FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/24UC/PHI/2023/0203 (1) and CHI/24UC/PHI/2023/0204 (2)
Property	:	7 Whitehill Park, Liphook Road, Borden, Hampshire, GU35 9DS (1) and 54 Whitehill Park Liphook Road, Borden, Hampshire GU35 9DS (2)
Applicant	:	Tingdene Parks Limited
Representative	:	Mr S Wood
Respondents	:	Ms K Newman (1) Mr S and Mrs P Butcher (2)
Representative	:	None
Type of Application	:	Review of Pitch Fee: Mobile Homes Act 1983 (as amended)
Tribunal Members	:	Mr I R Perry FRICS Mr E R Shaylor MCIEH Mr P E Smith FRICS
Date of Hearing	:	15th December 2023
Date of Decision	:	15th December 2023

DECISION

Summary of Decision

1. **The Tribunal determines that the pitch fee for 7 Whitehill Park Liphook Road Borden Hampshire is £1,994.16 with effect from 1st January 2023.**

2. **The Tribunal determines that the pitch fee for 54 Whitehill Park Liphook Road Borden Hampshire is £2,250 with effect from 1st January 2023.**

Background and Procedural History

3. On 24th March 2023, the Applicant site owner applied for a determination of a revised pitch fees of £1994.16 per month for 7 Whitehill Park payable by the Respondent (1) with effect from 1st January 2023, and £2,250 in respect of 54 Whitehill Park payable by the Respondents (2), also with effect from 1st January 2023.

4. These new proposed pitch fees were both based on an increase in line with the Retail Price Index ("RPI") of September 2022. The RPI applied was 12.6%.

5. Whitehill Park ("the Park") is a protected site within the meaning of the Mobile Homes Act 1983 ("the 1983 Act"). The definition of a protected site in Part 1 of the Caravan Sites Act 1968 includes a site where a licence would be required under the Caravan Sites and Control of Development Act 1960 if the exemption of local authority sites were omitted. The licence is dated 17th February 2017.

6. The 1st Respondent Ms K Newman is entitled to station her park home on Pitch 7 by virtue of an assignment under the 1983 Act dated 26th June 2020.

7. The 2nd Respondents are entitled to station their park home on Pitch 54 by virtue of an agreement under the 1983 Act dated 31st January 2022.

8. Both agreements include the statutory implied terms referred to below.

9. A Pitch Fee Review Notice with the prescribed form proposing the new pitch fee was served on each of the Respondents dated 28th October 2022, 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.

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

11. The current pitch fee at that time for Pitch 7 was £1,771.08 and for Pitch 54 £1,998.24. The RPI was 12.6% taking "the RPI Adjustment", as described, as the percentage increase in the RPI over 12 months for September 2022. No recoverable costs or relevant deductions were applied. No water, sewerage, gas and electricity or any other services are included in the pitch fee.

12. The Respondents did not agree to the increases and the park owners applied to the First-Tier Tribunal Property Chamber. Neither Respondent disputed the arithmetic calculation of the new Pitch Fees.

13. On 8th September 2023 the Tribunal issued Directions in respect of both pitches providing a timetable for the exchange of documentation directing that the applications be dealt with on the papers. Following receipt of objections from both Respondents further directions were issued on 10th October 2023 with a scheduled hearing date of 10th November 2023.

14. Further correspondence was received from Ms Newman and the hearing date for both cases was rescheduled for 15th December 2023 to following an inspection at 10.00 on that day.

15. Both Respondents informed the Tribunal that they would not attend the hearing. Neither Respondent disputes the rate of RPI applied, review date or arithmetic calculation.

16. The Applicant submitted a bundle of 74 pages to the Tribunal in respect of Pitch 7 and a bundle of 69 pages in respect of Pitch 54. These bundles had been copied to the Respondents.

The Inspection and Written Submissions

17. The Tribunal attended the site at 10.00 on 15th December 2023 and were shown round the site by Mr J Pearson of Tingdene and Tingdene's representative Mr S Wood. The Tribunal briefly spoke with Ms Newman and Mrs Butcher who both confirmed that they would not be attending the hearing. The Tribunal took care to note the areas within the site mentioned in the previous correspondence received from the parties.

18. Whilst the Tribunal wishes to make it clear that it has read the bundles relating to both pitches, the Tribunal does not refer to all the documents in detail in this Decision, some 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 if the Tribunal does refer to specific pages from the bundle, the Tribunal does so - both above and below - by numbers in square brackets [ ].

19. The first bundle included an email from Ms Newman of Pitch 7 sent to the Tribunal on 25th September 2023 in which she states that as no improvements have been made to the site the proposed RPI increase is not justified. She refers to a proposed change of legislation which will replace RPI as the multiplier with the Consumer Price Index ("CPI"). She also says that she would have welcomed an opportunity to negotiate about the proposed increase and says that she "simply cannot carry that kind of increase going forward."

20. Louise Boyle had written to Ms Newman on behalf of Tingdene on 21st November 2023 with answers to some of these points in which she states that the Park Office, recently provided, is to the benefit of all residents as a designated place to meet and discuss issues with Park executives.

21. Ms Newman had sent a further email to the Tribunal on 26th October 2023 in response to the written statement made by Mr Pearson on behalf of Tingdene. She states that her previous comments reflected the true condition from November 2022 to May 2023, that the site office is never manned, that no notice of maintenance works is given, that the improvements to the park entrance ran for some months from November 2022 and that some residents tidy raised flower borders. She reiterates her comments on the CPI replacing the RPI and says that she knows of other parks in Hampshire where the rate of increase was only 6%. She also refers again to her personal circumstances.

22. Mr and Mrs Butcher had written to the Tribunal on 18th September 2023 "to refute" the proposed increase in their pitch fee. They state that the RPI of 12.6% is one of the highest in recent times and that Tingdene have not spent any money on site improvements. They sent a further email dated 21st October 2023 informing the Tribunal that bollards at the entrance to the site had not been installed until September 2023, that a mattress has been left leaning against another home for more than 2 month which constitutes a fire hazard, that Tingdene will have received complaints about subletting and untidy gardens, that some people living on site are not the official residents, that commercial vehicles have parked on the site overnight which is against park rules and that the site office is manned on an irregular basis with no notification given to the homeowners.

23. During the inspection Mrs Butcher referred the Tribunal to belongings left outside one of the other homes on the site, referred Mr Pearson to an unknown party who used the park as a car park for his taxi and also questioned why the person taking meter readings on the site was being assisted by another Park Homeowner. Mrs Butcher stated that she thought a rise of 10.5% would be more acceptable.

24. Both bundles contained written statements from Mr J M W Pearson who is the Group Director of Tingdene Parks Limited ("The Company").

25. Mr Pearson states that the new site office replaced a derelict unused wooden shed. He accepts that the park residents were not informed in advance about these works but states that the new facility should be seen as an improvement. He does not agree with Ms Newman's assertion that the site entrance is an eyesore. He states that maintenance of park roads had been completed ahead of schedule and that there has been patching of some roads but that they are in good condition.

26. Mr Pearson states that third party contractors are employed to tend common areas, including the grassed areas. He also refers to the change from the RPI to CPI in July 2023, but particularly makes the point that this review is to take effect from 1st January 2023.

27. In his statement relating to Pitch 45 Mr Pearson states that the company is not seeking to recover costs of park improvements and asserts that there are no factors which displace the presumption that the pitch fees should rise in accordance with the RPI.

The Hearing

28. Following the earlier inspection, a hearing was held at Havant Justice Centre commencing at 11.30. Mr Pearson and Mr Wood attended on behalf of Tingdene. As previously notified neither Respondent attended.

29. Mr Pearson attested to the statements contained within the bundles. He said that Tingdene applied the RPI increases across all its parks and saw no reason to reduce increases below that figure. He explained to the Tribunal some of the increased costs borne by Tingdene including but not completely; interest payable, labour costs, material costs, general overheads and the statutory shift from low-cost red diesel to more expensive white diesel.

30. Mr Pearson explained to the Tribunal that it had taken time to remove the former wooden 'office' and provide the new site office with its associated service connections. During the works temporary safety fencing would have been in place. He explained that the new bollards installed at a later date had been necessary to prevent car owners parking on and damaging the newly paved pathway.

31. Mr Pearson informed the Tribunal that only 2 residents had objected to the RPI increase. He explained that the meters for service supplies to some homes were at ground level and that as the Tingdene employee charged with reading meters was recovering from an injury one of the homeowners had been assisting in this work. Some of the homeowners chose to support the site gardening contractor out of interest rather than reflecting a deficiency in the contractor's work.

32. Mr Wood contended on behalf of his client that whilst an the RPI increase is the maximum allowed it is the only benchmark from which

to assess increases. He referred the Tribunal to *Vyse v Wyldecrest Parks Management Ltd [2017] UKUT 24 (LC) and Wyldecrest Parks Management Ltd v Mrs Truzzi-Franconi and others [2020] UKUT 142 (LC*) and produced paper extracts for the Tribunal to consider. Mr Wood said in the Vyse case it is stated that the application of RPI is straightforward and provides certainty for all parties. In Truzzi-Franconi at paragraph 9 Judge Cook says "It is worth noting that paragraph 20 does not give the site owner an entitlement to an increase in the pitch fee in line with the RPI, although it has come to be regarded in that light (as the Tribunal remarked in paragraph 22 of Re Sayer [2014] UKUT 0283 (LC)."

33. The Tribunal was also referred to an appeal to the Upper Tribunal by *Mr John Sayer [2014] UKUT 0283 (LC)* "In practice that presumption usually means that the annual RPI increases are treated as a right of the owner".

34. Mr Wood contends that the RPI is the only benchmark for an increase in fees and should be used to avoid the necessity of forensic accounting reviews every year and in every case to justify that site owner's costs have risen and by how much.

35. In response to questions Mr Pearson stated that a site manager attends the site on a weekly basis and is available to speak with homeowners. The new site office with kitchen and toilet facilities is available for any meeting. In addition, the site notices have been upgraded and new grit bins provided to the site roads. The bollards in front of the office had been installed later to protect the paved pathway.

36. Mr Pearson contended that whilst sympathetic to any individual's situation affordability is not an issue. Rather the pitch fee is to be assessed focussing on any deterioration or improvement in facilities provided and ongoing costs to the Park owner. In conclusion, Mr Pearson and Mr Wood contended that there had not been a deterioration or reduction of amenity in the year 2022 and such works which had been done were for the good of the park, and there was not a significant reason to depart from the presumption of an increase in line with RPI.

The Relevant Law and the Tribunal's Jurisdiction

37. 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.

38. 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.

39. 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.

40. 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.

41. A review is annual on the review date. In respect of the procedure, paragraph 17 (2) requires the site owner to serve a written notice ("the Pitch Fee Review Notice") setting out their proposals in respect of the new pitch fee at least 28 days before the review date. Paragraph 17 (2A) of the 1983 Act states that a notice under sub-paragraph (2) is of no effect unless accompanied by a document which complies with paragraph 25A. Paragraph 25A enabled regulations setting out what the document accompanying the notice must provide. The Mobile Homes (Pitch Fees) (Prescribed Forms) (England) Regulations 2013 ("The Regulations") did so, more specifically in regulation 2.

42. The Mobile Homes Act 2013 ("the 2013 Act") which came into force on 26th 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 several other changes to the 1983 Act.

43. 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".

44. 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.

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

46. 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.

47. 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.

48. 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".

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

50. 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".

51. 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.

52. 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.

53. 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 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."

54. 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.

55. 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.

56. 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."

57. 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".

58. 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."

59. 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".

60. 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.

61. 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."

62. 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."

63. 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.

64. 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."

65. 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".

66. 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."

67. 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."

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

69. 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.

70. 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."

71. 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.

72. 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."

73. 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.

74. 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".

75. 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."

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

77. 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.

78. 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.

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

80. 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.

81. It should be recorded that the parties did not make reference to all 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.

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

Consideration of the Parties Cases, Findings of Fact and Decision

83. 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.

84. 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.

85. The Tribunal first had to decide whether there had been any deterioration in condition or reduction of amenities or services at the park.

86. On arrival the Tribunal had found the access to the Park to be well marked with good signage. There are some 64 pitches with only two vacant and well-marked car park areas. The roads had been patched in places but there were no serious potholes or damaged areas. There was some minor pooling on the roads following recent rain on the day of inspection, but this did not extend across the whole width of any road surface.

87. The new site office was clear to see, common areas appeared to be reasonably well maintained given the time of year and the 'paddock' beyond the main site was mown and included some benches. The Tribunal members are all experienced in inspecting parks and agreed that Whitehill Park is generally well maintained and there was no evidence of a deterioration in amenity or facilities.

88. Whilst the 1st Respondent argued that there should be no increase, the 2nd Respondents did not argue that there ought not to be an increase and had indicated to the Tribunal that an increase of 10.5% might have been acceptable, indeed it was implicit in their case evidence that they accepted that an increase in the pitch fee was reasonable.

89. The Tribunal concluded that there had been no reduction in amenity or condition of the Park and it was therefore reasonable to decide that an increase was justified and they should then decide on the amount of any increase, including to decide whether and RPI increase is justified.

90. The 1st Respondent stated that she "simply cannot carry that kind of increase going forward" and referred to other sites she had heard of where increases of 6% had been applied.

91. Some of the issues raised by the 2nd Respondents related to the behaviour of other parties but they too had felt that the rise of 12.6% was too high and suggested that 10.5% might have been more acceptable.

92. In his evidence at the Hearing Mr Pearson had explained the increases in costs faced by his company, and whilst no written evidence was produced the Tribunal found this argument to be persuasive.

93. 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 the appropriate rate of RPI, 12.6%, produces the reasonable figure for the new pitch fee.

94. **The Tribunal determines that the pitch fee for 7 Whitehill Park Liphook Road Borden Hampshire is £1,994.16 with effect from 1st January 2023.**

95. **The Tribunal determines that the pitch fee for 54 Whitehill Park Liphook Road Borden Hampshire is £2,250 with effect from 1st January 2023.**

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.