occupier was entitled to station the mobile home, (c) the express terms of the agreement, (d) the terms implied by section 2(1) and, (e) with any other requirements as may be prescribed. Section 2(1) and Part I of Schedule 1 dealt with the implied terms and essentially they covered seven different aspects of the agreement: duration, termination by the occupier, termination by the owner, recovery of overpayments by the occupier, sale of mobile home, gift of mobile home, and re-siting of mobile home.

75. Part II of schedule 1 of the first enactment of the 1983 Act gave a list of seven matters that could be implied in the agreement. Two of those seven matters related to pitch fees: Sums payable by the occupier in

pursuance of the agreement and the times at which they are to be paid; and review at yearly intervals of the sums so payable. Under section 2(2) of the 1983 Act the parties could apply to the County Court or an arbitrator to include one of more of the implied terms set out in Part II provided they were not part of the express terms. This right, however, to apply only subsisted for six months from the giving of the written statement. After that period the implied terms could only be included if both parties agreed.

76. Thus under the original enactment of the 1983 Act the arrangements for the payment of pitch fees were a matter of negotiation between the parties and normally would have been part of the express terms of the agreement.

77. This formed one of the main complaints of the 1983 Act in that it gave mobile home occupiers insufficient rights over increases in pitch fees demanded by the site owners. In 2001 the Government commissioned Berkeley Hanover Consulting to carry out a study on the *Economics of the Park Homes Industry* published on 29 October 2002[2]. The study concluded that the evidence did not support the idea of excessive profits in the sector as a whole but it found in relation to pitch fees that

> "Fourthly, while agreements normally make provision for pitch fee increases (and in the case of agreements made using the industry's standard agreement the implication is that increases should follow inflation), in practice above-inflation increases or one-off charges may be levied to cover particular items. Residents who object to such increases cannot exit from the contract easily, and recourse to the courts or arbitration to settle a dispute is likely to be time-consuming and expensive (especially as related to the amount of money in question)".

78. In July 2004 ODPM issued a consultation paper *Park Homes Statutory Instruments: consultation on implied terms and written statements*[3], and set out proposals to amend the terms implied into written statements by the 1983 Act including some specific provisions in relation to pitch fees. The Consultation Paper proposed three key changes to pitch fees which were to be incorporated as implied terms of the agreement. They were (1) an annual review of pitch fees, (2) the site owner must issue a notice in writing to all mobile home owners, 28 days before the review date giving his proposals for the amount of the following years pitch fee and the reasons for any increase, (3) the right for a dispute about pitch fees to be determined by the court or an

[2] *Economics of the park home industry,* a summary is available online at: http://webarchive.nationalarchives.gov.uk/20120919132719/http://www.communities.gov.uk/documents/housing/pdf/141128.pdf ; Housing Research Summary No.173, 2002

[3] *Implied Terms and Written Statements for Park Homes: consultation summary of responses,* February 2005: http://www.communities.gov.uk/archived/publications/housing/parkhomestatutory

arbitrator. The rationale for proposing these changes was set out at paragraphs 4.59 and 4.60 of the Consultation document:

> "4.59 Under the current system, site owners are free to set the terms of review of pitch fees in occupation agreements, so increases are often subject to little or no controls. This has led to examples where park home owners have seen their pitch fee rise extremely quickly in just a few years.
>
> 4.60 Some attempt at self-regulation has been made, with the trade associations requiring members to be mindful of inflation in annual increases in pitch fees and giving residents their reasons for increasing pitch fees. Trade associations are also to bring in a requirement for members to provide a schedule of outgoings with the written statement. Whilst this is welcome we want to ensure that all sites are required to operate to this minimum standard".

79. The details of the proposals were modified but the three essential changes for pitch fees were incorporated as implied terms in legislation by the Mobile Homes Act 1983 (Amendment of Schedule 1) (England) Order 2006/1755. Paragraphs 16-20 of the Amended Schedule 1 set out detailed terms in relation to the Pitch Fee. Paragraph 17(1) stated that the pitch fee shall be reviewed annually as at the review date. Paragraph 17 (2) required the owner at least 28 clear days before the review date to serve on the occupier a written notice setting out his proposals in respect of the new pitch fee. Paragraph 22(b) required the Owner if requested to provide free of charge to the Occupier documentary evidence in support of any change to pitch fee.

80. In April 2012 the Government issued a Consultation Paper entitled a *Better Deal for Mobile Home Owners*.[4] The reforms outlined in the Consultation Paper were proposed to prevent the exploitation of occupiers by unscrupulous site owners. The Government noted that some site operators were adding repair costs to pitch fees. The Government said it was minded to legislate "to make it absolutely clear that costs relating to the above cannot be included in a pitch fee review, and, therefore, home owners are not obliged to pay any sum attributable to repairs".

81. In October 2012 the Government published the *Summary of Consultation Responses and Next Steps*[5] and stated that at page 23:

> "In the Government's view it is clear that the priority for reform is not the law around repairs and improvements, but the transparency of pitch fee reviews. This is why we propose legislation should be introduced which requires the site owner to use a statutory notice when proposing a higher pitch fee. That form will require the operator to specify how the new pitch fee has been calculated, including all the

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[4] ISBN: 9781 4098 34373

[5] ISBN: 978-1-4098-3664-3

charges and what they are for. Home owners will be more able to determine whether the charges are eligible and reasonable. The form will also contain prescribed information about the rights and obligations of the parties. If the form is not used, then the pitch fee review is invalid and not payable".

82. Section 11 of the Mobile Homes Act 2013 which came into force on 26 May 2013 amended chapter 2 of Part 1 of Schedule 1 to the 1983 requiring Owners when serving the pitch fee review notice to also provide a document meeting the requirements set out in new paragraph 25A and the Mobile Home (Pitch Fees) (Prescribed Form) (England) Regulations 2013 (2013/1505).

83. Thus the new paragraph 17(2A) stated that "in the case of a protected site in England, a notice under subparagraph (2) which proposes an increase in the pitch fee is of no effect unless it is accompanied by a document which complies with paragraph 25A".

84. Paragraph 25A (1) is as follows:

(1) The document referred to in paragraph 17(2A) and (6A) must—

a) be in such form as the Secretary of State may by regulations prescribe,
b) specify any percentage increase or decrease in the retail price index [consumer prices index] calculated in accordance with paragraph 20(A1)
c) explain the effect of paragraph 17,
d) specify the matters to which the amount proposed for the new pitch fee is attributable,
e) refer to the occupier's obligations in paragraph 21(c) to (e) and the owner's obligations in paragraph 22(c) and (d), and (f) refer to the owner's obligations in paragraph 22(e) and (f) (as glossed by paragraphs 24 and 25).

85. The Explanatory Note to the SI 2013/1505 said:

"These Regulations prescribe the form of the document that must accompany a pitch fee review notice (served under paragraph 17(2) or (6)(b) of Chapter 2 of Part 1 of Schedule 1 to the Mobile Homes Act 1983) which proposes an increase in the pitch fee. The document must be in the form prescribed in the Schedule to these Regulations or in a form substantially to the like effect. A pitch fee review notice which proposes an increase in the pitch fee is of no effect unless it is accompanied by such a document. The document, to be completed by the site owner, provides occupiers with information about how the proposed new pitch fee has been calculated and information about the pitch fee review process".

86. The Tribunal concludes from its analysis of the legislative changes to pitch fees that the legislation has become increasingly prescriptive because not all site owners could be trusted with self regulation with

the result that some occupiers were faced with unwarranted and excessive increases in the pitch fee. The changes have come in two stages. The first stage was to provide an infrastructure to regulate the process of pitch fee reviews which involved a notice setting the proposals, a deadline for submitting the notice and a time restriction of an annual review. The second stage was aimed at improving transparency of the charges with the provision of a form containing prescribed information and the parties' rights to accompany the pitch fee review notice.

87. The Tribunal now turns to the question of whether the Second Pitch Fee Review Notice and the accompanying Pitch Fee Review Form are valid. The starting point for ascertaining whether a statutory notice is valid the provision under which the notice has been served should first be interpreted to identify the requirements of a valid notice followed by the second stage of deciding whether those requirements have been met.

88. In *Speedwell Estates Ltd v Dalzeil* [2002] 1 EGLR 55 concerning an enfranchisement notice, Rimer LJ said at page 57:

> "I consider the better approach is to look at the particular statutory provisions pursuant to which the notice is given and to identify what its requirements are. Having done so, it should then be possible to arrive at a conclusion as to whether or not the notice served under it adequately complies with those requirements ... The key question will always be: is the notice a valid one for the purpose of satisfying the relevant statutory provision."

89. In this case the Applicant served "a late pitch fee review notice". The procedure for which is governed by paragraph 17(6) of schedule 1 part 1 chapter 2 of the 1983 Act, and provides as follows:

> Sub-paragraphs (7) to (10) apply if the owner –
> (a) has not served the notice required by sub-paragraph (2) by the time which it was required to be served, but
> (b) at any time thereafter serves on the occupier a written notice setting out his proposals in respect of a new pitch fee.

90. The Tribunal pauses and observes that a pitch fee review notice must be in writing and must set out the owner's proposals in respect of a new pitch fee.

91. In this regard the Tribunal relies on the Upper Tribunal decision of Judge McGrath *Mr J Small, Mrs B Small, Mr J Small (Junior) T/A J & B Small Park Homes v Mr Talbot and others* [2014] UKUT 0015 (LC) which was concerned with the statutory regime for pitch fee reviews immediately prior to the changes made by the Mobile Home Act 2013. The question for the Upper Tribunal was whether the owner's notice under paragraph 17(2) was adequate to trigger jurisdiction of the Tribunal to determine level of pitch fee. The issue

in this case was that the owner's notice contained incorrect computations of the actual amount of the increase proposed and of the amount that the occupier would pay. The owner argued that the error in the notice did not matter because the owner's entitlement to a pitch fee review arises automatically and that any provision that interferes with the owner's right should be restrictively construed so as not to be penal or otherwise disproportionately interfere with his possessions. Judge McGrath acknowledged that there was some force to the owner's arguments, in particular that the pitch fee terms implied by the 1983 Act do not themselves specify the form or content of a notice proposing an increase. Judge McGrath, however, did not agree stating that it is clear that the process for the review of a pitch fee contemplated under the Act is a bilateral matter. Judge McGrath went onto state that at paragraph 20:

> "In order to start the process of review the site owner must "set out his proposals" for the pitch fee and in my view those proposals must be clear enough for the occupier to understand them and to either accept the proposals or reject them. This minimum requirement is necessary to trigger the review process otherwise the occupier will not have had an opportunity to consider the proposal and to accept it or reject it. The process will not be bilateral if the proposal is insufficiently clear".

92. The Tribunal also refers to paragraph 26(1) which states that "where in accordance with the agreement the owner gives any written notice to the occupier the notice must contain the following information: (a) the name and address of the owner".

93. The Tribunal sums up the requirements for a late pitch fee review notice: must be in writing, contain the name and address of the owner, and set out the owner's proposals for the pitch fee with sufficiently clarity to enable the occupier to understand them.

94. The Tribunal finds that the Second Pitch Fee Review Notice did not contain those requirements. Mr Sunderland argues that the requirements were nevertheless met because they were included in the Second Pitch Fee Review Form and the Notice made specific reference to the Form. Mr Sunderland relies on the two FTT decisions cited in paragraphs 62 and 64 above and best summed up by the obiter comments of Judge Cooke in *Mrs Julie Truzzi-Franconi* that "the form seems to be designed to function as the pitch review notice itself".

95. The Tribunal disagrees with the view that the introduction of the pitch review form effectively did away with the pitch fee review notice for the following reasons:

    a) The wording of paragraph 17 (6A) clearly states that a Notice under sub-paragraph 17 6(b) which proposes an increase in the pitch fee is of no effect unless it is accompanied by a document which complies with paragraph 25A (the pitch fee

review form). The Tribunal appreciates that the proposed increase is incorporated into the Pitch Fee Review Form, but that is as is prescribed, and yet the legislation still says that this is the form that must accompany the Pitch Fee Review Notice.

b) The analysis of the history of the legislation showed that the Notice and the Form serve different purposes. The Tribunal maintains that the analysis demonstrated that Parliament did not intend to replace the Notice with the Form. The purpose of the Notice is to trigger the review process. The purpose of the Form is about transparency and providing the occupier with additional information about the proposals in the Notice.

96. The Tribunal concludes that the Notice and the Form must stand on their own, each containing the necessary information required by Statute and provided that is met the Notice and the Form may be combined in the one composite document.

97. The Tribunal is satisfied that The Second Pitch Fee Review Notice did not comply with the statutory requirements because: (1) it did not set out the proposals for the review of the pitch fee; (2) did not include the name and address of the site owner; and (3) did not stand alone from the Pitch Fee Review Form.

98. The Tribunal observes that Judge Cooke's decision in *Mrs Julie Truzzi-Franconi* found that the prescribed pitch review form contained an inherent error in respect of the review date which in the Tribunal's view highlights the need for a stand alone pitch fee review notice.

99. The Tribunal turns now its attention to the Second Pitch Fee Review Form. The Tribunal found that Section 6 of the Form was not signed by a director or a person authorised on behalf of the site owner.

100. Paragraph 25A(a) requires the form to be in such form as the Secretary of State may by regulations prescribe. The Regulations SI 2013/1505 set out the required form or a form substantially to the like effect. Section 6 requires the signature of the Site Owners.

101. The Tribunal adopts the construction of section 6 placed by the FTT in *Marston Edge Limited v Sandra Andrews and others* (BIR/44UE/PHI/2022/0019-31) which decided that at [42]:

> "The legislation did not preclude an authorised person signing on behalf of the site owner, nor was there a requirement that where the site owner was a company the Pitch Fee Review Form had to be signed by a director or officer of the company. The Tribunal considered the reason for including section 6 on the form and found it was to inform the occupiers of the name and address of the site owner for the purposes of serving notices, to give a date for the Form and, by way of

the signature, to verify that the site owner is responsible and liable for the contents of the Pitch Fee Review Form".

102. Mr Sunderland's principal argument was that the primary legislation paragraph 25A did not specify that the prescribed form had to be signed. The Tribunal, however, observes that paragraph 25A requires a prescribed form and that the form prescribed by the Regulations incorporated a section for the signature of the site owner. The Tribunal acknowledges that the 1983 Act and the Regulations include no provision about the identity of the signatory on behalf of a corporate site owner. The Tribunal adopts the construction placed by the FTT in *Marston Edge* that it was sufficient for an authorised person to sign the form on behalf of the company for the purposes of confirming the content of the form and authorising the review of the pitch fee.

103. The Second Pitch Review Form had the name of pp Mrs T Cercel affixed next to the words "signed". There was no evidence on the face of the form the capacity in which Mrs T Cercel was purportedly signing the form. The Applicant adduced no evidence from either a Director of The Beaches Management Limited or Mrs Cercel about her authority to sign the Form. The Tribunal confirms its finding that a director or an authorised person had not signed the Form on behalf of the Applicant as site owner.

104. The Tribunal is, therefore, satisfied that the requirements of paragraph 25A(1a) have not been met, namely the Second Pitch Review Form is not in the form prescribed by the Regulations SI2013/1505 or a form substantially to the like effect.

105. The Tribunal observes that the two incidences of non-compliance: the Pitch Fee review Notice (not including proposals for the review and name and address of site owner) and the Form (not being signed by an authorised person) were not errors that would be obvious to a reasonable recipient of the notice.

106. The next question, therefore, is whether the non-compliance of the Second Pitch Fee Review Notice and Form with the statutory requirements is fatal to the validity of the Notice and Form.

107. In this regard the Tribunal relies on the Court of Appeal decision in *Osman v Natt* [2014] EWCA Civ 1520 which adopted a different approach in respect of validity of notices dependent on the type of case before it. The Court of Appeal distinguished between two types of cases:

    i) cases in which the decision of a public body is challenged, often involving administrative or public law and judicial review, or which concern procedural requirements for challenging a decision whether by litigation or some other process; and

ii) cases in which the statute confers a property or similar right on a private person and the issue is whether non-compliance with the statutory requirement precludes that person from acquiring the right in question.

108. In the first category of case, substantial compliance may be enough. But in the second category of case the court interprets the notice to see whether it actually complies with the strict requirements of the statute. If it does not, then the court, as a matter of statutory interpretation, holds the notice to be wholly valid or wholly invalid.

109. Martin Rodger KC, Deputy President of Upper Tribunal in *Shaw's Trailer Park (Harrogate) v Mr P Sherwood and Others* [2015] UKUT 0194 (LC) considered that breaches of the requirements in respect of notices under the 1983 Act fell within the second category of case identified in *Osman v Natt*. He said at paragraph 33:

> "This stricter approach has the great advantage of certainty in relation to property rights. It seems to me to be applicable to the procedures, statutory in origin, for initiating a review of pitch fees under agreements to which the 1983 Act applies. Perhaps more importantly, paragraph 17(6A) of Chapter 2 of Part 1 of Schedule 1 to the Act is explicit in prescribing that a notice which proposes an increase in the pitch fee "is of no effect unless it is accompanied by a document which complies with paragraph 25A". That express statement of the consequences of non-compliance removes any doubt, and leaves no room for considerations of whether any prejudice has been suffered as a result of the non-compliance. The only relevant question is therefore whether the first review form complied with paragraph 25A."

110. Mr Sunderland's reliance on the Court of Appeal decision in *Herron* was, therefore, misplaced because the dictum of "substantial compliance" fell within the first category of cases identified by the Court of Appeal in *Natt v Osman*.

111. It is necessary to refer to another Court of Appeal case decided after *Shaw's Trailer Park* and which elaborated upon the principles enunciated in *Natt v Osman*. Lord Justice Lewison said in *Elim Court RTM Co Ltd v Avon Freeholds Ltd* [2017] EWCA Civ 89, [2018] QB 18 at paragraph 52 (the paragraph references are to *Osman*)

> "The outcome in such cases does not depend on the particular circumstances of the actual parties, such as the state of mind or knowledge of the recipient or the actual prejudice caused by noncompliance on the particular facts of the case: see para 32. The intention of the legislature as to the consequences of noncompliance with the statutory procedures (where not expressly stated in the statute) is to be ascertained in the light of the statutory scheme as a whole: see para 33. Where the notice or the information which is missing from it is of critical importance in the context of the scheme the non-compliance with the statute will generally result in the invalidity of the notice. Where, on the other hand the information missing from the statutory notice is of secondary importance or merely

> ancillary, the notice may be held to have been valid: see para 34. One useful pointer is whether the information required is particularised in the statute as opposed to being required by general provisions of the statute. In the latter case the information is also likely to be viewed as of secondary importance. Another is whether the information is required by the statute itself or by subordinate legislation. In the latter case the information is likely to be viewed as of secondary importance. In this connection it must not be forgotten that while the substantive provisions of a bill may be debated clause by clause, a draft statutory instrument is not subject to any detailed Parliamentary scrutiny. It is either accepted or rejected as a whole. A third is whether the server of the notice may immediately serve another one if the impugned notice is invalid. If he can, that is a pointer towards invalidity."

112. The Tribunal comments that the breach of paragraph 17(6)(b) in this case goes to the heart of the review process and that compliance with the requirements triggers the review of the pitch fee. The Tribunal acknowledges that the requirement for the signature of the site owner in the Form is set out in subordinate legislation but the consequence of failure to comply with the prescribed form rendering the pitch fee review notice void and of no effect is contained in primary legislation (paragraph 17(6A). Finally the Tribunal notes that the site owner is entitled to serve another Notice (albeit a late review) if the impugned notice is invalid.

113. The Tribunal finds that the two incidences of non-compliance: the Pitch Fee review Notice (not including proposals for the review and name and address of site owner) and the Form (not being signed by an authorised person) merited the stricter approach as identified by the Deputy President in *Shaw's Trailer Park (Harrogate)* and rendered the Second Pitch Fee Review Notice and Form invalid

114. **The Tribunal decides that The Second Pitch Fee Review Notice and Form dated 5 December 2023 did not comply with the requirements of paragraphs 17(6)(b), 17(6A) and 25A(1a) of schedule 1, part 1, chapter 2 of the 1983 Act. The Tribunal, therefore, decides that the Second Pitch Fee Review Form and Notice was void and of no effect with the result that the Respondents were not liable to pay the proposed increase in the pitch fee.**

115. Before completing the first issue the Tribunal considers it prudent to address Mr Sunderland's concern that the

> "whole argument about validity of the Second Pitch Fee Review Form and Notice was a complete and utter waste of time. It has been determined by many Tribunals before, there has been no submission made by the Respondents in relation to the validity of it, it seems to be something that has been picked on by the Tribunal and picked on me perhaps on a personal matter".

116. The Tribunal makes the preliminary point that the issue of validity of the respective pitch fee review and form determines whether the review process is triggered, and if it is not triggered the Tribunal's jurisdiction is not engaged. The Tribunal is, therefore, required to satisfy itself that it has jurisdiction, and is entitled to raise jurisdictional points of its own volition.

117. However, in this case the Respondents were also voicing strong objections to validity of The Second Pitch Fee Review Notice and Form because they did not accept that The Beaches Management Limited was the site owner. Their beliefs were based on the facts that all their prior dealings had been with Wyldecrest Parks (Management) Limited and that "The First Review Notice and Form" had been issued for most of them in the name of Wyldecrest Parks (Management) Limited.

118. Mr Sunderland asserted that the Respondents' confusion was dissipated by the letter of 5 December 2022 withdrawing "The First Review Notice and Form". The Respondents disagreed and said it heightened their concerns about the transparency of the management and ownership arrangements at the Park.

119. The Tribunal articulated the Respondent's concerns in the Strike Out Notice and less elegantly at the hearing with the following statement:

> "The reality is that Beechfield Park is run and managed by the Wyldecrest Group which operates more than 80 Mobile Homes Parks nationwide. The Government has commented adversely on the use by site owners of complex company ownership structures to manage their parks because of the problems it creates for residents as they do not know who is responsible for the management of the site and who should deal with site issues. This is evident in this case because the Respondents do not recognise The Beaches Management Limited as the site owner and believe that their agreement is with Wyldecrest. The Applicant is also confused because the first Pitch Fee Review Notice was sent in the name of Wyldecrest. Despite the apparent confusion between the parties about the identity of the site owner, one matter is clear and that's The Beaches Management Limited is the owner for the purposes of fulfilling the statutory requirements of the 1983 Act in respect of pitch fees".

120. The Tribunal queried at the hearing about the corporate structure at the Park, and that it appeared to the Tribunal that Wyldecrest had given specific areas of responsibility of the Park's operation to different companies. The Tribunal questioned whether Wyldecrest was entitled to pick and choose the different companies involved for specific areas of responsibility. The Tribunal expressed the view that if the Wyldecrest Group had set up The Beaches Management Limited to run the Park, it should have full operational responsibility for the Park.

121. Mr Sunderland replied that Wyldecrest did not set up The Beaches Management Limited and that the corporate structure was already in existence when Wyldecrest purchased the Park. Mr Sunderland asserted that as The Beaches Management Limited held the lease for the Park that it had no option but to run the Park. Further as owner it was the only person that could issue a pitch fee review notice and form.

122. Mr Sunderland added that it was good management for "The Beaches Management to accede to the fact that there are other people who know the operation of a mobile home park better than they do and they get them to do it for them, while keeping an eye to make sure that their interest is served.

123. Mr Sunderland, however, did not address the Respondents' concerns about the issue of new 1983 agreement by Wyldecrest Parks (Management) Limited during the currency of the lease held by The Beaches Management Limited, and about the status of the other leaseholders of the Park. Further Mr Sunderland gave no explanation for why The Beaches Management Limited had not been named in the previous pitch fee review notices and forms sent to the Respondents.

124. The Tribunal considers that the Respondents' concerns about the validity of the Second Pitch Review and Notice highlighted that the issue of validity is not just about the Tribunal taking finicky technical points. In this case the defects identified with "The Second Pitch Fee Review Notice and Form" were ultimately about the transparency of the management arrangements for the Park, and giving clarity about them to the occupiers of the homes. The defects confirmed the Respondents' contention that The Beaches Management Limited had not been involved in the proposal for a new pitch fee and had not verified the information contained in the pitch fee review form.

Issue Two: Whether it is reasonable for the Pitch fee to be changed in respect of the Respondents' pitches, and if it is to determine the amount of the new pitch fee?

125. If the Tribunal's finding that the Second Pitch Fee Review Form and Notice is void and of no effect is wrong, the Tribunal in the alternative has decided to the determine the application for an increased pitch fee on its merits.

The Parties Cases

126. Mr Sunderland stated that the application was for an increase in the pitch fee for each of the Respondent's pitches in accordance with the percentage increase in the RPI of 12.3 per cent over 12 months by reference to the RPI published for August 2022. It is accepted that the correct RPI had been used. Mr Sunderland pointed out that as this was a late review the increase if granted would take effect from 5 January 2023.

127. Ms March on behalf of the Respondents disputed the pitch fee on six grounds which had been communicated to Mr Sunderland on 9 November 2022 by letter and in various emails which were included in the Respondents' evidence.

128. Mrs March said that the Respondents believed that their residency and their right to site their home was at risk. This was because their contracts were with Wyldecrest and not with The Beaches Management Limited which had been the site owners since 2016. Despite The Beaches Management Limited being the owners, Mrs March said that Wyldecrest was still purporting to act as site owner by actively courting new residents and buying old homes from owners. Mrs March added that Wyldecrest did the same with estate agents, and that she had evidence from estate agents that Wyldecrest was claiming to be the site owner.

129. Mrs March's second point was that there was non-compliance by The Beaches Management Limited in respect of the Register of Fit and Proper Persons. Mrs March pointed out that the Applicant's application for permission to appeal the FTT decision confirming the refusal of Arun District Council to make entry in the Register had been turned down. Mrs March acknowledged that The Beaches Management Limited had submitted a new application to Arun District Council. Mrs March stated that the Fit and Proper Person Regime had been discussed by the All-Party Parliamentary Group on Park Homes. The minutes of the 17 April 2023 meeting had recorded that a Site Owner could repeatedly submit new applications after each refusal decision by the Council with the potential for this to be an endless cycle.

130. Mrs March then referred to the failure of The Beaches Management Limited to communicate directly with individual residents and with the Qualifying Residents Association on matters that affected them directly or indirectly.

131. Mrs March stated that The Beaches Management Limited had not addressed matters to do with the site licence. They had not provided adequate lighting on the site, and that the light at the entrance was still not working. The Beaches Management Limited had failed to ensure that fire safety equipment was tested and maintained. The Beaches Management Limited had taken away all fire extinguishers and had put up a sign that informed residents of the phone numbers of the Fire Brigade. Mrs March pointed out that Arun District Council had issued a compliance order which the Applicant had been appealed to the Tribunal.

132. Mrs March's next point concerned the failure of The Beaches Management Limited to respond to queries about invoices and expenses being charged to residents including £600 for the application for an entry in the Register of Fit and Proper Persons. Mrs March pointed out the residents received an expenses demand with their pitch fee review form.

133. Mrs March submitted that all the pitch fee was paying for was the concrete that the mobile homes were on. Mrs March asserted that everything else was in the express terms of their agreement. Mrs March believed that such an arrangement was contrary to the implied terms of their agreement.

134. Mrs March's final point was that the residents held grave concerns regarding the validity and legality of their current agreements with Wyldecrest. Mrs March said that they had been making payments of an increased pitch fee because they were falsely led to believe that they could increase the term of the lease for their mobile home. Mrs March pointed out that their pitch fee had doubled on the understanding that Wyldecrest would pay £40,000 to Silk Trees Properties to sign over the lease. Mrs March stated that Christopher Ball who was also a director of The Beaches Management Limited had signed over the lease on the part of Silk Trees Properties.

135. Mrs March referred to the 17 April 2023 minutes of the All-Party Parliamentary Group which made reference to a complaint to West Sussex Trading Standards in January 2021 about whether the pitch agreements were unfair and in breach of consumer protection laws. The minutes reported that the complaint had been escalated to National Trading Standards which had requested funding from the relevant Government Department to fund the investigation. This funding had not been provided which meant that it was not possible at this stage for National Trading Standards to carry on an investigation.

The Law

136. Paragraphs 16 and 17 of schedule 1 part 1 chapter 2 of the 1983 Act deals with the procedure for changing the pitch fee. Essentially the pitch fee can only be changed with the agreement of the occupier or by order of the Tribunal following an annual review.

137. The procedure for determining the amount of the new proposed fee depends upon the interplay of four key provisions. Paragraph 16(b) states that the pitch fee can only be charged if the Tribunal considers it to be reasonable. Paragraph 20(A1) states unless this would be unreasonable having regard to paragraph 18(1) there is a presumption that the pitch fee shall increase or decrease by a percentage which is no more than any percentage increase or decrease in RPI . Paragraph 18(1) lists a number of facts to which particular regard shall be had in determining the pitch fee, and include sums expended by the owner on improvements since the last review date, any deterioration in the condition and any decrease in the amenity of the site, and reduction in services. Paragraphs 18(1A) and 19 list several matters to which no regard shall be had when determining a review of a pitch fee.

138. HHJ Alice Robinson in *Vyse v Wyldecrest Parks (Management) Limited [2017]* UKUT 24 (LC) considered the interrelationship between the four key provisions for determining the increase in pitch fee and said at

> "47. In my judgment, although the FTT may not alter the amount of the pitch fee unless it considers it reasonable to do so, paragraph 16(1), the issue of reasonableness is not at large. It is not open to the FTT simply to decide what it considers a reasonable pitch fee to be in all the circumstances. Reasonableness has to be determined in the context of the other statutory provisions.
>
> 48. The starting point is that there is a presumption of change in line with RPI "unless this would be unreasonable having regard to paragraph 18(1)", paragraph 20(A1). 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. Thus, for example, if the site owner has spent a substantial sum of money on improvements in accordance with paragraph 18(1)(a) and it would be unreasonable to limit any increase in the pitch fee to RPI, the presumption in paragraph 20(A1) does not arise. It is not strictly speaking a question of the presumption applying but being displaced, in accordance with the express provision in paragraph 20(A1), the presumption does not arise in the first place, because to apply it would be unreasonable.
>
> 50. If there is no matter to which any of paragraph 18(1) in terms applies, then the presumption arises and it is necessary to consider whether any 'other factor' displaces it. By definition, this must be a factor to which considerable weight attaches. If it were a consideration of equal weight to RPI, then, applying the presumption, the scales would tip the balance in favour of RPI. Of course, it is not possible to

be prescriptive as to precisely how much weight must be attached to an 'other factor' before it outweighs the presumption in favour of RPI. This must be a matter for the FTT in any particular case. What is required is that the decision maker recognises that the 'other factor' must have sufficient weight to outweigh the presumption in the context of the statutory scheme as a whole.

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

Consideration

139. In this case the Applicant was relying on the presumption in paragraph 20(A1) that pitch fee shall be increased by the percentage which is no more than the relevant percentage increase in RPI which is 12.3 per cent. The Applicant was putting forward no other ground for an increase.

140. The Respondents have disputed the pitch fee increase on various grounds. The Tribunal adopting the approach of HHJ Alice Robinson in *Vyse* will decide first whether any of those grounds fall within paragraph 18(1). If they do, the question for the Tribunal is whether it is unreasonable to apply the RPI presumption. If they do not. the Tribunal is obliged to apply the RPI presumption unless there is a weighty factor sufficient to displace the RPI presumption. Whether another factor qualifies as a sufficient weighty factor is a matter for the Tribunal based on all the circumstances of the case.

141. The Tribunal now considers whether the various factors relied on by the Respondents to dispute the increase in pitch fee fall with paragraph 18(1) and or have the potential to qualify as a "weighty factor" sufficient to displace the RPI presumption.

142. The Tribunal acknowledges the strength of the Respondents' concerns about the validity of their agreements with Wyldecrest Parks (Management) Limited. The question of whether Wyldecrest Parks (Management) Limited was entitled to provide new 1983 agreements when Beaches Management Limited was being held out as the site owner is not a matter that can be dealt with by the Tribunal under an application for a determination of a pitch fee. Mr Sunderland pointed out that the Respondents with new agreements have indefinite security of tenure which significantly increases the value of their mobile homes.

143. The Respondents' statement that their pitch fees had effectively doubled under the new 1983 agreements in order to secure the surrender of the short term lease held by Silk Trees Property Limited was part of the factual matrix but not a ground in itself for challenging the new pitch fee. Under a review the Tribunal is not deciding on the reasonableness of the pitch fee as whole. The Tribunal proceeds on the basis that the original pitch fee had been agreed by the parties as a matter of contract.

144. Mr Sunderland disputed Ms March's suggestion that the Respondents had been duped into signing the new agreements. Mr Sunderland pointed out that Wyldecrest Parks (Management) Limited had advised occupiers to take legal advice before signing the new agreements. Further Mr Sunderland referred to signed documentation supplied by Ms March which showed that she and her partner had confirmed their agreement to the new terms and had been told to seek independent legal advice. Ms March accepted that some of the Respondents had engaged solicitors, although she raised objection in one case where apparently one Respondent had took advice of a solicitor recommended by Wyldecrest Parks (Management) Limited. The Tribunal decided that this was not a matter that it could have regard to when considering the pitch fee increase.

145. Likewise the Tribunal disregarded the referral to Trading Standards about a potential investigation into whether the agreements were unfair and contrary to consumer protections laws. At the moment there was no investigation, and the Tribunal is required to exercise caution and not pre-empt any potential action that may or may not be taken by an enforcement body. Mr Sunderland asserted that there was no evidence whatsoever of fraud on the part of Wyldecrest Parks. Mr Sunderland mentioned that he had attended a meeting as an observer organised by Arun District Council involving Chichester District Council and various statutory bodies including the local Constabulary and the Leasehold Advisory Service to discuss the legality of the arrangements at several Parks operated by Wyldecrest parks. Mr Sunderland said that he had talked to the police officer attending who assured Mr Sunderland that there was no criminality. Mr Sunderland also stated that the Leasehold Advisory Service had informed the participants that Wyldecrest Parks had done nothing wrong.

146. The Tribunal is concerned that there is no entry in the Register of Fit and Proper Persons for the Applicant. This measure was introduced to ensure that Mobile Home Parks were properly managed and run which is a relevant consideration in determining new pitch fees. However, in this case the process had not been concluded and no decision had been made by Arun District Council on the new application by The Beaches Management Limited. The Tribunal concluded that the issue of no entry in the Register of Fit and Proper Persons is not at large, and, therefore, could not be taken account of in respect of the current review of the pitch fee.

147. The Tribunal accepts Mr Sunderland's submission that the Respondent's allegations of non-compliance with the conditions of the site licence were matters that should be dealt with under separate proceedings pursuant to the Caravan Sites and Development Act 1960 and were not relevant considerations for the review of pitch fee. Mr Sunderland added that Arun District Council had indicated that it was not contesting the Applicant's appeal against the compliance order in respect of fire safety.

148. At the hearing Ms March expressed concerns about the maintenance of the site road, the boundary fences, and various trees. Ms March, however, accepted that the Respondents had not specifically raised these matters in their evidence, and decided not to pursue them at this hearing but to reserve their right to raise them in the proceedings under section 4 of the 1983 Act in connection with the service charges demanded by the Applicant.

149. The Tribunal decided that the Respondents' submissions about the Applicant's failures to communicate with individual residents and the Qualifying Residents Association about matters that affected them directly or indirectly were not sufficiently made out. The Tribunal noted the Respondents' representation that they had not received documentary evidence in support of charges which they are entitled to under the implied term in paragraph 22(b). The Tribunal, however, formed the view the Respondents were reserving their position on the failure to supply documentary evidence for the section 4 proceedings in respect of the service charge.

150. The Tribunal considers the Respondents' contention that the pitch fee was "just for the concrete slab" and that under the express terms they paid for all the costs of the site owner through a service charge merited further investigation as to whether the contention could amount to a "weighty factor" displacing the RPI presumption.

151. The Tribunal finds the following facts in respect of the contention "just for the concrete slab":

a. The Respondents under Clause 4 of the express terms of their 1983 agreements[6] are obliged to pay a pitch fee, additional charges of water and sewerage, electric (street lighting), car parking for each additional car, and an estimated service charge.

b. Under the 1983 agreement the pitch fee is stated to include no services. Clause 10 of the express terms permit a review of the pitch fee outside the implied terms.

c. The estimated service charge includes the Owner's costs of providing the services and performing the obligations under the

[6] See Paragraph 43

implied terms of the agreement. The scope of the estimated service charge is wide and together with sub-clause 4(d) covers every eventuality of likely costs to the Owner in operating the Park.

d. The express terms permit the Owner to recover in any one year a balancing payment where the actual costs exceed the estimated costs. This gives the Owner protection in respect of any increase in costs arising from inflationary pressures.

e. The 1983 agreement with Harquail Homes Limited, a former site owner, included the express terms regarding additional charges and service charge. Wyldecrest Parks (Management) Limited incorporated effectively the same express terms in the new 1983 agreements together with an increased pitch fee. Ms March stated that under the new agreement the pitch fee for their mobile home increased from £214.94 per month to £413.87 per month.

f. UK Properties Management Limited were responsible for the collection of additional charges and service charge. On 21 September 2022 UK Properties served a demand for expenses recoverable for the year 2021/2022 payable on 1 November 2022 on the Respondents together with the pitch fee review notice. The example supplied by the Respondents showed the following charges:

Description of Item	**Total Cost (£)**	**Charge to Occupier (£)**
Water Charge	130.05	4.06
General Maintenance	6,808.50	212.76
Electricity	257.02	8.03
Management Charge	3,648.00	114.00
Total Charge for the Year	**10,843.57**	**338.85**

g. The amount of the expenses of £338.85 charged (£28.24 a month) was in addition to the proposed pitch fee for the Respondents which ranged from £252.97 to £602.58 per month with the majority of the pitch fees in the range of £352 to £387 per month.

h. The Respondents exhibited correspondence from the Chair and Secretary of the Qualifying Residents Association to Mr Johnson, and Mrs Cercel of Wyldecrest Parks. The letter of 30 May 2022 from Glyn Mayes-Jones, Chair, stated that the maintenance charge for 2021/2022 had increased by 275 per cent, and that the residents at Beechfield Park were currently paying £72.89 per month in maintenance/service charge. The

email dated 26 May 2022 from Jeanette Brown, the Secretary, raised queries on the expenses about the charges for general maintenance, repairing water leaks and burst water mains, the repair of boundary fence, the application fee for registration as a Fit and Proper Person and the removal of a tree and the subsequent repair to the pavement.

i. The charges for general maintenance and management appeared to fall in the category of communal services.

j. The effect of the express terms is to strip out from the pitch fee all the owner's costs for operating the Park including performing the Owners implied obligations under schedule 1 part 1 chapter 2 of the 1983 Act.

k. The Respondents' pitch fee represented a payment for consideration of the right to station their mobile home on the site. The fee did not represent consideration for the benefits and services under the implied terms of the 1983 Act.

152. The Tribunal concluded that the Respondents' contention that the pitch fee was "just for the concrete slab" had substance which might constitute a "weighty factor". In the hearing the Tribunal identified this matter as meriting further consideration and invited representations from Mr Sunderland.

153. Mr Sunderland initially pointed out that the question of service charges was not before the Tribunal, and that the express terms regarding the payment of service charges had been a longstanding arrangement at the Park. Mr Sunderland added that the definition of pitch fee at paragraph 29 did not include the costs of services.

154. The Tribunal acknowledged that Mr Sunderland may have a valid legal argument on the nature of the pitch fee and what it represents in terms of consideration. The Tribunal, however, wished to establish whether the Applicant agreed that the Respondents' statement that the pitch fee was "just for the concrete slab and that all other costs were payable as service charges" was factually correct. Mr Sunderland's initial response was that he had no instructions on the matter. The Tribunal then offered Mr Sunderland an opportunity for an adjournment so that he could obtain a witness statement from the persons responsible for the Park about which costs are included in the service charge, and also to make representations on the Court of Appeal decision in *P R Hardman & Partners v Greenwood & Anr* [2017] EWCA Civ 52. Mr Sunderland eventually declined the invitation to obtain a witness statement and agreed to proceed to deal with the issue.

155. The Tribunal adds for completeness that Mr Sunderland was aware of the Respondents' submissions about the pitch fee not including any service, maintenance, utility or management fees. In this regard the

Respondents included in their further evidence a letter from Jeannette Brown dated 1 November 2022 to Mr Sunderland's email of 31 October 2022 to the Respondents which incorporated Mr Sunderland's reply and Ms Brown's further response (in italics):

"Mr Sunderland: You provided 2 reasons why you would not agree to the review
2. The pitch fee does not include any service, maintenance, utility or management fees, which would be the elements deemed appropriate for RPI or CPI to be attached –
Under the Implied Terms of your agreement a pitch fee is defined as the amount which the occupier is required by the agreement to pay to the owner for the right to station the mobile home on the pitch and for the use of the common areas of the site and their maintenance; it is a single fee and does not include any "elements' as you suggest and the Review seeks to adjust this single figure to take account of changes in the Retail Prices Index
Ms Brown: Yes, the right to station our home on the pitch is the only real element, there is only one very small communal area, a patch of grass outside number 21. No, we disagree, maintenance cannot be included in the pitch fee as we are charged separately for this under expenses, service fees, you can't charge twice."

156. The Tribunal is entitled to assume that Mr Sunderland had instructions on behalf the Applicant to write a response to Ms Brown about the Respondents' grounds of opposition to the pitch fee. The Tribunal also gave Mr Sunderland on behalf of the Applicant a right of reply in writing to the Respondents' further evidence prior to the hearing which he declined.

157. Mr Sunderland proceeded to make submissions on the relevance of the fact that the pitch fee was "just for the concrete slab" which were as follows:

a. The dispute on the service charges is dealt with under section 4 of the 1983 Act and had no relevance to the review of pitch fees.

b. The definition of pitch fee in paragraph 29 did not include amounts due in respect of gas, electricity, water and sewerage or other services.

c. The pitch fee covered the common areas of the Park which included an small triangle of grass, roads and car parks. Mr Sunderland stated that the pitch fee represented consideration for the Owner's responsibility to maintain the common areas. The fact that the costs incurred by the Owner in exercising its responsibility may be collected through the service charge under the express terms of the agreement did not displace the owner's responsibilities under the implied terms.

d. The owner's responsibilities under the implied terms did not extend to repairing the common areas. It is limited to keeping the common areas clean and tidy.

e. The pitch fee is a global sum and is not broken down into a collection of services.

f. The application of the RPI presumption is not dependent upon evidence that the costs of services have risen by inflation.

g. The costs associated with the right to station the mobile home included the costs of loans and mortgages associated with the capital value of the Park which in this case amounted to several million pounds. The Tribunal considered that these costs were those of the freeholder and not of the Applicant. In the Tribunal's view the capital value of the Applicant's lease with an annual rent of £150 was minimal.

158. The issue, therefore, is whether the finding that the Respondents' pitch fee represented a payment for consideration of just the right to station their mobile homes on the Park is a "weighty factor" sufficient to displace the RPI presumption.

159. The Tribunal starts with the definition of pitch fee in paragraph 29 schedule 1 part 1 chapter 2 of the 1983 Act which provides that

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

160. The Upper Tribunal in *Britaniacrest Limited v Bamborough* [2016] UKUT 0144 (LC) at paragraph 24 described "the pitch fee as 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". The Upper Tribunal indicated in paragraph 25 the direct relationship between the amount of the pitch fee and the costs of services: "Thus if the cost of maintaining the site were to increase because of some statutory requirements this could be taken into account in determining the pitch fee".

161. In the earlier decision of Re Britaniacrest 2013 UKUT 0521 (LC) Martin Rodger KC, Deputy President, expanded on the package of rights included in the pitch fee at [61]:

> "There is no restriction on the rights conferred on the occupier which may be taken to be included in the pitch fee. In this case, for example, in addition to the right to occupy the pitch the occupier receives in return for the pitch fee the benefit of obligations by the owner to keep the common parts of the Park in a good state of repair, to provide and maintain the facilities and services available to the pitch from time to

> time (which include the utilities themselves and the conduits and meters through which they are supplied), and to insure the common parts. Each of these is an example of a service which can only be provided at a cost to the owner, yet for which there is no separate entitlement to charge; each must therefore be taken to be included in the pitch fee. The same is true, in my judgment, of the service provided by the owner in reading meters and calculating and administering bills for each of the utilities".

162. The Deputy President at [62] commented on the relationship of the "package of rights" with the definition of pitch fee in paragraph 29 when he said:

> I do not think that the definition of "pitch fee" in paragraph 29 of Schedule 1 to the 1983 Act alters this analysis. The purpose of the definition, and the exclusion from it of " amounts due in respect of gas, electricity, water and sewerage or other services ", is to make it clear what charges are governed by the restrictive provision for reviewing the pitch fee in paragraphs 16 to 20. If separate amounts are payable " in respect of " the various utilities, those amounts are not subject to the annual indexation by reference to RPI which is the normal limit of permitted increases in pitch fees. The definition does not require that the administration necessary to deliver the utilities cannot be covered by the pitch fee, nor does it make the imposition of an administration charge permissible.

163. The Tribunal's interpretation of the Deputy President's comment at [62] is that where there are separate charges for the utilities and other services they no longer form part of the pitch fee and are not governed by the review procedure under paragraphs 16 to 20 unless the agreement says to the contrary.

164. The Tribunal acknowledges that the fact the costs of services included in the package of rights are factored into the amount of the pitch fee does not alter the inherent nature of a pitch fee as a single payment in consideration for the totality of rights, benefits and services received under the 1983 agreement. The Tribunal accepts that a pitch fee should not be viewed in the same light as if it is a service charge comprising a collection of individual items where the amount of the service charge may fluctuate with variations in the costs of the individual services (*PR Hardman and Partners v Mrs Marilyn Fox and others* [2019] UKUT 248 (LC)).

165. The Tribunal is satisfied that the application of the RPI presumption in the determination of a new pitch fee is inextricably connected to the receipt of services and their costs included in the package of rights normally associated with the pitch fee. Paragraph 20(A1) which deals with the RPI presumption starts with "[Unless] this would be unreasonable having regard paragraph 18(1)" which is all about services and the condition of the site.

166. Thus in the typical pitch fee review where the pitch fee represents the totality of rights, benefits and services, the combination of the pitch fee as a single fee and the RPI presumption provide a straightforward mechanism with a high degree of certainty and avoids the examination of individual costs to the owner for settling the new pitch fee.

167. This case is not a typical pitch fee review because all the costs associated with the package of rights except for the right to station the mobile home have been stripped out of the pitch fee and are payable as additional charges and service charges. As the Court of Appeal explained in *PR Hardman & Partners v Greenwood & Another* [2017] EWCA Civ 52 this means that the only way that Occupiers can challenge the amount of these charges would be by application to the Tribunal under section 4 of the 1983 Act where the burden would be on the Occupiers to satisfy the Tribunal of the unreasonableness of the charge. The Respondents in this case do not have the benefit of the usual provisions for control of service charges which are found in residential leases except for the provision of reasonableness under the express terms. Further in this case the Respondents lose the protection and certainty offered by the 1983 Act in respect of the additional charges and service charges because they do not form part of the package of rights typically covered by the pitch fee. The Respondents indicated in the hearing that they considered their challenge to the state of condition of the park and the quality of services was by means of a section 4 Application, and not through the review of pitch fee.

168. The decision for the Tribunal is whether the stripping out of all costs associated with the package of rights except the right to station the mobile home park on the pitch constituted a "weighty factor" to displace the RPI presumption within the meaning ascribed by HHJ Alice Robinson in *Vyse*. HHJ Robinson stated that it was not possible to be prescriptive as to precisely how much weight should be given to an "other factor" and this must be a matter for the Tribunal in any particular case. Finally HHJ Robinson suggested where the "other factor" is wholly unconnected with paragraph 18(1) a broader approach may be necessary to ensure a just and reasonable result which must be viewed in the context that the expectation in most cases the RPI presumption would apply.

169. The Tribunal is satisfied that the structure of the 1983 agreements for the Park confers considerable benefits on the Applicant. The stripping out of all variable costs from the pitch fee ensures that the Applicant is able to recover its actual costs through the additional charges and the service charge, which gives the Applicant greater certainty than if those costs were part of the pitch fee. This means that in this case where all the variable costs have been stripped out the pitch fee simply represents the return on the capital investment in the Park. The Tribunal is entitled to assume that the Owner when granting the agreement would have ensured that the amount of the original pitch

fee agreed gave it a sufficient margin of return. The Tribunal notes that all but three of the Respondents have relatively new agreements with Wyldecrest Parks (Management) Limited which resulted in significant increases in the pitch fee where those new agreements replaced existing ones. Mr Sunderland submitted that the Tribunal should have regard to the capital financing costs in terms of loans and mortgages when considering the review of the pitch fee. The Applicant, however, does not bear those costs which presumably are with the freeholder which technically is not in receipt of the pitch fee.

170. In contrast, the Respondents are disadvantaged by the 1983 agreements at the Park. They do not have the protection of the 1983 Act in respect of those costs that have been stripped out of the pitch fee. In the Respondents' eyes they have already paid for those costs which would have formed the basis for the application of the RPI presumption if they had been subject to a typical 1983 agreement. The Respondents are not able to challenge the additional costs and the service charge through the review procedures for the pitch fee and they have to take out proceedings under section 4 of the 1983 in order to challenge them. This causes confusion on the Respondents' part as to the proper forum for challenging reductions in service and deterioration in the condition of the Park.

171. The Tribunal is satisfied that the above circumstances regarding the 1983 agreements at the Park amount to a "weighty factor" to displace the presumption of the increase in the RPI of 12.3 per cent.

172. **The Tribunal, therefore, decides that it is not reasonable for the Pitch Fee to be changed in respect of the Respondents' pitches because on the facts the pitch fee is just for the privilege of stationing the mobile home on the site and all the costs normally associated with the pitch fee have been stripped out by the Applicant and recovered by means of additional charges and a service charge. The Tribunal is satisfied that the structure of the 1983 agreements for the Park confers considerable benefits on the Applicant whilst disadvantaging the Respondents and as such amounts to a "weighty factor" which displaces the RPI presumption.**

173. The remaining issue concerns Mr Sunderland's application to strike out Mr Simon's application because of his failure to submit an objection in writing in accordance with the directions. The Tribunal accepts Ms March's explanation on behalf of Mr Simon that it was a genuine oversight. The Applicant has not been prejudiced by Mr Simon's failure because the same case was presented on behalf of all the Respondents. The Tribunal waives Mr Simon's non-compliance with directions and refuses the application to strike out.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.