FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/45UB/PHI/2023/0167 (1) and CHI/45UB/PHI/2023/0175 (2)
Property	**:**	22 Gladelands Park (1) and 93 Gladelands Park (2) Ringwood Road, Ferndown, BH22 9BW
Applicant	**:**	The Berkeley Leisure Group Ltd
Representative	**:**	Mr Steve Drew
Respondents	**:**	Mr John White and Mrs Sara White (1) Ms R Baker (2)
Representative	**:**	---
Type of Application	**:**	Review of Pitch Fee: Mobile Homes Act 1983 (as amended)
Tribunal Members	**:**	Judge J Dobson Mr K Ridgeway MRICS
Date of Hearing	**:**	18th October 2023
Date of Decision	**:**	17th November 2023

DECISION

Summary of Decision

1. **The Tribunal determines that the pitch fee for 22 Gladelands Park is £182.16 with effect from 1st January 2023.**

2. **The Tribunal determines that the pitch fee for 93 Gladelands Park is £216.68 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 [215- 220 (1) and 359- 366 (2)] for a determination of a revised pitch fee of £189.22 per month payable by the 1st Respondents with effect from 1st January 2023 in respect of 22 Gladelands Park ("Pitch 22") and of £225.06 per month payable by the 1st Respondents with effect from 1st January 2023 in respect of 93 Gladelands Park ("Pitch 93").

5. Gladelands Park, Ringwood Road, Ferndown, BH22 9BW ("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 site is licensed [21- 29].

6. The 1st Respondents Mr John White and Mrs Sara White are entitled to station their park home on Pitch 22 by virtue of an agreement under the 1983 Act first entered into on 27th April 2000 and assigned to them on 4th February 2014 [226- 242]. The 2nd Respondent Ms Baker is entitled to station her park home on Pitch 93 by virtue of an agreement under the 1983 Act entered into on 9th December 2005 and assigned to be on 26th February 2016 [370- 391]. 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 17th November 2022 [243- 251 (1) and 392- 400 (2)], 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" 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 22 was £165.60 and of Pitch 93 was £196.98. The RPI was 14.2% taking "the RPI Adjustment", as described, as the percentage increase in the RPI over 12 months for October 2022. A small additional charge was applied to the pitch fees for each pitch of £0.36 for a Local Authority Licensing charge but a relevant deduction was also applied of £0.22 described as a previous year recoverable cost. No water, sewerage, gas and electricity or any other services are included in the pitch fee. A separate charge, so not part of the pitch fee, was referred to for water and sewerage.

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 services provided to the Park [225]. The 1st Respondents' written case was that management cover on the park had reduced and secretarial cover had halved over the last year. The Tribunal understood that argument to be that there had been reduction in the services provided to the Park by the Applicant. The 2nd Respondent raised five separate points, four of which related to the condition of the Park, namely poor maintenance, flooding, lack of amenities and poor telephone/ internet service. Both Respondents raised issues with the level of increase in the pitch fee. The Applicant denied most of those matters.

13. The Tribunal decided that an oral hearing was necessary in light of the disputes as to facts and to obtain further information with regard to the issues raised. Further Directions were issued dated 8th September 2023, which also included providing for the hearing. Those identified two particular issues to be determined by the Tribunal, namely:

    i) whether issues raised regarding the Park were sufficient or the to be 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. No site inspection was directed.

15. 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 have the range of page numbers that they do.

16. Whilst the Tribunal makes it clear that it has read the parts of the bundle related to Pitch 22 and Pitch 93, 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 [ ].

17. 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

18. 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.

19. 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.

20. 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.

21. 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.

22. 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 the 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.

23. 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.

24. 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."

25. 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.

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

27. 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.

28. 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.

29. 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.

....."

30. Necessarily, any such matters need to be demonstrated specifically. As amended by the 2013 Act, paragraph 18 and paragraph 19 set out other matters to which no regard shall be had or otherwise which will not be taken account of.

31. 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."

32. 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.

33. 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.

34. 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."

35. 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.

36. 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.

37. Martin Rodger KC continued:

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

38. In *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"

39. 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."

40. 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."

41. 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.

42. 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."

43. 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."

44. 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.

45. 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."

46. 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."

47. 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."

48. 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."

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

50. 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.

51. 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."

52. 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.

53. 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."

54. 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.

55. 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".

56. 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."

57. As noted above, the cases mentioned were primarily concerned with instances where the site owner sought to increase by more than RPI (although in a High Court case of *Charles Simpson Organisation Limited v Martin Redshaw & another* [2010] 2514 (Ch) (CH/AP/391), 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.

58. 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.

59. 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.

60. 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.

61. 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.

62. 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.

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

The Hearing

64. The application was heard on 18th October 2023 with the Judge sitting at Havant Justice Centre and the other attendees attending remotely.

65. The Applicant was represented by Mr Steve Drew. Ms Chapman also attended. The 1st Respondents were represented by Mr White. The 2nd Respondent did not attend. The Tribunal received oral evidence from Mr Drew on behalf of the Applicant and from Mr White on behalf of the 1st Respondents. Mr Drew was questioned by Mr White and then by the Tribunal. Mr Curtis was briefly questioned by Mr Drew and then by the Tribunal.

66. The Tribunal is grateful to both Mr Drew and Mr White for their assistance in this case.

Procedural matters

67. 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.

68. 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 2023 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.

69. 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.

70. 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

71. 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.

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

Specific issues raised by the Respondents as to the condition of the Park and services provided

73. The Tribunal carefully considered 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 could not derive any assistance in respect of any particular elements of the site from photographs, none being provided by the parties during the course of the proceedings.

74. The Tribunal considers it to therefore be appropriate to explain why it did not determine it necessary to inspect. Whilst no inspection had been directed, it would have been entirely open to the Tribunal to decide to inspect in the event that the Tribunal had determined that an inspection may assist it in determining any matters in dispute.

75. The reason is, as explained further below, that none of the matters raised were matters in respect of which, having read the written evidence and heard the oral evidence, the Tribunal considered that an inspection would assist. The 2nd Respondent had not, as noted above, attended to provide anything additional to her written case which might have added any weight to her case and altered the approach to inspecting.

76. The Tribunal takes each matter raised by the Respondents about the Park in turn, starting with that mentioned by the 1st Respondents.

Decline in management and secretarial cover

77. Mr and Mrs White said in their written response to the application, which was established to have been written by Mrs White but with input from both and be on behalf of both, that the majority of residents are elderly and that they need a point of contact and a face. They asserted the decline the header identifies. Mr Drew did not ask any questions of Mr White with regard to this issue.

78. The Tribunal additionally noted that within one of the 2nd Respondent's points, there was reference to the manager formerly being a visible presence around the Park but that had declined. She asserted that she barely saw anyone other than a female member of staff in the office.

79. Mr Drew said in response to cross- examination that the Park was managed and the office was staffed. He said that when the office was not open, the manager's phone was on- and hence he could be contacted. Mr Drew noted that management had in the past been undertaken by a husband- and- wife team but, whilst plainly arrangements had changed, there remained a manager to deal with maintenance and matters of

administration. It was accepted that the opening hours of the office had been reduced but on the basis of little use being made of it by the residents.

80. In closing, Mr White submitted that there was not sufficient cover, giving an example of a resident wishing to view CCTV but there being no-one available. That had not been mention in evidence and so was being raised for the first time in closing comments but without any evidence on which to base it. Mr Drew contended that the office was manned in the mornings and the manager otherwise available. The Tribunal noted that the assertion of the office being manned in the morning was not based on any evidence which had been given either orally or in writing. The Tribunal was not prepared to accept new assertions in closing with no prior evidence on which to found it.

81. The Tribunal took note of the contended preference of residents, albeit with some caution where no other resident had maintained an objection raising that point. However, the Tribunal found that the 1st Respondents had failed to demonstrate that any change in the system of management of the Park had amounted to a reduction in services provided to the Park and determined that there was no matter relevant to the determination of the pitch fee.

Flooding of the Park

82. The first point made by the 2nd Respondent in her written response was that the Park floods. She accepted that the Park could not fully control the matter but asserted that little was done to alleviate the issue, with drainage being unable to cope. The Applicant's written reply was that any flooding was caused by a blocked water course outside of the boundaries of the Park and so beyond the control of the Applicant.

83. Mr White did not add anything about flooding in his oral case: the 1st Respondents had not raised any issue in their written one. Mr Drew said in oral evidence in response the Tribunal raising the 2nd Respondent's case on the matter, that the Park is situated in a low- level area and floods, which he accepted it did, as a natural consequence of its location. He hypothesised that the cause was a blocked culvert. However, it was apparent that he did not know that and so the written assertion was also found to the Tribunal to be a guess, perhaps an educated one but a guess all the same. Mr Drew said that there had been a problem several years ago and that there had been a recurrence last year.

84. The Tribunal found that the 2nd Respondent had not demonstrated any step which the Applicant ought to have taken and in particular anything which had deteriorated in terms of the condition of the Park. The Tribunal accepted that there had been flooding on the Park and understood why that may have been a particular concern to the 2nd Respondent where it had occurred the previous year.

85. The Tribunal found a lack of evidence on which to make any further finding in favour of the 2nd Respondent that there had been deterioration or any other matter relevant to the pitch fee. The Tribunal does urge the

Applicant to seek to ensure that whoever is responsible for any blocked culvert or similar takes action to address that and to consider whether additional drainage measures can be put in place on the Park but as those matters fall well outside of the current determination, the Tribunal says nothing more.

Poor telephone /internet service

86. The 2nd Respondent said that British Telecom had offered to run a new telephone (system?) and fibre throughout the Park but that the Applicant had declined due to cost and disruption. She said that phone outages are suffered with services being lost for several hours.

87. The Applicant's written statement in reply said that BT had not approached the Applicant about laying cables across the Park. He had nothing to add in oral evidence and inevitably was not challenged by the 2nd Respondent given that she was not present. Mr White did not make any comment whether in evidence or in closing.

88. The Tribunal found that it had no way of knowing why the 2nd Respondent believed BT had contacted the Applicant. However, where there was a written assertion not supported by other evidence and the 2nd Respondent had declined to attend to enable her assertion to be tested, the Tribunal found that it was at least as likely that the Applicant was correct. The 2nd Respondent in failing to demonstrate her case to be more likely, had failed to prove it.

Lack of amenities

89. The 2nd Respondent's next point was that the Park has no amenities or communal areas, referring to other parks having a clubhouse or shop. The statement of Mr Drew said that there had never been a clubhouse or shop on the Park. That statement did not appear to the Tribunal inconsistent with the 2nd Respondent's case and in any event was not challenged.

90. The Tribunal found that there has never been any clubhouse or shop and so the position was that the Park lacked those amenities but had always done so and there could be no decline in the level of amenities which had never existed.

91. The Tribunal also considered that in light of the lack of any pitch fee market and every pitch fee being specific, the level of amenities on any given other site had no relevance to the appropriate level of pitch fee for 2023 for the 2nd Respondent's pitch.

Condition of the Park

92. The final point made by the 2nd Respondent was primarily about the condition of homes on the Park rather than the areas of the Park managed by the Applicant. The Applicant implicitly accepted that the appearance and condition of some of the homes on the Park required attention.

93. The Tribunal finds that there is no evidence of any specific condition of any given home to enable any assessment of the extent to which that may detract from the Park as a whole, even assuming that to be relevant to the pitch fee. The Tribunal had no evidence of such condition at any previous time to identify deterioration to any extent over any period. The Tribunal was not persuaded that the condition of individual homes on the Park which was the responsibility of the home- owners should be equated with the condition of the Park for the purpose of considering pitch fees but in any event found that the 2nd Respondent had failed to prove any deterioration in any event.

Other matters mentioned in the hearing

94. Mr White sought to add in the hearing other matters about the Park. However, none of that was identifiable from the 1st Respondent's written case, or indeed that of the 2nd Respondent. Nevertheless, Mr Drew was apparently entirely capable of dealing with the matters and indeed had mentioned one of them himself- the boundaries- in response to a more general point, so the Tribunal allowed limited questioning on that.

95. Mr White contended that to the opposite side of the Park to his pitch was a boundary between the Park and a Sainsburys' store. He said that only a portion of fence had been replaced and that there were brambles behind the fence causing damage to fencing. Mr Drew's response was that the fence is the responsibility of Sainsburys.

96. The Tribunal did not find the point to be of assistance. On the basis of the fence forming the boundary, it seemed to follow that the brambles were on land belonging to Sainsburys and were not within the Park. The 1st Respondents failed to prove that the fence was the responsibility of the Applicant or to demonstrate asserted deterioration in any event.

Conclusion

97. 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.

Wider matters raised about the level of the increase- RPI

98. 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%.

99. The 1st Respondents referred to the increase in pitch fee being "unacceptably high", although referring to an increase of 13% in fact lower than the actual 14.2%. They accepted an increase but asserted that "such a high increase is not justified". It was added that the increase was not in line with other rises in costs and that no information has been provided

"informing the park residents why increase of such a large amount needs to happen". It was said that they had proposed an increase of 5%, although saying "this obviously is a starting point".

100. The Tribunal pauses to observe that the 5% is therefore presented as a negotiating position and to that extent there is a potential issue about the fact that the Tribunal is aware of it, when it oughtn't to be. However, the Tribunal noted that no negotiation had ensued and considers that it can have regard to the 1st Respondents having proposed 5% as a matter of fact and put out of its mind any other aspects. Whilst the 5% is briefly mentioned below, it should be apparent that the figure has not affected the outcome of this Decision.

101. The 2nd Respondent commented on the fact that there are different fees for different pitches. However, as that reflects the original pitch fee negotiated plus historic rises to that and there is no wide market rate for pitch fees, the fact of there being differences is a simple reality both between one park and the next and, very commonly, within a given park. The matter has no relevance to the decision required of the Tribunal.

102. The remainder of the 2nd Respondent's point is that the Applicant always charges the maximum RPI increase and that has been nearly 20% over the last two years. She also accepted costs were rising but challenged what she described as "charging as much as you can because you can from people on limited means".

103. 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 followed increased business cost. The Applicant added 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.

104. The 2nd Respondent could not add anything to her case or challenge the case of the Applicant in the absence of attending the hearing. Mr White did not ask Mr Drew any questions about the level of increase. However, given the cases raised by the Respondents and in order to further explore matters, the Tribunal did ask Mr Drew some questions about matters within the arguments the Respondents had advanced. Mr White added on this topic when questioned by Mr Drew that he believed that a lot of residents did not agree with the increase but did not wish to get into debt. The Tribunal was mindful that there was no first- hand evidence of the views of any other residents and considered that it could give no weight to that assertion, albeit the relevance was doubtful in any event.

105. The Tribunal enquired of Mr Drew how the Applicant had arrived at the level of increase. He replied that that the business was simply following the provisions in the agreements and the 1983 Act, which he said sets out a

review at RPI or up to RPI. The Tribunal enquired why the Applicant had chosen the RPI rather than up to that. Mr Drew said that the business chose to increase "in line with regulations".

106. The Applicant had offered discounts for payment by direct debit, Mr Drew said. The Tribunal queried why the discounts were not available to payers by other methods. Mr Drew explained that was because direct debit was the most efficient way for it to receive income. He accepted that where residents took advantage of the discount, the business was able to sustain the reduced level of income it received. The Tribunal enquired what consideration had been given to the effect on the Applicant if every resident were to be able to take advantage of the discount. Mr Drew said that applying the discount, the level of increased pitch fee would be 11% and did not suggest that would have been problematic for the Applicant.

107. The Tribunal sought specific clarification as to whether any analysis had been undertaken of the costs involved in running the Park and the increase in those costs when determining the rise in pitch fee. Mr Drew said that the business was aware of costs increasing and particularly the cost of repairs on parks, which he said was taken into account. Mr Drew conceded that there had been no analysis of the increase in any costs for this Park and no assessment of whether a 14% increase was required in order to account for those costs and maintain the same return for the business, rather the Applicant had followed the regulations. Indeed, the Tribunal considered it was obvious that the Applicant did not require that increase because the level of discount offered reduced the income.

108. Mr Drew stated, in reply to a subsequent question that some elements of business cost had increased beyond 14%, although he provided no examples and had no other evidence to support what was said. He conceded that he referred to general business costs and could not say that they related to the Park.

109. Given that the Respondents had specifically mentioned it, the Tribunal asked Mr Drew why no information had been provided to residents of why the increase was to the level it was. Mr Drew noted that the letter with the Review Notice form explained about the RPI but accepted that no other detail was given.

110. Finally, as it was asserted by the 1st Respondents that the rise was not justified, the Tribunal enquired whether Mr Drew wished to provide any additional such justification. He replied that the Applicant sought to maintain the Park and amenity and sought to offset the rise by the discount scheme. Given that there was no evidence of the cost of maintaining the Park, the Tribunal did not find that added anything.

111. The Tribunal also sought from Mr White clarification of two other specific points made by Mr and Mrs White in their written case, namely that the increase was not in line with the increase in every day living costs and that it had not been justified. Mr White accepted that other costs had gone up, for example council tax by 5%, gas and electricity but he said that

the pitch fee rise was not in line with those and was too much. In relation to the increase being justified, Mr White referred back to the specific points made about condition and services rather than other justification because of cost and so there is nothing additional requiring recording.

112. Mr Drew re- iterated the point in closing that the business had proposed an increase in pitch fee in line with the 1983 Act and the agreements, being the existing pitch fee plus RPI. He also re-iterated about the discounts. Mr White noted that there would be a further increase in two and half months' time.

113. Whilst the Tribunal therefore received some very limited evidence about costs incurred by the Applicant generally increasing, the Tribunal found that there had been no adequate evidence of that, no adequate evidence of the overall effect of any increases in the Applicant's costs and no indication of the relevance of any increases to the costs of operating the Park and so the reasonable level of pitch fee to meet that and provide a level of profit (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. Neither had the Applicant considered those matters adequately in deciding the level of increase to seek.

114. 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.

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

Application of the above to the law

116. 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.

117. There were no factors advanced said to support a higher sum. 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.

118. 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?

119. 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.

120. The Respondents in any event did not argue that there ought not to be an increase, indeed 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.

121. 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.

122.

123. 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?

124. The Tribunal reminds itself of the sixth proposition identified in *Kenyon* (and as explained in slightly different but very similar terms in *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.

125. 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.

126. 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.

127. 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-

128. The case advanced by the Respondents is that the increase should be lower and specifically refer to the rate of increase in RPI and wider financial and economic matters.

129. 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.

130. 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.

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

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

133. 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 was clearly explained in evidence to have increased the pitch fee by RPI because the presumption was that there would be a rise by RPI 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.

134. 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."

135. 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.

136. 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.

137. 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%.

138. 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.

139. Two considerations arise.

140. 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.

141. 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.

142. 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.

143. 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.

144. 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.

145. 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.

146. 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.

147. 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.

148. 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.

149. 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.

150. 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.

151. 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."

152. 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.

153. 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……."

154. 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,"

155. 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.

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

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

158. 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.

159. 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.

160. 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.

161. 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.

162. 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.

163. 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.

164. 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

165. 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?

166. 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.

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

168. 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.

169. 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.

170. 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.

171. 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.

172. 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.

173. The 1st Respondents had suggested an alternative percentage of 5%. The Tribunal considers that a 5% 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.

174. The Tribunal is mindful that the Applicant has not demonstrated that a 5% 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.

175. 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% for October 2022 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.

176. 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 5% 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 5% but not demonstrated to be 14.2%.

177. 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

178. The Tribunal therefore determines the reasonable pitch fee for each of Pitch 22 from 1st January 2023 to be £182.16 and for Pitch 93 to be £216.68.

Costs/ Fees

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

180. 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.

181. 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.

182. 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.