FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/23UE/PHI/2023/0098 CHI/23UE/PHI/2023/0099 CHI/23UE/PHI/2023/0100
Properties	**:**	96, 119 and 121 Quedgeley Court Park, Greenhill Drive, Tuffley, Gloucester GL4 0LP
Applicant	**:**	Donaldson and Newman Ltd
Representative	**:**	Nicolas Newman
Respondents	**:**	Christine Spencer (96) Jackie Grange (119) Winston Ffrench (121)
Type of Application	**:**	Review of Pitch Fee: Mobile Homes Act 1983
Tribunal members	**:**	Judge David Clarke Paul Smith FRICS Michael Jenkinson

DETERMINATION AND STATEMENT OF REASONS

Determination

The increases proposed of 14.2% in the pitch fees in this case are unjustified, and the Tribunal determines that the level of the pitch fees should not rise by the statutory presumption but be reduced from an increase of 14.2% to an increase of 10%.

In the light of the factors to which the Tribunal is required to have particular regard, the Tribunal determines that there should be a further reduction of 3% to take account of the continued deterioration in the condition of the Site and the continuing loss of amenity of the Site. The pitch fees in this case are therefore to rise for the year 2023 by an increase of 7%.

The additional charge for the supply of water to each pitch amounting to an increase from £14.67 per calendar month to £18.74 per calendar month is upheld.

The calculation of those new fees now payable are as follows.

(1) **In the case of Christine Spencer, pitch number 96, the pitch fee for the year commencing 1 January 2023 increases from £140.27 by 7% to £150.09 plus the water charge of £18.74 making a total of £168.83.**

(2) **In the case of Jackie Grange, pitch number 119, the pitch fee for the year commencing 1 January 2023 increases from £140.27 by 7% to £150.09 plus the water charge of £18.74 making a total of £168.83.**

(3) **In the case of Winston Ffrench, pitch number 121, the basic pitch fee for the year commencing 1 January 2023 increases from £140.27 by 7% to £150.09 plus the water charge of £18.74 making a total of £168.83. If the additional charge for parking a van was by agreement incorporated into the pitch fee, then the charge for parking rises by 7% to £28.36 making an overall total of £197.18.**

Statement of Reasons

Background to the Applications

1. These three conjoined applications ("the Applications") are made by Donaldson & Newman Ltd ("the Site Owner") of 79 Brentry Lane, Brentry, Bristol BS10 6RH. The company owns the mobile home site known as Quedgeley Court Park, Greenhill Drive, Tuffley, Gloucester GL4 0LP ("the Site"). The Site Owner's representative at the hearing, and the person responsible for management of the Site, is Nicholas Newman ("Mr. Newman"). The Respondents, Christine Spencer, Jackie Grange and Winston Ffrench, are the residents of three of the mobile homes on the Site, respectively numbered 96, 119 and 121. They all appeared in person at the hearing. Each of the Applications is in a similar but not identical form and is by the Site Owner for a determination of a new level of pitch fee under paragraph 16 of Schedule 1 of Chapter 2 of Part 1 to the Mobile Homes Act 1983, as subsequently amended ("the 1983 Act"). The Applications were made on 23 March 2023.

2. On 11 September 2023, the Tribunal directed that the Applications should be dealt with on the papers without an inspection. Having received objections from the Respondents, further Directions were issued on 11 October 2023 providing for an inspection of the Site and for a hearing and also providing for the preparation of three bundles of documents.

3. The Tribunal visited and inspected the Site in the presence of Mr Newman and two of the Respondents prior to the hearing on 15 November 2023.

Relevant facts

4. The Site Owner served all the occupiers of the Site who were owners of their homes with Pitch Fee Review Notices dated 28 November 2022 increasing the pitch fees as from 1 January 2023. The increase in the pitch fees was calculated by reference to the Retail Prices Index (RPI) which was issued for October 2022 which indicated an annual increase of 14.2%. In all three cases the pitch fee included the sum of £18.74 as recoverable water costs, as all pitches on the Site shared a water supply from a single meter. The total cost for 2022 was divided pro rata between all pitches with a supply. In the case of Mr. Ffrench the increase was from £166.77 pitch fee plus £14.67 water charge (total £181.44) to a new fee of £190.45 plus £18.74 charge for water making a total of £209.19. In the case of Ms Spencer and Ms Grange the increase was from £140.27 pitch fee plus £14.67 water charge (total £154.94) to a new fee of £160.19 plus £18.74 charge for water making a total of £178.93. The difference in the amounts was explained at the hearing as Mr. Ffrench paying an extra charge added to his pitch fee for parking of his van.

5. There is no issue raised either as to the validity of the Notices or to the validity of the calculation of the amount of the increase from the RPI. Three issues were raised by all three Respondents either in the documents in the bundles or from oral submissions at the hearing:

(1) They claimed that the amount charged with the pitch fee for water was too high and the level of increase was not merited.
(2) They submitted that the continuing dilapidation of vacant homes on the site meant that the pitch fee increase was not merited.
(3) They submitted that the scale of the increase was too high in any event.

Inspection of the Site

6. The Site consists of a mix of homes for rent and homes that have been purchased. It was also apparent that some of the homes were quite old; others were more modern. The Tribunal was told at the hearing that about two thirds of the homes are rented directly from the Site Owner. Nevertheless, the homes that were occupied were generally neat and some were obviously well kept. However, there were a considerable number of homes that were unoccupied and unkempt. One was totally derelict and another had plant growth out of a window. Some others were in a very poor state. A number of the unoccupied homes, the Tribunal were told, were used for storage and such storage was visible on the inspection. Two further homes that had been condemned by the Council were pointed out to the Tribunal.

7. There were two parts of the site in a poor condition. One was a former access way between trees (the access road is no longer used) which was untidy and had some abandoned materials. At the top of the site, on part of a former car park and where garages, now demolished, used to stand, there was a large JCB parked alongside a considerable amount of building and other materials. This area was not fenced off.

8. Many pitches had a parking space but others did not, particularly those to the north of the site that were arranged around a green open space without vehicular access to the site roadway. The number of designated parking spaces for those without a parking space on their pitch and for visitors was limited. A large number of new parking restriction signs warning of £100 fines were prominently placed around the site.

9. The Tribunal's attention was drawn to one home where there had been a leak from the water supply that has taken some time to be identified before it was repaired.

The Submissions of the Site Owner

10. The position of the Site Owner, as set out by Mr. Newman, in the three bundles, was straightforward. He provided the Site Licence and the Mobile Home Written Statement for each pitch. He provided a copy of the pitch fee notice in each of the three cases and contended he was justified in providing for the pitch fee to increase by the percentage of 14.2% being the increase calculated from the October 2022 increase in the RPI over the previous 12 months.

11. At the hearing, Mr. Newman elaborated his basic argument. Apart from the water charge, no other costs were recoverable and he was not seeking any additional increase in respect of any improvements. He did however point out that the street lighting now had LED lights, he had cut back trees and had removed the dilapidated garages as required by the Council. His paperwork in the bundles included an email from Gloucester City Council which stated (on 17 October 2023) that all the items on the updated schedule of works issued on 21 October 2021 (in accordance with a determination of this Tribunal) were now satisfied.

12. While Mr. Newman accepted that the water charge in 2023, based on usage in 2022, was significant, he maintained that it was a correct and just apportionment of the usage recorded by the meter and divided between all pitches. There were 82 pitches using water. He investigated any leaks promptly and made no charge for

repairs as it was his responsibility to deal with site leaks and the homeowner's responsibility to deal with leaks inside their homes. He thought that one cause of the large increase might have been a long-standing leak in the shower of Ms Grange's home.

13. With regard to the condition of the estate, Mr. Newman accepted that there was some dilapidation with three or four homes that were privately owned unoccupied and about ten unoccupied of those belonging to the Site Owner. He explained that the site had existed for over 50 years and some of the homes were 40 or 50 years old. Some were on a pitch designed for ten feet wide homes which are now difficult to sell and most modern homes needed a pitch designed for homes that are twelve feet wide. The long-term strategy is to try to develop the site for more modern units. Mr. Newman accepted that this site was not one of the highest quality, making this comment in the context of his submission that the level of pitch fee charged was commensurate with the nature of the Site and other sites would charge more.

14. In response to questions from the Respondents and the Tribunal, he said that there were no separate water meters for the homes – he had tried to get some for outside water hoses. With one central supply, he accepted that a resident could use a lot of water, for example by use of a garden hose, at the expense of all and thus there was the ability to use water freely at the expense of more careful residents who sought to limit water consumption. But he stressed that it was in his interest to keep water charges as low as possible as he paid the water charges on the majority of pitches that were rented.

15. Mr Newman claimed that the increase by the full RPI increase was justified as his costs had increased by a similar sum. He explained that the Site Owner paid a fee, also calculated to increase RPI, to the freeholder, a family trust. He admitted that that trust was a family pension trust but declined to give details of any interest he personally had in that trust.

16. The parking restrictions were new and had only just been implemented. It was an attempt to prevent unauthorised parking by vans and commercial vehicles and unauthorised visitors and to ensure parking was available for residents around the green. He agreed that fines had been issued to Mr. Ffrench – by him not the parking company – even though resident's permits had not come through. He said he knew the cars of all the residents but planned that there should be one permit per resident and one for guests.

The Submissions of the Respondents

17. The three Respondents each submitted separate, but often similar, arguments in their contributions to the bundle of papers. Each of them presented their case separately at the hearing. Their submissions will be outlined in turn.

A. Christine Spencer

18. The basic argument was simple – she was in dispute with the increase especially the water charges. In her letter in the bundle, she gave the reasons why she felt she should not have to pay such a large increase in ground rent. She contended that the site had not been kept in good order since she moved in in 2015. She described the site as unsightly, dilapidated and having condemned units. She complained about lengths of UPVC stacked against her shed for about six weeks, a failed streetlight not

attended to for six weeks and having a digger on site which had not been moved. She contended that she had been 'picked on' with a different set of rules for renters from those applied to owners, with a recent letter saying that she was not allowed two front doors (i.e., an integral door to the home and a porch door to the attached porch) but this letter was not sent to others with porches. Finally, she claimed that Mr. Newman intimidated and harassed people.

19. At the hearing, she submitted that some remedial work on the site had only been done in the last two months before this hearing. Two issues were discussed. She contended Mr. Newman turned off a streetlight late at night and it was not repaired for six weeks. In a response, Mr. Newman contended he did not turn off the light but found he could not repair it and it took a period of time to do so. With regard to the porch, she said her home had a porch and two doors when she purchased it in 2015 and there had been no complaint in the last eight years. There were quite a few homes with porches (included some of the rented homes, pointed out to the Tribunal at inspection) but she was the only person who had had a letter telling her to remove a door. When that letter was delivered, Mr. Newman insisted on taking a photograph of him handing her the letter. She found that upsetting and felt it was an example of harassment and the way Mr. Newman was picking on her. Mr. Newman that he wanted to take a photo as proof of delivery. He claimed that he had 'only recently' gone through the licence conditions but he was not able to tell the Tribunal why having two doors was a breach of the site licence conditions (the licence conditions were not included in the bundle).

B. Jackie Grange

20. Her basic argument was identical to that of Christine Spencer – she was in dispute with the increase especially the water charges. She contended that there had been no investment or improvement made to the site during her ownership over seven years and the site has deteriorated beyond what is reasonable. She was particularly concerned about the use by both of the former shop and old vans for storage.

21. She claimed nothing had really improved since Gloucester City Council brought a case to this Tribunal. Though the garages had been removed, the JCB remained and rubbish stores litter the Site. The old upper car park was now a dumping ground. Logs and white bags with chippings were left around the site. There should be a proper and fenced off compound. The condemned and derelict homes should be removed but there has been no indication when those vans will be dismantled and removed.

22. She recounted how there had been a recycling problem with the large wheelie bins having recycling mixed with non-recyclable waste. Since nothing was being done, she had arranged with the Council for all homes to have separate recycling using a vehicle able to negotiate the narrow Site roads. This had resulted in a dispute with Mr. Newman despite him doing nothing to resolve the matter himself. In a response, Mr. Newman said he was happy for the large recycling skips to be removed but large recycling lorries could not get access but the smaller caged lorry was acceptable.

23. The water cost was in Jackie Grange's view too high with six recent leaks and no rebate offered for wasted water. She was particularly angered by Mr. Newman

blaming her and claiming she had had a leak in her shower for seven years. It was the case that the shower was faulty when she purchased but she had had that fixed and it was only recently that there had been a further leak necessitating repair. With one meter for the whole site, there was no proof of water usage and insufficient detail of how the annual charge is calculated. It took a very long time for Mr. Newman to provide her with copies of the water bills though she admitted at the hearing that, when they arrived, she found it impossible to understand them.

24. She was upset that her attempt to challenge the increase in the pitch fee had led to Mr. Newman responding with a threat of debt collectors. In conclusion, she did not feel that Mr. Newman was a fit and proper person to run the Site.

C. Winston Ffrench
25. Though he firstly submitted a short identical case to the other two Respondents, (he was in dispute with the increase especially the water charges) and made some similar submissions in his longer letter and at the hearing, he also had some particular concerns about parking. He made the same points about the JCB and the Site being a mess with the dilapidated vans and the fact that tidying up work only began in the last three months. He too claimed that there was one set of rules for renters and another for owners with Mr. Newman telling him he had to remove rendering on his home even though it had been done by a previous owner (now said to be without permission); yet he had not had any complaint about it until recently.

26. His parking concerns related to three matters. Firstly, he had negotiated with Mr. Newman when he purchased his home a right to park his employer's van that he used daily for work on the upper car park for an additional £26 per month on top of the monthly pitch fee. He was never told that would be temporary. He recently received a letter giving very little notice that his right to park had been withdrawn. Secondly, at the same time, a new parking scheme appeared with notices around the site indicating a fine of £100 for unauthorised parking. Though no permits or details had been received, two £100 fine notices had been sent to his employer relating to his van being parked. No one else had had a fine and he felt he was being victimised. Finally, he had two motor bikes, but no car. They had been parked on his pitch in the parking space for the last two years. Yet without warning, Mr. Newman said two were not allowed and that one must be removed. The basis was there had been complaints about noise but no one had complained to him nor had Mr. Newman provided any evidence about complaints.

Discussions at the hearing
27. Following the submissions of the parties, the Tribunal initiated a discussion at the hearing to elucidate details of the points in dispute.

A. Water charges
28. Mr. Newman explained how the water charges work. There is a communal water supply and the meter is apparently about half a mile distance from the Site. The charge is divided between all the homes owned or tenanted on the Site. The charge for 2022 (from 2021 figures) was based on 83 homes; the charge of £18.74 per calendar month for 2023 was based on 78 homes. The reduction was because 12 had been condemned but about 5 or 6 had been brought back into use. He stressed that it was in his interest to keep the water charges as low as possible because the Site Owner was responsible for water charges to the tenanted pitches. The total cost in

2022 was £17,536.42 which when divided by 78 homes came to £224.83 per annum or a monthly charge of £18.74.

29. Water was supplied on a commercial basis from commercial companies (unlike domestic supplies) and he sought the cheapest price each year. The invoices to him were on estimated usage rather than the actual usage that he calculated from the meter readings so it was not possible to correlate the invoices with the charges made. The charges were passed on directly at the same rate of charge that he paid.

30. During the discussion, Mr. Newman commented that the Site Owner would not oppose owners choosing to have their separate water meter installed. They already pay their sewerage charge directly to Severn Trent water company.

B. Car parking

31. Mr. Newman sought to explain the recent new car parking system. It certainly seemed to be a reduction in amenity as it introduced substantial restrictions from what was, until October 31 this year, a simple system similar to that found on other mobile home parks. Visitor parking was available at the bottom of the site and there was one space for each resident either on their pitch or nearby. Mr. Newman admitted that there had been no consultation with residents before the new system was inaugurated. Though notices have appeared around the site warning of substantial penalty charges, he also could not explain how offending vehicles could be identified as there was no system of permits, if and when residents would get permits, and if so when or how visitors were expected to park. Christine Spencer commented that her son had recently come to visit but could only stay 20 minutes because of the warnings of fines after that time. Yet Mr. Newman admitted that there was no independent mechanism for enforcing the fines except for him informing the charging company of those breaching the new rules. He said he could recognise residents cars and said he admitted that he had been the person who levied two fines on Winston Ffrench.

32. He said that the reason for the new system was that he considered that there was sometimes an overflow of visitors and sometimes residents of the homes on the green could not find spaces. Jackie Grange commented that there was a need for parking for critical visitors such as carers and health professionals visiting elderly residents.

Factors relevant to the determination of the Pitch Fee

33. The Tribunal is required to determine the amount of the pitch fee in accordance with the provisions of the 1983 Act, as amended. One of the important objectives of the 1983 Act was to standardise and regulate the terms on which mobile homes are occupied on protected sites. All agreements to which the 1983 Act applies incorporate standard terms which are implied by the Statute, the main way of achieving that standardisation and regulation. In the case of protected sites in England the statutory implied terms are those in Chapter 2 of Part 1 of Schedule 1 to the 1983 Act.

34. Paragraph 29 of Schedule 1 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.

35. 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. A review is annual on the review date. In respect of the procedure, paragraph 17(2) requires the Owner to serve a written notice ("the Pitch Review Notice") setting out their proposals in respect of the new pitch fee at least 28 days before the review date.

36. 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.

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

38. 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."

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.

39. The owner may then apply to the Tribunal for an order determining the amount of the new pitch fee (paragraph 17(4)). The Tribunal is required to then determine whether any 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 reasonableness of that agreed pitch fee or of the subsequent fee currently payable at the time of determining the level of a new fee.

40. 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.

41. Paragraph 18 of Part 1, Chapter 2, Schedule 1 of the 1983 Act requires a tribunal to pay particular regard to a number of matters. It 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 or any adjoining land which is occupied or controlled by the owner since the date on which this paragraph came into force (in so far as regard has not previously been had to that deterioration or decrease).....
> (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"

42. Necessarily, any such matters need to be demonstrated specifically. As amended by the 2013 Act, the paragraph and paragraph 19 set out other matters to which no regard shall be had or otherwise which will not be taken account of. The relevance of each of these matters to this case is considered below. The first such matter is any sums expended by the owner on improvements since the last review date. There are no such improvements claimed by the Site Owner in this case.

43. 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."

Limits to the jurisdiction of the Tribunal

44. The jurisdiction of the Tribunal is limited to determining the pitch fee payable for 1 January 2023 in circumstances where the fee has not been agreed by the occupier prior to the application to this Tribunal.

45. It follows that the recent introduction of car parking restrictions, with the imposition of fines, cannot be taken into account in respect of settling the pitch fee from 1 January 2023. However, the Tribunal comments that such a scheme certainly might qualify as a decrease in amenity within paragraph 18 (1) (aa) above in respect of the pitch fee payable from 1 January 2024. Whether or not it will be so will depend on how the Site Owner proceeds with the new scheme and how it operates on that date. It will then be a matter, if application is made, for determination by a later Tribunal.

46. In this context, the Tribunal notes that Mr. Newman did not comply with the Site Owners consultation obligations which may well have applied to the new parking scheme that he introduced.

47. All three Respondents made significant criticisms of the behaviour of Mr. Newman towards them. All of them contended that they had suffered harassment, to the point of Jackie Grange saying she considered he was not a fit and proper person to run the Site. In the past 10 months since the three Respondents declined to agree the new pitch fee, Mr. Newman has raised issues with all of them, with Christine Spencer being told that she cannot have two front doors, with Jackie Grange subjected to a claim that her shower leaked for seven years and was responsible for excessive water consumption, and with Winston Ffrench an agreement to park his van was cancelled, the removal of a motor bike from his pitch was demanded and heavy fines issued to him through a parking scheme not yet fully implemented.

48. It is not for this Tribunal to rule in any way on whether these criticisms of Mr Newman are justified let alone whether they amounted to harassment. But Mr. Newman, and through him the Site Owner, must not take action that might be seen to penalise or prevent the Respondents exercising their right to have their pitch fee determined by this Tribunal.

Issues to be determined

49. There are three issues raised by all three Respondents either in the documents in the bundles or from oral submissions at the hearing which require a decision in order for the Tribunal to determine the level of the pitch fee.

(1) The submission that the scale of the increase at 14.2% was too high in any event.
(2) The submission that the continuing dilapidation of vacant homes on the site and the general condition of the Site amounted to either a deterioration in the condition, or a decrease in the amenity of the Site, justifying either a reduction in, or elimination of, the pitch fee increase.
(3) The claim that the amount charged with the pitch fee for water was too high and the level of increase was not merited.

Each will be considered in turn.

Issue one for determination - the Pitch Fee increase of 14.2%

A. The relevant law and case authorities

50. Paragraph 20 provides that there is a presumption that the pitch fee shall increase or decrease by a percentage which is no more than any percentage increase or decrease in the RPI calculated by reference to the latest index and the index published for the month which was 12 months before that to which the latest index relates. Mr. Newman calculated this as 14.2% and used that percentage as the basis for the amount stated in the pitch fee increase notice. This is understandable as in recent years the RPI increase has always been a low percentage and so the increase using RPI has not been challenged.

51. To sustain their submission that 14.2% is too high, the Respondents must satisfy the Tribunal that an increase at that level would be unreasonable and that there are good reasons for the presumption to be displaced and a lower figure substituted. The Tribunal considers that, in order to be able to determine if an increase of 14.2% is too high, it is 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.

52. A detailed explanation of the application of the provisions of the 1983 and 2013 Acts is to be found in a decision of the Upper Tribunal in *Sayer* [2014] UKUT 0283 (LC), in particular at paragraphs 22 and 23 in which it explained about the 1983 Act and the considerations in respect of change to the pitch fee. Notably the Deputy President, Martin Rodger KC said as follows:

> "22. The effect of these provisions as a whole is that, unless a change in the pitch fee is agreed between the owner of the site and the occupier, the pitch fee will remain at the same level unless the RPT considers it reasonable for the fee to be changed. If the RPT decides that it is reasonable for the fee to be changed, then the amount of the change is in its discretion, provided that it must have "particular regard" to the factors in paragraph 18(1), and that it must not take into account of the costs referred to in paragraph 19 incurred by the owner in connection with expanding the site. It must also apply the presumption in paragraph 20(1) that there shall be an increase (or decrease) no greater than the percentage change in the RPI since the last review date unless that would be unreasonable having regard to the factors in paragraph 18(1). 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."

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

54. 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. 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."

55. 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".

56. 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."

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."

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

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

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."

59. 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. Further explanation was given in paragraph 50 of *Vyse* 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."

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."

60. 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."

61. The final extract 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 broad-brush 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."

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

62. 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. 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."

63. 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 59 in this statement of reasons above). The RPI presumption not being lightly displaced was emphasised and paragraph 57 of *Vyse* quoted.

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

> "(1) The direction in paragraph 16(b) that in the absence of agreement the pitch fee may be changed only "if the appropriate judicial body … considers it reasonable" for there to be a change is more than just a pre-condition; it imports a standard of

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

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

66. 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".

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."

67. 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.

68. 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.

69. 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. 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.

70. 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.

71. 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, none of whom had the benefit of legal representation before the Tribunal.

B. Comment on the Evidence

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

73. The Site Owner did not provide any documentary evidence in this case as to any increase in costs that it had encountered in relation to this particular Park. The Tribunal determined that the Applicant had failed on the evidence to demonstrate any such increase. The Applicant had, the Tribunal found on the evidence, failed to prove that an increase by the level of RPI was appropriate beyond the presumption for it.

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

75. The Respondents specifically asserted that the level of increase was too high and therefore unjustified. The Site Owner might in response to that have considered it worthwhile to provide any available justification rather more fully and to provide supporting documents or other evidence. The Tribunal does not speculate about the evidence which may or may not have been available to the Site Owner and rather considers the evidence presented to it.

C. Application of the evidence to the law

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

77. There were no factors advanced by Mr Newman to support a higher sum than the 14.2% indicated by the RPI.

78. There was a claim by the Respondents that there should be a reduction from the RPI presumptive increase as there had been a further deterioration of the site - which is a matter specified in paragraph 18.1 to which "particular regard shall be had" in respect of any reduction below the level of RPI. As set out in the determination below, the Tribunal does uphold those submissions. In *Vyse* it was suggested that that decision means that the presumption does not arise at all. However, since the Tribunal did not consider that the deterioration in the site was sufficient to decide that there should be no increase at all in the pitch fee, the Tribunal considers that it

should still determine whether there is some other factor to rebut the applicability of the presumption.

79. 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.

D. Is an increase to the pitch fee reasonable?

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

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

E. What is the reasonable level of the new pitch fee?

82. 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".

Indeed, or 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. 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.

83. 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 Respondents' cases were not advanced in such specific terms, the Tribunal does not dwell on the point.

84. The case advanced by the Respondents is that the increase should be lower. 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.

85. It has been identified above that Mr Newman 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 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 broad-brush of RPI."

86. 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.

87. The 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 call into question the reasonableness of a pitch fee rise at the level of RPI - that is the essence of their submission that the increase is too high when put into the terms of the 1983 Act. 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%. It is that peak figure of 14.2% that was the one (correctly) used to identify the percentage increase in these three cases.

88. Two considerations arise. 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.

89. 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.

90. 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.

91. The Tribunal is similarly aware that wages and still more so pensions and welfare benefits are generally increasing below the rate of inflation, by which the Tribunal means the Consumer Price Index ("CPI"), which has been the measure used by the UK Statistics Authority since 2013 - see further below. Hence, there is a general cost

of living issue experienced by most people in the country at the current time and there was in Autumn 2022.

92. 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 do so as 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.

93. 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 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.

94. The Tribunal refers to the 2023 Act 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 will have. The level of pitch fees, if increased in line with the rise in RPI, is recognised by Parliament as an unusual and acutely critical problem.

95. 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 another factor which can and should properly be considered. 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.

96. The pitch fee from 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 as RPI will have been replaced as the relevant index for the twelve months from 1 January 2024.

97. The pitch fee from 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. 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.

F. Effect of the rebuttal of the presumption

98. 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?

99. A rebuttal of the presumption is just that. The presumption no longer applies. 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 it is for the Site Owner to 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. The Tribunal must of course still do that which it is required to do and determine the level of pitch fee that is reasonable.

100. 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.

101. Mr. Newman has not undertaken that exercise. The Site Owner has not made any decision that an increase by the level of RPI is justified financially – it 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 Site Owner had the opportunity to do that. It is therefore its own affair if it does not address such a point. The Tribunal considers that if a rise by RPI is no longer a presumption, a rise by RPI without any information about actual costs, is not a viable argument and the Tribunal does not accept it. In this case, Mr. Newman, in answer to a question from the Tribunal indicated that the Site Owner's fee payable to the freehold held by a family trust was also determined by the RPI but that he would seek to change it. The Tribunal was not satisfied by the response given which was that the Site Owner had any obligation to pay a charge linked to the RPI to its landlord. The Site Owner could have submitted evidence to that effect but chose not to do so.

102. 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.

103. 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. The 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.

104. 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 14.2% 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 0% but not demonstrated to be 14.2%.

105. 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.

G. Reasonable pitch fee

106. For these reasons, the Tribunal considers that, instead of 14.2% a fair and reasonable increase in the basic pitch fee, given the rate of inflation at October 2022, is 10%. Before applying that percentage to the pitch fees of the three Respondents, the Tribunal must first set out its determination on the further two issues.

Issue two for determination - the Continued Dilapidation of the Site

107. The Respondents submitted that the continuing dilapidation of vacant homes on the Site and the general poor condition of the Site amounted to either a deterioration in the condition, or a decrease in the amenity, of the Site, justifying either a reduction in, or elimination of, the pitch fee increase. They base their submission on Paragraph 18 (1) (aa) of Part 1, Chapter 2, Schedule 1 of the 1983 Act, set out above. The requirement is for a deterioration in the condition, and/or any decrease in the amenity of the Site (in so far as regard has not previously been had to that deterioration or decrease). The important words are those in brackets at the end. Deterioration in condition or decrease in amenity prior to 1 January 2022 would or could have been taken into account when the pitch fees were reviewed in 2022 or earlier years. It could therefore be argued (though Mr. Newman did not do so expressly) that this Tribunal cannot take into account the deterioration caused by the poor state of the Site and the considerable number of dilapidated or condemned homes as this was the case prior to 1 January 2023 and that some were used for storage before 1 January 2023.

108. The Tribunal does not take that view. The dilapidation caused by dilapidated vans, condemned homes, and unsightly storage within decrepit vans or in an unfenced site are continuing. The dilapidation has not been attended to in any way. The dilapidation will have increased further in the 12 months since 1 January 2022 because nothing has been done and the longer it goes on the amenity of the Site also deteriorates further.

109. It is relevant in this context that Gloucester City Council recognise that ongoing work and maintenance of this Site is needed to ensure the Site Licence conditions are met. This is stated in the letter Mr. Newman produced from the Council dated 17 October 2023. Though the letter acknowledged that the schedule of works required after this Tribunal's determination on 20 October 2021 were now satisfied, the Council made it clear that ongoing work concerning the aesthetics of some old empty units and the fencing off or a new compound was required.

110. For these reasons, the Tribunal determines that it can have regard to the deterioration in condition and the reduction in amenity in our determination of the correct level of pitch fee. We consider that the pitch fee should be reduced further by

3% in respect of this factor. The correct level of pitch fee increase for 2023 is therefore 7% and not 14.2%.

Issue three for determination - the charge for Water Supply

111. The Site Owner is entitled to recharge for water used by pitch owners under paragraph 21 of the implied terms contained in the written statements under the 1983 Act. The Respondents do not dispute that right to recharge, only the amount of the increase in the charge for 2023.

112. The Tribunal determines that the Respondents have not been able to demonstrate a good reason for reducing that increase. The Site Owner, through Mr. Newman, has provided the Tribunal with the total water charges from 1 November 2021 to 30 November 2022 which were the payments made by the Site Owner which set out the total payments of £17,536.42. the 2023 charge is based on those figures. The invoices were provided to Jackie Grange and though she said she found them hard to comprehend, there is no suggestion before the Tribunal that the total payments made for water were incorrect. The Respondents also do not challenge the division among 78 homes. Therefore, the charge made within their pitch fees of £18.74 for water is upheld.

113. With regard to the leaks, these do need to be actively managed but there is no evidence that Mr. Newman does not do so even though on one occasion it took a number of attempts to find the source of the problem. What the evidence does suggest, with a considerable number of leaks, that the water supply pipework may be coming to the end of its useful life and may require attention. A root and branch survey and assessment would assist.

114. Mr. Newman did not object to the proposal that pitch owners who wished to do so could have their own water meter installed. Indeed, he would agree to it. Separate meters, if possible, would solve the understandable concern about high communal water charges.

The level of pitch fee from 1 January 2023

115. In the light of the factors to which the Tribunal is required to have particular regard, the Tribunal determines that the level of the pitch fee should be an increase of 7% not 14.2%. The Tribunal calculates the correct sum to be, in the case of Jackie Grange and Christine Spencer a pitch fee of £150.09 for 2023 plus the charge for water of £18.74 making a total of £168.83.

116. In the case of Winston Ffrench, the basic pitch fee is the same, namely a pitch fee of £150.09 for 2023 plus the change for water of £18.74 making a total of £168.83. It was not made clear to the Tribunal whether or not the agreement between the Site Owner and Winston Ffrench was for a separate charge for parking the van (which would be paid with the pitch fee) or whether it was an agreement to increase the pitch fee by the agreed amount for parking. If it was the former, then it is not for this Tribunal to increase the amount paid for parking as we have no jurisdiction to do so. If the pitch fee was increased so as to allow the van to be parked, then the increase in the pitch fee of 7% also apples to the car parking element in the pitch fee. If that is the case, (which it may be as the amount was increased last year) the pitch fee is increased by £28.36 for the parking element making a total of £197.18. The Tribunal comments that if the pitch fee was altered to increase by the amount of the car

parking, then it may well be that Mr Newman and the Site owner cannot now withdraw the agreement for Winston Ffrench to park his van.

Fees

117. The Site Owner asked for a refund of the application fees paid in each case. In view of the decision of the Tribunal, such a refund is inappropriate.

Right of Appeal

118. A person wishing to appeal this decision to the Upper Tribunal (Lands 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 (RPSouthern@justice.gov.uk). 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.

119. 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.

120. 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 that the party who is making the application for permission to appeal is seeking.

5 December 2023