FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/45UB/PHI/2023/0180 (1) and CHI/45UB/PHI/2023/0181 (2)
Property	:	190 and 229 Lion House, Lion House Park, Mill Road, Hailsham, BN27 2SF
Applicant	:	The Berkeley Leisure Group Ltd
Representative	:	Mr Steve Drew
Respondents	:	Mrs J Unsted (1) Mrs S Clarke (2)
Representative	:	---
Type of Application	:	Review of Pitch Fee: Mobile Homes Act 1983 (as amended)
Tribunal Members	:	Judge J Dobson Mr N Robinson FRICS Mr E Shaylor
Date of Hearing	:	17th November 2023
Date of Decision	:	12th January 2024

DECISION

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Summary of Decision

1. **The Tribunal determines that the pitch fee for 190 Lion House is £199.93 with effect from 1st January 2023.**

2. **The Tribunal determines that the pitch fee for 229 Lion House is £199.93 with effect from 1st January 2023.**

3. **The Respondents shall reimburse the Applicant for the application fee paid in respect of their individual pitch, being £20.00 per application.**

Background and procedural history

4. On 9th March 2023, the Applicant site owner applied [538- 545 (1) and 604- 611 (2)] for a determination of a revised pitch fee of £207.68 per month payable by each of the Respondents with effect from 1st January 2023 in respect of both 190 Lion House, Lion House Park, Mill Road, Hailsham, BN27 2SF ("Pitch 190") and 229 Lion House, Lion House Park, Mill Road, Hailsham, BN27 2SF ("Pitch 229").

5. Lion House Park, Mill Road, Hailsham, BN27 2SF ("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 current licence is dated 16th February 2017 [37- 44] and allows 166 pitches.

6. The 1st Respondent Mrs J Unsted is agreed by the parties to be entitled to station her park home on Pitch 190 by virtue of an agreement under the 1983 Act. Mrs Unsted provided the annex to the written statement which comprises the implied terms and separately a photograph of the front page of the written statement [603], indicating the agreement to have first been entered into by Mrs Unsted's predecessor in title commencing 26th August 1999. The 2nd Respondent Ms S Clarke is entitled to station her park home on Pitch 229 by virtue of an agreement under the 1983 Act entered into originally on 2nd December 1994 in the usual form and assigned to her on 17th June 2019 [615- 634]. Both agreements therefore include the statutory implied terms referred to below.

7. A Pitch Fee Review Notice with the prescribed form proposing the new pitch fee was served on each of the Respondents dated 17th November 2022 [573- 581 and 635- 643], proposing to increase the pitch fee by an amount which the Applicant says represents an adjustment in line with the Retail Prices Index ("RPI"). It was said that there had been no changes since the last review.

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

9. The current pitch fee at that time of Pitch 190 was £181.75 and of Pitch 229 was the same. The RPI was 14.2% taking “the RPI Adjustment”, as described, as the percentage increase in the RPI over 12 months for October 2022. No recoverable costs or relevant deductions were applied. No water, sewerage, gas and electricity or any other services are included in the pitch fee.

10. The Respondents did not agree to the increase.

11. On 3rd July 2023, the Tribunal issued Directions [5- 11] regarding these pitches and also more generally in relation to the Applicant’s applications and later issued further Directions [546- 548] providing a timetable for the exchange of documentation. The Tribunal initially directed that the application be dealt with on the papers. The parties did not request an oral hearing or object to a determination on papers.

12. However, the Tribunal undertook a review of the documentation on receipt of the bundle. The Tribunal decided that an oral hearing was necessary in light of the disputes as to facts. Further Directions were issued dated 18th September 2023 [546- 548], which also included providing for the hearing and a site inspection.

13. The Applicant had submitted a determination bundle comprising 1102 pages, in respect of various pitches on various sites it owns where the proposed pitch fee was not agreed by the park home- owners, which was copied to the Respondents. The large majority of those pages have no direct relevance to this case. The single bundle does explain why the page references in this Decision are almost all of high- numbered pages.

14. Whilst the Tribunal makes it clear that it has read the parts of the bundle related to Pitch 190 and Pitch 229, the Tribunal does not refer to all of the documents in detail in this Decision, that being unnecessary. For the avoidance of doubt, where the Tribunal does not refer to pages or documents in this Decision, it should not be mistakenly assumed that the Tribunal has ignored or left them out of account. Insofar as the Tribunal does refer to specific pages from the bundle, the Tribunal does so- both above and below- by numbers in square brackets [ ].

15. This Decision seeks to focus on the key issues. The omission to therefore refer to or make findings about every statement or document mentioned is not a tacit acknowledgement of the accuracy or truth of statements made or documents received. Not all of the various matters mentioned in the

bundle or at the hearing require findings to be made for the purpose of deciding the relevant issues in this application.

The relevant Law and the Tribunal's jurisdiction

16. 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.

17. 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.

18. 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.

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

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

21. 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.

22. 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."

23. Consequently, if the increase in the pitch fee is agreed to by the occupier of the pitch, that is the end of the matter. There is nothing for the Tribunal to determine and hence the Tribunal has no jurisdiction. If the occupier does not agree, the pitch fee can only be changed (increased or decreased) if and to the extent that the Tribunal so determines.

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

25. The Tribunal is required to then determine whether any increase in pitch fee is reasonable and to determine what pitch fee, including the proposed change in pitch fees or other appropriate change, is appropriate. The original pitch fee agreed for the pitch was solely a matter between the contracting parties and any change to the fee being considered by the Tribunal is a change from that or a subsequent level. The Tribunal does not consider the wider reasonableness of that agreed pitch fee or of the subsequent fee currently payable at the time of determining the level of a new fee.

26. The Tribunal is required to have regard to paragraphs 18, 19 and 20 of Part 1 of Schedule 1 of the 1983 Act when determining a new pitch fee. The implementation of those provisions was the first time that matters which could or could not be taken into account were specified.

27. Paragraph 18 provides that:

"18(1) When determining the amount of the pitch fee particular regard shall be had to-
(a) any sums expended by the owner since the last review date on improvements …….
(aa) any deterioration in the condition, and any decrease in the amenity, of the site …………
(ab) any reduction in the services that the owner supplies to the site, pitch or mobile home and any deterioration in the quality of those services since the date on which this paragraph came into force (insofar as regard has not previously been had to that reduction or deterioration for the purposes of this sub- paragraph.
…………"

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

29. Paragraph 20A(1) introduced a presumption that the pitch fee shall not change by a percentage which is more than any percentage increase or decrease in the RPI since the last review date, at least unless that would be unreasonable having regard to matters set out in paragraph 18(1) (so

improvements and deteriorations/ reductions). The provision says the following:

> "Unless this would be unreasonable having regard to paragraph 18(1), there is a presumption that the pitch fee shall increase or decrease by a percentage which is not more than any percentage increase or decrease in the retail price index calculated by reference only to-
> (a) the latest index, and
> (b) index published for the month which was 12 months before that to which the latest index relates."

30. For reasons which may be apparent from the headline decision but will in any event almost certainly become apparent from the discussion of the application of the law below, the Tribunal considers it appropriate to set out elements of the judgments of a number of case authorities, doing so in significantly greater detail than usual in a case involving a pitch fee review.

31. A detailed explanation of the application of the above provisions is to be found in a decision of the Upper Tribunal in *Sayer* [2014] UKUT 0283 (LC), in particular at paragraphs 22 and 23 in which it explained about the 1983 Act and the considerations in respect of change to the pitch fee.

32. Notably the Deputy President, Martin Rodger KC said as follows:

> "22. The effect of these provisions as a whole is that, unless a change in the pitch fee is agreed between the owner of the site and the occupier, the pitch fee will remain at the same level unless the RPT considers it reasonable for the fee to be changed. If the RPT decides that it is reasonable for the fee to be changed, then the amount of the change is in its discretion, provided that it must have "particular regard" to the factors in paragraph 18(1), and that it must not take into account of the costs referred to in paragraph 19 incurred by the owner in connection with expanding the site. It must also apply the presumption in paragraph 20(1) that there shall be an increase (or decrease) no greater than the percentage change in the RPI since the last review date unless that would be unreasonable having regard to the factors in paragraph 18(1). In practice that presumption usually means that annual RPI increases are treated as a right of the owner.
>
> 23. Although annual RPI increases are usually uncontroversial, it should be noted that the effect of paragraph 20(1) is to create a limit, by reference to RPI, on the increase or decrease in the pitch fee. There is no invariable entitlement to such an increase, even where none of the factors referred to in paragraph 18(1) is present to render such an increase unreasonable. The overarching consideration is whether the RPT considers it reasonable for the pitch fee to be changed; it is that condition, specified in paragraph 16(b), which must be satisfied before any increase may be made (other than one which is agreed). It follows that if there are weighty factors not referred to in paragraph 18(1) which nonetheless cause the RPT to consider it reasonable for the pitch fee to be changed, the presumption in paragraph 20(1) that any variation will be limited by reference to the change in the RPI since the last review date may be displaced."

33. In *Shaws Trailer Park (Harrogate) v Mr P Sherwood and Others* [2015] UKUT 0194 (LC), it was repeated that:

> "23. Where a new pitch fee is not agreed, the overarching consideration for the FTT is whether 'it considers it reasonable for the pitch fee to be changed' (para 16(b)."

using wording the same as that within paragraph 23 of Sayers.

34. Those paragraphs therefore emphasise that there are two particular questions to be answered by the Tribunal. The first is whether any change should be made to the pitch fee at all. If the answer to that is that the pitch fee should not change, that is the end of the matter. The second, and provided that the decision is made to alter the pitch fee, is about the amount of the new pitch fee, applying the presumption stated in the 1983 Act but also other factors where appropriate.

35. Martin Rodger KC continued in *Shaws*:

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

36. In *Britaniacrest Limited v Bamborough* [2016] UKUT 0144 (LC), the wording used by the Upper Tribunal was that:

> "The FTT is given a very strong steer that a change in RPI in the previous 12 months will make it reasonable for the pitch fee to be changed by that amount, but is provided with only limited guidance on what other factors it ought to take into account"

37. The Upper Tribunal went on in *Britaniacrest* to suggest that it could have expressed itself better in *Sayers*- and the Deputy President was again on that Tribunal, one of two members- and then continued (albeit in the context of whether the increase could be greater):

> "31. ...The fundamental point to be noted is that an increase or decrease by reference to RPI is only a presumption; it is neither an entitlement nor a maximum, and in some cases it will only be a starting point of the determination. If there are factors which mean that a pitch fee increased only by RPI would nonetheless not be a reasonable pitch fee as contemplated by paragraph 16(b), the presumption of only an RPI increase may be rebutted.....
>
> 32. ...... If there are no such improvements the presumption remains a presumption rather than an entitlement or an inevitability."

38. 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."

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

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

> "It is to be noted that, other than providing for what may or may not be taken into account for the purpose of determining any change in the amount of the pitch fee, there is no benchmark as to what the amount should be still less any principle that the fee should represent the open market value of the right to occupy the mobile home."

41. It was further re-iterated that:

> "the factors which may displace the presumption are not limited to those set out in paragraph 18(1) but may include other factors."

42. Later in the judgment it was explained that where factors in paragraph 18(1) apply, the presumption does not arise at all, given the wording and structure of the provision, and in the absence of such factors it does.

43. Further explanation was given in paragraph 50 with regard to "other factors" that:

> "If there is no matter to which any of paragraph 18(1) in terms applies, then the presumption arises and it is necessary to consider whether any 'other factor' displaces it. By definition, this must be a factor to which considerable weight attaches. If it were a consideration of equal weight to RPI, then, applying the presumption, the scales would tip the balance in favour of RPI. Of course, it is not possible to be prescriptive as to precisely how much weight must be attached to an 'other factor' before it outweighs the presumption in favour of RPI. This must be a matter for the FTT in any particular case. What is required is that the decision maker recognises that the 'other factor' must have sufficient weight to outweigh the presumption in the context of the statutory scheme as a whole."

44. And in paragraph 51, the Upper Tribunal continued:

> "On the face of it, there does not appear to be any justification for limiting the nature or type of 'other factor' to which regard may be had. If an 'other factor' is not one to which "no regard shall be had" but neither is it one to which "particular regard shall be had", the logical consequence is that regard may be had to it. In my judgment this approach accords with the literal construction of the words of the statute. Further, it is one which would avoid potentially unfair and anomalous consequences."

45. Whilst recognising that the particular question which had been discussed was matters arising which did not fall with paragraph 18(1) because of a failing which had caused no prejudice, the Upper Tribunal also observed:

> "58. .... In circumstances where the 'other factor' is wholly unconnected with paragraph 18(1), a broader approach may be necessary to ensure a just and reasonable result. However, what is just or reasonable has to be viewed in the context that, for the reasons I have already given, the expectation is that in most cases RPI will apply."

46. The final of the several parts of the judgment in *Vyse* itself quoted by the Tribunal is the following:

> "64. The pitch fee is a composite fee being payment for a package of rights provided by the owner to the occupier, including the right to station a mobile home on the pitch and the right to receive services, *Britanniacrest* (2016) paragraph 24. ……………….. Not all of the site owner's costs will increase or decrease every year, nor will they necessarily increase or decrease in line with RPI. The whole point of the legislative framework is to avoid examination of individual costs to the owner and instead to apply the broadbrush of RPI. Parliament has regarded the certainty and consistency of RPI as outweighing the potential unfairness to either party of, often modest, changes in costs."

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

48. 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.

49. However, it is worthy of reference that in paragraph 31 it was said about the provisions in the 1983 Act that:

> "The terms are also capable of being interpreted more purposively, on the assumption that Parliament cannot have intended precisely to prescribe all of the factors capable of being taken into account. That approach is in the spirit of the 1983 Act as originally enacted when the basis on which new pitch fees were determined was entirely open."

50. The Upper Tribunal also addressed the question of the weight to be given to other factors than those in paragraph 18(1) at paragraph 45 of its judgment quoting paragraph 50 in *Vyse* (see paragraph 45 in this Decision above). The RPI presumption not being lightly displaced was emphasised and paragraph 57 of *Vyse* quoted.

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

> "(1) The direction in paragraph 16(b) that in the absence of agreement the pitch fee may be changed only "if the appropriate judicial body … considers it reasonable" for there to be a change is more than just a pre-condition; it imports a standard of reasonableness, to be applied in the context of the other statutory provisions, which should guide the tribunal when it is asked to determine the amount of a new pitch fee.
>
> (2) In every case "particular regard" must be had to the factors in paragraph 18(1), but these are not the only factors which may influence the amount by which it is reasonable for a pitch fee to change.
>
> (3) No weight may be given in any case to the factors identified in paragraphs 18(1A) and 19.
>
> (4) With those mandatory considerations well in mind the starting point is then the presumption in paragraph 20(A1) of an annual increase or reduction by no more than the change in RPI. This is a strong presumption, but it is neither an entitlement nor a maximum.
>
> (5) The effect of the presumption is that an increase (or decrease) "no more than" the change in RPI will be justified, unless one of the factors mentioned in paragraph 18(1) makes that limit unreasonable, in which case the presumption will not apply.
>
> (6) Even if none of the factors in paragraph 18(1) applies, some other important factor may nevertheless rebut the presumption and make it reasonable that a pitch fee should increase by a greater amount than the change in RPI."

52. This Tribunal understands that reference to an increase above RPI reflects the facts of *Kenyon* and changes below that level are to be approached in the same manner.

53. Martin Rodger KC, the Deputy President, then made observations about the reference in the statute to a presumption. In particular, he observed:

> "…… the use of a "presumption" as part of a scheme of valuation is peculiar".

54. He concluded his discussion of the law with the following, reflecting the observation in previous judgments:

> 58. ……. I adhere to my previous view that factors not encompassed by paragraph 18(1) may nevertheless provide grounds on which the presumption of no more than RPI increases (or decreases) may be rebutted. If another weighty factor means that it is reasonable to vary the pitch fee by a different amount, effect may be given to that factor."

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

to take the same approach and different terms used did not seek to affect the approach taken.

56. The strong presumption of an increase or decrease in line with RPI is an important consideration. However, as referred to in the case authorities above, a presumption, where applicable is just that. Even in the absence of factors contained in paragraph 18, the Tribunal shall take account of such other factors as it considers appropriate and give such weight to those factors as it considers appropriate, it being a matter of the Tribunal's judgment and expertise, in the context of the statutory scheme, to determine the appropriate weight to be given. There is no limit to the factors to which the Tribunal may have regard.

57. It is, and must be, a matter for the individual Tribunal to determine whether there are other factors and the weight to give them, including determining whether that is sufficient to rebut the presumption or not. It is for the party who wishes to do so to seek to rebut the presumption, raising matters which may do so. If in so taking account and weighing, the Tribunal considers that those other factors are of sufficient weight then the presumption is rebutted.

58. If there are matters which rebut the presumption, that is to say matters which mean that the given presumption should not apply, the Applicant's case both for any change to the pitch fee and for the level of increase sought needs to be proved generally.

59. The pitch fee, will be the amount that the Tribunal determines taking account of any relevant matters, including any appropriate change determined from the current pitch fee at the time. That may still be the amount sought to be charged by the site owner or may be a different amount.

60. It should be recorded that the parties did not make reference to any of the above case authorities. However, they are established ones on matters involved in this case and the Tribunal is required to apply the law and take account of decisions relevant to the decision to be made in this case. The Tribunal concluded on balance that it did not require the assistance of submissions on the law from the parties in this instance.

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

The Inspection

62. The Tribunal inspected the Park at just after 9.30am on the morning of the hearing. Mr Steve Drew, Mrs Karen Gribble and Mr Sean Buckley attended on behalf of the Applicant. The Respondents were both in attendance at and around their individual pitches.

63. The Tribunal looked at the parts of the site around the two relevant pitches. The Tribunal obtained a more general impression from walking

from their parking to the Park office and then to the two pitches. The Park seemed to the Tribunal as at the inspection date to be generally well-maintained. Mrs Clarke accepted that there were no ongoing issues around her pitch, which the Tribunal only visited briefly in the circumstances.

64. The Tribunal spent more time, and prior to visiting Mrs Clarke's pitch, at Mrs Unsted's pitch. That was situated by the edge of the Park. Beyond the grassed area is a channel which contained water, the ditch as referred to below, approximately 1.5 feet wide, which on the opposite side there was a small bank with a quantity of dead leaves. To the other side is a public road, from which access can be obtained to communal parking situated to one side of Pitch 190 and along beside other pitches.

65. Between the parking area and Pitch 190 were trees/ hedging. There was also a hardstanding area to the pitch side of that accessible from the pitch.

66. The grassed area running slightly downhill to the ditch from the park home contained stumps of trees which had plainly been present and then been removed. There was an apparent line said to be 3 metres (accepting a leap from imperial measurements to metric ones) from the park home itself. There was also another area of approximately 3 metres between that and the stumps of the trees. To the other side of the stumps and to the ditch was an area approximately 1.5 metres at its deepest and reducing to almost nothing.

67. At the time of the inspection there were some long grasses by the end of the area and by the ditch but everything else was relatively tidy and there was nothing considered by the Tribunal notable about the condition of the pitch or the adjacent area.

68. Whilst the inspection revealed little of significance in itself, it was, however, very helpful in understanding the nature of Pitch 190, the ditch and the area by those.

The Hearing

69. The application was heard on 17th November 2023 at Lewes Crown Court in the civil court there. The Tribunal and the parties attended in person.

70. The Applicant was represented by Mr Steve Drew. Mrs Gribble also attended. The Respondents represented themselves. The Tribunal received oral evidence from Mr Drew on behalf of the Applicant and from the Respondents in addition to the Applicant's statement signed by Mr Drew [582- 584] and the Respondents' response to the applications.

71. Mr Drew was questioned by Mrs Unsted and Mrs Clarke and then by the Tribunal. Mrs Unsted and Mrs Clarke were briefly questioned by Mr Drew and by the Tribunal.

72. The Tribunal is grateful to all of the above for their assistance in this case.

Procedural matters

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

74. The Notice and prescribed form proposing the new pitch fee were served more than 28 days prior to the review date of 1st January 2023. The Application to the Tribunal to determine the pitch fee made on 9th March 2023 was within the period starting 28 days to three months after the review date. The form indicated that the Applicant had applied the RPI of 14.2% applying the RPI figure published in October 2022.

75. The Tribunal is satisfied that the Applicant has complied with the procedural requirements of paragraph 17 of Part 1 of Schedule 1 of the 1983 Act to support an application for an increase in pitch fee in respect of the pitch occupied by the Respondents.

76. The Tribunal therefore turns to the question at the heart of the case, namely the level of proposed increase of the pitch fee.

Consideration of the parties' cases and findings of fact

77. The Tribunal does not set out the parties' cases at length in advance of discussion of the relevant issues. The cases were set out in writing in various documents, supplemented by recorded oral evidence and brief submissions. The Tribunal refers to the relevant parts of the parties' cases in its consideration of the individual items below.

78. The Tribunal takes each limb of argument in turn, first the matters related to the condition of the Park as referred to above and secondly, certain specific points raised by Ms Unsted. The Tribunal then refers to the Respondents' wider arguments about the level of the increase.

Issues raised by the Respondents as to the condition of the Park

79. The Respondents raised, as one limb of their arguments, issues with the maintenance of the Park, in particular, on the part of Mrs Unsted, the boundary and maintenance to the bottom of her garden [initially within the proceedings 550].

80. Mrs Unsted had sent previous correspondence dated 13th December 2022 [585- 586] which accepted a discussion about the boundary area but said there was no outcome, adding that there had been no maintenance of the area by the Applicant. The letter identified that the Applicant's employee Adrian had visited with a tree surgeon, apparently on 3rd November 2022.

81. She wrote again by letter dated 23rd May 2023 [589- 590], which identified that her pitch included an area 3 metres from the side of her park home, that it had taken some months for the Applicant to attend to trees, that her son was mowing some of the grass areas. Maintenance had

"not always been to a high standard". Mrs Unsted complained of the ditch flooding.

82. Mrs Unsted wrote a further letter to the Applicant dated 2nd July 2023 [594- 595] in which she added that an employee of the Applicant had suggested that she shore up the boundary bank and described the area between the end of Mrs Unsted's pitch and the boundary as "no man's land". She also stated that the trees were attended to in October 2022.

83. Mrs Clarke complained in her response to the application by email [614] that she had seen deterioration by trees getting out of control into telephone wires and also hedges and pathways not being attended to for long periods of time.

84. The Applicant's position with regard to Mrs Unsted's points was firstly indicated in its statement [582- 584] which said, in summary, that Mrs Unsted had been spoken to about the boundary and that any failings with regard to the ditch.

85. The Applicant replied to Mrs Unsted's May 2023 letter bv correspondence dated 5th June 2023 [592]. That contended that trees around the Park are "tended to on the basis of a professional survey" adding that "plans to cut back/maintain trees are put in place in the context of that survey and taking account of TPOs [tree protection orders]".

86. The Applicant said nothing specific in its statement with regard to Mrs Clarke's {644- 645] about her objection to the proposed pitch fee increase, not having seen her comments by that time.

87. Mrs Unsted raised in questioning Mr Drew an issue with the extent of her pitch, which she said appeared to extend into the car park. Mr Drew explained that the Applicant had mislaid the written statement for the pitch so could not comment. The Tribunal considered nothing relevant to this case turned on that, the extent of the pitch itself not being the question for determination and not identifiably affecting the relevant fee.

88. The Tribunal carefully considered what it had seen at the inspection and the evidence presented by the parties at the hearing and in writing. It is stating the obvious to say that the Tribunal did not see the condition of any part of the Park as at the pitch fee review date or at any previous date. The Tribunal did see the condition as at the date of inspection approximately one year later than the review date. The Tribunal could derive relatively little immediate assistance as to the condition a year earlier from the inspection itself, although more generally the condition seen in conjunction with other evidence enabled the Tribunal to make some assessment of the condition at the relevant date.

89. The Tribunal asked Mr Drew about ownership of the ditch, whose answer was not wholly clear. Mr Buckley, interjecting (albeit that he was not giving evidence and ought not to have done) was firm that although on the deeds the land containing the ditch was owned by the Applicant, in practice the

highway authority maintained it and the ditch was its responsibility. Mrs Unsted said that the ditch had been cleaned out approximately a fortnight before the inspection with black sludge being removed.

90. The Tribunal considered it very possible that the ditch formed part of the highway and so was the responsibility of the highway authority, but equally that it may attend to the ditch in order to avoid danger with use of the highway and not because the Applicant lacked any responsibility for it. Perhaps fortunately given the lack of clarity, the Tribunal determined that, as explained below, no specific finding was required.

91. The Tribunal was concerned at the ditch flooding, although not onto land forming part of Mrs Unsted's pitch. The Tribunal was in any event not able to identify that the position had altered appreciably, if at all, and that the flooding demonstrated a deterioration from a previous condition of that area of the Park. It was not, for example, apparent that in similar conditions to those in which the ditch had flooded in 2022 it had previously not flooded, still less at any given point in time from which any deterioration could be assessed. Hence, nothing specific turned on ownership of the ditch.

92. The most contemporaneous information regarding the Park itself in the area of Pitch 190 was that contained in the letter from Mrs Unsted of December 2022, where the reference to attendance with a tree surgeon indicated at least potential acceptance by the Applicant of a need to attend to the condition of trees. In turn, that indicated some deterioration in the condition of those trees. Equally, Mrs Unsted's reference to the trees growing out of control indicated the nature of the attention required. Her letter sent in May 2023 suggested that the trees were attended to between December and May.

93. However, and significantly, the letter dated July 2023 by referring specifically to the trees being attended to in October 2022, made clear that issue was addressed prior to the service of the subject Pitch Fee Review Notice. Mr Drew confirmed in oral evidence that trees had been cut in October 2022 and Mrs Unsted accepted that in her oral evidence, including one by the kitchen window and one by the shed. Hence, any deterioration in the condition of the trees prior to that would have been relevant to an earlier pitch fee determination but was not relevant to this one.

94. The Tribunal also understood from Mrs Unsted's evidence, not that anything turns on the matter, that the stumps which the Tribunal had seen at the inspection were of fir trees or conifers taken down approximately six years earlier.

95. The Tribunal has no reason to doubt any of the evidence of Mrs Unsted, nor to doubt the contents of her correspondence (accepting those contained no statements of truth and were not referred to in a document which did). The Tribunal accepted that over a period of time there had been some lack of maintenance of the trees. The Tribunal did not disbelieve the Applicant's position that trees were surveyed but noted that

the Applicant's case said nothing about the regularity of such surveys or the appropriateness of that. However, that was not relevant deterioration as explained in the above paragraph.

96. The Tribunal also accepted that over a period of time there had been some lack of maintenance of the area between Mrs Usted's pitch and the boundary, with a failure to sufficiently identify the extent of the pitch, and consequently some deterioration in the condition of that. The Tribunal found the Applicant, through its employees, to have been vague at best and to have failed to fully understand and investigate. Mr Drew also accepted misunderstanding when responding to questions and giving oral evidence.

97. The Tribunal finds that there ought to have been clear records as to the extent of Mrs Unsted's pitch and for it to have been plain that the remainder of the Park outside of individual pitches fell to be maintained by the Applicant. It ought not to have been difficult to identify the extent of the area for which the Applicant was responsible and to deal with it.

98. The Tribunal finds, both from Mrs Unsted's evidence and by inference from the Applicant's apparent lack of understanding of its own responsibility, that the Applicant did not maintain the area between Mrs Unsted's pitch and the ditch in the manner in which it ought to have done and hence the condition did deteriorate. The Tribunal also noted Mr Drew's understanding as expressed in his oral evidence that there had not been maintenance, although if anything had turned on the specific matter the Tribunal would have been a little cautious about Mr Drew's apparent lack of direct knowledge.

99. It should be recorded that Mrs Unsted accepted that action by the Applicant had improved but the Tribunal understood that to post- date the review date. It was therefore welcome but not directly relevant.

100. However, there was no actual evidence of a specific previous condition at a specific time which the Tribunal could pinpoint and so the Tribunal was unable to assess the extent of any ongoing deterioration as at the review date. Similarly, any decline in amenity arising from it.

101. In relation to the more general issues raised by Mrs Clarke, the Tribunal inferred that the trees to which she referred- which were not precisely identified- may at least in part have been attended to in October 2022. In any event, it was not sufficiently clear to what extent the trees growing out of control during a period of months was reflected in their condition at the time of the review, or what the condition was at that time.

102. With regard to the hedges and pathways, whilst the Tribunal noted Mrs Clarke's point about a lack of regularity of maintenance, no specific effect was identified. In addition, in response to a question from Mr Drew, Mrs Clarke referred to "slight deterioration of some paths and hedges: nothing major".

103. The Tribunal found there to be no sufficient evidence of the previous condition and any decline in condition to be able to determine deterioration to the Park and/ or decline in amenity which may have arisen.

104. Consequently, the Tribunal did not find on balance that deterioration in the condition of the site or decrease in the amenity of the site for the purpose of the 1983 Act had been proved as at the review date by the Respondents.

Additional matters raised by Mrs Unsted

105. Mrs Unsted raised a further specific issue in her correspondence that the Applicant had lacked competency in the time it had taken to remove her deceased husband's name from correspondence. Mrs Unsted explained that the receipt of correspondence including his name was upsetting. She did not accept that the fact that the Pitch Fee Review Notice had been in both names was a sufficient reason for later correspondence also being. Mrs Unsted also cited the matter as evidence of the inefficiency of the Applicant.

106. The Applicant provided the explanation mentioned above and also apologised. It was accepted in the letter signed by Mr Drew dated 5th June 2023 that letters after 15th December 2022, when it was said Mrs Unsted's husband's name had been removed from the database, should have been in her name only. Given that the above position was not discernibly in dispute, no finding by the Tribunal was required.

107. That is not a matter related to the Park and its condition nor about amenity. It would need to be another factor of sufficient weight for it to have an effect. The Tribunal addresses that below.

108. Mrs Unsted also argued as a specific point, that she and others had been discriminated against by not being given any discount despite paying by direct debit because she had not agreed the increase in the pitch fee as proposed by the Applicant. Mr Drew questioned Mrs Unsted as to why that was discriminatory, to which Mrs Unsted responded that she paid by direct debit and all others did (which the Tribunal observes may or may not be correct in fact) but she received no discount and so was treated differently.

109. The Tribunal accepts that park home owners who did not agree the proposed increase and pay that by direct debit were treated differently to others. However, the Tribunal does not identify that as discrimination in any manner in which such a term might ordinarily be understood. It is certainly not identifiably discrimination because of any characteristic protected in any way which might affect how the Tribunal ought to deal with this case.

110. The Tribunal finds that the Applicant was under no obligation to offer any discount from the proposed pitch fee for any reason. The Applicant was equally entitled to decide that it would offer a discount only in given

circumstances. The Tribunal determines that whilst the effect in this instance, and others, is that certain park home owners will pay more in 2023 than other ones will, that is not of itself relevant to the appropriate level of pitch fee, whether for the particular Respondents or more generally. It is equally notable that whilst the discount reduces the amount actually required to be paid in 2023, the underlying pitch fee remains the same. It follows that no more need be said about this point.

Wider matters raised about the level of the increase- RPI

111. The Respondents' case was expressed slightly different by the 1st Respondents and the 2nd Respondent, but the essence was the same. As noted above, the proposed increase was of the rate of increase in RPI, 14.2%. Both Respondents also sought to challenge the amount of the increase in the pitch fee.

112. In the case of Mrs Unsted, it was argued that there was a lack of justification for the level of increase. In her correspondence dated 13th December 2022, Mrs Unsted asserted that RPI was not the best indicator to use, suggesting the index of private housing rental prices- which indicated a 3.8% increase- as an alternative. In her further correspondence dated 23rd May 2023, she explained why she considered that index more appropriate as not including items such as food and cars and she further noted that a high percentage of residents receive only a pension, referring to the rate of increase in pensions. She also explained in oral evidence that her daughter had identified the particular index. More generally, Mrs Unsted said, in concluding her letter, that she could "see no justification for such an increase in the fee".

113. In Mrs Unsted's further letter to the Applicant dated 2nd July 2023 she said that the Applicant had increased by the same level as the increase in RPI but "there is no comparison made to the actual increase in costs incurred for the maintenance of the site etc." She additionally noted that the Applicant has increased discounts for payment by direct debit but noted that had also been in place previously and she said was proportionately lower this year, hence the increase for someone accepting and taking the discount the previous year as compared to the current year was 14.99%. Mrs Unsted's own increase was asserted to be higher still because she had received the benefit of the discount the previous year but now would not do because she had not accepted the RPI increase and so would pay approximately 20% more than the previous year.

114. By further letter dated 6th July 2023 [596], Mrs Unsted added that she still considered no justification had been provided for why the pitch fee was being increased, particularly no breakdown of increased costs for the Park. She suggested that the lack of comment was because there was no justification and the RPI was used "regardless of how much pitch fee increase is actually required". Mrs Unsted repeated the lack of justification in oral evidence.

115. Mrs Unsted also asserted in the July letter that "if the pitch fee continues to increase at a rate substantially higher than the increase to the pension, there will be an affordability issue for some residents".

116. In the case of Mrs Clarke, it was argued in her email response that there would have been a substantial rise over a two- year period. She asserted that to be "totally unreasonable and unjustified" adding that the Applicant "did not have to take the maximum RPI in the current climate". Mrs Clarke referred to the sharp rise in food and energy bills. She expressed willingness to agree a reasonable increase.

117. The Tribunal queried when Mrs Clarke gave oral evidence her use of the phrase "totally unreasonable". Mrs Clarke said that she accepted a business would wish to make a profit but it did not need to take the maximum. She conceded that "unreasonable" might have gone too far and that "unfair was perhaps" more the term she considered suitable. Mrs Clarke re- iterated her opinion that the level of increase- the maximum- was unfair in closing.

118. The Applicant said in the statement signed by Mr Drew that regulations had been followed with regard to increase in the pitch fee in line with the rise in RPI, a position he repeated at the start of his oral evidence. Essentially, no more was said than that about the decision made in writing. The Tribunal appreciates that the Applicant sought to keep its responses succinct but would have been assisted by more information in these instances.

119. Mr Drew re-iterated the position in closing comments, saying that the Applicant had acted lawfully in proposing an increase of 14.2%. The lawfulness is not in doubt, but not the end of the matter either.

120. It was added in correspondence dated 14th December 2022 [587] in response to that from Mrs Unsted that business costs had increased over the year and by a lot more than the 3.8% to which she had referred. In oral evidence, Mr Drew further rejected that level of increase as appropriate.

121. The Respondent also said in the correspondence dated 5th June 2023 that the net effect of the discount- assuming applicable- was to take the increase down to "around 10%". Mr Drew said in evidence that the impact was to produce an increase of approximately 11%, although the Tribunal noted that a slightly lower percentage- 10%- had been stated in correspondence. The Tribunal considered the written figure more likely to be accurate. Mr Drew explained that the discount offered was by way of a one- off credit to the account but the fee remained increased by 14.2%.

122. The Applicant addressed the level of increase further in response to the correspondence from Mrs Unsted in its letter dated 7th July 2023 [599]. It was said that "the business has followed the mechanism set out in the Mobile Homes Act and the mobile home agreement that you took over. These provide that the review may be conducted at the rate of increase/(or decrease) in the Retail Prices Index". However, the letter went on to explain that "Business

cost is increasing including the employment cost of staff whether they are on-site or in area or central support roles. Repair and maintenance cost has also increased beyond the published inflation rate." It was not said to what extent that formed part of any decision made in late 2022. The letter added that the discounts were offered in the context of the "cost of living crisis". Mr Drew added in closing that the Applicant acknowledged that a 14.2% increase might cause hardship to residents but said that the Applicant had chosen to offer a discount.

123. Mr Drew said in oral evidence in response to questioning by Mrs Unsted that the Applicant had always followed the approach of increasing by RPI and that it seemed unwise to vary from that as it might set a precedent for future years. He separately said, answering a question by Mrs Clarke, that the Applicant seeks not to vary from an increase in line with RPI in order to "make things clear". In response to a query from the Tribunal as to why such an increase produced clarity, Mr Drew suggested that it would be otherwise be subjective as to the level of proposal.

124. Mr Drew repeated in answer to cross- examination that business cost has increased. The Tribunal asked Mr Drew what specific business costs had increased. He gave the example of the cost of tarmac increasing by 22%. However, Mr Drew conceded in response to the next question that no tarmacing had been undertaken on the Park at the review date or during the year. The Tribunal finds the increase in cost of tarmacking to not be relevant.

125. The Tribunal enquired about more likely relevant costs such as ground maintenance, direct staffing costs and costs of contractors. Mr Drew was unable to answer, although he indicated the increase had been less than 14%. Mr Drew later added that fuel costs had increased "considerably", although he did not identify what that increase was. One increased cost was said to be the area manager being an additional post because remits and areas had changed- although that was therefore a general approach and not specific to the site. The business considerations which led to the re- organisation were not explained and so the Tribunal did not consider that it could properly take account of that potential consideration.

126. The increase proposed was therefore, Mr Drew agreed, because of the increase in RPI and not costed out. There had not been an analysis of cost for the Park, although the Tribunal accepts that Mr Drew added that there were central costs. In response to a question as to how the Applicant determined that running the Park was profitable, Mr Drew said that consideration was given to staffing, pitch fees and sales. It was accepted by Mr Drew that an increase in line with the rise in RPI was one higher than the rise in some costs, although he asserted the offered discount had increased.

127. Mr Drew also agreed that if all park home owners had accepted the pitch fee and received the discount, the increased income for the business would be under 11% (indeed 10% in the event). Mr Drew conceded that would have been acceptable to the Applicant and that such a level of

increase in income was sustainable. He explained that the Applicant had budgeted on the basis of all park home owners receiving the discount.

128. Mr Drew said, in response to a further question from the Tribunal, that the Applicant had not considered capping the increase.

129. Whilst the Tribunal received some evidence about certain costs incurred by the Applicant generally increasing, some to a significant extent, the Tribunal found that there had been insufficient evidence, no adequate indication of the overall effect of increases in the Applicant's costs as a whole and more pertinently no indication of the relevance of any increases to the costs of operating the Park and so the reasonable level of pitch fee to meet that and provide a level of profit (the exact level of which is not a matter the Tribunal considers it should venture into) in the event that the Tribunal considered those matters to have relevance in the context of the statutory provisions as identified in the case authorities. That said, a pitch fee income increase of 10% would have been sufficient for the Applicant.

130. The Applicant did not provide any documentary evidence in this case as to any increase in costs that it had encountered in relation to this particular Park. The Applicant had, the Tribunal found on the evidence, failed to prove that an increase by the level of RPI was appropriate in the event that the presumption of an increase by RPI was rebutted.

131. The Applicant also did not, it should be added, provide any evidence or otherwise run any argument, that a rise by RPI, or any other rise, was appropriate because of an increase in the value of the right to station the Respondents' park homes on the particular pitches. Nothing was said about that right to station the park home element of the pitch fee. Hence the Tribunal addresses the issue in brief terms, there being no argument to recount and consequently nothing else to say.

132. The Tribunal recognises that the right to station a park home on a pitch inevitably has a value and that the value could be found to increase year by year. Neither an increase by RPI or otherwise is necessarily a consequence only of increased costs. However, the Tribunal found that the Applicant had failed to prove that the pitch fee should increase for that reason and so does not seek to make any finding as to what the value of the right may be nor of any change to that value.

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

134. The Tribunal adds that Mrs Unsted also referred to particular cost due to her own illness. The Tribunal sympathises with her about that but does not consider it a matter of which account can be taken in respect of the pitch fee increase.

135. Mrs Unsted also said in oral evidence that her state pension had risen by in the region of 10% to 11%, although a private one had not increased. The Tribunal accepts that from what it knows of pension increases in 2023.

136. Mrs Clarke made a point in oral evidence that once the pitch fee increased it would go up again from that level and so on year on year. The Tribunal accepts that any future pitch fee will be affected by the level of the fee for the subject year.

Application of the above to the law

137. As identified above, but it does no harm to be reminded of them, the first question for the Tribunal to determine is whether any change to the pitch fee ought to be made. If so, the second question is whether the level of any new pitch fee is one which would increase (in this case) the existing pitch fee by the RPI or is a different level. Plainly, the first question needs to be answered before the second and if the answer to the first is that there should be no change, then in fact the second question does not fall to be answered at all.

Should the pitch fee change?

138. The factors discussed in detail below are not ones which the Tribunal considers ought to result in the pitch fee remaining at the same level as the previous year.

139. Whilst there was a lack of documentary evidence and only limited oral evidence from Mr Drew which identifiably addresses the costs of operating the Park, the Tribunal accepts it as highly likely that the Applicant's such costs have increased to some extent. Mr Drew was sufficiently clear about that and the Tribunal has no reason to doubt him. It is abundantly clear from frequent reference on the news and current affairs programmes, and indeed from day to day lives, that various costs increased, particularly for example building materials. That indicates that some level of increase is appropriate.

140. The Respondents in any event did not argue that there ought not to be an increase, indeed it was implicit in much of their case, confirmed by oral evidence, that they accepted that an increase in the pitch fee was reasonable (but for the deterioration/decline which they advanced but which the Tribunal has not accepted). That was not the real battleground in this case.

141. The Tribunal considers the bar for an increase (or decrease in relevant circumstances) is a relatively low one. Whilst no change at all may be appropriate if all circumstances remain entirely the same and no addition

purely for the fact of use of the pitch were appropriate in the particular case, the Tribunal considers that if the site owner can point to some change or a change is accepted by the pitch fee occupier, it would be rare that the Tribunal did not find a change to be reasonable. The Tribunal repeats that there was no evidence, or indeed contention, that the value of the use of the pitch had altered.

142. In this instance, the Tribunal is content that a change to the pitch fee, and more particularly in this instance an increase in the pitch fee is appropriate.

What is the reasonable level of the new pitch fee?

143. Having therefore determined to alter the pitch fee and by way of an increase of it- and having determined that the factors to which particular regard ought to be had are not such as to prevent the presumption of an increase in line with the increase in RPI – the Tribunal considers whether the fee should increase in line with that increase.

144. The key question is therefore whether there is some other factor of sufficient weight to rebut the presumption of an increase by RPI. The weight must be enough to deal with a presumption which has been described as strong. It is also not lost on the Tribunal that the formula set out for the calculation of the new pitch fee on the pitch fee review form assumes an increase by the rise in RPI, although of course the way in which that form sets that out cannot alter the statutory provisions or the case authorities to be applied.

145. The Tribunal reminds itself of the sixth proposition identified in *Kenyon* (and as explained in slightly different but very similar terms n *Vyse*, namely:

> "...... Even if none of the factors in paragraph 18(1) applies, some other important factor may nevertheless rebut the presumption and make it reasonable that a pitch fee should increase by a greater amount than the change in RPI"

Or indeed the opposite, being that some other important factor may rebut the presumption and make it reasonable that a pitch fee should be one involving less than an increase by RPI. It is of course the question of an increase below the level of RPI which is the relevant scenario for the Tribunal to consider given the Respondents' cases.

146. There were no factors advanced said to support a higher sum than produced by an increase in RPI.

147. The Tribunal addresses briefly the inclusion of Mrs Unsted's husband's name on correspondence. That the Tribunal does so briefly is not to detract from the upset caused to Mrs Unsted by the ongoing receipt of such correspondence. Neither is it to ignore the frustration caused by the matter not being attended to more swiftly.

148. Rather the Tribunal considers that the matter is not one which can properly be regarded as sufficiently weighty in the context of the scheme of the Act that it could rebut the presumption of an increase in line with the rise in RPI. The understandable upset and the frustration were avoidable and so it is regrettable that they have arisen. However, in the context of the appropriate level of the pitch fee, they are not the sort of matter which are sufficiently weighty to have an effect.

149. The Tribunal does not consider it necessary to say any more about those matters other than to note that the issue with the name(s) on correspondence has been belatedly resolved and so to trust that no ongoing issue will arise.

150. Turning then to the financial aspect of the Respondents' cases, the Tribunal firstly appreciates that the individual financial position of the occupiers of a given pitch is not one of the identified relevant considerations under the 1983 Act, and it is difficult to identify how it might carry sufficient weight to otherwise be an appropriate factor which might rebut the wide RPI presumption. As the Respondent's case was not advanced in such specific terms, much as Mrs Unsted said something about her situation, the Tribunal does not dwell on the point.

151. The Tribunal also observes that whilst the nature of the discounts offered by the Applicant benefit some residents and not others, which the Tribunal can well understand causes disquiet- and may favour those better able to pay and disadvantage those less able to pay in the first place, which is a less than ideal outcome- that discount is from the level of the pitch fee proposed and does not reduce the underlying pitch fee. In any event, it is not relevant to the correct answer to the question for the Tribunal, namely the level of that pitch fee.

Is the rate of the increase in RPI for the given year and the wider situation a weighty factor to rebut the presumption?-

152. The case advanced by the Respondents is that the increase should be lower to one extent or another and they both specifically refer to the high rate of increase in RPI and the wider economic situation, although Mrs Unsted does so in rather more detail in writing than Mrs Clarke given the various items of correspondence.

153. The Tribunal pauses to observe that most pitch fee increases are not actively opposed, much as they are often not actively agreed to. Where increases are opposed, the opposition is usually that there are assertions of elements of deterioration to the site, decline in amenity or reduced services.

154. Prior to this calendar year, the Tribunal cannot identify there to have been arguments raised of impact on an increase to the extent of the rise in RPI, because of the extent of the increase produced and/ or the economic climate. The Tribunal considers this is just the sort of matter into which the Tribunal should be extremely slow to venture, unless the argument has

been specifically raised by the occupier of the pitch. However, those matters have been raised here.

155. The Tribunal has carefully noted the point identified in *Vyse* that:

> "The whole point of the legislative framework is to avoid examination of individual costs to the owner and instead to apply the broadbrush of RPI."

The Tribunal has also had regard to the "good reason" for the reference to RPI.

156. However, the Tribunal has also noted that is not the end of the matter because, as explained in *Vyse* amongst other cases, the presumption is rebuttable and RPI may be only part of the story. The Tribunal necessarily must be able to consider whether the presumption has been rebutted.

157. The current time is one in which RPI has increased sharply from the levels seen until as recently as the end of 2021. It is the level of increase caused by the percentage rise in RPI which the Respondents assert call into question the reasonableness of a pitch fee rise at the level of RPI- that is the essence of their wide case when put into the terms of the 1983 Act.

158. In terms of the rise in RPI, the Tribunal notes that as at Spring 2020, just after the start of the Covid-19 pandemic, RPI stood at approximately 2.1%. By the following year it had risen a little to 2.9%. By October 2022, the relevant period for the level of RPI in these cases, RPI peaked at 14.2%.

159. The very sharp rise in the level of RPI produces RPI increases in 2022 being a percentage which has not been seen previously since 2013 and indeed a significantly longer time. Indeed, it is far more than any such previous rise.

160. Two considerations arise.

161. The first is whether that large increase in RPI, as compared to previous years, is a relevant "other factor" which can therefore be considered. The second is whether, assuming the first to apply, it is a factor the weight to be given to which is sufficient to rebut the presumption of a percentage rise in the level of the pitch fee to the extent of that increase in RPI. In both instances that is applying the Tribunal's judgment and expertise to determine the appropriate weight to be given to such factors.

162. The Tribunal determines that the answer to those questions is that yes, the large increase in RPI is a factor which can be considered. Further, yes, the extent of the increase is such that in the circumstances of this case it is a factor of sufficient weight that the presumption of a rise in line with RPI is rebutted.

163. The Tribunal does not operate in a vacuum, it is inevitably well aware of the wider world. The frequent reference on the news and current affairs

programmes that costs have increased significantly and are increasing significantly has been mentioned above.

164. The Tribunal is similarly aware that pensions and welfare benefits had until rises mid this year generally increased below the rate of inflation and so too wages until the last couple of months, so some while after the increase sought by the Applicant. By inflation the Tribunal means the CPI, which has been the measure used by the UK Statistics Authority since 2013- see further below. Hence, there was a particular general cost of living issue experienced by most people in the country, which is generally accepted, the Tribunal considers, as occurring from Spring/ Summer 2022.

165. The Tribunal adds that it is also aware, having dealt with many pitch fee increase cases and with a particularly large number of applications this year, that there are site owners which are seeking smaller increases in the pitch fee. That is not to say, of course, that all site owners should- costs and a myriad other relevant circumstances and considerations are bound to vary. The Tribunal refers to the matter not for that reason but rather to make it clear that the Tribunal does not consider that the extent to which pitch fees on other sites have or have not been proposed to increase in line with the rise in RPI is a relevant factor in this case.

166. The Tribunal is additionally aware of the Mobile Homes (Pitch Fees) Act 2023 ("the 2023 Act"). Following the commencement date of that Act on 2nd July, the presumption in respect of pitch fees has become that any change shall not, subject to paragraph 18(1) or other factors of sufficient weight, exceed the Consumer Prices Index ("CPI") rather than the RPI. The next increase of pitch fees on the Park and any other park hereafter will attract a presumption of increase by CPI. The over-arching question of reasonableness will remain the same.

167. The Tribunal finds it instructive to consider matters generated in relation to the introduction and passage of the Bill. For the avoidance of doubt, the Tribunal does not do so with a view to affecting the construction and/ or application of the 1983 Act but merely as a source of information about the general position in terms of RPI increases and the very recent departure from that.

168. The Bill was originally introduced as a Private Member's Bill but with the support of the Government and with the Explanatory Notes written by the Department for Levelling Up, Housing and Communities ("DLUHC"). It is the Library Briefing for the House of Lords from which the Tribunal noted the continued estimate number of park homes in England as 85,000 as referred to above, although the Briefing indicates that it obtained the figure from a DLUHC paper named "The impact of a change in the maximum park sale commission: Executive Summary" issued on 16th June 2022.

169. The Act, as it has become, reflects a commitment as far back as 2014 by the government to alter the provision in respect of pitch fees from the RPI. As is widely recognised the RPI used to commonly be referred to and be

the basis for inflation figures and so on but has not been in widespread use for several years, ceasing to be the measure used by the UK Statistics Authority as mentioned above. RPI is therefore the cost of a basket of goods but not the basket generally used. In Wales, a separate Act to the 2013 Act was introduced that same year, the Mobile Homes (Wales) Act 2013 which replaced reference to RPI with CPI.

170. It is notable, and far from irrelevant, that the CPI produces, or at least so far has produced, a lower rate of increase than does the RPI. The CPI figure for October 2022, the complete month before the Notice served by the Applicant was 11.1%: RPI was 14.2% as the Applicant set out in the Notice. The different at the time of the Notice was therefore 3.1%, a difference which is at about or greater than the rise in RPI itself in total for some of the previous years from 2013 onwards and not far short of the remainder.

171. To put it another way, pitch fees increasing at the rate of RPI increase beyond the usual method of calculating inflation (and do so year on year with cumulative effect as returned to below). That differential was relatively small between the time of the Government commitment and 2021, such that there may have been little imperative to tackle the issue. However, the difference has increased considerably in 2022 and RPI is far higher than previous years.

172. It was said in the Explanatory Notes the following:

> "As the RPI rate is generally higher than CPI, mobile home owners, the majority of whom are elderly, became increasingly concerned that their incomes which generally increase by CPI would not keep pace with the rise in the pitch fees."

173. In any event the Library Briefing records that when the Government launched a consultation in 2017, 96% of residents supported a change to CPI and all site owners favoured continued use of RPI. Neither side of that is perhaps particularly unexpected. Nevertheless, the Briefing records that in 2018, the Government conclusion was that "CPI is the most appropriate inflationary index". Hence, the Tribunal perceives, the support for the Bill and assistance provided. It is said that the Bill was also introduced in 2020 and 2021 but did not progress due to lack of Parliamentary time. In 2023, that time was found.

174. The Tribunal notes that very little was said about the Bill in Parliament, particularly in the House of Commons, apparently because there was no opposition and nothing to debate, such that it passed all stages in a single day. When introducing the Bill to the House of Lords, Lord Udny- Lister said of the Bill, amongst other things, that:

> "The Bill will also make a positive contribution towards addressing the costs of living crisis that many people in this country face, including of course park home residents."

And later:

"……. The aim of this Bill is to ensure that the many vulnerable park home residents on low incomes are struggling at this critical time…………."

175. The final comment in the House of Lords, by Baroness Scott as Under-Secretary of State at the Department for Levelling Up, Housing and Communities was along similar lines, being that the Bill:

"is one step in making a much-needed change to the lives of all park home residents. When enacted, it will help residents with cost of living pressures by changing the inflationary index used in pitch fee reviews from RPI to the lower CPI. This will mean that pitch fee increases and residents' income will be subject to the same measures of inflation,"

176. Lord Udny- Lister also made the point mentioned above that:

"RPI is generally higher than other inflationary indices and is no longer used as a measure of inflation",

continuing by making various observations about effects of rises in line with RPI. A number of other interesting comments were made in the short debate regarding park homes and residents of them, although not relevant to this Decision.

177. As the Tribunal understands matters, in fact incomes were generally increasing below CPI as well, although nothing specific turns on that here and more recently that may have changed, albeit some months after the pitch fee review date.

178. The Tribunal refers to the above not specifically because of the change from the use of RPI but because of the effect that a rise in this pitch fee in line with the increase in RPI currently has and the level of pitch fee proposed in consequence of that and because of the recognition that 2022 onward has produced a cost of living crisis, as termed above, such that the level of pitch fees, produced by an increase in those if increased in line with the rise in RPI, is recognised as an unusual and acute- "critical"- problem.

179. Whilst for many years the rise in inflation, by which the Tribunal means CPI, and indeed the rise in RPI had been relatively very modest, the Tribunal considers that the extent of the rise in RPI and the uniquely high rate of increase in RPI as at July 2022 onwards, at least during the life of the 2013 Act, is such that the Tribunal determines it is an other factor which can and should properly be considered.

180. Further, because the increase is at so proportionately significant a level and the contrast to the level in previous years from 2013 onwards is a matter of such considerable significance, the Tribunal considers that it is of sufficient weight that in itself it rebuts the presumption of a change to the pitch fee to increase it at the level of the rise in RPI.

181. The Tribunal does not seek to determine what the answer may have been in the event that the RPI increase was a percentage other than 14.2%, although it is aware that the same approach has been taken to a rise in RPI of 12.6%. The Tribunal confines itself in this case to the actual percentage applicable at the notice date.

182. The pitch fee for 1st January 2023 onwards as determined by the Tribunal is necessarily the existing pitch fee as and when the Applicant serves the next Pitch Fee Review Notice. The pitch fee for 1st January 2023 will have an ongoing impact, as Mrs Clarke pointed out. Consequently, if the pitch fee for the following year is to increase, the presumption will be of a change to reflect the rise in CPI- RPI having been replaced as the relevant index- for the twelve months to October 2023 from the level in October 2022 with the increase being from the figure for the 1st January 2023 fee.

183. Thankfully, the CPI rate of increase is falling. The figures for the 12 months until November 2023 is recorded as 3.9%. The Tribunal of course itself sought out the latest and previous CPI figures but they are readily and publicly available from the Office for National Statistics or similar. The Tribunal expects that analysis of them is also available but does not consider it appropriate to seek any such, which analysis may be open to disagreement. Whilst the Tribunal has found the reason for the change in index used to be useful, the actual level of increase in CPI is not relevant. The effect of the 2023 Act is not retrospective.

184. A rise by the unusually, since 2013 at least, high level of RPI in October 2022 would fix the base level at or based on that level in future years and so the pitch fee occupiers would continue to bear that. The Tribunal therefore considers that the ongoing effect is of relevance and, whilst not a weighty factor which rebuts the presumption in itself, does properly form part of the wider factor.

<u>Effect of the rebuttal of the presumption</u>

185. Having determined that the presumption of an increase of the percentage rise in RPI has been rebutted, the inevitable next question to answer is what level of pitch fee does the Tribunal determine appropriate?

186. A rebuttal of the presumption is just that. The presumption no longer applies. That does not determine that a pitch fee which has increased to reflect the rise in RPI cannot be reasonable. One does not necessarily lead to the other. It can only be right that the site owner can obtain an increase at that level if such an increase can be demonstrated to be reasonable. The Tribunal considers that the site owner must demonstrate the reasonable level of pitch fee sought. More generally, the parties need to seek to persuade the Tribunal of another level of pitch fee as the reasonable level.

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

188. Plainly there may well be instances where an increase of RPI may be reasonable and demonstrably justified. A site owner may consider the costs of operating the given park, identify that those have increased at the level of RPI or greater and reach a reasonable decision to increase the pitch fees of the pitches on the sites by the amount of the RPI, explaining that to the Tribunal such that the increase is specifically justified, and the resulting pitch fee found to be at the reasonable level.

189. The Applicant on its evidence has not undertaken that exercise. It has not made any decision that an increase by the level of RPI is justified financially- the Applicant may simply be covering its increased costs, may be experiencing a reduction in income in real terms or may be making a greater profit. The Tribunal has no way of knowing that on the case presented. It merits repeating that the Applicant had the opportunity to do that- it received the Respondents' case and knew what was said quite specifically and clearly- and was hardly taken by surprise.

190. Rather, the Tribunal considers that the Applicant was alive to the fact that points about that would be taken and was able to provide evidence to address the matter Save for one particular examples of increase in the cost of tarmacking not relevant to the Park for the year in question and rather vague references to other increases, the Applicant did not specifically seek to otherwise justify the increase in the pitch fee. It is therefore its own affair that it did not address such a point better, including by provision of relevant evidence if available.

191. The Tribunal considers that if a rise by RPI is no longer a presumption, the reasonable pitch fee being one increased by RPI being without any information about actual costs increasing at or about that level and/ or other matter demonstrating such a rise to produce the appropriate pitch fee, is not an argument which should easily be accepted and the Tribunal does not accept it in this instance. As identified above, the evidence of the extent of increased cost was scant.

192. Set against the background of there being no evidence of an increase in the value of the right to station the park home on the pitch and there being no argument that such value had increased and should contribute to the level of increase in the appropriate pitch fee, the Tribunal does not give weight to that right in respect of any increase, much as the Tribunal recognises that there is a value which has contributed to the pitch fee historically.

193. As the Tribunal has noted above, it is not appropriate to base the level of a pitch fee on the financial circumstances of the individual pitch occupier. That would require an individual assessment of the appropriate level of increase in each individual case, an improperly time consuming and administration heavy process for sums of money which, whilst greater where RPI is higher, are relatively low. The question is not whether any increase in the pitch fee creates an affordability issue for the particular occupiers of this Park.

194. Hence, the effect is that the Applicant has failed to demonstrate that a pitch fee with an RPI increase on the previous pitch fee is reasonable and has failed to demonstrate any specific level of increased pitch fee is reasonable. Neither have the Respondents demonstrated any specific level of pitch fee to be reasonable. None of the parties have provided anything persuasive about a given level of pitch fee as the reasonable level. No other index greatly assists- the CPI for the reason mentioned above- and indeed any consumer index will not accurately demonstrate business cost increases, however useful the presumption is in avoiding complications where it applies.

195. In the absence of anything documented from the Applicant to work with and with only general indications of increase in the costs of matters the relevance of which to the operation of the Park is unclear, the Tribunal is left to consider the level of increase which produces the reasonable pitch fee, not demonstrated to be 14.2% but rather more than 3.8% and requiring a fair degree of increase to allow for the accepted fact of an increase in cost of managing the Park and possible increase in value of siting a home on the pitch.

196. The Tribunal has carefully considered the question of what level of increase in the pitch fee is appropriate in order to arrive at the reasonable pitch fee and in doing so has applied its expertise, has stepped back and has looked at the overall evidence received. Taking matters in the round, the Tribunal considers that a pitch fee which increases by 10% as compared to the existing pitch fee produces the reasonable figure for the new pitch fee.

Reasonable pitch fee

197. The Tribunal therefore determines the reasonable pitch fee for each of Pitch 190 and Pitch 229 from 1st January 2023 to be £199.93.

Costs/ Fees

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

199. Whilst the Tribunal has reached the conclusion set out above that the should be lower than the Applicant sought, nevertheless the Applicant has achieved an increase in the pitch fee of most of what it sought and the specific points raised by the Respondents about maintenance of the Park and related were successfully responded to by the Applicant. The Respondents have been successful with their wider arguments, which exercised the Tribunal at some length, to an extent.

200. Any party might have agreed a different outcome to the one they ideally sought. It might be that negotiations could have resulted in an outcome of

or very close to this one. Both sides could bear some criticism for not doing more to reach an agreement on the level of pitch fee (being different for example from an underlying pitch fee against which a sum is credited). However, in the absence of agreement and short of leaving the pitch fee at the level for the previous year, the Applicant was effectively compelled to make an application to the Tribunal in order to achieve increase.

201. The Tribunal considers by a narrow margin and identifying arguments which could reasonably take the answer either way that it is appropriate on balance to direct the reimbursement by the Respondents to the Applicant of the application fee paid, being £20.00.

Right to Appeal

1. A person wishing to appeal this decision to the Upper Chamber must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision. Where possible you should send your further application for permission to appeal by email to rpsouthern@justice.gov.uk as this will enable the First-tier Tribunal to deal with it more efficiently.

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.