FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/19UH/PHI/2023/0053, 0054, 0055, 0056, 0058, 0059, 0060, 0062, 0063
Property	**:**	2A, 3, 4, 6, 8, 10, 11, 37, 45 Hardy Country Park, Bridport Road, Dorchester, Dorset, DT2 9DS
Applicant	**:**	Alison Newey & Patrick Hall (2A) Ron Emery (3) Sylvia Thompson (4) A and S Hopkins (6) Margaret Jonesy-Greening (8) Peter Churchill (10) Peter Dalkin (11) Deanna Gomm (37) Francis Williams & Carole Williams (45)
Representative	**:**	Patrick Hall
Respondent	**:**	Southern Country Parks Ltd
Representative	**:**	Ms Amanda Gourlay of Counsel instructed by Apps Legal Ltd
Type of Application	**:**	Review of Pitch Fee: Mobile Homes Act 1983 (as amended)
Tribunal Member(s)	**:**	Judge J Dobson Mr M Ayres FRICS
Date of Hearing	**:**	21st August 2023 and 5th September 2023
Date of Re- convenes	**:**	3rd October 2023 and 12th December 2023
Date of Decision	**:**	12th December 2023 Corrected 12th January 2024

DECISION
as corrected pursuant to rule 50 of The Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013

Summary of Decision

1. **The Tribunal determined that the pitch fee review notices served by the Applicant were valid.**

2. **The Tribunal determined that the pitch fee for the year beginning 1st January 2023 and for each of the relevant pitches should be changed.**

3. **The Tribunal determined that the condition of the Park had deteriorated and the amenity had declined and regard has not previously been had to those in determining a pitch fee.**

4. **The Tribunal determined that the pitch fee for each pitch should be reduced to the level of the pitch fee for the year beginning 1st January 2021.**

5. **The Tribunal determines the reasonable pitch fee for the pitches identified below and payable on 1st of the month with effect from 1st January 2023 are as follows:**

   Pitch 2A- £310.28
   Pitch 3- £288.04
   Pitch 4- £288.04
   Pitch 6- £288.04
   Pitch 8- £288.04
   Pitch 10- £288.04
   Pitch 11- £288.04
   Pitch 37- £252.74
   Pitch 45- £288.04

6. **The Respondent shall bear the application fees paid by the Applicants which shall be paid by 29th December 2023.**

Background

7. The Respondent has been the owner of Hardy Country Park ("the Park") since 8th May 2015. The Applicants are the owners of park homes sited on the listed pitches. Pitch 2A as termed is variously described both as that and simply as Pitch 2 but as there is another pitch which was formerly numbered 2 and to which reference is made below, it is considered preferable to use the description of Pitch 2A to avoid confusion. The Applicants are entitled to occupy the pitches under agreements of various dates and including assignments of agreements entered into by previous occupiers of relevant pitches. Nothing turns on the precise dates, although notably the longest- standing resident, Mrs Thompson has occupied since the 1970s.

8. Hardy Country Park ("the Park") has been in operation since the 1960s, it is said, then known as Morn Gate Caravan Park and was partially a holiday

park and partly a residential one. It was owned by a Mr and Mrs Jackson until the sale to the Respondent (in its former name of John Romans Park Homes Limited). It is said to occupy slightly over six acres.

9. The Park is a protected site within the meaning of the Mobile Homes Act 1983 ("the 1983 Act"). The definition of a protected site in Part 1 of the Caravan Sites Act 1968 includes a site where a licence would be required under the Caravan Sites and Control of Development Act 1960 if the exemption of local authority sites were omitted. The site licence was provided [338- 347]. Planning permission allows for forty- two units. Until 2015, twelve had been for permanent residence and thirty for holiday use.

10. A letter addressed to the owners of the park home sited on each pitch was served by way of a Pitch Fee Review Notice with the prescribed Form, detailing the proposed new pitch fee for each individual pitch and calculation of it, on each of the Respondents, each dated 29th November 2022 [e.g. 25- 33], seeking an increase by an amount which the Respondent says represents an adjustment in line with the Retail Prices Index ("RPI") from 1st January 2023 onwards. The fees were expressed as monthly sums. The Respondents did not agree to the increase.

11. The RPI was 14.2% taking "the RPI Adjustment", as described, as the percentage increase in the RPI over 12 months to October 2022. No recoverable costs or relevant deductions were applied. Water and sewerage charges are included in the pitch fee. Additional charges are made for, gas and electricity, as set out in the Written Statement, i.e., agreement, for occupation of each pitch.

12. The current pitch fee payable as from 1st January 2022 and the new monthly fee sought in respect of the pitches relevant in this case ("the Pitches") were as follows:

    Pitch 2A- £328.90 to £375.60
    Pitch 3- £ 305.32 to £348.68
    Pitch 4- £305.32 to £348.68
    Pitch 6- £305.32 to £348.68
    Pitch 8- £305.32 to £348.68
    Pitch 10- £305.32 to £348.68
    Pitch 11- £305.32 to £348.68
    Pitch 37- £267.90 to £305.94
    Pitch 45- £305.32 to £348.68

Procedural History

13. The Applicants sought the determination of the pitch fee payable in respect of the above listed pitches on 4th January 2023, submitting the relevant application [6- 12 and 16- 22], the latter adding pitch 11, citing as their grounds for objection matters broadly amounting to lack of maintenance, loss amenity space, removal of landscaping and similar, including consequent increase in noise, and loss of staff. It was argued that the Pitch Fee Review Notice was not valid, the issues had not been considered

previously and other matters were raised, in four other "main strands" which the Tribunal addresses below, although some of those four can be dealt with together as being of a broadly similar nature.

14. There is nothing which specifically requires to be noted about the procedural history of these applications prior to the final hearing commencing. The Applicants were directed to provide a hearing bundle for a hearing listed for one day on 21st August 2023, including time for an inspection scheduled for 10.00am. One occupier, not listed above, withdrew her objection.

15. The Applicants submitted a PDF determination bundle comprising 776 pages, which was copied to the Respondent. That included the applications and other documents for each pitch relevant, including (and being a significant portion of the bundle) the respective consents for the representative acting, Pitch Fee Review Notices and Forms and the Written Statements [24- 286]. There were also included a large number of photographs of the Park [456- 544 and 751- 752], including from January 2023 and 2021, and a plan of the Park displaying the location of the Applicants' pitches [725].

16. Whilst the Tribunal makes it clear that it has read the bundle, the Tribunal does not refer to all of the documents in detail in this Decision, it being impractical and unnecessary to do so. Where the Tribunal does not refer to pages or documents in this Decision, it should not be mistakenly assumed that the Tribunal has ignored or left them out of account. Insofar as the Tribunal does refer to specific pages from the bundle, the Tribunal does so by numbers in square brackets [ ], and with reference to PDF bundle page-numbering.

17. In the event, the hearing could not be completed on 21st August 2023, in part a reflection of delays in reaching the Court in Weymouth from the inspection in the height of summer holiday season and in everything being set up on arrival, but mostly because the number and nature of the issues did not allow any prospect of the case concluding in the remainder of the day. The Applicant's evidence was completed. A second day therefore needed to be arranged and was listed for a fortnight later, as the first date convenient, namely 5th September 2023. The Respondent's evidence and closing submissions were dealt with, taking between them a full second hearing day.

18. In light of the identification of potentially relevant caselaw of which the parties were unaware, notwithstanding the law referred to by Counsel, as mentioned below, the parties were given the opportunity to provide written submissions on the particular question. Those were required by 5pm 15th September 2023 but an extension of time was sought until 29th September 2023 and granted.

19. Necessarily, the Tribunal was then required to consider those and a time arranged for that amidst the hearing and other diary entries. That consideration occurred initially on 3rd October 2023. The conclusion of

the process of receiving and considering information therefore extended some weeks beyond the usual, where it might have been anticipated that all evidence and submissions, together with the making of a decision, subject to the drafting up of that, would have completed on the first hearing date some nearly six weeks earlier. Regrettably, other commitments delayed the opportunity being available to write this Decision and then on completion of a draft, there remained matters for the Tribunal to discuss further in order to finalise its determination and the document. Time needed to be found for that further discussion, achieved today.

20. The Tribunal accepts that in light of the above process and other commitments, there has been delay in the issue of this Decision some way beyond the target date of four weeks from consideration by the Tribunal of the written submissions. The Tribunal apologises for that delay and any inconvenience arising.

The Inspection

21. Given that the inspection preceded the hearing in this instance, the Tribunal refers to that first.

22. The inspection took place on the morning of 21st August 2023. The inspection was attended, in addition to the Tribunal members, by certain of the Applicants to one extent or another, most particularly Mr Hall and Ms Newey on behalf of the Applicants. It was attended by Ms Gourlay, Ms Apps and Mr Romans on behalf of the Respondent. The inspection took approximately one hour. It was explained that the Tribunal would look at anything anyone present wished it to but would not wish to receive information, which would be a matter to be dealt with at the hearing when evidence was heard.

23. The Tribunal observed the overall condition of the Park as highlighted by both the Applicants and the Respondent. The Tribunal records what it was shown below in some detail. It should, however, be emphasised that the Tribunal did not undertake a survey of the Property, either in respect of specific areas or generally.

24. The Tribunal of course saw the condition of the Park nearly eight months after the date from which the new pitch fee is payable and nine and a half months or so from the date of the Pitch Fee Review Notice. The Tribunal is mindful that the inspection can only demonstrate the condition on the date the inspection took place and does not of itself identify the condition of the park on any other date. An assessment is required of the matters seen in the inspection in the context of the other evidence, which is returned to when the Tribunal makes findings of fact below.

25. The Tribunal principally walked around the side of the Park on which the Applicant's pitches are located. The Tribunal briefly went around the redeveloped other side of the Park. The Tribunal had accessed the Park via the main entrance gate. The Tribunal was shown Mayfield, as it is called,

from one of two entrances to it, being that very approximately opposite the main entrance gate.

26. The inspection started by the entrance gate. The Tribunal noted that and the walls either side to be fairly new and the gate to open automatically when vehicles approach. The Tribunal also noted the new- looking fencing starting either side of the walls by the entrance gate. There is a noticeboard by the gate.

27. The inspection proceeded to the west of the park, where the Applicant's pitches are located. Pitches 1, 2A, 9 and 42 which are not the subject of pitch fee agreements are also located within that area.

28. The Tribunal was shown pitch 37, occupied by Ms Gomm. The Tribunal noted two empty pitches between the entrance and her pitch. Ms Gomm's pitch has a small outside area either side of the home, one side used as a seating area and the other as more of a utility area. The distance from the rear of the home to the boundary fence is a few feet. The road noise outside the home was considerable.

29. The Tribunal then proceeded around the road in that part of the site, being shown an entrance from North Rew Lane, a single- track road running by the western boundary of the Park, and an area fenced off and referred to as the compound.

30. The compound was surrounded by Heras fencing. The area was overgrown with vegetation to a height of approximately three feet. Within the compound was decking, stones and a mound. It is located adjacent to Pitch 2A, occupied by Ms Newey and Mr Hall and to Pitch 45, occupied by Mr and Mrs Williams. The compound area was very unslightly.

31. The Tribunal saw a row of former garages. There were disused solar panels on the roofs of those. It was indicated one may still contain a car. The garages were in a poor condition.

32. There was a hedge along the western boundary, but it was disputed whether that had been trimmed a few days previously or at an earlier point, although it was not suggested that happened prior to the Pitch Fee Review date.

33. Part of the road up to the electrical supply or thereabouts which was previously gravel had replaced, it was agreed. It was also said, and agreed, that some of the potholes to the remainder of the roadway through that western portion of the park had been filled in ten days earlier, although it was not clear that the filling would be more than a short- term fix.

34. Comments being made by the parties ran contrary to the explanation by the Tribunal that the inspection was not the time to provide the Tribunal with information, but minor breach of that is common and difficult to avoid. Both parties were present, so no advantage was gained. Equally, the indications were not contentious.

35. The Tribunal saw that some potholes remained as the road went around the corner after the garages. In general, the road, once it down turned into the western part of the Park after pitch 37 was in relatively poor condition, the best parts adequate. The Tribunal was specifically shown new electric lights beside the road.

36. An alleyway leading to pitch 9 was pointed out. To the side of the alley away from the home there were long bramble branches and overgrown hedges/ trees.

37. The pitches not licensed suffered from overgrown bushes and weeds to several feet high. There was also an overgrown path to pitch 1 with broken fencing. Number 12 was accessed via grassy track also quite overgrown. The Tribunal saw a shed containing electric installations. Only a few feet away there was an oil tank, although both looked longstanding.

38. In general foliage, grass and other vegetation other than within pitches occupied by licencees was overgrown, lacking maintenance and unsatisfactory. The Tribunal saw well- established and untended weeds. The gardening and other maintenance of grass, trees, shrubs and similar appeared to have received inadequate attention for a long time.

39. The pitches in the occupation of the Respondent were in poor condition and unsightly.

40. Mayfield was very much a field, rather than an area which had been landscaped or maintained. The grasses and vegetation were a few feet high. There is a flattened area through the field of a few feet wide, leading from the entrance the Tribunal saw, which served as a sort- of pathway. The parties indicated the path to continue in something of a loop round to another gate towards the south- eastern corner beyond the other side of the pitches of the newly developed part.

41. It was identified where the area which the Applicants said has previously been used as a recreation area was situated.

42. The Tribunal briefly walked around the newly redeveloped part of the Park. A top surface to the road has not yet been laid, such that there are raised manhole covers but otherwise the road is newly laid and edged. The grass around the pitches and hardstanding is short. Most of the pitches are currently empty but the hardstanding is in place for them. There is a hedge to the eastern boundary, including brambles, but kept to a few feet and of the character of a maintained countryside boundary.

43. Overall, the Tribunal saw a very marked, indeed stark, contrast between the newly developed eastern part of the park, with new roads, short grass and such vegetation as there was controlled on the one hand and the part of the Park occupied by the Applicants which was overgrown, poorly maintained, apparently uncared for and in poor condition.

44. Whilst the Tribunal had considered the substantial number of photographs provided, the inspection was nevertheless found very useful by the Tribunal to identify the condition of the Park and understand the issues raised.

The Hearing

45. The application was heard on 21st August 2023 at Weymouth and Dorchester County Court, in Weymouth in person. The Applicants attended, as did the Respondent's director Mr Romans and the representatives. The hearing on 5th September 2023 was attended remotely, which included a number of Applicants sharing a screen to watch- no other participation was required from them by that stage. The Applicants were represented by Mr Hall, the partner of Ms Newey and an occupier of the home on pitch 2. The Respondents were represented by Ms Gourlay of Counsel. A document 21 pages long titled Skeleton Argument was provided by Ms Gourlay, which in particular set out relevant law.

46. The Tribunal received oral evidence on the first day from Mrs Gomm, Mr Williams, Mr Hall, Mr Hopkins, Mr Dalkin, Mr Churchill and Mrs Jonesy-Greening in addition to the matters in their statements or similar [545-562]. The Tribunal received oral evidence from Mr Romans on the second day, in addition to matters deal in his statement [578- 603]. The Tribunal does set out the oral evidence received in this part of the Decision and instead records it where relevant to discussion of the issues below.

47. The Tribunal had received statements of case from the parties [respectively 287- 331 and 563- 577 plus an Applicants' reply 332] and also received oral closing submissions from Ms Gourlay and then from Mr Hall. Those from Mr Hall addressed the legal elements and evidence. Ms Gourlay sought to apply the evidence to the law already identified. However, she did indicate that there was no authority in respect of whether deterioration or decline- see below- had to be permanent or could be temporary.

48. The Tribunal identified that the issue had been mentioned in a decision of the Tribunal which it had recently considered in another case and quoting a decision of the Martin Rodger KC, Deputy President of the Upper Tribunal (Lands Chamber). There was brief discussion of that with Counsel, although the Upper Tribunal decision itself was not identified fully in the decision of this Tribunal and could not be found during the course of the hearing. The subsequent invitation for the parties to provide written submissions limited to the particular point came in consequence of the Tribunal identifying a slightly longer quotation from the Upper Tribunal decision in another decision of this Tribunal- see below.

49. The Tribunal sets out the submissions received and the other submissions in Ms Gourlay's Skeleton Argument and the oral closing submissions below when addressing the issues, with one qualification, namely that the Applicants' written submissions went some way beyond the question of deterioration/ decline being capable of being temporary. Where they did so, the Tribunal had not given permission and takes no account of them

The Tribunal addresses separately the two principal strands of the Applicant's case, namely, firstly, whether the Notice was valid and so a new pitch fee could be determined and, secondly, that the proposed increase in pitch fee was not appropriate. and in turn, then dealing briefly with other matters.

50. It was observed by the Tribunal in the hearing that a myriad of points have been made and/ or issues raised in evidence and that exploration of all of those in detail would result in a very lengthy and potentially impenetrable decision, even beyond what must be accepted to be a decision of less than ideal length now produced. This Decision seeks to focus as best possible 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.

51. The Tribunal is particularly grateful to Mr Hall and Ms Gourlay for their assistance in this case and grateful for the contributions of the witnesses in their evidence.

The relevant Law and the Tribunal's jurisdiction

Statute and Regulations

52. 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.

53. The implied terms in respect of the pitches involved in this case are included in the bundle [for example 42- 60]. Those all include the following, [see e.g. paragraph 22 of the written statement of Mrs Newey:

> "The owner shall –
>
> (c) be responsible for repairing the base on which the mobile home is stationed and for maintaining any gas, electricity, water, sewerage or other services supplied by the owner to the pitch or to the mobile home;
> (d) maintain in a clean and tidy condition those parts of the protected site, including access ways, site boundary fences and trees, which are not the responsibility of any occupier of a mobile home stationed on the protected site;"

54. 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.

55. The principles governing a pitch fee increase are provided for in paragraphs 16 to 20 inclusive of Schedule 2 to the Act. The procedure is provided for in paragraph 17, which also makes reference to paragraph 25A.

56. 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 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.

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

58. 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."

59. The owner or the occupier of a pitch may 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 change (increase or decrease) in pitch fee is reasonable and to determine what pitch fee, including the proposed change in pitch fees or other appropriate change, is appropriate.

60. The original pitch fee agreed for the pitch was solely a matter between the contracting parties and that 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 perceived reasonableness of that agreed pitch fee in any wider sense, for example by comparison to other pitch fees, or of the subsequent fee currently payable at the time of determining the level of a new fee.

61. 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 when determining whether to alter the pitch fee and the extent of any such change were specified.

62. Paragraph 18 provides that:

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

63. "Regard" is not the clearest of terms and the effect of having such regard is left to the Tribunal. Necessarily, any such matters need to be demonstrated specifically. "Particular" emphasises the importance and strength of the regard to be had.

64. As amended by the 2013 Act, paragraph 18 and paragraph 19 set out other matters to which no regard shall be had or otherwise which will not be taken account of.

65. 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-
> the latest index, and
> index published for the month which was 12 months before that to which the latest index relates."

66. For reasons which will 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.

Caselaw in respect of validity of pitch fee notices

67. There is relatively little caselaw in respect of this aspect of the dispute.

68. The question was first addressed in the Upper Tribunal in the case of *Small v Talbot* [2014] UKUT 0015, a decision of Judge Siobhan McGrath,

President of the First Tier Tribunal (Property Chamber) sitting in the Lands Chamber, to which the Respondent referred. The Notice that had been served was held not to be valid for the reason that the owner's Notice contained incorrect computations of the actual amount of the increase proposed and of the amount that the occupier would pay.

69. However, some caution is needed in applying that decision now. At the time of the particular Notice, the requirement for the Notice to be accompanied by the prescribed Form had not been introduced, so the only document which was required and which would provide information to the park home owner was the Notice itself.

70. Nevertheless, it merits noting that the Upper Tribunal in *Wyldecrest Parks Management Limited v Truzzi- Franconi* [2023] UKUT 42 (LC), held earlier this year that the Notice served in that case was valid because, even if there was any failing in the information provided (which the Upper Tribunal did not accept) it had in any event fulfilled its purpose despite the inaccuracy and so fell within the requirements explained in *Mannai Investment Co Ltd v Eagle Star Life Assurance Co Ltd* [1997] UKHL 19. That decision of the Upper Tribunal indicates a relatively high bar for a park home owner to clear in order to obtain a determination that a Notice is not valid.

71. Somewhat more recently than *Mannai*, the question of validity of documents such as notices was considered by the Court of Appeal in *Natt v Osman* [2014] EWCA Civ 1520. The Tribunal adopts the wording of Ms Gourlay as to the judgment and effect, which it encounters- indeed refers to- on a not irregular basis and where it is content that Ms Gourlay's summary and quote are correct.

72. The Court of Appeal considered the distinction between the validity of documents in "two broad categories":

    (1) "those cases in which the decision of a public body is challenged, often involving administrative or public law and judicial review, or which concern procedural requirements for challenging a decision whether by litigation or some other process", and

    (2) "those cases in which the statute confers a property or similar right on a private person and the issue is whether non-compliance with the statutory requirement precludes that person from acquiring the right in question".

73. At paragraph 31, it was said:

    "The Court of Appeal cases show a consistent approach in relation to statutory requirements to serve a notice as part of the process for a private person to acquire or resist the acquisition of property or similar rights conferred by the statute… The court has interpreted the notice to see whether it actually complies with the strict requirements of the statute; if it does not, then the court has, as a matter of statutory interpretation, held the notice to be wholly valid or wholly invalid…"

74. And further:

> "[33] In cases such as the present, that is to say the acquisition of property rights by private persons pursuant to statute, the intention of the legislature as to the consequences of non-compliance with the statutory procedures (where not expressly stated in the statute) is to be ascertained in the light of the statutory scheme as a whole. In some cases, for example, the court has held in favour of invalidity where the notice or the information which is missing from it is of critical importance in the context of the scheme"
>
> [examples were then given]
>
> "[34] By contrast, the court has held in favour of validity where the information missing from the statutory notice is of secondary importance or merely ancillary."
>
> [examples were then given]

75. The indication from *Wyldecrest Parks Management Limited v Truzzi-Franconi* is that missing or inaccurate information is most likely to produce the latter result, although *Small* may well support an argument that if there is missing or inaccurate information which is fundamental, that might render the Notice invalid.

Caselaw in respect of the amount of the pitch fee and related

76. A detailed explanation of the application of the statutory 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. 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). .....
>
> 23. ..... 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."

77. Two sets of factors which may mean that the RPI presumption does not apply were identified- the paragraph 18(1) factors and other factors.

78. 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)."

So, using wording the same as that within paragraph 23 of *Sayer*.

79. Those paragraphs therefore emphasise that there are two particular questions to be answered by the Tribunal. The first and "overarching" one is whether any change in the pitch fee at all is reasonable, where unless it is reasonable for there to be change, there is no change at all. The second is about the amount of any new pitch fee, which includes applying the presumption stated in the 1983 Act where that arises- which it may not given the effect of paragraph 18(1). Account must also be taken of other factors where appropriate.

80. In *Britanniacrest Limited v Bamborough* [2016] UKUT 0144 (LC), the Upper Tribunal (albeit in the context of whether the increase could be greater) it was said about the presumption:

> "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 be 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."

81. 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."

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

83. With particular regard to paragraph 18 of Chapter 2, the Upper Tribunal explained as follows:

"24. ..... paragraph 18(1)(ab) requires the FTT to have regard to any reduction in services which the owner supplies to the site, the pitch or the individual home. That is consistent with the pitch 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. Where such services are reduced, or the quality diminishes, the Act requires that reduction or deterioration to be taken into account (presumably as a factor justifying either a reduction in the pitch fee or a smaller increase than would otherwise be allowed)."

84. The ability to determine that there should, assuming there to be any change at all, be a lower increase than RPI or indeed a reduction where appropriate is clearly identified. The Tribunal considers that the comments of the Upper Tribunal apply just as much to condition and amenity as they do to services, there being nothing in the Act to support dealing with one differently to the other.

85. 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.

86. The Judge in *Vyse* also carefully set out why RPI was used, rather than seeking to consider every element of costs individually. With regard to the latter, it was said:

"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."

87. That broad legislative purpose merits careful note. However, it was also 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."

88. That serves to emphasise, lest such emphasis be required, that there are two sets of potential factors, the paragraph 18(1) factors on the one hand and other factors on the second hand. The Judge repeated that the pitch fee can only be changed if the Tribunal considers it reasonable for there to be a change and the "particular regard" to be had to the matters in paragraph 18(1)

89. Later, and significant in the context of this group of applications, it was explained that given the wording and structure of the provision, paragraph 18(1) factors arising can cause the RPI presumption not to arise. In the

absence of such factors (or if regard which they merit is insufficient), it does arise. The judgment in *Britanniacrest* that a reduction or smaller increase in pitch fee may be justified by paragraph 18(1) was quoted.

90. The Judge made the following statements which make the position clear, as follows:

91. "48. ..... If, having regard to a factor to which paragraph 18(1) applies, it would be unreasonable to apply the presumption then the presumption does not arise."

and:

"The presumption of change in line with RPI did not arise because the FTT considered it unreasonable applying what the FTT believed to be paragraph 18(1)(ba)."

92. The Upper Tribunal identified in paragraph 50 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."

93. The Upper Tribunal discussed in *Vyse* about "other factor[s]" at some length and explained that such other factor(s) must be sufficiently weighty if they are to rebut the presumption in light of the statutory scheme.

94. Assuming that there are no paragraph 18(1) factors, the other factors not only have to exist but also that they have to be of sufficient weight to rebut the presumption of an increase to reflect the level of increase in RPI because the presumption has then arisen.

95. 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.

96. It is worthy of brief reference that the Upper Tribunal summarised six propositions derived from the various previous decisions with regard to the effect of the implied terms for pitch fee reviews. However, the Tribunal does not consider it necessary to set them all out, having explained the relevant ones above. The Tribunal does note item v., which reflects the judgment in *Vyse,* stating as follows:

"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."

97. The Upper Tribunal has returned to matters related to pitch fees in other more recent cases, Deterioration in the condition and amenity of the site was referred to in *Wickland (Holdings) Limited v Ameila Esterhuyse* [2023] UKUT 147 (LC) as recently as 30th June of this year. The displacement of the presumption of a rise in the pitch fee in line with RPI was because of the weight to be given to an other factor and not the matters within paragraph 18. The decision reflected a quite particular factor relevant in that case and applied the case authorities identified above, so that save for affirming that deterioration is that since 2014 when the provision came into force and not only that since the last pitch fee review (paragraph 23), the judgment contains nothing directly additionally relevant for these purposes.

98. The Tribunal considers the net effect is that if paragraph 18(1) factors apply to render an increase in line with RPI unreasonable, the level of the new pitch fee is an open one subject to application of case law and the statutory scheme. Otherwise, there is a, strong, presumption of an increase in line with the increase in RPI (at least at the time of the pitch fee review in these cases). However, as referred to in the case authorities above, a presumption, where applicable is just that and necessarily is rebuttable. It neither instance will the pitch fee determined necessarily reflect the change in RPI.

99. If the presumption of an increase by RPI does not arise then the effect is that the Tribunal needs to consider the appropriate level of pitch fee absent that presumption. That does not mean that the pitch fee cannot change. However, if a change is appropriate, there is no specific steer as to what that change should be. It is right to say that where the presumption has been rebutted a pitch fee which has increased to reflect the rise in RPI may still be reasonable- the one matter of the presumption itself being rebutted does not necessarily lead to the other.

100. The Tribunal must still do that which it is required to do and determine the level of pitch fee that is reasonable. The pitch fee will be the amount that the Tribunal determines, including whether there should be any change at all from the current pitch fee at the time and, if so, to what level, taking account of the relevant matters.

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

102. For completeness, the Tribunal does not identify anything in the case authorities which adds anything to the definition in the Act of "condition" or indeed any other term within paragraph 18(1) save for "amenity".

103. In respect of "amenity", in *Charles Simpson Organisation Ltd v Redshaw* (2010) 2514 (CH), a case quoted by Ms Gourlay although not on this specific point, Kitchen J explained:

> "In my judgment, the word "amenity" in the phrase "amenity of the protected site" in paragraph 18(1)(b) simply means the quality of being agreeable or

pleasant. The Court must therefore have particular regard to any decrease in the pleasantness of the site or those features of the site which are agreeable from the perspective of the particular occupier in issue."

Other rights and remedies

104. The Applicants and Respondent of course entered into a contract in relation to the siting of the park homes on the given pitches. That contract includes the express terms stated within it. As discussed, statute has also implied a large number of terms. The parties are given rights and remedies by those, the remedies being for breaches of the contract.

105. The rights are those set out, subject to appropriate interpretation or construction. There may be matters within the jurisdiction of the Tribunal: otherwise there are matters which remain in the jurisdiction of the Courts.

106. A site owner has wider legal obligations, by way of examples, to comply with fire safety, planning requirements and the terms of the Site Licence granted. That is relevant given that the Applicants argued that there had been a lack of compliance by the Respondent and that had relevance to the pitch fee determination being made.

Findings of Fact

107. In light of the matters noted at the inspection and the evidence received, the Tribunal makes the following findings of fact. Firstly, about general matters as to condition and amenity: secondly, about specific elements of the Park and thirdly about other issues raised.

Condition and amenity generally

108. The Park has not been used for touring caravans, tents and similar since the 1980s, accepting the Applicants' case about that, to the eastern side of the Park where the new development has taken place. Since that time there had predominantly been holiday- let mobile homes. There were always, or at least since the 1970s, some residential units on the western side- the Tribunal accepted the oral evidence of Mr Williams and Mr Hall and others about that.

109. The Respondent commenced development on the Park in early 2018. Mr Hall and Mrs Newey moved to their current pitch in February 2019 (from a pitch on the eastern part then number 48). Considerable changes were made to the eastern side of the Park. The Applicants said that little information was provided to them, which was not challenged. The redevelopment largely ceased in 2020 due to the Covid 19 pandemic and that remained the case during much of 2020 and 2021 and the Park was, as the Applicant's statement of case describes it a "work in progress".

110. The condition of the Park deteriorated to an extent from 2015 as the Applicants assert and then markedly from 2018 to 2020 and then onwards.

The Tribunal accepts the Applicants' evidence that there was development work to the eastern part but only limited maintenance to the western part. The Tribunal further finds that the position worsened further during 2021 and 2022. The assertion by the Applicants of the Park looking "derelict" is not an in-apt description for the western part.

111. The Tribunal allows for the condition as at the Pitch Fee Review Notice date having been less bad than as at the inspection in August 2023 and takes account of continued decline after the Notice date not being relevant to the determination required. The Tribunal finds that there had been an element of work prior to the inspection by way of temporary filling of certain potholes and tidying of some foliage. As will be identified from the comments about the inspection, those had very limited impact in the wider context.

112. That finding does not detract from the fact that work has been undertaken to the Park, although principally to the re- developed eastern side, and indeed takes account of that work. The Respondent produced a list of work undertaken [694], although not the invoices themselves and no details of amounts paid and extending from March 2022 to June 2023, so almost half beyond the date of the Pitch Fee Review Notice. The list included matters which might be expected to require attention periodically such as emptying a septic tank. The largest number of entries- six- were for grass cutting, followed by rat problems- five.

113. The Tribunal finds that the Applicants were honest and correct in stating that, for a lengthy period, they accepted what they were told about the redevelopment of the Park being of benefit to them. They did not raise significant issues about the work being undertaken or the effects of that work by way of noise and disruption, much as those effects were felt.

114. However, the Tribunal finds that the Applicants nevertheless were concerned at the lack of attention given to the western side of the Park on and the decline in the condition of that side, affecting their enjoyment of their homes. That concern grew from 2020/2021 such that Applicants were initially reluctant to agree the increase in pitch fee sought in October 2021. The Tribunal accepts that they were persuaded to not oppose that because of indications given to them about the Park, which were not then fulfilled. That and increased deterioration lead to the Applicants not agreeing the currently sought increase.

115. It is convenient to here deal with the Applicant's point that they only agreed to the 2022 pitch fee on the basis of assurances about future maintenance.

116. The Applicants' case is that they sought a commitment from the Respondent and that assurances were given that maintenance would be attended to. Those were not fulfilled. The Tribunal accepts as a fact that the Applicants did not dispute the 2022 increase for that reason and otherwise would have done so.

117. The Tribunal does so despite there being some doubt as to how the assurances were given. The Applicants stated that that Mr Hopkins telephoned the park owners office in December 2021 to raise concerns about the Park. It is said that the following day, "the office" assured Mr Hopkins that the issues raised were going to be addressed. Whilst it was suggested in the written case that the call related to the condition of the Park generally, Mr Hopkins said in oral evidence that he rang about the condition of Pitch 9. He said that Mr Romans told him that it, the home, would be removed after Christmas. He added that he was promised a five-star park when the development started.

118. Mr Roman's evidence was that he had checked and he disagreed that Mr Hopkins had called. Mr Romans did not accept speaking to Mr Hopkins. The Tribunal had no reason to doubt Mr Hopkins and also considered it more likely that he would recall something of significance to him than would Mr Romans. However, on the oral evidence received, that was not the assurance to which the Applicants referred.

119. On balance, the Tribunal finds that there was an assurance given going beyond Pitch 9. There is ample evidence that the condition of the Park was poor, the evidence of dissatisfaction was cogent but the increased pitch fee was not opposed and was paid. The Tribunal accepts there having been a reason for the third in spite of the first two.

Specific elements of the Park

120. Turning to specific aspects of the condition, firstly there is, the Tribunal finds, a wider area outside the gate to the Park which the Tribunal considers is likely to facilitate easier access and egress. The Tribunal considered the available photographs [e.g. 639 and 642]. That is not a substantial change for those living on the Park but does provide an element of advantage. It was accepted that the entrance to the Park (now gated) itself is not wider.

121. Whilst the Applicants' position in general terms was that the entrance gate was not needed, the Tribunal finds that the new entrance gate provides a degree of extra security to the Park by way of there being a gate rather than an open entrance. The Tribunal finds that persons who do not occupy the Park and have not visited would be unlikely to know that the gate opens to admit any car. However, that security is reduced by the fact that it does so open. Mr Hall said in closing that the Applicants accepted there was no decrease in amenity. The Tribunal finds the gate to provide no detriment but only modest enhancement.

122. The Tribunal finds that the removal of the bank and the trees which previously stood either side of the entrance (and could be seen on photographs [632- 635 and 638- 641] was detrimental to amenity. The Tribunal accepts the evidence of the Applicants that it provided noise-reducing qualities by the deflection and absorption of noise. In the absence of any recording of noise in one state or another, any evidence from a relevant expert or other evidence on which an assessment could properly

be made, the Tribunal makes no finding as to the exact extent. However, the Tribunal is satisfied applying its experience and expertise and considering the evidence given by the Applicants that the original bank and trees/ hedge will have provided noise insulation, whereas a fence and what were at the relevant time low relatively thin laurel bushes yet to grow and fill out, if planted yet at all as at October 2022, were rather less effective.

123. The Tribunal noted the point put to Mr Hall by Ms Gourlay that there would not be a lot of sound cover in winter from deciduous trees but also Mr Hall's reply that the bank and vegetation under the trees remained. It was not possible to make any determination of the relative effect of loss of leaves during winter, which no evidence addressed, expert or otherwise.

124. The Tribunal finds that any additional noise impacts on Ms Gomm in particular. The Tribunal finds from the inspection of her pitch and the road noise heard that she could not pleasantly be outside her home except at any times of the day for which the traffic was particularly light. It will be appreciated that the Tribunal cannot know what the position would have been in any precise terms had the bank and trees remained.

125. The Tribunal finds that the effect is that much less on the Applicants as their pitches increase in distance away from the road and considers on balance that pitches towards the southern side suffer no or negligible effect. As for whether that will alter if the vegetation and foliage is attended to appropriately is not known but is no reason not to attend to that.

126. The Tribunal does not find the removal of the trees and the replacement with the fence to amount to deterioration. Photographs suggested that the trees became somewhat unkempt but the Tribunal considers that reflected lack of maintenance of them- there was deterioration to that extent until that point but prior to the Notice.

127. The fence is perfectly fine in itself. It was suggested by Mr Romans to be cleaner. It is certainly less soft than the grass bank and trees- the Applicants may perceive more clinical or stark. The difference is one of perspective. The fence may fit better with a metal gate and the intended image for the Park: it may be less how the Applicants would prefer the park to present- Mrs Jonesy- Greening for example opined a change from a country park to a concrete jungle. However, with that item and with others, the Tribunal was alert to the need to distinguish differences of perspective from deterioration and decline and did not confuse one with the other.

128. The laurel bushes now outside the fence provide an additional break between the road and the Park. It may well be that as they grow taller and thicker some of the softness will return and the noise- reducing properties will increase but that will be in the future not at the Review date.

129. The Tribunal is not persuaded that the deliberate change from the bank and the trees to a different style of boundary can amount to a deterioration in condition of the Park. There is a difference between how the Park was and how it now is but it is the consequence of positive action. Neither, at

least to date, lessening of noise- reducing properties or being less to the taste of the Applicants can amount to deterioration in condition.

130. Mrs Gomm complained that she could be seen when sitting outside her home by people on the upper floor of buses. The Tribunal finds that to be correct in the area where seating is placed. It is apparent that the height of the fence and bushes is and is intended to be well below the level of the bank plus trees. The upper floor of buses would be at a higher level. The frequency of sitting outside and being able to be seen was not clear. The Tribunal accepted that Mrs Gomm has experienced a decline in amenity because of being more visible but did not find that the Park as a whole had within the meaning of paragraph 18(1).

131. For completeness, the Tribunal finds, as argued in the Respondent's case, that part of the difficulty for Ms Gomm with being visible is a consequence of the homes being removed from the two pitches to the immediate east of hers but that is not a matter of deterioration or similar. (Neither could there be other guarantee of those pitches being occupied at any given time.)

132. The condition of the side of the Park occupied by the Applicants is poor. It is below the level of any other Park which the Tribunal members have inspected. That is a finding the Tribunal makes with no pleasure and no little disappointment that the statement is considered accurate.

133. The compound as it is known is very unsightly, at least to the Applicants whose pitches are close to it. It is not visible from the re-developed other side of the Park. The Tribunal accepts the oral evidence of the Applicants that they could see the compound and contents either from their homes, for example Mrs Gomm and Mr Williams, or otherwise could see when in the Park. The Tribunal also accepts the evidence of Mr Hall that when he moved pitches in February 2019, there was a home on the site with a single small pile of rubble and some logs.

134. Mr Romans said that the fencing had previously been covered in green mesh thereby obscuring what was inside, but this had been removed by persons unknown. The Tribunal accepts the mesh had existed and that whilst the compound was then still visible, the contents of it were less so. The Tribunal does not make any finding as to why the mesh was removed but does find it improbable that the removal was by any of the Applicants.

135. At the very least, the compound could potentially have had materials stored relatively neatly and have been maintained. Green mesh could have been re- fitted. Instead, the compound was simply a dumping ground amidst the Applicant's pitches. Waste had been left there, which the Tribunal found ought instead to have been placed in a skip or removed. Mr Romans conceded that everything within the compound related to the new development, not to the western side of the Park where the Applicants homes are placed.

136. The Tribunal also accepts the evidence of Mrs Gomm and Mr Hall that the compound, unslightly as it was when the Tribunal inspected, was in a worse condition at the time of the Pitch Fee Review by way of containing less waste, Mr Romans did at least accept that the spoil and rubbish left in the compound had increased during its existence. The Tribunal considered arguably a reduction in rubbish since the Review may have enabled more weeds and so to that extent the condition seen by the Tribunal was worse than as at the Review date. In any event, any precise comparison was not required. The Tribunal does not accept the evidence of Mr Romans that the Heras fence, through which the contents could easily be seen, somehow made the area neat and tidy.

137. The Tribunal did not accept the evidence of Mr Romans that he left the contractor to decide where to place the compound, which the Tribunal found implausible. Nor that there was nowhere else available- there was ample other empty space on the Park. The compound was not visible from the pitches on the newly developed part of the Park. The Tribunal finds that to have been deliberate. That is to say that the compound was deliberately placed amongst the Applicants pitches rather than being visible to the pitches the Respondent hoped to sell. Mr Romans said that he was happy with the location of the compound.

138. That is particularly unsatisfactory where there is not even any discernible ongoing work to the other side of the Park. The Tribunal finds there to be no good reason for the debris to remain and the area to remain overgrown and unsightly. It is an unnecessarily ongoing eyesore. Ms Gourlay suggested in closing that the compound would only remain temporarily- the wider question of temporary matters is referred to below- although the Tribunal could not identify any evidential basis for that. The Tribunal suggested to Mr Romans that the building work looked to be done and queried the ongoing need for the compound. However, Mr Romans maintained that it continued to be needed in case homes had to be moved.

139. The Tribunal found that whatever period the compound may remain in situ for in the future- which it cannot know- it has been in existence and very unsightly for a considerable time to the hearing date and most importantly including the Review date.

140. In contrast, the Tribunal found, accepting the contents of photographs to be correct that the land on which the compound is situated used to, prior to the compound, be a well- maintained communal lawn area with shrubs and maintained trees.

141. The Tribunal finds that pitches in the ownership of the Respondent and the homes situated on them, where applicable, are in a very poor condition. They are particularly unsightly for the Applicants who occupy pitches adjacent and in the vicinity. The Tribunal accepted the assertion, although Mr Romans unconvincingly denied it, that pitch 9 deteriorated after being tenanted by the Respondent.

142. There were points made about rodents on the site, although as was pointed out, the site is in the countryside. It was common ground that reports were made and the Respondent instructed a company to attend. The Tribunal is unable to find whether there was a rat infestation only on pitch 42, tenanted by the Respondent or more generally or whether the overgrown nature of the western side of the Park increased the number of rodents, the Tribunal cannot determine- at first blush the proposition seems plausible but there was no appropriate evidence on which to reach a conclusion. The Tribunal noted the Respondents letter 6th January 2023 [448] referred to "a great cost to ourselves" in employing someone. The evidence does not indicate a "great cost". The tenor of the comment suggests a reluctance to incur expenditure.

143. The Tribunal finds on what it saw at the inspection and the evidence of the Applicants that the foliage and vegetation used to be generally tidy up to 2018, whereas it was by the inspection, and the Tribunal is entirely satisfied was both at the earlier Pitch Fee Review Notice date and for at least two years prior to that, very untidy and far out of control. Understandably, each Applicant addressed that.

144. The Tribunal carefully noted the photographs put to Mr Romans on behalf of the Applicants and identified deterioration on those, which to an extent Mr Romans accepted in his oral evidence. The condition of the Park as shown in 2017 [751] supported the Applicants' evidence- even on the aerial photograph, trees can be seen to be shaped and hedges a straight hedges. That is not to suggest perfection at that date or any other one and the Tribunal did not treat that as having existed.

145. The Tribunal finds that the Respondent entirely failed to take anything like adequate steps to deal with the foliage and vegetation from 2018 and in contrast allowed the pitches not occupied by park home owners and the other areas of trees, hedges and other greenery to reach their very unsatisfactory state. That includes sizeable and well- established weeds. Whilst there were invoices for grass cutting- albeit not identifying where- only one invoice in March 2022 referred to hedge trimming and none to other garden maintenance save for that cutting of grass.

146. The Tribunal notes in that regard that Mr Williams had indicated having sought work to be undertaken to trees by his pitch during the ownership of the previous owner which it was indicated had not happened. The Tribunal further notes that the parties agreed that six trees had been removed at the request of Mr Williams and he expressed gratitude. That is a modest positive but not more than that. Mr Williams explained in oral evidence that the height reached by then had caused root instability and in writing he said that he had accepted the Respondent's position that by then a reduction ins height was not sufficient.

147. The Tribunal rejects the evidence of Mr Romans that it might be a positive for the Applicants to have overgrown vegetation because it obscures other park homes. It is correct to say that it does obscure other homes and pitches which are not occupied by park home owners and

which are in a very overgrown and otherwise poor state. Mrs Jonesy-Greening had said that she had been able to see the derelict pitch 9 until the hedges and similar grew to obscure it. There may be some arguable benefit in that as compared to the alternative but that does not make the overgrown vegetation a positive.

148. The Tribunal found Mr Romans somewhat defensive and evasive when asked about the condition of the western side of the Park as visible from the Applicants' homes. However, it is implicit from evidence given that Mr Romans accepts the poor condition of those pitches and homes not licensed. If he had not, it is difficult to imagine how.

149. Quite plainly, the position ought to be- and the Tribunal accepts on the evidence previously was up to 2015 and to a lesser extent thereafter- that the pitches not occupied by park home owners are adequately maintained, that the homes are similarly and so there is no need for either the homes or pitches to be obscured. Similarly, that the vegetation is managed and kept tidy, as the Tribunal finds in broad terms on the evidence it previously was.

150. Whilst there were numerous questions put to Mr Romans as to potential fire hazards, the Tribunal did not consider anything turned on that specifically. However, where there was, for example, a dismantled porch to the home at pitch 34 the timber to which remained on the pitch and was not removed, the Tribunal identified that fire risk increased. So too from the overgrown nature of the area generally. The Tribunal does not profess to have specific expertise in fire risk assessment, although has seen numerous reports in previous cases and so possesses some understanding.

151. The Tribunal accepts Mr Romans' that the general layout of the western part of the Park where the majority of the Applicants pitches were situated (Mrs Gomm's pitch was something of an exception) was the same as it had previously been. However, the condition of it had markedly declined.

152. The roads around the side of the Park occupied by the Applicants were found by the Tribunal to be poorly maintained and not satisfactory. Whilst it was apparent that some potholes had been filled, that had not been done well or with likely permanent effect, as Applicant after Applicant pointed out when giving evidence. The position of the potholes could still be seen, they were not flat with the rest of the road and the filler looked very likely to come out in the relatively short term. That is where filling had taken place, which was only in some of the holes.

153. The Tribunal did not find the state of the roads to be one of the elements which made the condition poorer than other sites seen. Whilst unsatisfactory, they were not terrible, not least in comparison to other elements. The Tribunal did find them to contribute to the overall lack of care and maintenance of the side of the Park in which the Applicants live.

154. There has been a change to access from North Rew Lane. The Applicants presented as somewhat ambivalent about it. Mr Romans said that some residents had complained about walking their dogs and having

to leave via the entrance to the main road outside the front of the Park. He could not say who. The Tribunal nevertheless found that the evidence was essentially correct- it was on balance more logical that a request had been made to prompt some work. The Tribunal considers the element a minor one in any event.

155. The Tribunal does not find any or any relevant deterioration arising from the condition of the garages. The evidence, such as it was, indicated their condition has not been good for some significant time. It was not sufficiently possible to contrast one condition with the other, the latter being at the time of the Review, to make any finding.

156. The Tribunal found electric lighting to the western part of the Park had been updated but had no clear evidence about the previous lighting or the extent of any gain. The Tribunal considered the change to some light from one type to another as carrying modest benefit to the Applicants.

157. The Tribunal finds that there was a recreation field available to be used by the Applicants or their visitors and that did in the past include usable play equipment for children [528 amongst others demonstrates as at 2015] and benches in addition to open space. Whilst Ms Gourlay put to Mr Hall that the written statement made no mention, the Tribunal does not find that assists with whether the areas- or any other communal area existed- see further below.

158. The Tribunal accepts that such an area is shown on the plan for planning permission back in 1977 [353] but also with an area of scrub land. The 1977 agreement between Dorset Council and the then site owner not only requires recreation land to be provided but marks clearly in blue outline where that was required to be situated. The Tribunal finds that the 2013 plan [286] which does not show the area and shows the sited homes across the whole eastern side was not accurate- in order to be, most of the homes on the eastern side and a roadway would need to have been moved and there is no other hint that occurred. The 2017 documents accord with photographs and the Applicants' evidence.

159. The parties spent some time on the question of the extent of the previous recreation area and the scrub. The area is not available anymore. The equipment is not longer present. The Tribunal saw the aerial photographs in the bundle marked by the Applicants with a blue trapezoid for the recreation area [458] to reflect the blue outline on the plan to the 1977 agreement. However, the Tribunal noted that photograph included hedging or other vegetation and that extended further into the shape to the south- eastern corner. Irrespective of whether there was formerly an area of scrub as plainly provided for in the planning permission or ought to have been but was not and whatever the exact size of any area of scrub was, there was, on either side's case, formerly ample recreation space to provide for a range of activities. Consequently, the Tribunal determines that it is not necessary for the purpose of determining the pitch fees to find which side is correct. The exact term of the planning permission granted is not relevant to this case.

160. The Tribunal noted that Mr Romans stated that he was told by the previous owner that he had not seen residents use the areas. The third hand nature of that and the vagueness of it is such that the Tribunal cannot set any store on the evidence and comfortably prefers the evidence of the Applicants that there was use. The Tribunal accepts that at least some of the play equipment was old. If any was unsafe, it was sensible to remove that. The Tribunal noted that in oral evidence Mrs Jonesy- Greening gave an example of a bright plastic slide, conveying the impression that was not unsafe. The Respondent did not point to any or all equipment being unsafe. The Tribunal does not find it all to have been unsafe, but limits its findings to that. The equipment was not replaced. The Tribunal finds that Mr Hall's oral evidence that some benches remained usable is more likely than not to be correct.

161. Whichever way, a significant recreation space has been removed and the precise dimensions do not affect to any material degree the extent to which this element makes a contribution to the deterioration and/ or decline in amenity.

162. The Respondent had purchased Mayfield. The Tribunal finds that Mayfield is nothing like an adequate substitute. Whilst the Tribunal accepts Mr Romans' evidence that residents can walk through it, including with dogs, in effect they can only do so along the path between the vegetation and cannot, at least pleasantly walk elsewhere in the field. The field is also uneven. The Tribunal accepted Mr Hopkins evidence, by way of example, that his wife cannot walk on the field. The Tribunal finds that applies for practical purposes to person with effects on stability. The "country field" Mr Romans described for dog walking and the previous recreation space were quite different. The Tribunal need not venture into the debate about whether Mayfield is part of the Park, attached to the Park or similar. The Tribunal did note that Mr Romans accepted that he could remove access and use by residents is a "goodwill gesture".

163. The field cannot practically be used by the residents for any other activity. There is no play equipment. There is no area for the playing of games. There is nowhere to sit. There is a marked decline in amenity which has arisen from the removal of the original recreation area and the poor attempted substitute of Mayfield.

164. For the avoidance of doubt, the Tribunal accepted that much smaller areas of communal space marked as A1, A2, and A3 on aerial photographs [458] remain, although those marked A4 and A5 (mainly) do not. The Tribunal finds those to have been rather less significant to the residents and of limited relevance to the outcome of this case.

165. There has been considerable development work to the other side of the Park, creating the straight rows of new pitches, including creating the new roads seen at the Inspection. Mr Romans claimed not to be aware of the number of bases when it was put to him that there were more than the Site Licence allows. The Tribunal did not find that likely. The newly developed

part of the Park, once occupied, is likely to bed in over a period of time but at the present looks somewhat stark, not least where only a handful of the pitches are occupied by park homes. As for whether it may then be better or worse than the western part of the Park could be if it was properly maintained is the sort of matter on which opinions are likely to differ but is not relevant for this case or for the Tribunal to determine in any event.

166. The Tribunal found that there was a number of trees within the eastern part of the Park prior to the redevelopment. Those were removed. Insofar as trees were consistent with the countryside location but maintained, the Tribunal found that they had contributed to a degree to the amenity of the Park. That contribution was lost by their removal.

167. The Tribunal finds that there has been work to the Park which may benefit the Applicants. The Tribunal finds that the Respondent did not give notice of works where required. He professed a lack of knowledge that he should.

168. The Tribunal has referred to the new gate above and so does not return to it. So too, the entrance to the lane to the side of the Park.

169. Mr Romans gave evidence that there was a new water treatment and sewerage plant, which he said sorted out the sewerage and produced clear water, installed the Tribunal understood in or about late 2021. It also provided a reserve system. Mr Romans spoke with clarity and had plainly been interested, unsurprisingly given the costs he had incurred. Mr Williams said in oral evidence that the tank was the same and most of the pipes were and that the work reflected an increase in pitches. Mr Hopkins accepted that the water supply had suffered from leaks everywhere. The Tribunal noted the new pumphouse shown on photographs [533] and no doubt at the inspection, although not specifically noted.

170. There was challenge to whether the work had benefitted the Applicants- but not to the fact that the work itself had been undertaken. The Tribunal finds that it was undertaken. The Tribunal noted the information as to the expenditure on the system. The Tribunal is mindful that there has been wider development of the site and the apparent increase in intended homes. The Tribunal considers that a new water treatment and sewerage system is likely overall to be better than an old one, including for the Applicants and notwithstanding that their case identifies some problems experienced. The Tribunal finds on balance the fifty to sixty years old estimated by Mr Romans to be the age of the old system is thereabouts correct, being consistent with the time of use of the Park.

171. The Tribunal accepted that the new system included a new reserve supply and that the previous supply was old. That may benefit in the event that the main system fails and that the reserve requires use. The Tribunal finds that the aim will be to avoid that use and that the use is likely to be limited- there was no evidence to demonstrate otherwise and the Tribunal considers that Mr Romans would have asserted greater likely use if

relevant. Nevertheless, the Tribunal accepted the thrust of Mr Romans' evidence that the back- up arrangements were improved.

172. The Tribunal does not find that the Applicants have tangibly benefitted from the new plant. Mr Romans did not identify an difficulty with the old system for the purpose of the Applicants and did not identify any direct benefit from the new one other than improved water pressure. As to whether any previous leaks were said to have affected pressure was unclear. Mr Hall said he saw no improved pressure, to which there was no response made. The Applicants did not identify any improvement with either water or sewerage. A system without leaks is, on the other hand, better in general than one with leaks.

173. The Tribunal finds that the driver for that work was the development of the site. To no extent does the Tribunal find that improvement for the Applicants- or the western side of the Park more generally- to have been the reason for the work. Any benefit accruing to the Applicants is in effect incidental. The Tribunal agrees with the submissions of Mr Hall that work has been overwhelmingly undertaken to develop the Park and not to maintain the Park and that work to the new pitches does not equate to maintenance of communal areas.

174. The Tribunal considers on the evidence that the Respondent has devoted its energies to the development of the eastern side of the Park where there is the opportunity to generate significant sums from new sales. The Respondent has demonstrated a lack of interest in and generally concern for the western side of the park where those opportunities are not presented, at least to anything like the same extent. There is no more obvious demonstration than the facilitation of the placing of the compound out of sight of the new development and firmly in the midst of the western part of the Park.

175. Taking matters as a whole and setting such beneficial work as identified against the negatives described above, the Tribunal unhesitatingly finds that there has been significant deterioration in the condition of the Park as a whole and the part of the Park occupied by the Applicants in particular. The Tribunal finds that there has been a significant decline in amenity from the those matters, the loss of the bank and the loss of the recreation field.

Other matters raised

176. There was a dispute between the parties as to whether issues had been reported to Graham Rowley. It was agreed that Mr Rowley had been employed but Mr Romans did not accept reports being made. He said that Mr Rowley was over- seeing all parks and was not linked to the Park in particular, rather he lived there temporarily whilst looking for another property. Nevertheless, it was accepted that the role enabled the Applicants to raise issues with him.

177. The Tribunal finds on the balance of probabilities that the Applicants did make reports of matters they were dissatisfied with, including the condition of the Park to the Respondent's employee on site. That would have seemed a simple and obvious thing to do. There was no reason to disbelieve the Applicants.

178. In terms of the Applicants argument that the Respondent has not complied with the terms of the Site Licence and other regulatory requirements, the Tribunal makes no findings of fact.

179. The Tribunal accepts that a fire risk assessment was carried out in 2022 but no more than that. The Tribunal notes and accepts that a gas bottle was removed from pitch 9 but the person who attended said he was only there for that task. The Tribunal notes that the Respondent did not preclude fire extinguishers being an inadequate size but the Tribunal is not prepared to go beyond that. As identified in the hearing, the Tribunal considers that it lacks the evidence to make any positive finding of a lack of compliance. That is what the Applicants would require.

180. The Tribunal does not go as far as to find that the Respondents have not complied, considering it unnecessary to go that far for the purpose of the case and because any entity which might pursue such matters, most obviously the local council, is not a party to this case. In addition, applications made would be likely to come before this Tribunal.

Application of the law and those findings of fact

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

182. The Notice in the form used by the Applicant, and prescribed form proposing the new pitch fee for each pitch were served more than 28 days prior to the review date of 1st January 2023. The application to determine the pitch fee made on 4th January2023 was within the period starting 28 days to three months after the review date. The Tribunal is satisfied that the basic procedural requirements of paragraph 17 of Part 1 of Schedule 1 of the 1983 Act have been complied with.

Validity of the Notice

183. The Tribunal determines that the Pitch Fee Review Notice was valid.

184. There was no point taken about the prescribed Form as served by the Respondent and the Tribunal identified no issue with it and any question of whether it may have been appropriate for the Tribunal to take a point in the event of identifying such an issue does not arise. Mr Hall argued in closing that the Form is not the Notice, which is correct. The Applicants' written case doubted the covering letter to amount to a Notice either.

185. The argument advanced by the Applicants was that the Notice itself was invalid because it did not provide the information it was required to. Mr Hall argued that if, for example, it was said that there had been an improvement, the Notice should say so. More generally, he argued that the Notice was required to provide a narrative explanation for why the site owner proposed whatever increase to the pitch fee was proposed. In response to the Tribunal's query as to whether or that applied where the increase was by RPI (alone), Mr Hall argued it was.

186. Ms Gourlay for the Respondent pointed out that there are no prescribed requirements for the Notice and no need for a detailed analysis of the proposed increase. In effect, she argued that any relevant information is contained in the form, including making clear the pitch fee proposed.

187. The Respondent in its statement of case also referred to a decision of the Eastern Region of this Tribunal under case reference CAM/26UC/PHI/2014/001 regarding various properties at Scatterdells Park. A quote was provided with regard to one apparent line of argument and then a wider view was expressed that the requirement was for what was described as "a Notice of Increase" and then the information in the form.

188. The decision and a 2019 decision within this region both address a specific form of Notice used, which differs from this instance. The decisions are not authority which this Tribunal must follow, not universally agreed with, and the Respondent succeeds on authorities, as explained below.

189. The Tribunal does not consider that a generic letter with no individual addressee is particularly good practice. It is especially impersonal and may be liable to create an impression on the part of the park home owners that the site owner is disinterested in them and is simply following a process the outcome of which it regards as a fait accompli. The small additional effort to produce a letter with the name of the park home owners shown, particularly on modern systems is considered by the Tribunal to be significantly outweighed by the merits of producing something actually addressed to the home owner. That said, it can fairly be said that it is not for the Tribunal to dictate the form of communication used and not a matter on which any determination can be made by the Tribunal.

190. More pertinently, it is right to say that there is no information which the statute requires to be included in the Notice and matters have moved on significantly since *Small* because of the prescribed Form being introduced, which should contain all of the relevant information (although as revealed in *Truzzi- Franconi*, following the form does not necessarily elicit that).

191. The Tribunal considers that there must be a document, in common practice a letter, which informs the park home owner that it is a Pitch Fee Review Notice, but need to no more than that and, preferably, mentions

that the Form is attached. The actual Notice served by the Respondent on each Applicant specifically informs the home owner rather than a named individual but otherwise provides somewhat more than the bare minimum which may suffice.

192. The Form which accompanied the Notice to each home owner did provide the name and address of the home owner and so was personal to them. It provided the details of the proposed new pitch fee and the basis for it i.e., an increase in line with RPI, which was a sufficient basis and did not require expanding on. The Tribunal accepts that the Applicants knew what the Respondent intended to convey.

193. The Applicants raised a point that the signature on the Form was not clear. However, it had been signed and there was no evidence that the signatory, whether Mr Romans, in whose name the Notice letter was sent with a similar signature, or any other on his behalf lacked the ability to sign on behalf of the Respondent company. The Tribunal is aware that a specific issue about that has arisen in other cases but understands without successful challenge but in any event the particular point is not in dispute here.

194. In any event the Applicants knew on whose behalf the form had been completed- the site owner. Save that a clear signature might provide a more obvious specific name, the park home owner would not receive additional relevant information. In particular, nothing would be added about the pitch fee, the reasons for the pitch fee or the ability to challenge the proposal. None of the information which the park home owner requires, and which consequently the site owner is required to provide, is added to or detracted from by lack of clarity of the signature.

195. The Form and the requirements of the Form are found in Regulations and not in the 1983 Act itself, including as amended. The requirement for a signature is only indicated by the Form itself including a line for the provision of one. The Tribunal regards the signature as a very minor element in any event.

196. The Tribunal therefore determines that the Notice served by the Respondent on each Applicant was valid.

197. A brief point advanced on behalf of the Respondent that the Applicants are estopped from taking the point because of accepting previous notices sent in the same form requires no determination.

Deterioration and/or Decline?

198. The Tribunal unhesitatingly determines that the factors in paragraph 18(1) of the Act apply in light of the facts found by the Tribunal. The Tribunal has found there to be a deterioration in the Park as a matter of fact. The Tribunal determines that there has been a significant deterioration in condition and a decline in amenity in the terms set out in the Act.

199. For completeness, the Tribunal records that the Respondent did not assert that any of the deterioration and decline identified by the Tribunal had been considered previously, Ms Gourlay accepting in her Skeleton Argument that it had not.

200. The Tribunal has touched upon lack of definition of the term "condition". It is apparent that Parliament did not consider there to be a need to define it. The only logical conclusion to be drawn from that is that it is intended to be given its everyday meaning. The Tribunal regards that as unproblematic.

201. The Tribunal adopts the judgement of Kitchen J. with regard to the term "amenity", so "the quality of being pleasant or agreeable" and consideration of "the pleasantness of the site". Amenity is in that regard a different matter to "amenities", by which it might well be intended to refer to facilities.

202. The Tribunal is mindful that deterioration in condition and decline in amenity are not the same thing and that it might be possible to have one without the other. The Tribunal accepts that there could be circumstances which amounted to a reduction in amenity without there being deterioration in condition- other matters may change, including quite deliberately on the part of the site owner by way of ongoing development, the example Ms Gourlay gave (of which an increase in noise because of a fence with less sound- proofing than a grass bank and trees might be relevant). However, it is not easy to identify a situation in which the condition has declined and the pleasantness of the site is unaffected.

203. The Tribunal determines that determination of deterioration and decline necessarily requires considering the condition and amenity at the relevant time as compared to that which the park homeowners previously enjoyed (subject to limits of the date of the enactment and matters considers in previous reviews where relevant). That is as opposed to some notional level of the acceptable extent of condition and amenity.

204. It necessarily follows that the condition both as at the time of the pitch fee review and as at any relevant previous date are to be considered. That is returned to below.

205. The Tribunal has found the evidence to support the condition of the Park having until at least early 2018 been good (which is not to say perfection) with maintained trees shrubs and grass areas and the roads and communal areas similarly maintained. The Tribunal does not find Mr Williams comment to detract from that to any relevant extent. There was of course no compound until it was placed where it is following redevelopment commencing. The Tribunal has found by October 2022 marked and significant deterioration in condition from that level and a significant decline in amenity arising from that.

206. The Tribunal determines that the initial decline will have appeared to have been a relatively modest one. The Tribunal also considers that it will have taken time for the decline in the condition of roads and the overgrown nature of the pitches mentioned and the vegetation and foliage generally to become more established and obvious. It is apparent that was of concern certainly by 2020 and 2021, much as the Applicants were pragmatic about effects of Covid 19. The Tribunal infers that initial deterioration will have been to a modest degree and the decline in amenity will have been relatively minor. The continued lack of sufficient maintenance enabled the Park to reach the condition found as at the review date and subsequently that seen at the inspection somewhat later.

207. The Tribunal determines that on the basis of its findings as to the grounds and maintenance and the substantial deterioration and decline found both at the inspection and from the oral evidence received. It is not necessary to repeat any of that. The fact that a small number of trees, apparently suffering by then from lack of maintenance, were removed by the Respondent is barely here or there in the wider context.

208. The Tribunal rejects the argument that the fact that the implied terms make no reference to the availability of communal areas such as recreation area is relevant. The implied terms are implied by the 1983 Act in respect of every residential site. They do not, and could not, seek to address the particular situation at every individual park. The implied terms deal with matters generally.

209. There was a recreation area existed at the time that the Applicants agreements were entered into and it was part of the Park. Paragraph 18(1) of Chapter 2 relates to the condition of the Park and imposes no limit by reference to other implied terms. The area has been removed and the attempted substitute provides far less amenity. The question of planning breaches or lack of them plays no part in this Decision, which addresses the matters referred to in the 1983 Act.

210. Ms Gourlay argued in her Skeleton Argument that maintenance of landscaping, as she termed it, does not fall within the ambit of paragraph 18(1). She asserted that the Applicants have other remedies. There are indeed other potential remedies, as touched upon above, in the event of breach of contract. However, nowhere in the 1983 Act does it say that paragraph 18(1) excludes any matters for which there may be any other form of remedy open to be pursued by a park home owner, which is scarcely surprising.

211. The Tribunal unhesitatingly rejects Ms Gourlay's argument that maintenance of landscaping does not fall within matters which may amount to deterioration in condition or decline in amenity. Given the very poor condition seen by the Tribunal and accepted as existing at the time of the pitch fee review, indeed the worse condition then, to categorise the matters as "landscaping" seeks to stretch that term far beyond breaking point. In any event, the Tribunal is content that matters which may properly fall within the term landscaping are ones which it is entitled to

have regard to where it considers that appropriate as forming part of the condition of the Park and the amenity provided by it.

212. The Tribunal has found that the Respondent has undertaken work to the Park and has weighed that. The Tribunal accepts that positive change must be weighed against any decline or deterioration. The Tribunal was a little cautious about doing so, given that it was less than clear whether any improvement to the elements described above had been consulted upon and therefore to what it extent it ought to be taken account, but as the counter- weight is far more significant, the Tribunal determines that last point would make no practical difference to the outcome either way.

213. The Tribunal found the gate to provide modest improvement. The new fence when accompanied by fully grown bushes might prove to in due course but not as at the review date. The water and sewerage new system had no identified positive effect for the individual Applicants. The Tribunal has considered the work undertaken and the not insignificant money spent, although any apportionment of that between the new development and the existing park homes was not clear. Insofar as there was any less tangible improvement, for example by a new reserve supply if required, the Tribunal determined that also merited modest weight in the context of the condition and amenity as a whole.

214. Even taking the improvements asserted and ignoring any issue as to consultation, the work undertaken does not alter the balance having been considerable deterioration and decline. The Tribunal wholly rejects the Respondent's argument that the balance is a positive weight in its favour.

215. The Tribunal rejects the Respondent's argument that the Applicants' case is largely subjective and that there are simply two different parts to the Park. There are indeed two appreciably different parts but one has experienced considerable work and the other marked neglect. The Tribunal accepts the argument of the Respondent that regard should be had to the Park as a whole, rather than only considering the part occupied by the Applicants. Paragraph 18(1) talks about the site generally. There is a contrast with other factors of weight which may, as *Esterhuyse* demonstrates, relate to a smaller area, even a single pitch. The Tribunal's determination relates to the condition of the Park as a whole and decline in amenity as a whole.

216. The Tribunal considers that the deterioration and decline affects each of the Applicants to a broadly similar extent taking matters in the round. The Tribunal seeks to make no determination as to whether there may be differing effects from one pitch to another with different results being produced as to the effect on the pitch fee, although it does observe that such an approach would add to the complexity of such cases. The Tribunal does not consider it appropriate here to distinguish one pitch from the next in terms of effects even if in principle that is permissible.

217. The Tribunal has not found there to be a reduction in the services provided to the Park.

218. The Applicants argued that "compliance by the park owner with the various legislations that apply to park homes and protected sites … constitute a service supplied to the occupiers". The Tribunal does not find that to be a service provided by the site owner, which is effectively the end of that point.

219. However, the Tribunal mentions that it was argued on behalf of the Respondent that services as referred to in paragraph 18(1)(a) means something akin to utilities because paragraph 29 of the Chapter lists gas electricity, water and sewerage "and other services". The Tribunal is not persuaded that is the limit to "other services" but it matters not for these purposes. The Tribunal determines that a site owner must comply with legislative and similar requirements because it is obliged to do so: compliance is not a service. Whilst it is accepted by the Respondent that a park home suffered an interrupted water supply in May 2023 that post-dates the pitch fee review date.

220. Mr Hall also argued in closing that maintenance of the Park is a service. However, as lack of maintenance has led to deterioration and the Tribunal has already taken account of that, the Tribunal does not consider the point would add anything. In any event, the Tribunal does not consider that is what services within paragraph 18(1) intends to refer to.

Temporary or only permanent?

221. The Tribunal determines that there is no requirement for a deterioration in condition or a decline in amenity (or indeed a reduction in services in principle) to be permanent in order for it to fall within paragraph 18(1).

222. Ms Gourlay contended in her Skeleton Argument that deterioration falls within paragraph 18(1) where it has been irreversible. However, the Tribunal finds nothing in that paragraph or the related provision which required such irreversible deterioration. The example Ms Gourlay gave of reduction in perceived amenity because of expansion of the site is of something unlikely to be reversed (although even then it would not be impossible for the owner to reduce the size).

223. It merits identifying, for the avoidance of doubt, that the Tribunal considers that Ms Gourlay was correct about there being a lack of any authority about the proposition in issue. The Tribunal has not been able to identify any appeal or other final decision by the Upper Tribunal from which the words identified by the Tribunal emanate. The Tribunal believes that the comments made by the Upper Tribunal were made when granting permission to appeal. The consideration of an application for permission to appeal does not have weight as a precedent- hence the lack of inclusion of the decision with the case authorities quoted from above.

224. There are two decisions of this region of this Tribunal which make reference to the comments made by Martin Rodger KC, Deputy President to the Upper Tribunal (Lands Chamber). Those are

CAM/26UC/PHI/2014/0001 to which reference is made above and which the Tribunal perceives to have been relatively contemporaneous and involved parties with various lines of dispute, one of which resulted in *Vyse* quoted from above, and then somewhat more recently CHI/00HE/PHI/2021/0031, 0033 - 0037, 0090-0093, 0096, 01000, various properties at St Dominic Park, another park which has occupied the Tribunal more than once.

225. The comments are said in both cases to have been as follows:

> "Contrary to paragraph 5 of the applicant's statement of case, it does not follow that a temporary loss of amenity cannot reasonably be the basis of a curtailment of the RPI increase in pitch fees. Such curtailment need not have a permanent effect…
>
> It is therefore open to the First-tier Tribunal on the next review to adjust the appropriate increase to reflect the fact that a temporary disruption, which justified restricting the 2012 increase, is no longer relevant."

226. The view is expressed that the question is not whether deterioration in condition or decline in amenity will continue for all time but rather whether there has been such deterioration or decline at the relevant time.

227. The Tribunal does not know how the Tribunal in 2014 had sight of the Upper Tribunal document. The Tribunal has been unable to locate it. The Upper Tribunal office has not been able to provide it- the Tribunal caused an enquiry to be made. The written submissions of Ms Gourlay indicate that she has not been able to locate it either. The Tribunal guesses- and puts the matter not higher- that the 2014 decision of this Tribunal was provided by Wyldecrest, the party to those cases which was also a party to the 2013 decision. It appears that in 2021, Wyldecrest sought to argue that the comments of Martin Rodger KC assisted it.

228. The Tribunal was mindful, even before receipt of the parties' submissions on the point, both that no authority is created which the Tribunal must follow and that a different decision could have been reached with the benefit of full argument and in the event of a final decision being made, which would then have been binding on this Tribunal assuming the determination of the issue to form part of the basis of the decision in the case. The Tribunal also takes on board the observation in the 2021 decision that the quote cannot be considered in context.

229. Ms Gourlay also argued that at the time of the Upper Tribunal decision, as stated by this Tribunal, the current version of paragraph 18 had not long come not into being- in May 2013. Ms Gourlay suggested that it is reasonable to infer that the decision of this Tribunal which was appealed took place against the backdrop of the previous version of paragraph 18, so prior to 18(1)(aa) and (ab) and (ba), and paragraph 18(1A) being inserted. The Applicants also noted that the decision refers to cases pre-dating the 2013 Regulations. Ms Gourlay observed that decisions such as *Vyse* are later.

230. The Tribunal accepts the first and third elements. The Tribunal simply does not know about the second- lacking information as to when the appealed decision was made and not considering that any inference can be drawn without more for it to be based on. It is unsurprising that any case authorities as at 2014 would have been based on the previous version of paragraph 18 and so that does no in itself assist with the answer.

231. Although it does not place weight on them in the circumstances, the Tribunal considers that the comments of the Deputy President are entirely consistent with the statute and the statutory scheme.

232. Ms Gourlay sought in her written submissions to argue otherwise. She pointed to a decision of Judge Cooke decision in *PR Hardman & Partners v Fox, Greenwood* [2019] UKUT 0247 (LC), in which it was held that a pitch fee should not vary in the manner of a service charge under the Landlord & Tenant Act 1985.

233. The Tribunal considers that statement uncontroversial. However, the 1983 Act does not state that the condition of the Park, the amenity of the Park and services provided to the Park are irrelevant. Instead, it specifically details those matters as being ones to which regard must be had by the Tribunal. Patently, there was a purpose in that. The purpose that the Tribunal is able to alter the level of the pitch fee because of them.

234. Pitch fees are not tied to specific costs in the way that service charges are. Service charges vary according to the expenditure they are required to meet and have to be justified in that manner. There is no profit element. Many site owners charge service charges for matters not covered within the pitch fees and do so in the manner in which landlord of leased properties do.

235. The ability to take account of any element of deterioration or decline (or reduction in services) once is very different from deciding whether specific charges for specific service costs are payable and reasonable. The ability to undertake the task of considering deterioration and decline required by statue is not caused difficulties by the uncontroversial and more general statement of the Upper Tribunal in the particular case.

236. Ms Gourlay continued her submissions by arguing that the ability to have regard to temporary impact runs contrary to paragraph 57 of *Vyse*, which is in similar terms to paragraph 64 quoted above.

237. HHJ Robinson said the following

> "……. The legislative framework for determining any change in pitch fee provides a narrow basis on which to do so which no doubt provides an element of certainty and consistency that is of benefit to site owners and pitch occupiers alike. The costs of litigating about changes in pitch fee in the FTT and in the Tribunal are not insubstantial and will almost invariably be disproportionate to any sum in issue. I accept the submission of [the occupier's representative] that

an interpretation which results in uncertainty and argument at many pitch fee reviews is to be avoided and that the application of RPI is straightforward and provides certainty for all parties.

238. The Tribunal accepts the wide merits of that observation. However, it is plainly not the be all and end all and it is dangerous to take it out of context.

239. The Judge does not, and cannot, seek to disapply the provisions of the 1983 Act. Whatever the merits may be of certainty and, where appropriate, lack of argument, they cannot prevent parties arguing the relevance of either improvements or deterioration where those arise. Or prevent other factors being raised and considered. The Tribunal separately finds nothing in the judgment in *Vyse* or any of the other authorities referred to above which indicate that deterioration and/ or decline (or reduction) within paragraph 18(1) may or may not be temporary.

240. Ms Gourlay also argued in her Skeleton Argument that the impact of a below RPI increase (and presumably no change or a reduction) militates against the rebuttal of the presumption for matters that are remediable. She took the argument further in that document, asserting that matters which are remediable are not matters to which the Tribunal should have regard, but the Tribunal treats her argument as having moved on by the time of the written submissions.

241. The submission of Mr Hall on behalf of the Applicants generally referred to whether any reduction in an increase from RPI needed to have a permanent effect. That unfortunately misunderstood the point on which submissions were sought. Given that the Tribunal's decision favours the Applicants' wider case, the Tribunal did not consider it necessary to clarify the relevant point and seek further submissions.

242. The question in respect of paragraph 18(1) factors found is whether they render it reasonable for the RPI presumption not to apply- and then their effect on the level of pitch fee, including whether that should change and, if so, in what manner. That allows both for factors which render it unreasonable for the presumption to apply and for there to be factors which are not sufficient to do so. That requires the Tribunal to consider the significance of the factors and enables the Tribunal to apply its judgment and expertise to those matters. The factors do not dictate the pitch fee produced.

243. The Tribunal determines that the extent to which any deterioration and/or decline is temporary forms part and parcel of that. It may be that deterioration and decline is sufficiently temporary and sufficiently easily remediable that the significance of the matter is modest. Or it may be that there is an extent of decline and deterioration that, remedial or not, that is sufficient for the presumption not to arise and the pitch fee to alter not at all or to alter in another manner than a rise by RPI. The answer will inevitably differ from one case to the next.

244. The Tribunal is content that Parliament left those matters to the expertise of the Tribunal. Further that if Parliament had intended that only permanent deterioration and decline should prevent the RPI presumption arising or otherwise dictate the appropriate level of pitch fee determined, then when enacting wide- ranging law in respect of mobile homes and pitch fees, it would have so stated. The additional provisions introduced in 2013 were added specifically to amend the 1983 Act and are in clear terms. The Tribunal is confident that any limit to the permanent or temporary nature of any deterioration or decline would have been referred to in the event that Parliament had wished to limit the Tribunal's consideration of the given case for that reason.

245. It follows that whilst Ms Gourlay argued that temporary reductions should not impact on the pitch fee, the Tribunal rejects such a sweeping assertion. The effect of any deterioration or decline being in whole or part permanent or temporary is addressed below.

246. It also follows, the Tribunal considers, that whilst inevitably anything other than an increase in the pitch fee by RPI not only reduces the amount payable for the immediate year but for subsequent years, subject to resolution then of the relevant issues with site (which may then amount to improvement, in which regard the Tribunal notes that a consultation process may be required, or may just effectively amount to reinstatement), that is a factor for the Tribunal to weigh. It may well be that considerable weight is appropriate, although that must inevitably be balanced by the other considerations. It is scarcely irrelevant that both the park owner will have allowed the park to deteriorate and amenity decline (with one might imagine less work being undertaken and hence less cost) and that the park owner can and should put that right as soon as practicable, hence avoiding impact for later years and removing the merit in that line of argument.

247. The above does not, the Tribunal considers, limit matters which render it appropriate to determine that an RPI increase should not apply to only permanent deterioration and decline.

248. In terms of the question of how the park owner may seek to increase the pitch fee at a subsequent time to reflect the fact that previous deterioration has been attended to, that will be a matter for the park home owner at that time. The Tribunal accepts that the park home owner will need to consider whether any process needs to be followed and whether any consultation is required.

249. The Tribunal suggests, albeit lightly, that attending to previous deterioration or decline may not in the normal course amount to an improvement and so does not require consultation. The Tribunal accepts that if it is wrong in that regard, there will be some burden placed on the park owner. The Tribunal considers that does not assist any argument against a deterioration or decline being able to be temporary.

250. It necessarily follows that the Tribunal does not accept the arguments on behalf of the Respondent about lack of certainty, in particular lack of

certainty about whether works to address the deterioration and/ or decline are improvements.

251. In a similar vein, the Tribunal does not consider that the concerns expressed on behalf of the Applicants about how the Pitch Fee Review Form could accommodate any reduction because of deterioration and/ or decline being sought to be accounted for in later year by an increase affects the answer. Whilst the form may require some adaptation (but without removing information required) or there may need to be some explanation in the Notice, none of that detracts from the provisions of the statute. Whilst the Tribunal disagrees with the 2014 decision's suggestion about duplication of information between the Notice and the Form, now is not the time to be waylaid by that.

252. The Tribunal specifically rejects the Applicants' argument in their written submissions that there ought to be order for re-imbursement of part of previous pitch fees because of any deterioration or decline. There is simply no jurisdiction for that on a pitch fee application.

Other Factors

253. The Tribunal deals contrastingly briefly with the other matters raised by the Applicants one or more of which may amount to an other factor which could, if weighty enough, rebut the RPI presumption assuming that presumption to have arisen.

254. Mr Hall submitted that compliance and safety are important, as of course they are, and that consequently lack of compliance, especially with the terms of the Site Licence which is attached to the express terms, is a weighty matter. Mr Hall also noted that breach of fire safety requirements may have an impact on insurance and argued that the extent to which the western area of the Park is overgrown breaches fire safety requirements. He asserted that paragraphs 16 to 20 of the Chapter enable consideration of any matters the Tribunal considers relevant.

255. Mr Hall did accept that Dorset Council was not intending to take action about any asserted breach of planning permission. The Applicants' case that the amendments to the site and reduction in common areas were a breach could only therefore be argued before the Tribunal.

256. The obvious difficulty with all of the above is that the relevant authorities had not made any clear statement that there was any such breach and there was more generally a lack of evidence on which a conclusion could be reached, so that the Tribunal made no finding in favour of the Applicants. It was for the Applicants to prove their case on the point.

257. The Tribunal also noted that there were matters related to fire safety to which reference was made had not been raised prior to closing comments, which the Tribunal was not prepared to consider, including because the Respondent had not received the opportunity to address them.

258. The Tribunal does not accept Ms Gourlay's submission that the Tribunal should not consider any breach of a site licence, fire safety legislation or planning requirements in respect of a pitch fee determination. The Tribunal has explained above that it regards any such breach as not relevant to condition or amenity. However, given there is no limit to what may be an other factor, the Tribunal finds no basis for any blanket exclusion of such breaches as potential factors.

259. The Tribunal is inclined to the view that if such a breach can be demonstrated on the evidence and is sufficient to be a weighty other factor, the Tribunal is entitled to have regard to it. The Tribunal is of the opinion that it should be quite careful about doing so given other potential proceedings and should require clear evidence. That is a matter of practical application and not principle.

260. As the Tribunal has found no breach and so there is nothing with regard to any such requirements which has relevance to this Decision, the Tribunal does not venture any further.

261. The Tribunal considers that in principle the giving of misleading information by a site owner which has an effect may be capable of amounting to a weighty factor in respect of that specific party, perhaps others if it is known that the information will be passed to others and they will reply upon it.

262. However, in relation to the particular telephone call and the one matter only that the Respondent indicated only to one Applicant - the removal of the home on pitch 9 would be addressed- the Tribunal does not consider there to be a matter sufficiently weighty to amount to a factor which should rebut the RPI presumption if it arises for that Applicant and certainly not more generally.

263. With regard to the more general objection expressed to a previous pitch fee increase where the Applicants were persuaded not to argue the matter in the given year because of something which was not in fact correct, the Tribunal consider it should not be precluded from considering the relevance of that in a latter year. Such a representation made by a site owner may be a weighty factor.

264. Given the other matters addressed above and below, the Tribunal does not seek to be more specific and does not consider it necessary to dwell on the point.

265. There was mention by the Applicants at paragraph 70 of their statement of case about a 14.2% being unnecessary to meet increased business costs and "in effect an unearned windfall pay rise" and RPI standing at "an unprecedentedly high figure". Reference is made to compounded increases. The increase is argued to be "unjustifiable, unnecessary and unsustainable".

266. The Tribunal has addressed increases at the high level of RPI applicable to late 2022 in quite some detail in other decisions this year, which raised very specifically the level of RPI in the context of other living costs and economic factors and related matters. It has considered them in the context of being an other factor of weight, determining that the very particular circumstances rendered the extent of the increase a weighty factor and finding the reasonable pitch fees to be one involving an increase of below 14.2%.

267. The Tribunal has carefully considered whether it is necessary to deal with the issue in detail in this case. Given the other issues raised in this case and given the determination made below on the basis of those, the Tribunal does not consider it necessary to add anything to this Decision.

Additional arguments raised

268. Ms Gourlay argued a lack of breach of contract by the Respondent. However, she submitted that if the Applicants contended there to be such a breach, the Applicants would have remedies for that and so it was not a matter for a pitch fee determination.

269. The Tribunal considers that the question of whether the Applicants may potentially have any other remedy in respect of any matters to which they refer as part of the deterioration of the Park and/ or decline in amenity is of no or more than marginal relevance to determination of the pitch fee. It is not a matter mentioned in the Act in any manner and may rely on the outcome of other proceedings at an uncertain date.

270. The Tribunal is given jurisdiction to determine the pitch fee on the basis of a statutory scheme. Its hands are not and cannot be tied by what may or may not be the outcome of a different set of proceedings if pursued to conclusion at an unknown time. The Tribunal notes that the Applicant's may have a separate remedy insofar as any matters amount to a breach of contract but considers that general observation is as far as it needs to go.

271. The Tribunal adds however, that there is nothing in the Act which limits the relevant considerations. Hence even if the fact of a potential other remedy were of greater relevance than the Tribunal considers it to have, that would be far from the end of the story. A situation in which the Tribunal might have to pre-judge what the outcome of a breach of contract or other claim might be in order to identify what elements of deterioration or decline may be included in that and which elements may not would not be an appropriate exercise to embark on.

272. The Tribunal determines that its task as laid down in the Act is to determine whether as a matter of fact there has been, for example, a deterioration in condition or reduction in amenity. That is the task which the Tribunal undertakes.

The effect of the above determinations and the pitch fees

273. The first question is whether there should be any change from the pitch fee for 1st January 2022 onward and then secondly if so, what that change should be.

274. The Tribunal is mindful in respect of the latter that it must have particular regard to deterioration and decline but that it could both do so and decide the RPI presumption should reasonably remain, or it may have particular regard and determine that it is not reasonable for the presumption to apply.

275. Regard would also need to be had to the fact that the pitch fee includes the right to site the park home on the pitch itself, the services and amenities forming part of the matters for which the pitch fee is payable but somewhat less then the entirety. There is no breakdown from the Respondent- nor does the Tribunal recall ever receiving one- as to how the original pitch fee was set taking account of the right to site on the pitch on the one hand and other elements of the pitch fee on the other. The Tribunal suspects, but does not know and so puts no weight on the matter, that in most if not all instances there is no breakdown ever produced and indeed the site owners do not undertake any such exercise, instead arriving at a single overall figure they consider suitable generally.

276. The Tribunal is mindful that there are different pitch fees on different pitches within the same park quite frequently and this Park is one example of that. Most of the fees payable by the Applicants are at the same level but the pitch fee for Pitch 2A is very approximately 7% higher than the most common figure whereas the pitch fee for Pitch 37 is more than 10% less than the most common one. Clearly, it has been considered by the Respondent's predecessor and accepted by the particular Applicants or their predecessors that a difference from the most common figure is appropriate.

277. However, that does not assist with identifying the extent to which any given fee reflects the value of a particular element of the matters for which the pitch fee is payable. The Tribunal therefore considers that it must have regard to the different elements within the pitch fee and then use it expertise to determine the impact of a change to any of those elements.

278. Regard also needs to be given to the fact that costs will have increased from those in previous years of attending to the condition of the park in respect of any given step taken. The increase in cost of steps which were not taken and led to the deterioration and decline is not relevant to an increase in fee. It is scarcely a valid argument that costs of undertaking work have increased if the maintenance work in question is not undertaken.

279. The Tribunal carefully considered whether the appropriate approach was to leave the pitch fee at its current level and simply not to apply any increase. That is to say that the answer to the over-arching question of whether it is reasonable that the pitch fee should change at all may be that it should not.

280. The Tribunal also notes that the Respondents sought only that there should be no increase in pitch fee. Nonetheless, the Tribunal is required to come to its own view as to the appropriate level of fee, as an expert Tribunal, with the over- arching consideration of whether there should be any change firmly in mind.

281. The Respondent would of course, in the event of a lack of change, have received a fee below the level that it sought for the period 1st January 2023 onward if the Tribunal had adopted that course and, insofar as it incurred costs, it would have had to bear the increase in those costs from an unchanged level of pitch fee. That is not an irrelevant factor, but it is not considered nearly sufficient to dictate the answer.

282. As Ms Gourlay correctly identified, any reduction from an RPI increase will also, unless a greater later increase occurs, have an effect year on year. The Tribunal takes full account of that in its approach.

283. The Tribunal determined that the fee should change.

284. The Tribunal determines that the appropriate regard to be given to the deterioration and decline found is such that the presumption of a pitch fee increase by the level of RPI as set out in paragraph 20 does not arise. The Tribunal did not find there to be any other weighty factors which would rebut the RPI presumption if it had arisen but that is not relevant.

285. The Tribunal consequently needs to consider whether those render an increase at the same rate as RPI (absent a presumption) is reasonable and otherwise what effect they do have. The Tribunal determines that the particular regard to be had and the extent of deterioration and decline to which that regard is to be had properly results in the presumption not arising. The Tribunal further determines that in the absence of such a presumption, a rise in pitch fee to reflect the rise in RPI would plainly be unreasonable, in light of the findings of fact made.

286. The Tribunal has considered the possibility of an increase in the pitch fee lower than by the increase in RPI. The Tribunal concluded that is not appropriate given the extent of the deterioration and decline identified and concluded that the change in the pitch fee should not be one of an increase. The Tribunal had concluded that the pitch fee should change because merely making no increase in the fee does not sufficiently recognise the degree of deterioration which has occurred.

287. In light of the degree of decline identified by the Tribunal and the relative condition of the Park as compared to that found to have existed in previous years, and the impact on amenity, the Tribunal determined that there should be a reduction in the level of pitch fee from the level as at January 2021. The Tribunal determines that the change to the pitch fee by way of a reduction to it is appropriate.

288. The Tribunal is mindful that the result will be that the Respondent will have an even lower fee income, but again whilst recognising that not to be irrelevant, the Tribunal does not consider it determinative and rather to only be one of the factors to weigh. The Tribunal has considered carefully the potential ongoing impact on income with great care and given that due weight but that does not outweigh the effect of the deterioration and decline.

289. The Tribunal has carefully considered whether the appropriate pitch fee is the fee at a previous point in time, perhaps when the condition of the Park had not deteriorated and amenity had not declined although that is quite some time ago. The appropriateness of that, however, depends firstly on whether a specific and suitable point in time can be identified. There is some convenience and logic to reducing the pitch fee to the level at a defined previous point in time where a suitable one is identifiable and the Tribunal considers that level of pitch fee to be reasonable at the Review date.

290. The Tribunal has found that the Park was in a good condition previously and then declined due to reduction in ongoing maintenance, to the condition seen in August of this year (albeit accepting that to post-date the pitch fee review date), as explained at length above and not repeated now.

291. In substantially reducing the level of maintenance, the Applicant was found to have significantly reduced the level of cost. Therefore, a large amount of the cost which had been met by previous pitch fees was no longer being incurred by the Applicant at all. In that regard, the question was not the one of considering the increase in cost for maintenance and whether that cost had increased to the extent of RPI or assuming always such an analysis would have been an appropriate one to undertake. Rather, the work and services for which the Applicant was paying had significantly fallen. Cost which had previously been incurred simply was no longer relevant. The Tribunal considers that the amount that the Applicant is likely to have saved by the significantly reduced level of service substantially exceeds any increase in the cost of the level of service which has continued to be provided, although that does not form the basis for this decision.

292. The Tribunal appreciates that lack of maintenance is not the sole complaint of the Applicants. The removal of the recreation field is of course a somewhat different matter amounting to decline in amenity rather than deterioration. That enabled the Respondent to undertake the new development. It did not involve identifiable cost or cost saving except cost as part of development and any modest saving from not replacing play equipment. The effect was not gradual.

293. However, the question is what is the appropriate pitch fee as from 1st January 2023 and not any previous time, nor indeed what the appropriate pitch fee would be today. The Tribunal is mindful that the case authorities have also identified a broad approach is to be taken and the question is not

one of totting up all the site owner's costs and the increase or reduction in them in any precise terms. Such an exercise would be likely to be onerous, not least in evidencing all such costs and considering those.

294. The Tribunal should therefore take a broader approach to the question of reasonableness and applying the provisions of the Act. The Tribunal considers it clear, both from the wording of the Act itself and the observations made in *Britanniacrest* (see above) that the Act does not preclude a reduction in the level of pitch fees. The fact that decline and deterioration are relevant must enable the Tribunal to reduce fees in consequence of that where the Tribunal determines it appropriate to do so.

295. The Tribunal has found that the condition of the Park and reduced level of amenity was, for want of a better word, tolerated until 2021, by which point the January 2021 pitch fee was payable. Given that the Tribunal has accepted that the balance was continued decline since then, the Tribunal does not consider that the pitch fee ought to be greater than the fee at that time. Although the Applicants' position is that there was also decline in 2020, the Tribunal considers that reduction to that level, where the Review date was late 2019 and work was accepted as being undertaken, would go too far.

296. The Tribunal has weighed up whether the appropriate approach to take is to consider the pitch fee in the absence of deterioration in condition and decline in amenity and then to apply a percentage increase to make provision for the level of decline or deterioration. The Tribunal does not consider that differences significantly from the approach it takes in certain other of its jurisdiction. The Tribunal would apply its experience and expertise and exercise its judgment. It may be that approach would be particularly appropriate where cost of management have demonstrably increased and there has not been a reduction in the work undertaken such that to those extents a rise by RPI would be appropriate but there has been other deterioration or decline- perhaps the level of work has never been sufficient. The Tribunal will stop speculating.

297. However, the Tribunal considers that where an appropriate actual pitch fee figure for the given pitch is available and it at a level which the Tribunal considers is appropriate for the pitch fee to be determined, there is a lot to be said for adopting such a figure. The Tribunal considers weighing up matters a whole that in this instance the 2021 figure is at an appropriate level for the pitch fee from January 2023. The bundle includes the figures for 2021 for each pitch within the various previous Notices provided.

298. The Tribunal therefore determines the pitch fee for each relevant pitch for 1st January 2023 onwards to be as follows:

Pitch 2A- £310.28
Pitch 3- £288.04
Pitch 4- £288.04
Pitch 6- £288.04
Pitch 8- £288.04

Pitch 10- £288.04
Pitch 11- £288.04
Pitch 37- £252.74
Pitch 45- £288.04

299. It may be that the Applicant will now **a**ddress the condition of the park and that at a future date it returns to the level previously enjoyed by the residents, whilst inevitably the park will not be the same as it was given the development of it. It may be that in due course the Applicant can therefore justify an appropriate increase. However, that is a matter of a speculation about the future and not something of assistance at this immediate time.

300. For the avoidance of doubt, the Tribunal does not determine there to be any factors other than the condition of the Park and the level of amenity which are sufficiently weighty to relevant to the level of change over and above the above factors in this instance.

Costs/ Fees

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

302. The Applicants have each sought reimbursement of the application fee of £20.00 per application.

303. It will be appreciated that the pitch fees have been changed. The outcome was that the pitch fees have been reduced and have been reduced because of significant failings being found with the maintenance of the Park.

304. The question of who has won and who has lost is not the entire answer. Nevertheless, any reader will inevitably conclude that the Respondent has lost, seeking to defend a pitch fee which the Tribunal has found not to be the reasonable one and where significant deterioration in condition, for example, has bene found. Whilst not the entire answer, the outcome is inevitably a relevant consideration and the nature of the outcome in this instance particularly so.

305. The Tribunal considers that the weight of other relevant factors is also in favour of the Applicants recovering the fees.

306. The Tribunal grants the Applicant's applications for recovery of the application fees.

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.