FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/45UB/PHI/2023/0194 (1) and CHI/45UB/PHI/2023/0196 (2)
Property	**:**	17 Summerlands Court Park (1) and 40 Summerlands Court Park (2) Liverton, Newton Abbot, Devon, TQ12 6HB
Applicant	**:**	The Berkeley Leisure Group Ltd
Representative	**:**	Mr Steve Drew
Respondents	**:**	Mr Malcolm and Mrs Celia Curtis (1) Mrs B Terry (2)
Representative	**:**	---
Type of Application	**:**	Review of Pitch Fee: Mobile Homes Act 1983 (as amended)
Tribunal Members	**:**	Judge J Dobson Mr M Ayres FRICS Mr M Jenkinson
Date of Hearing	**:**	17th October 2023
Date of Decision	**:**	17th November 2023

DECISION

Summary of Decision

1. **The Tribunal determines that the pitch fee for 17 Summerlands Court Park is £209.42 with effect from 1st January 2023.**

2. **The Tribunal determines that the pitch fee for 40 Summerlands Court Park is £209.42 with effect from 1st January 2023.**

3. **The Respondents shall reimburse the Applicant for the application fee paid in respect of their individual pitch, being £20.00 per application.**

Background and procedural history

4. On 9th March 2023, the Applicant site owner applied [828- 835 (1) and 956-963 (2)] for a determination of a revised pitch fee of £217.41 per month payable by the Respondents with effect from 1st January 2023 in respect of both 17 Summerlands Court Park ("Pitch 17") and 40 Summerlands Court Park ("Pitch 40").

5. Summerlands Court Park ("the Park") is a protected site within the meaning of the Mobile Homes Act 1983 ("the 1983 Act"). The definition of a protected site in Part 1 of the Caravan Sites Act 1968 includes a site where a licence would be required under the Caravan Sites and Control of Development Act 1960 if the exemption of local authority sites were omitted. The licence [66- 73] currently allows for 46 pitches.

6. The 1st Respondents Mr Malcolm Curtis and Mrs Celia Curtis are entitled to station their park home on Pitch 17 by virtue of an agreement under the 1983 Act first entered into on 5th April 1995 by the Respondents' predecessors [839-854]. The 2nd Respondent Mrs B Terry is entitled to station her park home on Pitch 40 by virtue of an agreement under the 1983 Act entered into by Mrs Terry stated to have commenced on 1st June 1981 [972- 996]. Both agreements include the statutory implied terms referred to below.

7. A Pitch Fee Review Notice with the prescribed form proposing the new pitch fee was served on each of the occupiers dated 25th November 2022 [855- 863 and 997- 1005], proposing to increase the pitch fee by an amount which the Applicant says represents an adjustment in line with the Retail Prices Index ("RPI"). It was said that there had been no changes since the last review.

8. Section 4 of the "Pitch Fee Review 2023" document contained a calculation for the proposed new pitch fee. The calculation was expressed as a formula of (A)+(B)+(C) – (D) where
   (A) is the current pitch fee,
   (B) is "the RPI Adjustment",
   (C) is the recoverable costs, and
   (D) is the relevant deductions.

9. The current pitch fee at that time of Pitch 17 was £190.38 and of Pitch 40 was the same. The RPI was 14.2% taking "the RPI Adjustment", as described, as the percentage increase in the RPI over 12 months for October 2022. No recoverable costs or relevant deductions were applied. No water, sewerage, gas and electricity or any other services are included in the pitch fee.

10. The Respondents did not agree to the increase.

11. On 3rd July 2023, the Tribunal issued Directions [5- 11] regarding these pitches and also more generally in relation to the Applicant's applications] providing a timetable for the exchange of documentation. The Tribunal initially directed that the application be dealt with on the papers. The parties did not request an oral hearing or object to a determination on papers.

12. However, the Tribunal undertook a review of the documentation on receipt of the bundle. The Respondents raised, as one limb of their arguments, issues with the Park [838 and 965]. The 1st Respondents' written case was that there had not been regular maintenance, that leaves were blown but rarely picked up and that grass was only strimmed, at which time it went everywhere. Whilst the 1st Respondents did not say so in terms, the Tribunal understood that argument to be that there had in effect been a deterioration in condition and/or a decrease in amenity of the site. The 2nd Respondent raised a more specific issue that there was a lack of drainage to her pitch and that water had accumulated up to 7 inches deep around the park home and had caused the boards to the base of her shed to rot. The Tribunal noted there to be ninety pages of photographs provided by the 1st Respondents, some with two photographs to the page. An additional three photographs were provided by the 2nd Respondent.

13. The Tribunal decided that an oral hearing was necessary in light of the disputes as to facts but also because of the large quantity of photographs provided by the 1st Respondents, which the Tribunal understood to be intended to demonstrate deterioration but where the Tribunal did not know which areas of the Park were shown and the specific deterioration to which reference was sought to be made. Further Directions were issued dated 8th September 2023, which also included providing for the hearing and a site inspection. Those Directions identified two particular issues to be determined by the Tribunal, namely:

    i) whether issues raised regarding the Park were sufficient for the RPI presumption not to arise and
    ii) whether the extent and effect of an increase by RPI in the wider economic climate was a weighty factor of sufficient weight to rebut the presumption of an increase by the level of increase in RPI if that presumption had arisen

14. The Applicant had submitted a determination bundle comprising 1102 pages, in respect of various pitches on various sites it owns where the proposed pitch fee was not agreed by the park home- owners, which was copied to the Respondents. The large majority of those pages have no direct relevance to this case. The single bundle does explain why the page references in this Decision are all of high- numbered pages. The 1st Respondents' photographs are in the bundle [866- 955].

15. Whilst the Tribunal makes it clear that it has read the parts of the bundle related to Pitch 17 and Pitch 40, the Tribunal does not refer to all of the documents in detail in this Decision, that being unnecessary. For the avoidance of doubt, where the Tribunal does not refer to pages or documents in this Decision, it should not be mistakenly assumed that the Tribunal has ignored or left them out of account. Insofar as the Tribunal does refer to specific pages from the bundle, the Tribunal does so- both above and below- by numbers in square brackets [ ].

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

The relevant Law and the Tribunal's jurisdiction

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

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

19. Paragraph 29 defines a pitch fee 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. If, but only if, the agreement expressly provides it, the fee will also include amounts due for gas, electricity, water and sewerage or other services.

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

21. A review is annual on the review date. In respect of the procedure, paragraph 17(2) requires the site owner to serve a written notice ("the Pitch Fee Review Notice") setting out their proposals in respect of the new pitch fee at least 28 days before the review date. Paragraph 17(2A) of the 1983 Act states that a notice under sub-paragraph (2) is of no effect unless

accompanied by a document which complies with paragraph 25A. Paragraph 25A enabled regulations setting out what the document accompanying the notice must provide. The Mobile Homes (Pitch Fees) (Prescribed Forms) (England) Regulations 2013 ("The Regulations") did so, more specifically in regulation 2.

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

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

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

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

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

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

27. The Tribunal is required to have regard to paragraphs 18, 19 and 20 of Part 1 of Schedule 1 of the 1983 Act when determining a new pitch fee. The implementation of those provisions was the first time that matters which could or could not be taken into account were specified.

28. Paragraph 18 provides that:

> "18(1) When determining the amount of the pitch fee particular regard shall be had to-

(a) any sums expended by the owner since the last review date on improvements .....
(aa) any deterioration in the condition, and any decrease in the amenity, of the site .....
(ab) any reduction in the services that the owner supplies to the site, pitch or mobile home and any deterioration in the quality of those services since the date on which this paragraph came into force (insofar as regard has not previously been had to that reduction or deterioration for the purposes of this sub- paragraph.
....."

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

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

"Unless this would be unreasonable having regard to paragraph 18(1), there is a presumption that the pitch fee shall increase or decrease by a percentage which is not more than any percentage increase or decrease in the retail price index calculated by reference only to-
(a) the latest index, and
(b) index published for the month which was 12 months before that to which the latest index relates."

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

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

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

"22. The effect of these provisions as a whole is that, unless a change in the pitch fee is agreed between the owner of the site and the occupier, the pitch fee will remain at the same level unless the RPT considers it reasonable for the fee to be changed. If the RPT decides that it is reasonable for the fee to be changed, then the amount of the change is in its discretion, provided that it must have "particular regard" to the factors in paragraph 18(1), and that it must not take into account of the costs referred to in paragraph 19 incurred by the owner in connection with expanding the site. It must also apply the presumption in paragraph 20(1) that there shall be an increase (or decrease)

no greater than the percentage change in the RPI since the last review date unless that would be unreasonable having regard to the factors in paragraph 18(1). In practice that presumption usually means that annual RPI increases are treated as a right of the owner.

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

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

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

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

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

36. Martin Rodger KC continued:

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

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

"The FTT is given a very strong steer that a change in RPI in the previous 12 months will make it reasonable for the pitch fee to be changed by that amount, but is provided with only limited guidance on what other factors it ought to take into account"

38. The Upper Tribunal went on in *Britaniacrest* to suggest that it could have expressed itself better in *Sayers*- and the Deputy President was again on

that Tribunal, one of two members- and then continued (albeit in the context of whether the increase could be greater):

> "31. ...The fundamental point to be noted is that an increase or decrease by reference to RPI is only a presumption; it is neither an entitlement nor a maximum, and in some cases it will only be a starting point of the determination. If there are factors which mean that a pitch fee increased only by RPI would nonetheless not be a reasonable pitch fee as contemplated by paragraph 16(b), the presumption of only an RPI increase may be rebutted.....
>
> 32. ..... If there are no such improvements the presumption remains a presumption rather than an entitlement or an inevitability."

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

> "33. We therefore agree ..... that the FTT has a wide discretion to vary the pitch fee to a level of a reasonable pitch fee taking into account all of the relevant circumstances, and that the increase in RPI in the previous 12 months is important, but it is not the only factor which may be taken into account."

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

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

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

42. It was further re-iterated that:

> "the factors which may displace the presumption are not limited to those set out in paragraph 18(1) but may include other factors."

43. Later in the judgment it was explained that where factors in paragraph 18(1) apply, the presumption does not arise at all, given the wording and structure of the provision, and in the absence of such factors it does.

44. Further explanation was given in paragraph 50 with regard to "other factors" that:

> "If there is no matter to which any of paragraph 18(1) in terms applies, then the presumption arises and it is necessary to consider whether any 'other factor' displaces it. By definition, this must be a factor to which considerable

> weight attaches. If it were a consideration of equal weight to RPI, then, applying the presumption, the scales would tip the balance in favour of RPI. Of course, it is not possible to be prescriptive as to precisely how much weight must be attached to an 'other factor' before it outweighs the presumption in favour of RPI. This must be a matter for the FTT in any particular case. What is required is that the decision maker recognises that the 'other factor' must have sufficient weight to outweigh the presumption in the context of the statutory scheme as a whole."

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

> "On the face of it, there does not appear to be any justification for limiting the nature or type of 'other factor' to which regard may be had. If an 'other factor' is not one to which "no regard shall be had" but neither is it one to which "particular regard shall be had", the logical consequence is that regard may be had to it. In my judgment this approach accords with the literal construction of the words of the statute. Further, it is one which would avoid potentially unfair and anomalous consequences."

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

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

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

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

48. In *Vyse*, other case authorities were also referred to and quoted, although it is not necessary to address all of those in this Decision.

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

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

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

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

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

> "(1) The direction in paragraph 16(b) that in the absence of agreement the pitch fee may be changed only "if the appropriate judicial body … considers it reasonable" for there to be a change is more than just a pre-condition; it imports a standard of reasonableness, to be applied in the context of the other statutory provisions, which should guide the tribunal when it is asked to determine the amount of a new pitch fee.
>
> (2) In every case "particular regard" must be had to the factors in paragraph 18(1), but these are not the only factors which may influence the amount by which it is reasonable for a pitch fee to change.
>
> (3) No weight may be given in any case to the factors identified in paragraphs 18(1A) and 19.
>
> (4) With those mandatory considerations well in mind the starting point is then the presumption in paragraph 20(A1) of an annual increase or reduction by no more than the change in RPI. This is a strong presumption, but it is neither an entitlement nor a maximum.
>
> (5) The effect of the presumption is that an increase (or decrease) "no more than" the change in RPI will be justified, unless one of the factors mentioned in paragraph 18(1) makes that limit unreasonable, in which case the presumption will not apply.
>
> (6) Even if none of the factors in paragraph 18(1) applies, some other important factor may nevertheless rebut the presumption and make it reasonable that a pitch fee should increase by a greater amount than the change in RPI."

53. This Tribunal understands that reference to an increase above RPI reflects the facts of *Kenyon* and changes below that level are to be approached in the same manner.

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

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

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

> 58. ..... I adhere to my previous view that factors not encompassed by paragraph 18(1) may nevertheless provide grounds on which the presumption of no more than RPI increases (or decreases) may be rebutted. If another weighty factor means that it is reasonable to vary the pitch fee by a different amount, effect may be given to that factor."

56. As noted above, the cases mentioned were primarily concerned with instances where the site owner sought to increase by more than RPI or, in a High Court case of *Charles Simpson*, the primary issue was whether there should be a decrease. The facts are not by some distance the same as this case, as discussed below. The Tribunal considers that the cases all sought to take the same approach and different terms used did not seek to affect the approach taken.

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

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

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

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

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

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

The Inspection

63. The Tribunal inspected the Park at 10am on the morning of the hearing. Mr Drew, Mrs Grivill and Mr Young attended on behalf of the Applicant. Mr Curtis and Mrs Terry, principally the former, attended on behalf of the Respondents.

64. The Tribunal looked around the site. That included the entrance road area and the fence/ wall/ flowerbed area shown in a number of the photographs. Some of the fencing was fairly new and in very good condition. An area was older and in poorer condition.

65. The Tribunal saw relatively new pathways and a machine along one path which it appeared was in the process of being repaired or renewed. There were a few weeds to the edges of paths and rather more of them in a small area by the laundry and a set of garages.

66. The tarmac to the parking spaces including that for Pitch 40 was in relatively poor condition. The only noted drain to the road/ parking area communal space, situated in one corner of that contained a notable amount of plant debris, whether leaves or broken- down former leaves or similar, which looked likely to have some impact on ability for water to drain off.

67. Pitch 40 itself was set a little lower than the adjacent pitch. To the rear of the home itself was a flagged area, which included a shed. That was approximately set one foot lower than the remainder of the pitch. There was a small gravel area in the middle of the flagged one.

68. On returning in the direction of the entrance to the site, the amount of overgrown foliage behind one run of garages was shown which the Tribunal was done to highlight asserted general lack of maintenance. What would have been an alley/ pathway was not easily accessible. However, it was not apparent that alley/ pathway ran anywhere else or was otherwise useful for any particular purpose.

69. The Tribunal was finally shown a long communal alleyway/ path out of the site which had different surfaces for different sections, the final long portion being gravel. That suffered a little from weeds but nothing which the Tribunal considered significant or long- established.

70. It had explained that the Tribunal would not take evidence at the inspection and that would be dealt with in the hearing. However, the Tribunal records certain matters which were mentioned and which amounted to evidence, considering it appropriate to do so.

71. It was said by both Mr Curtis and the Applicant that the wall and flowerbed area by the entrance below the fence formed part of the site. Comments were made by Mr Curtis regarding part of the fence along the entrance not having been painted. Mr Drew said that the fences belonged to the houses which backed onto the entrance road. Mr Curtis suggested they were or should be owned 50- 50 between the houses and the site. It was said that someone had fallen over on one of the paths which had been replaced, which was why it had been replaced with a slope. Mrs Terry indicated that the flooding had been to the flagged area described above. She said that the last flooding of her pitch had been two or three years ago.

The Hearing

72. The application was heard on 17th October 2023 at Torquay and Newton Abbot County and Family Court. The Tribunal and the parties attended in person.

73. The Applicant was represented by Mr Steve Drew. Mrs Grivill also attended. The 1st Respondents represented themselves. The 2nd Respondent did not attend. The Tribunal received oral evidence from Mr Drew on behalf of the Applicant and Mr Curtis on behalf of the 1st Respondents.

74. Mr Drew corrected his statement by explaining that the Applicant had acquire the Park in April 2022. Mr Drew was questioned by Mrs Curtis for her husband and herself and then by the Tribunal. Mr Curtis was briefly questioned by Mr Drew and then by the Tribunal.

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

76. Mr Drew also referred to a statement from Mr Young, the manager in charge of the Park. However, as the Tribunal explained, no such statement was in the bundle. He also sought to rely on maintenance being recorded maintenance records, but those were not in the bundle either.

Procedural matters

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

78. The Notice and prescribed form proposing the new pitch fee were served more than 28 days prior to the review date of 1st January 2023. The Application to the Tribunal to determine the pitch fee made on 9th March 2022 was within the period starting 28 days to three months after the

review date. The form indicated that the Applicant had applied the RPI of 14.2% applying the RPI figure published in October 2022.

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

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

Consideration of the parties' cases and findings of fact

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

82. The Tribunal takes each limb of argument in turn, first the matters related to the condition of the Park as referred to above. Secondly, the Tribunal refers to the Respondents' wider arguments about the level of the increase.

Issues raised by the Respondents as to the condition of the Park

83. The Tribunal carefully considered what it had seen at the inspection and the evidence presented by the parties at the hearing and in writing. It is stating the obvious to say that the Tribunal did not see the condition of any part of the Park as at the pitch fee review date or at any previous date. The Tribunal did see the condition as at the date of inspection some months later and could derive some assistance in respect of certain particular elements of the site as at the date of the photographs from the 1st Respondents taken during the course of the proceedings.

84. The Tribunal noted that the Applicant had purchased the site relatively recently and that it accepted that there was maintenance needed. That suggested in principal that the condition of the site may have deteriorated in the meantime. The Applicant's case accepted that some maintenance and upgrading was required and said that matters requiring attention were being addressed, suggesting the site would be in what even the Applicant would regard as the appropriate condition only at a later time. Hence, there was a prospect that the condition had deteriorated over a period.

85. However, there was almost no actual evidence of a previous condition which the Tribunal could identify and so inevitably nothing from which the Tribunal could assess whether there had been any deterioration or to what extent.

86. Mr Drew explained in evidence that the Park was managed from New Park, another site owned by the Applicant nearby. He contended that there was much greater presence than under the previous ownership. He was not

able to give first hand evidence regarding the amount of maintenance or the contents of the records said to exist. Mr Curtis disputed that, suggesting more limited time spent to Mr Drew but that, it was established, related to matters beyond Mr Drew's knowledge.

87. Whilst there were matters requiring attention, the Tribunal considered those were of a relatively modest nature for these purposes. There may be substantial invasive plant growth and weeds that have clearly taken a significant time to become so established and are sufficiently marked to contribute to a conclusion that the condition of the site has deteriorated and potentially that amenity has declined. This was not such a case.

88. Rather, the Tribunal determined that the small weeds seen could have grown in quite a short time and were of a nature that will arise regularly and will need to be dealt with regularly. The nature of them suggested that steps had been taken by the Applicant from time to time and that the weeds had appeared subsequently. The larger weeds by the laundry did not so obviously fit that pattern and seemed to have been allowed to grow for somewhat longer. The Tribunal considered that they ought to have been dealt with sooner. Mr Drew accepted in evidence that work was required. However, the extent to which there had previously been weeds in that area and the extent to which they had previously been attended to was not demonstrated. The impact of any increase in weeds to such a small area was considered to be very minor.

89. The overgrown foliage behind the two blocks of garages appeared to have probably grown somewhat from Spring onwards and may have been rather less overgrown prior to that. It was in need of some attention but equally as the area was of no obvious use, the Tribunal did not consider it ought to be a priority for attention and did consider that over-grown nature of the area to be of only modest note. Mr Drew said in evidence that Mr Curtis had pointed the area out to the Applicant's personnel but that they couldn't get into the area as there was a wasps' nest and until that was no longer present no work could be started. The Tribunal accepted that explanation as to lack of work in the recent period. More relevant to this case, the Tribunal also noted that the area was pointed out at the site inspection but had not been mentioned in the Respondents' written cases, which also suggested the over- grown nature of the area may post- date or predominantly post- date the pitch fee review date.

90. The Tribunal understood and sympathised with the concern of Mrs Terry regarding the flooding of the lower flagged area of her pitch. The Tribunal accepted that flooding had occurred, although it should be noted that flooding was not easily visible on the photographs which she sought to provide of that. There were areas which may well have been water but it was not possible to make a finding of that.

91. The Tribunal considered that the single drain to the road/ parking area outside Pitch 40 was inadequate and that more drainage ought to be provided. However, the Tribunal was unable to identify any related deterioration in condition of the site or decline in amenity as at the pitch

fee review date. It was difficult to discern the period of time over which the debris in the drain had accumulated but that time was not necessarily more than a number of weeks. The Tribunal considered it unlikely any of that had been present some months earlier, much as there could have been other debris unknown to the Tribunal. In any event, that last time that flooding had affected Pitch 40 had, firstly, been long before the pitch fee review date and, secondly, had been caused by matters unknown. There was in particular nothing to suggest that the flooding was other than the effects of wet weather and a lower lying area of pitch, and nothing to indicate it related to any deterioration in the Park.

92. The photographs taken by the 1st Respondents also showed an area of road covered by a layer of water but which appeared to be lower down a slope than the drain shown- and so would not drain into it. The indication was that only some water running down was directed into the drain by any camber or similar. However, there was nothing which demonstrated that anything had changed, in particular any defect to the drain. The Tribunal had nothing from which it could identify the specific cause and deterioration or decline.

93. For completeness, the Tribunal records that photographs taken by the 1st Respondents also showed leaves and apparent moss growth to the edge of a road. However, there was no way of knowing for how long those had been present and the Tribunal did not in any event consider that they were of more than marginal relevance.

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

95. Before moving on, the Tribunal makes it clear that it accepted the evidence of Mr Drew that there had been some matters requiring attention at the park. Similarly, the Tribunal trusts that the Applicant will attend to the weeds and overgrown foliage and will continue the work on pathways to ensure that the park is as well- maintained and pleasant to live in as reasonable. In addition to the flushing of drains which the Applicant said in its statement signed by Mr Drew in reply to the 2nd Respondent's case would be undertaken by a contractor when there next is flooding, the Applicant may consider ensuring that the drain to the particular parking areas is regularly checked and may also consider that one or more additional drains would be helpful. Nevertheless, none of that had any relevance to the decision made in these cases.

Wider matters raised about the level of the increase- RPI

96. The Respondents' case was expressed slightly different by the 1st Respondents and the 2nd Respondent, but the essence was the same. As noted above, the proposed increase was of the rate of increase in RPI, 14.2%.

97. The 1st Respondents referred to the increase in the pitch fee as being "way too much" in the economic climate. They observed that no-one they knew of had received a pay rise of that level. In addition, they referred to being in receipt of state pension and also the rising costs of food and utilities. They contended that 6% was an appropriate level of increase, Mr Curtis adding in oral evidence that they were aware of another site owner nearby increasing by that amount.

98. It was also said that the pitch fees for the Park are one of the highest in the area. However, on the one hand no evidence of that was provided. On the other hand, there is no market level for pitch fees and so the pitch fees on another site, or even on the next pitch, are of no relevance to the determination of the pitch fee for a given pitch.

99. Reference was further made to significant discounts offered by the Applicant to park home- owners who paid the pitch fee in one payment or who set up a direct debit but not, the Respondents observed, if payment is made by standing order.

100. The 2nd Respondent commented on the fact that previous increases had been at the level of increase of her pension. She asserted in her written cases that a significantly lower level of increase- 4%- was reasonable and referred to the general rise in the cost of living. Mrs Terry referred to contacting her MP about the law being changed, although as explained below that has in any event happened. For completeness, a point was also made about water charges, mentioned here solely for the purpose of identifying that such charges do not form part of the pitch fee and do not impact on the determination made.

101. The Applicant said nothing about any of the above matters in their original written case. In its statement signed by Mr Drew with regard to the 1st Respondents' case, the Applicant said that the increase in line with the rise in RPI reflected business cost. The Applicant stated in the statement signed by Mr Drew in reply to the 2nd Respondent's case that the Applicant relied upon the presumption of an increase in line with the increase in RPI and said the increase was in line with that. The Tribunal appreciates that the Applicant sought to keep its responses succinct but would have been assisted by more information in these instances.

102. The Tribunal enquired of Mr Drew what consideration had been given to the level of increase. He replied that considerable time had been given over to deciding the level of increase to seek. The Applicant had agreed to seek the increase "provided for" but to increase discounts offered. The discount did not reduce the underlying fee from which the next pitch fee would be calculated. Mr Drew explained that was because direct debit was the most efficient way for it to receive income. Mr Curtis queried why the discounts were not available to payers by standing order, the answer to which was that efficiency.

103. The Tribunal further asked whether the Applicant had increased by RPI because it could or because of, for example, any identified works and a

budget. Mr Curtis subsequently asked a very similar question. Mr Drew answered that the pitch fees were essentially increased in line with expectations in the agreement and the 1983 Act. He added that the level impacts on resources and revenue.

104. In response to query as to the consideration given to the finance of residents regarding the level of increase, Mr Drew accepted that it was a large increase to ask of residents but referred to costs increasing and repeated that the Applicant had taken account of the increase by way of significant discounts being offered (for particular payment methods).

105. Mr Drew stated, in reply to a subsequent question about increase in the Applicant's costs that the cost of tarmac has gone up 22%. He conceded that no tarmac was anticipated to be used on the Park this year. Mr Drew also accepted that there had been an analysis of increased costs for the Park and that consideration had been of general business costs. In response to further clarification sought by the Tribunal he said that the Applicant owns fifty parks and had not considered matters at a park- by-park level.

106. The Tribunal pressed Mr Drew whether consideration had been given to an increase of 10.1% in line with, for example, the increase in pensions. Mr Curtis confirmed that figure to be correct or thereabouts. Mr Drew said that the business was simply following the provisions in the 1983 Act. He stressed the Applicant sought to increase in line with those provisions when given the opportunity to clarify any of his evidence.

107. Mr Drew re- iterated the point in closing that the business had reviewed the pitch fee in line with the schedule to the 1983 Act and in line with RPI. He also re-iterated about the discounts. Mr Curtis similarly repeated the lack of availability of discount for payers by standing order.

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

109. The Applicant did not provide any documentary evidence in this case as to any increase in costs that it had encountered in relation to this particular Park. The Applicant had, the Tribunal found on the evidence, failed to prove that an increase by the level of RPI was appropriate in the event that the presumption of an increase by RPI was rebutted.

110. The Applicant also did not, it should be added, provide any evidence or otherwise run any argument, that a rise by RPI, or any other rise, was

appropriate because of an increase in the value of the right to station the Respondents' park homes on the particular pitches. Nothing was said about that right to station the park home element of the pitch fee. Hence the Tribunal addresses in brief terms, there being no argument to recount and consequently nothing else to say.

111. The Tribunal recognises that the right to station a park home on a pitch inevitably has a value and that the value could be found to increase year by year. Neither an increase by RPI or otherwise is necessarily a consequence only of increased costs. However, the Tribunal found that the Applicant had failed to prove that the pitch fee should increase for that reason.

112. It is a matter for the Applicant as to the evidence it adduces. However, the Tribunal decides matters on the evidence before it rather than seeking to guess what evidence there might have been had a party chosen to provide it. Hence if a party fails to adduce evidence which might have been relevant, it may bear consequences of that, dependent here on whether or not it can rely on the presumption in the event. The Tribunal does not speculate about the evidence which may have been available and rather considered the evidence presented to it.

Application of the above to the law

113. As identified above, but it does no harm to be reminded of them, the first question for the Tribunal to determine is whether an increase in the pitch fee is reasonable. The second question is whether the level of the new pitch fee is one which would increase (in this case) the existing pitch fee by the RPI or is a different level.

114. There were no factors advanced said to support a higher sum than produced by an increase in RPI. There is also, in light of the determinations about the specific items above, no deterioration of the site or reduction in services and no other matter specified in paragraph 18.1 to which "particular regard shall be had" in respect of any reduction below the level of RPI.

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

Is an increase to the pitch fee reasonable?

116. Whilst there was a lack of documentary evidence and only limited oral evidence from Mr Drew which identifiably addresses the costs of operating the Park, the Tribunal accepts it as highly likely that the Applicant's such costs have increased to some extent. Mr Drew was sufficiently clear about that and the Tribunal has no reason to doubt him. It is abundantly clear

from frequent reference on the news and current affairs programmes, and indeed from day to day lives, that various costs have increased and are increasing, particularly for example building materials.

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

118. The Tribunal considers the bar for an increase (or decrease in relevant circumstances) is a relatively low one. Whilst no change at all may be appropriate if all circumstances remain entirely the same and no addition purely for the fact of use of the pitch were appropriate in the particular case, the Tribunal considers that if the site owner can point to some change or a change is accepted by the pitch fee occupier, it would be rare that the Tribunal did not find a change to be reasonable. The Tribunal repeats that there was no evidence, or indeed contention, that the value of the use of the pitch had altered.

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

What is the reasonable level of the new pitch fee?

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

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

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

121. It is of course the question of an increase below the level of RPI which is the relevant scenario for the Tribunal to consider given the Respondents' cases.

122. The Tribunal appreciates that the individual financial position of the occupiers of a given pitch is not one of the identified relevant considerations under the 1983 Act, and it is difficult to identify how it might carry sufficient weight to otherwise be an appropriate factor which might rebut the wide RPI presumption. As the Respondent's case was not advanced in such specific terms, the Tribunal does not dwell on the point.

123. The Tribunal also observes that whilst the nature of the discounts offered by the Applicant benefit some residents and not others, which the Tribunal can well understand causes disquiet- and may favour those better able to pay and disadvantage those less able to pay in the first place, which is a less than ideal outcome- that discount is from the level of the pitch fee proposed and does not reduce the underlying pitch fee. It in any event has no relevance to the question for the Tribunal.

Arguments advanced by the Respondents

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

124. The case advanced by the Respondents is that the increase should be lower and specifically refer to the high rate of increase in RPI and the wider economic situation.

125. The Tribunal pauses to observe that most pitch fee increases are not actively opposed, much as they are often not actively agreed to. Where increases are opposed, the opposition is usually that there are assertions of elements of deterioration to the site, decline in amenity or reduced services.

126. Prior to this calendar year, the Tribunal cannot identify there to have been arguments raised of impact on an increase to the extent of the rise in RPI, because of the extent of the increase produced and/ or the economic climate. The Tribunal considers this is just the sort of matter into which the Tribunal should be extremely slow to venture, unless the argument has been specifically raised by the occupier of the pitch.

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

128. The Tribunal could not properly consider the question of whether any increase in the pitch fee is realistic for the occupiers of this Park more generally, even if it wished to. The Tribunal can take a relatively well-educated guess from its experience of park home cases, but it declines to guess.

129. It has been identified above that the Applicant failed to justify the RPI increase to any extent other than identifying the presumption that such an increase is permitted and referring in very general terms to increased business cost. The Applicant in contrast had, it was clearly explained in evidence, increased the pitch fee by RPI because the presumption was that there would be a rise by RPI and hence it had adopted that perceived maximum. Save for one particular examples of increase in the cost of

materials not relevant to the Park for the year in question, the Applicant did not specifically seek to otherwise justify the increase in the pitch fee.

130. The Tribunal has carefully noted the point identified in *Vyse* that:

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

131. The Tribunal has also had regard to the "good reason" for the reference to RPI. However, the Tribunal has also noted that is not the end of the matter because, as explained in *Vyse* amongst other cases, the presumption is rebuttable and RPI may be only part of the story.

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

133. In terms of the rise in RPI, the Tribunal notes that as at Spring 2020, just after the start of the Covid-19 pandemic, RPI stood at approximately 2.1%. By the following year it had risen a little to 2.9%. By October 2022, the relevant period for the level of RPI in these cases, RPI peaked at 14.2%.

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

135. Two considerations arise.

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

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

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

139. The Tribunal is similarly aware that pensions and welfare benefits had until rises mid this year generally increased below the rate of inflation and so too wages until the last couple of months, so some while after the increase sought by the Applicant. By inflation the Tribunal means the CPI, which has been the measure used by the UK Statistics Authority since 2013- see further below. Hence, there was a particular general cost of living issue experienced by most people in the country, which is generally accepted, the Tribunal considers, as occurring from Spring/ Summer 2022.

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

141. The Tribunal is additionally aware of the Mobile Homes (Pitch Fees) Act 2023 ("the 2023 Act"). Following the commencement date of that Act on 2nd July, the presumption in respect of pitch fees has become that any change shall not, subject to paragraph 18(1) or other factors of sufficient weight, exceed the Consumer Prices Index ("CPI") rather than the RPI. The next increase of pitch fees on the Park and any other park hereafter will attract a presumption of increase by CPI. The over-arching question of reasonableness will remain the same.

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

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

144. The Act, as it has become, reflects a commitment as far back as 2014 by the government to alter the provision in respect of pitch fees from the RPI. As is widely recognised the RPI used to commonly be referred to and be the basis for inflation figures and so on but has not been in widespread use for several years, ceasing to be the measure used by the UK Statistics Authority as mentioned above. RPI is therefore the cost of a basket of

goods but not the basket generally used. In Wales, a separate Act to the 2013 Act was introduced that same year, the Mobile Homes (Wales) Act 2013 which replaced reference to RPI with CPI.

145. It is notable, and far from irrelevant, that the CPI produces, or at least so far has produced, a lower rate of increase than does the RPI. The CPI figure for October 2022, the complete month before the Notice served by the Applicant was 11.1%: RPI was 14.2% as the Applicant set out in the Notice. The different at the time of the Notice was therefore 3.1%, a difference which is at about or greater than the rise in RPI itself in total for some of the previous years from 2013 onwards and not far short of the remainder.

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

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

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

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

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

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

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

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

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

> "RPI is generally higher than other inflationary indices and is no longer used as a measure of inflation",

continuing by making various observations about effects of rises in line with RPI. A number of other interesting comments were made in the short debate regarding park homes and residents of them, although not relevant to this Decision.

152. As the Tribunal understands matters, in fact incomes were generally increasing below CPI as well, although nothing specific turns on that here and more recently that may have changed, albeit some months after the pitch fee review date.

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

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

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

156. The pitch fee for 1st January 2023 onwards as determined by the Tribunal is necessarily the existing pitch fee as and when the Applicant serves the next Pitch Fee Review Notice. Consequently, if the pitch fee for the following year is to increase, the presumption will be of a change to

reflect the rise in CPI- RPI having been replaced as the relevant index- for the twelve months to October 2023 from the level in October 2022 with the increase being from the figure for the 1st January 2023 fee.

157. Thankfully, the CPI rate of increase is falling. The figures for the 12 months until October 2023 is anticipated to be a little over 5%. The Tribunal of course itself sought out the above statistics in the immediately preceding paragraphs, although they are readily and publicly available from the Office for National Statistics or similar. The Tribunal expects that analysis of them is also available but does not consider it appropriate to seek any such, which analysis may be open to disagreement. The Tribunal considers that rate of increase reducing is quite different from actual prices reducing- prices are not reducing, they are simply increasing more slowly.

158. The pitch fee for 1st January 2023 will have an ongoing impact. Indeed, that is not only for the following year but also for every later year, the later pitch fees all being affected by the level of the existing fee at the time which will itself have been affected by previous levels of fee.

159. A rise by the unusually, since 2013 at least, high level of RPI in October 2022 would fix the base level at or based on that rate in future years and so the pitch fee occupiers would continue to bear that. The Tribunal considers that this point is of less significance than the first one if taken in isolation, because future pitch fees will always start from previous ones, but of course it cannot be so taken in isolation.

Effect of the rebuttal of the presumption

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

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

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

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

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

165. The Tribunal is mindful of the basket of goods as effectively indicating an increase at the level of the rise in RPI reasonable and the Tribunal must consider that, even where the presumption does not apply. However, the Tribunal considers that if a rise by RPI is no longer a presumption, a rise by RPI making the pitch fee nevertheless reasonable and without any information about actual costs increasing at or about that level and/ or other matter demonstrating such a rise to produce the appropriate pitch fee, is not a viable argument and the Tribunal does not accept it.

166. Set against the background of there being no evidence of an increase in the value of the right to station the park home on the pitch and there being no argument that such value had increased and should contribute to the level of increase in the appropriate pitch fee, the Tribunal does not give weight to that right in respect of any increase, much as the Tribunal recognises that there is a value which has contributed to the pitch fee historically.

167. The Applicant has failed to demonstrate that a pitch fee with an RPI increase on the previous pitch fee is reasonable. Neither have the Respondents demonstrated any specific level of pitch fee to be reasonable. Neither of the parties have provided anything persuasive about a level of pitch fee as the reasonable level.

168. The Respondents had suggested an alternative percentage. The Tribunal considers that a 4% to 6% increase would have been a generous approach for the Applicant to take. It is not objectively the appropriate level of increase producing the reasonable pitch fee, rather the reasonable level of pitch fee is higher than the previous pitch fee by a greater percentage.

169. The Tribunal is mindful that the Applicant has not demonstrated that a 4% to 6% rise would fail to cover its increase in costs or reduce its profit and has not adduced any specific evidence or made any specific submissions to counter that level of increase. However, applying its experience, the Tribunal considers that such a level of increase so far below RPI (or indeed CPI insofar as of any relevance as a guide) is on balance unlikely to produce the reasonable level of pitch fee.

170. The 2023 Act which now provides for future rises to have a presumption of a rise by CPI is now in force. However, the effect is not

retrospective, in the same way that legislation rarely is and so does not apply to this pitch fee. As it happens, the CPI figure of 11.1% is relatively close to midway between the figures advanced by the parties but equally the Tribunal notes that the basket of goods and services which is considered in calculating CPI is not particularly well suited to demonstrating the increased costs to a business such as the Applicant and so the reasonable level following rebuttal of the presumption, much as it is the measure Parliament has implemented as the maximum to which the presumption itself applies for pitch fee reviews since July 2023. Hence CPI may provide a degree of guidance, despite not being the presumed increase for the time of this review, but guidance is as high as matters can be put.

171. In the absence of anything documented from the Applicant to work with and with only general indications of increase in the costs of matters the relevance of which to the operation of the Park is unclear, but with a 4% to 6% increase not creating what is considered to be a reasonable level of pitch fee, the Tribunal is left with the reasonable pitch fee being on balance a figure somewhat above 6% but not demonstrated to be 14.2%.

172. The Tribunal has carefully considered the question of what level of increase in the pitch fee is appropriate in order to arrive at the reasonable pitch fee and in doing so has applied its expertise and taking matters in the round, the Tribunal considers that a pitch fee which increases by 10% as compared to the existing pitch fee produces the reasonable figure for the new pitch fee.

Reasonable pitch fee

173. The Tribunal therefore determines the reasonable pitch fee for each of Pitch 17 and Pitch 40 from 1st January 2023 to be £209.42.

Costs/ Fees

174. The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party (which has not been remitted) pursuant to rule 13(2) of The Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013. The Applicant paid an application fee of £20.00 in respect of each application.

175. Whilst the Tribunal has reached the conclusion set out above that the should be lower than the Applicant sought, nevertheless the Applicant has achieved an increase in the pitch fee of most of what it sought and the specific points raised by the Respondents about maintenance of the Park and related were successfully responded to by the Applicant. The Respondents have been successful with their wider arguments, which exercised the Tribunal at some length, to an extent.

176. Any party might have agreed a different outcome to the one they ideally sought. It might be that negotiations could have resulted in an outcome of or very close to this one. Both sides could bear some criticism for not doing more to reach an agreement on the level of pitch fee (being different for

example from an underlying pitch fee against which a sum is credited). However, in the absence of agreement and short of leaving the pitch fee at the level for the previous year, the Applicant was effectively compelled to make an application to the Tribunal in order to achieve increase.

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

Right to Appeal

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

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

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

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