FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/00HE/PHC/2023/0001 and CHI/00HE/PHI/2023/0285 - 0313
Property	**:**	The properties listed in Annexe 1 to this decision at Meadowlands Court, Poundstock, Bude Cornwall. EX23 0FF.
Applicant	**:**	Occupiers of the Property, (excepting 2 Primrose Bank, 5 Foxglove Crescent and 5 Orchid Avenue) listed in Annexe 1 (Section 4). Budemeadows Country Park Ltd (Pitch Fees).
Representative	**:**	Rick Dean (Chairman of the Meadowlands Court Residents Association "the Association") and Mike Collins (Treasurer of the Association).
Respondent	**:**	Budemeadows Country Park Ltd (Section 4). All the occupiers of the Property listed in Annexe 1 (Pitch Fees).
Representative	**:**	IBB Law LLP Solicitors (John Clements).
Type of Application	**:**	Application for a determination of any question arising under **Section 4** of the Mobile Homes Act 1983 (as amended) (MHA) and Review of **Pitch Fees Paragraph 18 of Schedule** 1 Chapter 2 of the MHA.
Tribunal members	**:**	Judge C A Rai; Mr M C Woodrow, MRICS and Mr M Jenkinson.
Date and venue of Hearing	**:**	24 November 2023. Bodmin Law Courts, Launceston Road, Bodmin PL31 2AL.
Date of Decision	**:**	20 December 2023.

DECISION

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1. The questions raised by the Applicant in the section 4 application were resolved as follows: -
   (a) The Respondent had confirmed in correspondence exchanged with the Applicant before the hearing that Budemeadows Country Park is a Protected Site. Budemeadows Country Park is owned by Budemeadows Country Park Limited which is part of the Royale Life group of companies and operated under the "Royale Life" banner.
   (b) Any agreement or written statement to which the MHA applies is binding on, and will continue for the benefit of, the successors in title to the original owner (identified on that agreement or written statement).
   (c) Although the statements signed by the Applicant contained a box for their signatures to be witnessed by a third party, it is not a legal requirement for the signatures of the parties to those statements to be witnessed. The Respondent said that the signature box will be removed from new agreements.
   (d) An application was previously made by the Respondent for its nominated manager to be registered under the **Fit and Proper Person (England) Regulations 2020**, but the nominated manager has recently left her job. The Respondent has agreed to make a further application nominating a different manager on or before 1 February 2024.
   (e) The parties accepted that a single set of Site Rules can be deposited with Cornwall Council and agreed between them.
2. The Tribunal declines to make any of the Orders sought by the Applicant.
3. The Tribunal determines that the Pitch Fee payable by the Applicant from 1 January 2023 is £247.73
4. The Reasons for the Tribunal's decisions are set out below.

Background

5. The Applicant, originally represented by the late Mr Lionel Clarke, Chairman of the Association applied to the Tribunal on 31 January 2023 for a determination under section 4 of the MHA. That Application named Mr J Bull of Royale House, 1550 Parkway, Whiteley, Fareham, Hampshire P015 7AG as Respondent.

6. The written statement of Mr and Mrs Clarke dated 6 December 2019, a copy of which was annexed to the application, identified the parties to the agreement as Mr and Mrs Clarke and Budemeadows Country Park Limited (Budemeadows). The address shown for Budemeadows in the statement is different from that referred to in the application. The header on each page of the written statement referred to "RoyaleLife (EXCLUSIVE BUNGALOW LIVING)" and the footer referred to "Royale Parks Ltd – WRITTEN STATEMENT" [B2 15].

7. The Tribunal issued directions on 22 May 2023 which named the Respondent as Royale Parks Ltd (Mr J Bull), confirming that it had served a copy of the application with a set of those directions on the Respondent and also sought clarification from the Applicant with regard to the content of his Application. In particular, it asked him to set out exactly the questions he wanted the Tribunal to answer and the content of any orders that he wished the Tribunal to make [B2 109]. It also gave notice that the application would be struck out unless this information was provided by 29 May 2023.

8. Subsequent Directions dated 30 May 2023 reminded the parties that all correspondence with the Tribunal must be copied to the other party and directed that a telephone case management hearing would be held on 14 June 2023.

9. Following the case management hearing Mr D. Banfield FRICS Regional Surveyor, issued Directions dated 15 June 2023 (the June Directions) in which he identified the possibility that the Respondent might be unaware of the proceedings and directed that hard copies of the previous correspondence and the Directions must be sent to the Respondent by post. Paragraphs 7 and 8 of the June Directions set out the Applicant's "questions" and the Orders it was seeking from the Tribunal [B2 115].

10. The Respondent emailed the Tribunal with the Respondent's reply to the section 4 Application [B2 7] which identified that Meadowlands Court, Poundstock, Bude, Cornwall EX23 0FF (the Park) is owned by Budemeadows (not Mr J Bull or Royale Parks Ltd).

11. The Respondent's reply confirmed that:-

    (a) the registered office (which is the official address of that company) is at Royale House, 1550 Parkway, Whiteley, Fareham, Hampshire. PO15 7AG;
    (b) Budemeadows had acquired the Park on 10 September 2018 and provided evidence of its ownership.

12. The Respondent also applied for the name of the Respondent to the section 4 proceedings to be amended to Budemeadows.

13. In separate proceedings brought by the Respondent in an application dated 30 March 2023, a determination with regard to pitch fees was sought with regard to the Properties listed in Annexe 1.

14. The Tribunal issued directions dated 11 September 2023 in which it indicated that the application was suitable for determination without a hearing. It also directed that the Tribunal would proceed to determine the application on paper, as soon as it was able, but when it subsequently identified and connected the section 4 application with the pitch fee application, Judge N Jutton issued Directions, dated 27 September 2023, directing that the two applications would be listed to be heard together at an oral hearing.

15. The Tribunal subsequently directed that the Respondent prepare two hearing bundles and the parties agreed, in the absence of any dispute between them with regard to the content and service of the pitch fee review forms, that copies of the pitch fee review forms, and letters sent to the Respondents to that application could be excluded from the hearing bundle. It was also agreed that the individual agreements need not be included as each occupier has an agreement regulated by the MHA which contains the statutory implied terms which regulate the annual pitch fee review. [Emails exchanged between the parties containing their written agreement were sent to the Tribunal but not included in the hearing bundles].

16. The Tribunal also joined all the residents represented by the Association as parties to the section 4 application as by then it had been confirmed that the application had been made on behalf of some members of the Association. It is agreed that the Association represents all the Respondents to the Pitch Fee Application, save and except the occupiers of 5 Orchid Avenue, 5 Foxglove Crescent and 2 Primrose Bank (referred to as Primrose Park in the Directions dated 11 September 2023).

17. The Tribunal received two hearing bundles, Bundle "1" (Pitch Fees) comprising 79 pages and Bundle "2" (Section 4) comprising 134 pages. References to numbers in square brackets in this decision refer to pages of the documents in those bundles and are preceded by the letter B and 1 or 2. It has also seen the documents (land registry entries, and site licence) referred to and included with the Respondent's Reply dated 9 August 2023 sent to the Tribunal [B2 9] but omitted from Bundle 1.

18. Although the Tribunal has referred to the Applicant and the Respondent as described in the preface to this decision throughout, Budemeadows is the applicant, and the Association is the respondent to the pitch fee application.

19. The Tribunal indicated to both parties that it would not inspect the Park and neither party subsequently requested an inspection [B2 121].

The Hearing

20. The Hearing took place on Friday 24 November 2023 at Bodmin Law Courts, Launceston Road, Bodmin PL31 2AL at 10 a.m.

21. The Applicant was represented by Mr Rick Dean, Chairman of the Meadowlands Court Residents Association and Mr Mike Collins, Treasurer.

22. The Respondent was represented by Mr John Clement (IBB Law) and Mrs Reach.

23. It was agreed that the Tribunal would hear representations about the section 4 application first. The Respondent stated that the Tribunal has no jurisdiction to deal with the order which the Applicant sought for the pitch fee to remain the same save and except under those paragraphs in the MHA which relate to

the review of pitch fees and therefore proposed, which was agreed, that all representations made by the Applicant regarding the amount of the Pitch Fee would be considered later in relation to the Pitch Fee application.

The Section 4 Application

24. The MHA standardised and regulated the terms on which mobile homes are occupied on protected sites.

25. Section 4 of the MHA gives the Tribunal jurisdiction to determine any question arising under the Act or any agreement to which it applies. It is set out in Annexe 2.

26. The questions raised by the Applicant are listed in paragraph 7 of the June Directions [B2 115]. (These were not considered at the hearing in the same order as listed in that paragraph).

27. **Protected Site and ownership** - The Applicant had already acknowledged that it is satisfied that the Park is a Protected Site. The Applicant, however, remained confused about the ownership of the Park.

28. The Respondent had provided documentary evidence showing that the Park is owned by Budemeadows but the references to RoyaleLife and Royale Parks Limited on the agreements added to their confusion. Budemeadows was actually referred as "Bude Meadows Country Park Limited" [B2 15].

29. Mr Clements explained that the Royale Life Group owned approximately fifty parks which are all marketed under the trading group banner Royale Life but that each Park is owned by an individual SPV (Specific Purpose Vehicle Company). Since the section 4 application was made, the Royale Life group of companies has entered administration. He said that, at the date of the Hearing, the administrators continued to oversee the operation of the group and the original staff remained employed but that this was unlikely to continue indefinitely. Mr Dean expressed concern that the Applicant has no single contact point with anyone with whom it was possible to obtain information about the operation of the Park. He said that no representative from Budemeadows is regularly present at the Park. Although Mrs Reach referred to a telephone contact number, Mr Dean suggested that calls to this number often went straight to an automated answerphone.

30. **Legality of written statements** - The form of the written statement has caused additional confusion because the Applicant claimed that the content of some of the written statements is inconsistent with the statutory implied terms.

31. The Respondent accepted that the example statement in the bundle (Mr and Mrs Clarke's statement) is not correct. Mr Clement stated, both in the Respondent's response to the application and during the hearing, that inconsistencies in the statement will not prejudice occupiers rights and the

implied terms will apply and that these cannot be modified by express written terms in the statements.

32. From the submissions made by Mr Dean it was apparent that there is no evidence identifying which written statements contain terms which depart from the implied terms. Mr Dean referred to what he described as "the proper written statement". He said he had obtained a copy of this statement approximately twelve months ago when Royale Life had put forward a proposal offering pitch owners an alternative written statement, at an increased pitch fee, in return for Budemeadows would forgo the 10% levy due on the sale price of the home.

33. Mr Clement stated that the Respondent would not have any difficulty with providing written confirmation and that written statements could be corrected. However, he expressed concern about owners having more than one written statement which he said might cause future confusion.

34. Mr Dean said that owners with incorrect statements have experienced difficulties when selling their homes. He wants replacement statements in the correct form, consistent with the statutory implied terms, to be supplied to any Applicant occupier who has an incorrect statement, without charge albeit in exchange for, not in addition to, an existing written statement.

35. Mr Dean expressed disquiet about the RoyaleLife logo remaining on the written statements but accepted that the company named as a party to the statement is the Park owner. He expressed the view that the statement should refer to the actual owner of the Park.

36. Mr Clement told the Tribunal if, as is possible or even likely, the Park is sold as a result of the administration, the written statements will not be amended again because section 3(1) of the MHA transfers the original owners' obligations under the agreement to a new owner. (Section 3(1) is reproduced in Appendix 2 below).

37. **Can RoyaleLife staff witness owners' signatures on the written statement?** - It was suggested that many of the occupiers' signatures on their written statements have been witnessed by RoyaleLife employees. Mr Clement confirmed that there is no legal requirement for the signatures of any of the signatories to the agreement to be witnessed. He conceded that the current form of agreement contains a box which implies that there is a requirement for the parties signature to be witnessed.

38. Mr Clement said that the rules in relation to company execution of documents had been relaxed some years ago. He suggested that it is not current practice for employees of the RoyaleLife group to witness signatures. He confirmed that the "signature box" will be removed from new versions of the written statement.

39. **The fit and proper person register** – The Applicant wants the manager of the Park listed on the Register of Fit and Proper Persons maintained by Cornwall Council.

40. It was not disputed that an application had been made on behalf of the Site Owner for Emma Smith (an employee of RoyaleLife) to be the added to the Cornwall Council Register of Fit and Proper Persons. Unfortunately, for undisclosed reasons, the application was not processed. Mr Clement suggested that this was probably because the relevant fee was not paid to Cornwall Council. However, he said Cornwall Council had neither rejected the application nor progressed it.

41. Mr Dean said that Cornwall Council had told the Applicant the application would be rejected but no evidence was supplied to the Tribunal in the bundles to substantiate his statement. Mr Dean also said that the late Mr Clarke had spoken to someone at the Council. Mr Dean produced a copy of an email from Cornwall Council dated 11 October 2023. That email had not been disclosed to the Respondent or the Tribunal before the hearing. It was concluded that Cornwall Council has not formally determined the previous application.

42. Mr Clement confirmed that Emma Smith had left her job at the end of October 2023. It was agreed that within the next three months the Respondent will make a new application nominating the manager of the Park be added to the register of Fit and Proper Persons maintained by Cornwall Council. He said the application will be made before 1 February 2024.

43. **Site Rules –** The Applicant wanted an agreed set of Site Rules and claimed there had been no consultation with the occupiers of the Park about the Rules. The Respondent stated that the Rules were drawn up before the owners were given written statements which is why consultation had never been an option.

44. It appears that the parties agree that there are several versions of the Rules and there appeared to be a consensus between them, that it would be possible to finalise an agreed set of rules and file these with Cornwall Council. Mr Clement stated that there is no legal requirement for Rules. However, it appears that Park Rules were filed at Cornwall Council but the fee for filing was not paid. He will establish which set of Rules was filed and the relevant fee will be paid. These Rules will apply but once the Rules are formally deposited with Cornwall Council a Schedule 3 form will be sent out to all the occupiers of the Park with a copy of the Rules.

45. Mr Dean said that the Applicant is keen to establish which set of Rules was deposited but that there is willingness between the parties to agree the Rules which will apply on the Park.

46. The orders sought by the Applicant in relation to its section 4 application are listed in paragraph 8 of the June Directions.

47. The first two orders requested both relate to the Applicant's written statements. The Applicant had asked that the Tribunal order the provision of new written statements and order the Respondent to obey the implied terms.

48. Mr Clement indicated that it was undesirable to confuse matters further by providing new written statements but suggested the way forward will be for the Respondent to establish which occupiers had incorrect statements and then replace those. He also submitted that the order sought in relation to adherence with the implied terms was unnecessary, as this is a legal requirement.

49. The third order sought related to the amount of the Pitch Fees. The Tribunal agreed that submissions relating to the pitch fees would be heard in response to the Respondent's Application for the increase sought. It had no jurisdiction to determine the pitch fees under section 4 but would do so in response to the Respondent's application, taking into account the Applicant's submissions.

The Pitch Fee Application

50. Although this application was made by the Park Owner the Tribunal has continued to refer to the Association as the Applicant and the Park Owner as the Respondent (see paragraph 18 above).

51. The date of the proposed increase in the pitch fees was 1 January 2023 (the Review Date). The increase in the Retail Price Index (RPI) for the relevant preceding 12 months is 14.2%. The Applicant does not dispute that figure. It was also accepted that the Respondent has followed the correct procedure in notifying the occupiers about the proposed increase.

52. For the Respondent, Mr Clement referred to the legislation which relates to the increase of pitch fees, now in Chapter 2 of Schedule 1 to the MHA. He said that the legal presumption is that the pitch fee shall be increased by the percentage increase in RPI during the relevant 12 month period. He acknowledged that certain factors can displace that presumption but said that none of the reasons put forward on behalf of the Applicant demonstrate the existence of a relevant factor such as deterioration in the amenities of the Park during the 12 months preceding the Review Date.

53. The Tribunal established, after questioning both parties, that there had been no increase in the pitch fees paid by the occupiers of the Park during the previous four years. All the Applicant occupiers are paying the same pitch fee of £225 per month as was payable when they signed their written statements.

54. One resident, the occupier of 5 Foxglove Crescent, who is not represented by the Applicant, said she is paying £232 per month, but it was established that this included water charges of £7 a month.

55. The Applicant has not alleged that there has been any deterioration of the Park. Mr Clement submitted that none of the factors, which the Applicant alleges should be taken into account, displace the presumption of an increase in the pitch fee of the amount proposed.

56. Mr Clement drew the Tribunal's attention to the matters referred to in paragraph 18(1) of Schedule 1 to the MHA.

57. Mr Clement acknowledged that the Tribunal can decide that it is unreasonable to apply the presumption but referred the Tribunal to the case law and in particular to **Toni Vyse v. Wyldecrest Parks (Management) Limited [2017] UKUT 24 (LC)** the "**Toni Vyse"** case in which HH Judge Alice Robinson had suggested that, should the Tribunal take account of other factors, these must be "weighty".

58. The Applicant submitted that when occupiers moved onto the Park, they relied on promises that the Respondent would provide certain amenities and benefits included within their pitch fees. These amenities have not materialised.

59. The installation of the security gates was completed during the summer of 2021. However, the indoor swimming pool, coffee lounge and gym facilities have not been provided.

60. Mr Dean suggested that pitch fees were not increased in the previous years because the owner was conscious that the "promised" facilities had not, for the most part, been constructed. He suggested that marketing literature supplied to prospective purchasers still refers to the "proposed" amenities.

61. The only evidence of this which the Tribunal could find in the bundle was a welcome letter from RoyaleLife, referred to by the Applicant in its statement outlining the background to its complaint, as Document I which refers to "a secure gated community where you can enjoy a relaxed, carefree lifestyle with like-minded people. We offer a selection of fantastic on-site facilities such as indoor and outdoor pools, gyms, coffee lounges and tea gardens"* [B2 103] However the footnote states "* Facilities vary by development".

62. Mrs Reach told the Tribunal that she was aware that pitch fees had been increased annually on other RoyaleLife Parks. The uncertainty with regard to current and future ownership of the Park coupled with the obligations owed by the administrators to creditors might have influenced the decision of the owner to increase the pitch fees in the Park in 2023.

63. Three factsheets titled Meadowlands Court Frequently Asked Questions [B1 26, 24 & 28] dated August 2022, November 2022 and January 2023 refer to Pitch Fees of £230.63, £225 and £256.95 respectively.

64. Mrs Reach suggested that these factsheets are produced for use by all the RoyaleLife branded parks and take account of anticipated RPI increases, whether or not these have been proposed or demanded, on individual parks.

65. Mrs Reach was unable to explain why the pitch fee referred to in the sheet dated August 2022 is higher than that referred to in the sheet dated November 2022.

The Law

66. All agreements to which the MHA applies incorporate standard terms which are implied by the Act. Those that apply to protected sites in England are contained in Chapter 2 of the Part 1 of the Schedule to the MHA.

67. The principles governing an increase in pitch fees are in paragraphs 16 to 20. A review of the pitch fee can be undertaken every year on the review date. There is no dispute in this case that the Respondent undertook a review of the pitch fee and served the correct written notices on the Applicant using the prescribed form.

68. Paragraph 16 of Chapter 2 of Schedule 1 to the MHA provides that the pitch fee can only be changed with the agreement of the occupier of the pitch, or if the Tribunal, on the application of the owner or occupier, considers it reasonable for the pitch fee to be changed and makes an order determining the amount of the new pitch fee.

69. In these proceedings the occupiers have not agreed to the proposed increase, so the Park owner has applied to the Tribunal for an order determining the amount of the new pitch fee.

70. Paragraph 20 of Chapter 2 of the MHA is the starting point for the Tribunal's jurisdiction when considering what order, it should make. That paragraph provides that unless this would be unreasonable, there is a presumption that a pitch fee will increase, or decrease, in line with the change in RPI during the last 12 months.

71. The parties agree that RPI has increased by 14.2% during the relevant 12 month period. The Respondent is aware that an amendment to paragraph 20 will result in the index to be applied changing from RPI to the Consumer Prices Index ("CPI"), but this does not affect this application. Following the commencement of the Mobile Homes (Pitch Fees) Act 2023 ("the 2023 Act") on 2 July 2023, 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 CPI rather than the RPI. The next increase in pitch fees on the Park will be governed by the change in CPI over the relevant 12 month period.

72. The Tribunal can refer to paragraph 18(1) of Chapter 2 of Schedule 1 to the MHA and decide if it would be unreasonable to apply the presumption.

73. Paragraph 18(1) refers to matters in relation to which the Tribunal can have particular regard. These include both improvements to the site by the owner since the last review date and deterioration in the condition, and any decrease in the amenity of the site or any adjoining land occupied or controlled by the owner since the date the paragraph came into force. If the pitch fee has not been previously reviewed, references to the last review date are to be read as references to the date when the agreement commenced.

74. Therefore, the presumption of the increase in the pitch fee can be displaced if anything in paragraph 18 is relevant, or if there are other factors of "sufficient weight".

75. The case law suggests that the starting point is that the Tribunal must decide if it is reasonable for the amount of the pitch fee to change (paragraph 16(1)) but the amount of any change is within its discretion.

76. The Upper Tribunal has given guidance to this Tribunal in a number of cases. In **Britaniacrest Limited v Barnborough [2016] UKUT 144 (LC)** it identified three basic principles which it said shaped the statutory approach to pitch fee review in paragraph 19 of its decision.

77. **Firstly** the pitch fee can only be changed either (a) with the agreement of the occupier, or (b) if the appropriate judicial body, following an application by either party, considers it reasonable for the pitch fee to be changed and makes an order determining the amount of the new pitch fee; **secondly** if Para 17(1) is followed so the machinery for the proposed increase has been correctly undertaken on the correct dates using the prescribed form of notice; and **thirdly** when the statutory presumption has been taken into account (Para 20), and the proposed increase is in line with the change in RPI (up or down) and calculated by reference to the latest published index for the month which was 12 months before that to which the latest index relates.

78. The decision stated that "The FTT is given a very strong steer that a change in RPI 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" (paragraph 22). The Upper Tribunal went on to decide that the increase or decrease in RPI only gives rise to a presumption, not an entitlement or a maximum, and that in some cases it would only be a starting point to the determination.

79. In other words, if the presumption that the change limited by RPI produced an unreasonable result, the Tribunal could rebut it. "It is clear, however, that other matters are relevant and that annual RPI increases are not the beginning and end of the determination because paragraphs 18 and 19 specifically identify matters which the FTT is required to take into account or to ignore when undertaking a review".

80. That starting point is, subject to the proviso that it must take particular regard to the factors in paragraph 18(1) and must not take into account other costs referred to in paragraph 19 (but those are not relevant in these proceedings). The Tribunal must also apply the presumption (paragraph 20) that any increase (or decrease) must be no greater than the percentage change in the RPI since the last review date **unless that would be unreasonable** (tribunal's emphasis) having particular regard to the paragraph 18(1) factors.

81. In the **Toni Vyse** case, Judge Robinson considered the interrelationship between the provisions concerning alteration in the amount of the pitch fee. She referred to four key provisions as the basis for the FTT determining a pitch fee.

82. **Firstly** paragraph 16 which provides that a pitch fee can only be changed by the FTT if it "considers it reasonable for the pitch fee to be changed and makes an order determining the amount of the new pitch fee".

83. **Secondly** paragraph 18(1) which specifies those matters to which the "particular regard shall be had" when determining the amount of the new pitch fee. **Thirdly** Judge Robinson said that there are a number of matters "to which no regard shall be had" and referred to paragraphs 18(1A) and 10.

84. **Fourth** is the caveat "unless this would be unreasonable having regard to paragraph 18(1) there is a presumption that the pitch fee shall increase or decrease by a percentage which is no more than" the specified change in the relevant RPI (paragraph 20(A1).

85. Judge Robinson continued by stating that she did not consider it a proper reading of paragraph 20(1) to conclude that the only matter which could justify an increase greater than the increase in RPI is if improvements had been carried out within paragraph 18(1). She said if improvements which made it unreasonable for the presumption to be applied had been carried out, the presumption is disapplied. "If there are no such improvements the presumption remains a presumption rather than an entitlement or an inevitability" (Para 32).

86. Judge Robinson agreed with the basic submission advanced on behalf of Britaniacrest, "namely that the FTT has a wide discretion to vary the pitch fee to a level of a reasonable pitch fee taking into account all the relevant circumstances" acknowledging that "the increase in RPI in the previous 12 months is important" but she said "it is not the only fact which may be taken into account" (paragraph 33).

87. In paragraph 47 of the decision, Judge Robinson stated that although, in her judgement, the FTT may not alter the amount of the pitch fee unless it considers it reasonable to do so, "the issue of reasonableness is not at large. It is not open to the FTT simply to decide what it considers a reasonable pitch

fee to be in all the circumstances. Reasonableness has to be considered in the context of the other statutory provisions".

88. Judge Robinson said that for the statutory presumption (of the entitlement to an increase or decrease in line with RPI) to be displaced, it is necessary to consider whether any 'other factors' displace it. "By definition this must be a factor to which considerable weight attaches". She explained this by saying that a consideration of equal weight to RPI would tip the balance in favour or RPI. She said "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."** (Tribunal's emphasis). "What is required is that the decision made recognises that the 'other factor' must have sufficient weight to outweigh the presumption in the context of the statutory scheme as a whole".

89. The decision in **Wyldecrest Parks Management Ltd v. Mr and Mrs Kenyon and others [2017] UKUT (LC)** was issued just after the decision in **Toni Vyse.** The Deputy President of the Upper Tribunal, Martin Rodger KC, had been afforded the opportunity to consider Judge Robinson's draft decision and stated that it "includes a further detailed and illuminating consideration of the statutory scheme, emphasising a number of important considerations". It is worth mentioning that he drew attention to two, both mentioned above in paragraph 87, namely that the issue of reasonableness is not at large and that "Reasonableness has to be determined in the context of the other statutory provisions". He also referred to Judge Robinson's discussion about any factor which would or might displace the statutory presumption having sufficient weight.

Reasons for the Decision

90. Taking into account the relationship between all of those matters, it has been usual for pitch fees to increase annually in line with any increase in RPI and it is probably fair to record that until recently, most Park owners will have expected to obtain an annual increase in pitch fees which corresponds with that increase.

91. However, it would be wrong for this Tribunal not to consider whether it is appropriate to take account of the current cost of living crisis. The 14.2% increase in RPI, used by the Respondent to calculate the pitch fee increase, reflected the peak of the increase in the relevant index during the last 12 months. The percentage change in RPI over the last 12 months was 13.8% in February 2023 and was 11.4% in April 2023. By October 2023, the change in RPI (for the preceding 12 months) had dropped to 6.1%.

92. Of course, this Tribunal accepts that other factors are also relevant. When the Respondent considers an increase in the pitch fee next year, (January 2024) the relevant index used to calculate any increase will be CPI and the change in that over the preceding 12 month period is likely to be lower.

93. The increases in utility costs, coupled with food inflation, both impacted by the war in Ukraine have also affected the change in RPI, but it should be accepted and acknowledged that costs incurred by the Respondent in running the Park will have also been affected by the same factors.

94. Applying Judge Robinson's very precise guidance, this Tribunal must not apply a factor to displace the statutory presumption that the Respondent is entitled to a 14.2% increase in the Pitch Fee unless that other factor is of sufficient weight to outweigh the statutory presumption.

95. Although unnecessary to refer in detail to all the written and oral submissions put forward by the parties, the Tribunal has carefully considered the submission made by the Respondent in paragraph 33 of Budemeadows Reply to the Applicant (B1 20).

96. The Tribunal has decided that the timing of the calculation applying the increase in RPI, coupled with the cost of living crisis, is of sufficient weight to displace the statutory presumption that it should apply the RPI increase to determine the new pitch fee.

97. Having reached that conclusion, the Tribunal has to determine the Pitch Fee. The Tribunal does not accept that there is any justification for the arguments put forward by the Applicant that the absence of promised facilities should influence the amount of the Pitch Fee increase or trigger a decrease in the current Pitch Fee. The Applicant has not produced any actual evidence that it was agreed by the Respondent that the facilities to which it referred, such as the indoor swimming pool and the coffee lounge and gym, would be provided at the Park within a defined timescale. There is no evidence of any contractual obligation on the part of the Respondent to provide any of these facilities.

98. The Tribunal has decided, taking into account that the Respondent has not increased the pitch fee since the Applicant's agreements were completed, that an increase of 10.1% is appropriate. The the current pitch fee of £225 multiplied by 10.1% is £22.73 (£225 + 23.73 = £247.73).

99. The Tribunal therefore determines that the new Pitch Fee, applicable from the 1 January 2023, is £247.73.

Judge C A Rai (Chairman)

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.

ANNEXE 1

Property	
1 Orchid Avenue	
2 Orchid Avenue	
3 Orchid Avenue	
5 Orchid Avenue	
6 Orchid Avenue	
3 Foxglove Crescent	
5 Foxglove Crescent	
7 Foxglove Crescent	
9 Foxglove Crescent	
10 Foxglove Crescent	
1 Honeysuckle Way	
2 Honeysuckle Way	
7 Honeysuckle Way	
10 Honeysuckle Way	
11 Honeysuckle Way	
13 Honeysuckle Way	
14 Honeysuckle Way	
15 Honeysuckle Way	
16 Honeysuckle Way	
17 Honeysuckle Way	
20 Honeysuckle Way	
22 Honeysuckle Way	
26 Honeysuckle Way	
28 Honeysuckle Way	
42 Honeysuckle Way	
44 Honeysuckle Way	
1 Camelia Close	
9 Apple Blossom Way	
2 Primrose Bank	

Annexe 2

Extracts from Mobile Homes Act 1983 as amended.

3.— Successors in title.

(1) An agreement to which this Act applies shall be binding on and enure for the benefit of any successor in title of the owner and any person claiming through or under the owner or any such successor.

4.— Jurisdiction of a tribunal or the court [...]2

(1) In relation to a protected site [...]2 , a tribunal has jurisdiction—
(a) to determine any question arising under this Act or any agreement to which it applies;

Chapter 2 Schedule 1

16.

The pitch fee can only be changed in accordance with paragraph 17, either—
(a) with the agreement of the occupier, or
(b) if the [appropriate judicial body]2 , 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.

]1

Paragraphs 18 -

18.—

(1) When determining the amount of the new pitch fee particular regard shall be had to—
(a) any sums expended by the owner since the last review date on improvements—
(i) which are for the benefit of the occupiers of mobile homes on the protected site;
(iii) which were the subject of consultation in accordance with paragraph 22(e) and (f) below; and
(iii) to which a majority of the occupiers have not disagreed in writing or which, in the case of such disagreement, the [appropriate judicial body]2 , on the application of the owner, has ordered should be taken into account when determining the amount of the new pitch fee;
[
(aa) in the case of a protected site in England, 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 for the purposes of this subparagraph);

(ab) in the case of a protected site in England, 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 (in so far as regard has not previously been had to that reduction or deterioration for the purposes of this subparagraph);
]3
(b) [in the case of a protected site in Wales,]3 any decrease in the amenity of the protected site since the last review date; [...]3
[
(ba) in the case of a protected site in England, any direct effect on the costs payable by the owner in relation to the maintenance or management of the site of an enactment which has come into force since the last review date; and
]3
(c) [in the case of a protected site in Wales,]3the effect of any enactment, other than an order made under paragraph 8(2) above, which has come into force since the last review date.
[
(1A) But, in the case of a pitch in England, no regard shall be had, when determining the amount of the new pitch fee, to any costs incurred by the owner since the last review date for the purpose of compliance with the amendments made to this Act by the Mobile Homes Act 2013.
]3
(2) When calculating what constitutes a majority of the occupiers for the purposes of sub-paragraph (1)(b)(iii) each mobile home is to be taken to have only one occupier and, in the event of there being more than one occupier of a mobile home, its occupier is to be taken to be the occupier whose name first appears on the agreement.
(3) In a case where the pitch fee has not been previously reviewed, references in this paragraph to the last review date are to be read as references to the date when the agreement commenced.

20.—

[
(A1) In the case of a protected site in England, unless this would be unreasonable having regard to paragraph 18(1) , there is a presumption that the pitch fee shall increase or decrease by a percentage which is no more than any percentage increase or decrease in the [consumer prices index]3 calculated by reference only to—
(a) the latest index, and
(b) the index published for the month which was 12 months before that to which the latest index relates.
(A2) In sub-paragraph (A1), *"the latest index"* —
(a) in a case where the owner serves a notice under paragraph 17(2), means the last index published before the day on which that notice is served;
(b) in a case where the owner serves a notice under paragraph 17(6), means the last index published before the day by which the owner was required to serve a notice under paragraph 17(2).
]2
(1) [In the case of a protected site in Wales, there]2 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 retail prices index since the last review date, unless this would be unreasonable having regard to paragraph 18(1) above.
(2) Paragraph 18(3) above applies for the purposes of this paragraph as it applies for the purposes of paragraph 18.