FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/18UC/PHI/2023/0433- 0479
Property	**:**	Ringswell Park
Applicant	**:**	Sovereign Park Home Estates Ltd
Representative	**:**	Chubb Bullied Solicitors
Respondent	**:**	The pitch occupiers of the relevant pitch numbers
Representative	**:**	
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	**:**	7th February 2024
Date of Decision	**:**	7th March 2024

DECISION

Summary of Decision

1. **The Tribunal determined that in respect of all pitches (with the exception of the one where the Written Statement already produced a review date of 1st January) the pitch fee review date had been varied by course of conduct to 1st January.**

2. **The Tribunal did not therefore determine any of the Notices to be invalid or strike out any of the applications.**

3. **The Tribunal determined that it was not reasonable for the pitch fee to be changed for the year beginning 1st January 2023 and for each of the relevant pitches.**

4. **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.**

5. **The Applicant shall bear the application fees paid.**

Background

6. The Applicant (or its directors) has been the owner of Ringswell Park ("the Park") since 2007. The Respondents are the owners of park homes sited on the listed pitches. The Applicants are entitled to occupy the pitches under agreements of various dates, including assignments of agreements entered into by previous occupiers. Nothing turns on the exact dates.

7. The Park is a protected site within the meaning of the Mobile Homes Act 1983 ("the 1983 Act"). The definition 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 [62- 70] granting a licence to three individuals, who the Tribunal understands to be the directors of the Applicant. The Licence allows for up to 87 units.

8. 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 17th November 2022 [e.g.45- 54], 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.

9. 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 water, sewerage, gas and electricity, as set out in the Written Statement, i.e., agreement, for occupation of each pitch.

10. The current pitch fee payable as from 1st January 2022 and the new monthly fee sought for the relevant pitches ("the Pitches") were as follows:

Pitch address	1st Jan 2022 pitch fee/mth	Proposed 1st Jan 2023 pitch fee/mth
6A Third Avenue	£103.62	£118.33
1 Alexander Walk	£128.41	£146.64
1A Alexander Walk	£124.33	£141.98
3 Alexander Walk	£120.64	£137.77
4 Alexander Walk	£154.92	£176.92
6 Alexander Walk	£170.68	£194.92
7 Alexander Walk	£119.87	£136.89
1 Cromwell Terrace	£160.20	£182.95
2 Cromwell Terrace	£168.85	£192.83
2A Cromwell Terrace	£135.38	£154.60
3 Cromwell Terrace	£147.90	£168.90
4 Cromwell Terrace	£118.91	£135.80
1 Nelson Way	£108.37	£123.76
4 Nelson Way	£136.37	£155.73
7 Nelson Way	£183.40	£209.44
11 Nelson Way	£131.68	£150.38
12 Nelson Way	£176.06	£201.06
3 Drake Avenue	£140.05	£159.94
6 Drake Avenue	£138.71	£158.41
7 Drake Avenue	£139.14	£158.90
8 Drake Avenue	£155.64	£177.74
11 Drake Avenue	£149.65	£170.90
2B Marlborough Drive	£173.65	£198.31
4A Marlborough Drive	£137.71	£157.26
6 Marlborough Drive	£126.13	£144.04
7 Marlborough Drive	£164.14	£187.45
8 Marlborough Drive	£146.82	£167.67
9 Marlborough Drive	£148.32	£169.38
14 Marlborough Drive	£135.68	£154.95
15 Marlborough Drive	£156.69	£178.94
16 Marlborough Drive	£159.95	£182.66
17 Marlborough Drive	£158.12	£180.57
18 Marlborough Drive	£170.25	£194.43
19 Marlborough Drive	£141.86	£162
5 Montgomery Road	£135.42	£154.65
6 Montgomery Road	£156.86	£179.13
7 Montgomery Road	£146.47	£167.27
8 Montgomery Road	£130.02	£148.48
10 Montgomery Road	£146.36	£167.14
3 Wellington Close	£154.46	£176.39
4 Wellington Close	£115.20	£131.56
5 Wellington Close	£161.87	£184.86
6 Wellington Close	£161.10	£183.98
8 Wellington Close	£142.53	£162.77
9 Wellington Close	£142.53	£162.77

Procedural History

11. The Applicant sought the determination of the pitch fee payable in respect of the above listed pitches by applications dated 29th March 2023, submitting the relevant applications [e.g. 6- 13].

12. In terms of the procedural history of these applications, perhaps the most notable matter is that the Tribunal indicated that it was minded to strike out various of the applications for reasons related to the absence of written agreements and hence the ability to identify the pitch fee review date and to agreements provided stating a review date other than 1st January . Two subsequent sets of Directions were given [2400- 2418]. In light of the objections, the Tribunal altered its initially proposed approach of determining the applications on the papers. The Applicants were directed to provide a hearing bundle for a hearing listed for one day on 7th February 2024, including time for an inspection scheduled for 10.00am. It was said that the Tribunal would consider at the commencement of the hearing whether to strike out any of the applications. Two occupiers, not listed above, withdrew their objections.

13. The Applicants submitted a PDF determination bundle comprising some 2784 pages, which was copied to the Respondents. That included the applications and other documents for each pitch relevant (and being the first 2399 pages of the bundle plus pages 2425- 2530), including the Pitch Fee Review Notices and Forms and the Written Statements (where that of Mr Thomas appeared at [2612- 2629] and others relied on in relation to the review date appeared at [2638- 2742].

14. 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. Regrettably, the page numbering on the numbered pages and the PDF numbering do not match.

The Inspection

15. Given that the inspection preceded the hearing, the Tribunal refers to that first. The inspection took place on the morning of 7th February 2024. The conditions were damp and with some rain.

16. The inspection was attended, in addition to the Tribunal members, by Mr Small and Mr Self on behalf of the Applicant and principally, although not solely, by Mr Thomas on behalf of the Respondents. 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. Insofar as anyone tried to provide such information, save the specific matter mentioned below, the Tribunal ignored that.

17. The Tribunal observed the overall condition of the Park as highlighted by both the Applicants and the Respondent and principally records what it saw in relation to the specific matters raised in written cases. It should, however, be emphasised that the Tribunal did not undertake a survey of the Property, either in respect of specific areas or generally.

18. The Tribunal of course saw the condition of the Park some thirteen months after the date from which the new pitch fee is payable and fifteen 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 regarding the matters seen during the inspection of the condition of the Park at the pitch fee review date and so in the context of the other evidence of that, which is returned to when the Tribunal makes findings of fact below.

19. The inspection started towards the entrance to the Park at a small parking area. There is a noticeboard to one side which includes an out-of-date insurance policy for the Park.

20. The Tribunal was taken along the various roads within the Park. Much of the road surface was fine. However, not all of it. The Tribunal also saw a number of holes, other dips and other areas of deterioration. There was further broken tarmac and gaps in tarmac around drainage grids. The extent of deterioration varied from one road to the next, some worse than others. A number of the holes and dips were filled with water.

21. Reference was made by the Respondents to a road which leads up from a public road. The Tribunal was taken down a portion of it. The road leads up past a lamppost and then there is a fork. It was indicated that a small distance of one fork (the left if one were travelling uphill) falls outside the Park and then the continuation of the road does fall within the Park, with park homes on both sides. It was indicated that the right fork extends further until it becomes part of the Park and after passing garages which belong to and are at the rear of a row of private houses. Whilst strictly those indications were evidence, they were not obviously controversial and the apparent change for roadway within the Park and outside of the Park could be seen from the road surfacing. The surface of the road falling outside the Park was relatively poor but also irrelevant to this case. The light on the lamp- post was said not to work but as that also fell outside of the Park, that was equally not relevant to the case.

22. The Tribunal saw an apparently blocked drain to one corner of the eastern side of the Park. The drain was covered in mud and grass and there were decaying leaves. There was no standing water, however.

23. The Tribunal was shown another section of drain/ sewerage pipe under a manhole cover (which was lifted off). It was not identifiable that was

anything of concern about that. There was a grid on a plinth where the bricks of the plinth were cracked but no other identifiable issue arose.

24. The Tribunal was also shown several small stores containing electrical apparatus. The parties had referred to those as boxes but as "electric boxes" may conjure a different image to the particular items, the Tribunal referred to them on the day as "cupboards". However, as they are freestanding and at various locations on the Park resembling very small low sheds, the term "store" is used as perhaps being the best term apparently available. It was initially said that those belong to the electricity company. Subsequent clarification established that any equipment inside does but the stores themselves belong to the Applicant. The stores are wooden with corrugated iron roofs.

25. There was nothing to see in terms of parking removed and no longer present of course. The Tribunal did note a poor area of fencing to the eastern edge of the Park, by Hill Barton Road it was said, approximately 6 feet long and with a gap, but that had not been raised in the cases previously. There was also some cracking to the covers of fire equipment boxes and similar minor defects but nothing preventing use of the equipment, assuming always any use to be appropriate- which may not reflect current fire service recommendations.

The Hearing

26. The application was heard on 6th February 2024 at the Tribunal Centre in Exeter in person. Mr Jeffery (Jeff) Small and Mr Callum Self of the Applicants attended. They were not represented at the hearing by Chubb Bullied or another representative and they presented the case between them. Several of the Respondents attended. With no disrespect intended to them, it is not practical to list them all individually. The principal participants as representatives of the Respondents at the hearing were Mr Thomas and Mr Liddon. A document 9 pages pages long titled Skeleton Argument was provided from Mr Ibraheem Dulmeer of Counsel which set out matters relevant to the Respondent's case essentially along the lines of the Respondent's statement of case (see below) but he did not attend to represent. A case authority was mentioned of *Admiralty Park Management Company Limited v Ojo* [2016] UKUT 421 (LC) in respect of the need to give both parties the opportunity of making submissions and presenting evidence if a new issue were raised, a matter of which the Tribunal was well aware.

27. The situation in terms of previous involvement of legal representatives on both sides but in neither case attendance at the final hearing was unusual but plainly intended and so the Tribunal proceed on the basis of that said by the participants present.

28. In accordance with the Directions, the Tribunal first addressed at the hearing the question of whether any of the applications ought to be struck out. The Tribunal then turned to the substantive issues.

29. The Tribunal received oral evidence on behalf of the Applicants from Mr Small, who had previously signed the Applicant's Reply at least with a statement of truth. The Tribunal also heard from Mr Self, who had not previously provided any written evidence, in respect of the question of validity of the Pitch Fee Review Notices. That approach was therefore somewhat exceptional. However, it became apparent that there were matters that Mr Self could address and which it was useful to hear about and ones which Mr Small could not address. The Respondents were content that if Mr Self wished to offer an explanation, they would be happy to hear it and to question him, notwithstanding the lack of a written statement. In those circumstances, the Tribunal determined that it was appropriate on balance to hear from Mr Self.

30. The Tribunal also received oral evidence from Mr Thomas and Mrs Stephaney Pickup (but only to the extent of confirming her statement- she was not asked any questions) on behalf of the Respondents. The Tribunal had received written witness evidence from Mr Thomas [2574- 2575 and 2600- 2602] and Mrs Pickup [2572- 2573]. The Respondents also relied on written evidence only of Mr Trevor Coomb [2561- 2563] and Mr Alan Webber [2630- 2631]. The statement of Mr Coomb attached various photographs of the electrical stores [2564- 2568] and an email from Mr Simon Jupp M.P. regarding the stores and comments by the electricity supplier [2570- 2571]. The statement of Mr Thomas attached photographs of the roadways and drainage grids [2577- 2599]. In addition, the Tribunal received the Written Statement for Mr Liddon's pitch, provided with the Respondents' Skeleton Argument- see below.

31. The Tribunal additionally received some documents on which the Respondents sought to rely and which had not been served in accordance with the Directions. That was also exceptional, but the Tribunal considered it appropriate where it had permitted additional witness evidence on behalf of the Applicant. One was a letter from the former owner company dated 23rd January 2007 which informed the pitch occupiers of the sale to "Mr and Mrs Jeff Small". The others were a letter from 2005 and the Written Statement for 1 Alexander Walk.

32. The Tribunal had received statements of case from the parties (respectively [56- 61] for 6A Third Avenue and the equivalent in respect of the other pitches on behalf of the Applicant and then a Reply to the Respondents' case [2781- 2784] and on behalf of the Respondents (also settled by Mr Dulmeer) 2540- 2555]. The Tribunal also received oral closing submissions from Mr Liddon and then briefly from Mr Small and Mr Self.

33. The Tribunal does not set out the oral evidence received, or any other evidence of submissions, in this part of the Decision and instead records them where relevant to discussion of the issues below.

34. Astonishingly, in the course of the hearing, it was established during the evidence of Mr Self and in response to the questioning of Mr Liddon, that the Applicant did not possess the Written Statement for Mr Liddon's pitch and so the Applicant or the Applicant's representative had placed in the

bundle documents what Mr Self described as a "draft". Mr Liddon made the strong point that was not his agreement- which had been produced by him. The same approach was established to have been taken with certain other pitches.

35. The Tribunal condemns the act of placing in the bundle a document which the Applicant and/or Applicant's representative knew was not the actual document and with no acknowledgement that the document had been placed in the bundle as a "draft", adopting the inappropriate term used by Mr Self but a term which will suffice for this purpose. That act specifically misled the Tribunal and would have continued to do so but for the intervention of Mr Liddon. It was plainly a deliberate act.

36. It is by an extremely narrow margin that the Tribunal takes no further action in respect of that and has not referred it any other body. That includes in respect of the representative, and in particular the legal executive with conduct of the case for the Applicant, Mr Jordan Davidson. It is unclear whether he was aware of the documents being a "draft" but it is he who filed and served the bundle to be relied on that the hearing and so holds responsibility for its conduct. Mr Davidson ought to reflect very carefully on that. If such a situation is ever repeated, at the very least, a report to the Solicitors Regulation Authority/ The Law Society and/ or the Chartered Institute of Legal Executives as appropriate should be expected.

37. The hearing was regrettably also marred by certain Respondents (not it should be said Mr Thomas or Mr Liddon) talking during evidence and laughing or commenting in response to evidence of the Applicant's witnesses. It is apparent from the Respondents' case that the Respondents do not accept all that said by the Applicants. However, the Tribunal had identified the basic ground rules by which the hearing would proceed. In any event, Mr Small was entitled to the same courtesy when giving evidence that any other participant ought to. The Tribunal explained that if any of the Respondents were able to comply, they would not be able to remain. Several left at the afternoon break.

38. The Tribunal is particularly grateful to Mr Small and Mr Self on the one hand and Mr Thomas and Mr Liddon on the other hand for their assistance in this case and is grateful for the contributions of the witnesses in their evidence.

39. 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.

The relevant Law and the Tribunal's jurisdiction

Statute and Regulations

40. 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.

41. 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.

42. 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.

43. 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.

44. 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.

45. 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."

46. 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.

47. 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.

48. 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.

49. 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.
> ....."

50. "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.

51. 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.

52. 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."

53. The implied terms also include the following:

"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. For reasons which will become apparent from the discussion of the application of the law, the Tribunal considers it appropriate to set out elements of the judgments of case authorities, doing so in significantly greater detail than usual in a case involving a pitch fee review.

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

55. 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."

56. 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*.

57. 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.

58. In *Britanniacrest Limited v Bamborough* [2016] UKUT 0144 (LC) (included in the bundle [2743- 2755]), 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."

59. Other potentially relevant factors were mentioned and then it was said:

"33. We therefore agree ..... that the FTT has a wide discretion to vary the pitch fee to a level of a reasonable pitch fee taking into account all of the relevant circumstances, and that the increase in RPI in the previous 12 months is important, but it is not the only factor which may be taken into account."

60. More generally, the Upper Tribunal identified three basic principles which it was said shape the scheme in place- 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.

61. 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)."

The Respondents' statement of case specifically cited paragraph 24 (and indeed part of paragraph 31).

62. 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. The fact that there is reference to a smaller increase or reduction serves to emphasise that the Tribunal must first have decided that the pitch fee should change and suggests that the presumption of an increase by RPI unless that is not appropriate having regard to paragraph 18(1) factors and, if relevant, any factors which may rebut the presumption, only apply if the Tribunal has first decided that the pitch fee should change at all.

63. In the Upper Tribunal (Lands Chamber) decision in *Vyse v Wyldecrest Parks Management Ltd* [2017] UKUT 24 (LC) (included in the bundle at [2756- 2779], HHJ Robinson adopted the above approach, albeit to a rather different situation to this one and in relation to passing on site licence fees. The Judge in *Vyse* also 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."

64. The Applicant specifically cited another part of the judgment in which it was said as follows:

"There are a substantial number of mobile home sites in England occupied pursuant to pitch agreements which provide for relatively modest pitch fees. 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 submissions…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".

65. The Respondents cited a different part, paragraph 31, in which the Judge said:

> "… 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."

66. That broad legislative purpose merits careful note and the merits of certainty are obvious. However, none of that can detract from the requirement to apply paragraph 18(1) and it was also made clear by the Judge that:

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

67. 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. That inevitably and intentionally reduces the certainty. It neither instance will the pitch fee determined necessarily reflect the change in RPI. 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).

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

69. "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)."

70. 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."

The Respondent's statement of case cited the paragraph and paragraph 51 in full, but the Tribunal does not consider it necessary to quote any more in this Decision.

71. 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 a presumption which has then arisen in light of the statutory scheme.

72. 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.

73. 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, although the Applicant's statement of case quoted the propositions in full, the Tribunal does not consider it necessary to set them all out, having explained the relevant ones above. The Tribunal does note item i. as follows:

> "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."

74. 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 2023. 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 affirmed 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.

75. The Tribunal must still do that which it is required to do and determine the level of pitch fee that is reasonable, whether unchanged or changed. 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.

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

77. 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".

78. In respect of "amenity", in *Charles Simpson Organisation Ltd v Redshaw* (2010) 2514 (CH), 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."

79. The Tribunal notes that Mr Dulmeer made specific reference to that explanation in the Respondents' statement of case.

Potential strike out of certain of the applications

80. The Tribunal determined that none of the applications ought to be struck out.

81. The Tribunal issued 3 separate Notices of being Minded To Strike Out for various reasons [2400- 2408]. Firstly, there were pitches for which there was no Written Statement. Secondly, there was a significant number of Written Statements which did not contain any date for the pitch fee review. Thirdly, there were nine which did give contain a date but of 1st February.

82. The Applicant responded to each Notice by a letter sent to the Tribunal by Chubb Bullied, which made representations [2632- 2636]. The Applicant identified that in 2020, the Tribunal had considered the appropriate pitch fee on a large number of pitches on the Park and that the Tribunal had not raised any issue with the pitch fee review date applied at that time. That date was 1st January and so the same as this pitch fee review. The letter explained that the pitch fee occupiers had been written to in November 2019 in respect of the review as at 1st January 2020. It was implicit in the Applicant's position that no pitch occupier had taken any point as to the review date. The Applicant provided Written Statements for those pitches where they had not been provided at the time of the Minded to Strike Out. (Those therefore apparently became pitches where a date was lacking rather than where an agreement was lacking, except those for which "drafts" were produced where plainly in fact no agreement had been provided in the proceedings to the Tribunal and the Respondents.)

83. The Respondents argue, correctly, that previous decisions of the Tribunal are not binding, although the Tribunal notes that they must be given appropriate respect. Authority about seeking to re-litigate matters already raised in previous litigation could be of some relevance, much as that is significantly limited here by the lack of the point specifically being raised by any party.

84. The Respondents argued with regard to Written Statements lacking any pitch fee review date, that the Pitch Fee Review Form contains notes which specifically state that if no date is specified in the Statement, the date is likely to be the anniversary of the commencement of the agreement. The Respondents argued, excepting one agreement which happened to have

commenced on 1st January, that the pitch fee review date of 1st January was incorrect and the Notice invalid for that reason. The notes are not of course binding authority and are simply there to provide guidance. Even matters provided with specificity in the Form cannot alter the actual law. The word "likely" has no doubt been chosen deliberately and reflecting the fact that the date may be the anniversary but will not be if there is anything to render that not appropriate and for another date to apply.

85. It was argued in respect of agreements containing the 1st February date that the pitch fee review date needed to be that date. There was, the Tribunal notes, no lack of clarity as to the date originally agreed.

86. It was Mr Liddon's case in particular that the "draft" agreement produced by the Applicant was not the agreement and he had produced the actual one as explained above. As that produced a review date of 1st November, subject to that having been varied, he also specifically sought a strike out. Hence it is sensible to address that in conjunction with the applications which received a Notice.

87. The Tribunal heard the evidence of Mr Small in respect of the Pitch Fee Review Notices. He explained in response to cross examination that he had relied on legal advice that 1st January was the correct date. He also said that the Applicant had undertaken some reviews on 1st February in the past, informing the Tribunal that they had changed that 8 or 9 years ago to one date for the whole of the Park. Mr Small was, however, somewhat uncertain as to the process adopted.

88. It was for that reason that the Tribunal also heard evidence from Mr Self. He explained that the Applicant had identified that pitches had a number of different review dates and that over a period of time, but especially 5 to 6 years ago, it had decided to adopt a single date. He was adamant that had never been queried or challenged. In response to the Tribunal's questions, it was established that Mr Self had not been involved with pitch fee reviews in previous and so had described his understanding of the Applicant's approach rather than having first hand knowledge, such that his evidence was less of an advance on that of Mr Small than had been envisaged. He did say that the system showed pitch fee reviews for the 5- or 6-year period and that the pitch occupiers had paid.

89. Mr Thomas put to Mr Self that his letters from 2005 and 2007- see above- referred to 1st February but Mr Self observed that he referred to the most recent few years. Mr Liddon noted that there must be at least a year between reviews, to which Mr Self suggested that there had been a year without any review. It was further questioning of Mr Small that revealed the "draft" agreements.

90. It is apparent that it was only the diligence of the Legal Officers of the Tribunal that led to the identification of any issue with the review date. None of the Respondents had suggested that they disagreed with the date.

91. The Tribunal accepted that irrespective of any lack of dates for the pitch fee review date on some of the Written Statements and indeed any lack of a Written Statement, in practice pitch fees had been reviewed on 1st January in previous years without any issue arising. That was at least as at 1st January 2020 but equally the figures for 1st January 2022 are not those determined by the Tribunal for January 2020 (having checked the 2020 Decisions available) and hence there has been at least one more review date of 1st January since.

92. The Tribunal determined that a pitch fee review date of 1st January had therefore been created by variation of the agreements. That was not by way of a specific written variation but rather by course of conduct. The Tribunal was content that was ample to enable a variation and had been ample to do so in this instance. Whilst it was not fatal to the Applicant's argument, the Tribunal noted that there was no suggestion that the Applicant had specifically written to the Respondents and explained its approach and the reasons for that. The Tribunal considers that would have been good practice and that failure to do so constituted poor practice, although being a matter to weigh and, as stated, not fatal.

93. That variation was sufficient to vary the specific pitch fee review dates stated of 1st February and was sufficient to vary the review dates which would otherwise have been the anniversary of the agreement being entered into.

94. For the avoidance of doubt, the Tribunal was unclear whether reviews had been undertaken from 1st January prior to 1st January 2020 and considered that the length of time for which any date had been accepted may have a bearing on whether there has been the course of conduct to vary the review date. However, in this instance, the Tribunal was content that even if the first such review was that on 1st January 2020, that was sufficient.

Consideration of the condition of the Park and the amenity

Electrical stores

95. The Tribunal found the condition of the electrical stores which it was shown to be poor. The Tribunal distinguishes the stores themselves from the electrical equipment inside them. The Tribunal accepts the Respondent's case that the stores are suffering from rot and are in an unsightly condition. The Applicant's assertion in its Reply that the stores are in reasonable condition is optimistic at best. The assertion that they are in "fine working condition" depends in part on "fine" intends to indicate as to how unrealistic it is but in any event, it does not reflect the actual condition. The Tribunal also accepted that the existing meters would need reading and that the condition of the stores and thereabouts rendered that a more difficult task than ideal on the occasions required. The Tribunal does not accept the evidence of Mr Small that the Applicant "cannot touch" the stores, which belong to it as Mr Small somewhat reluctantly accepted in response to the Tribunal's questions. The Tribunal accepts that arrangements would be likely to be required with those who own the

electrical equipment to enable upgrading and perhaps other repairs but that is noanswer. For completeness, Mr Liddon sought to refer to a survey by National Grid but it was established that was not in the bundle.

96. The Tribunal also accepts that at least one such store cannot be accessed short of clearing away a quantity of accumulated soil in front of the doors and certainly not easily. The Tribunal does not find there to be any issue with electrical safety on the evidence presented- if there is, that has not been demonstrated to the Tribunal.

97. The Respondents also contended that because of the condition of the electrical stores, the Respondents could not have smart meters fitted. It was said that the suppliers had refused to fit such meters for that reason. The Respondents particularly presented the email from Mr Jupp M.P and the quote from National Grid that there had been attendance at the Park and that "The landlord's enclosures that our service equipment, supplier electricity meters, and some private equipment are located in are generally in a poor state of repair all over the site which is why the suppliers are reluctant to work on the equipment and install smart meters." The Tribunal determined that aspect of the Respondent's case was also made out. The Tribunal had no reason to conclude that the M.P. had not correctly documented the reply which he had received from National Grid or had indicated a reply which he had not received. The National Grid assessment also supported the wider conclusion about unsatisfactory condition of the stores.

98. The Applicant's reply suggested that the Respondents took issue with electrical stores being present in themselves and that the Respondents argued an impact on amenity irrespective of the condition of the stores. That is not the Tribunal's understanding of the Respondent's case, but if it had been, the Tribunal would have accepted that the presence of electrical stores in good condition would not have amounted to deterioration or a decline in amenity.

Roadways

99. The Tribunal determines some parts of the roadways to be in satisfactory condition and does not set a standard of perfection. Most areas taken in isolation were not excessively troubling but cumulatively, the Tribunal finds the roads overall to have been in an inadequate condition, given the number of holes and uneven areas. The Tribunal does not agree with the Applicant that the condition overall can be described as reasonable, or that the amenity has been unaffected. All else aside that would be to ignore the cogent evidence.

100. Mr Thomas was able to describe the condition of the roads and the damage and defects to them and the Respondent's case attached a number of photographs – identified above. He referred in his statement to requiring two walking sticks and explained that there are other disabled residents. The Tribunal also saw the condition of the roads itself, albeit some months after the pitch fee review date. The inspection was particularly useful in respect of the roadways, where it is difficult to obtain

a clear impression from a series of photographs each of a small area and inevitably one where the Respondents identified a problem. The Respondents described problems which may have indicated a greater extent of issue than identifiable: the Applicant in contrast identified a lesser level of issue.

101. There were a large number of holes and other areas of deterioration, particularly dips and scrapes to the surface. Some wear is to be expected as roads are used and otherwise they are exposed to the elements. It is not realistic to expect them to remain exactly as laid down. That said, roads can wear without the impact amounting to deterioration for these purposes. The Tribunal notes Mr Small's evidence that there has been no insurance claims, although does not accept Mr Small's view that any lack of those supports there being no issues. The Tribunal considers that the roads are not in a dreadful state but their condition is and, on the evidence, was at the review date less than adequate. The Tribunal considers there to be a greater risk than there ought of falls by pedestrians.

102. The Tribunal finds there to have been a lack of a maintenance plan. That was apparent from the evidence of Mr Small. There was also lack of inspection and/ or maintenance records which might have supported a suitable regime for checking and maintaining/ repairing. That tended to support the Respondents' case and not that of the Applicant. The approach to the roadways was at best reactive, sporadic and partial. Mr Small asserted that holes had been filled, even allowing for attendance after the review date and in advance of the inspection. There was some evidence of some work undertaken on behalf of the Applicant from time to time, but it was difficult to identify much. Insofar as Mr Small said reports were referred to a tarmacadam contractor to make good and resurface the roadways, the condition of roadways seen did not support that. Whilst Mr Small asserted that £20,000 had been spent over 2020 to 2023, the Tribunal was not persuaded that was correct. The receipts he asserted existed had not been provided and it was not apparent where that sum had been spent. That said, the question was not one of whether any work had ever been undertaken but whether that was sufficient to avoid deterioration.

103. The Tribunal did note that Mr Small suggested a cost of in excess of £100,000.00 to resurface all roads, a significant sum and will need to accumulate funds. Plainly that would be a considerable cost but would also go beyond maintenance and constitute an improvement. There is no need to dwell on that in this Decision.

<u>Drains</u>

104. The Tribunal finds there to be and have been a blocked drain grid, being the one seen by the Tribunal. The Tribunal finds on the evidence received that was blocked on the pitch fee review date as well as when seen by the Tribunal. The Tribunal determines that has nothing to do with the actions of any other pitch occupier. However, that was not an item to

which the Tribunal identified the Respondents had made reference and so not one which had apparently been regarded as significant.

105. The Tribunal has considered the evidence received in relation to blockages. The Tribunal notes that the Respondents assert that to be evidence of a lack of maintenance. The principal statement contained the evidence of Mrs Pickup. She referred to a blockage in December 2022, shortly prior to the review date, causing water and sewerage to seep into her home. The Tribunal has no reason at all to doubt that Mrs Pickup experienced the effects described by her.

106. The Tribunal also notes that the Applicant contends that there has been no lack of maintenance. Mr Small described professional contractor surveys to make sure the drains are running clear and that there is a site survey and plans from Metrorod and Aquablast. Further, the Applicant asserted that maintenance was carried out routinely and where necessary although there was again a surprising lack of maintenance records documentary evidence which the Applicant must surely have in respect of work undertaken and expenditure. The Applicant's case was that any issues arose from residents flushing items which should not be flushed, giving a specific example found of tablets and casing. In addition, when that had caused problems, the Applicant had, it was asserted, resolved those in a reasonable time. The Tribunal found a reactive regime to be more appropriate for this aspect- clearing blockages when identified.

107. The Respondents have not demonstrated the cause of the unpleasant problem described by Mrs Pickup and sympathy for her in experiencing that cannot obscure the need for the Respondents to prove the issue alleged. The Respondents did not demonstrate any issue with the drainage other than blockages arising. The drains were described as pitch fibre or newer plastic and the evidence indicates worked satisfactorily except where blocked. It follows that this aspect of the Respondents' case fails.

108. The Tribunal also accepts that the written witness statement of Mr Webber as to smells on the Park may well be correct. The Tribunal notes it is said that is a consequence of poor drainage. However, as the Tribunal does not find poor drainage to have been demonstrated (beyond the single blocked drain), it is consequently not demonstrated that any smells have been for that reason. The Tribunal has necessarily applied some caution to the evidence of this witness, given the lack of oral evidence and hence the lack of ability of the Applicant to challenge the evidence by questioning, but equally it is not apparent that oral evidence would have been likely to add considerably in light of the lack of identifiable defects to drainage.

<u>Parking</u>

109. The Tribunal did, it will be appreciated, hear oral evidence from Mr Thomas and it is he who dealt with the issue of the removal of parking spaces on behalf of the Respondents. Mr Thomas was clear in his evidence that 26 spaces were removed and replaced with 5 further park homes (no doubt generating 5 sale prices). He described a particular area to the left of

the entrance road, not marked out but able to accommodate 22 cars. The Tribunal found no reason to disbelieve him.

110. Clear evidence was given as to where the parking spaces had been located and the fact that the areas were now occupied by park homes. Mr Small did not deny that to be correct. The Tribunal was given an indication generally at the inspection as to where the spaces had been but rather obviously could see no more than that which was presently in situ.

111. The Applicant's case as expressed in the Reply was there is "sufficient parking on site", which Mr Small said in oral evidence was 1 visitor space per 8 pitches pursuant to the Model Standards and where he said there were approximately 12. "Sufficient" may be subjective but also not relevant to whether parking has reduced. It may be relevant to the weight to be given to the reduction. Notably, the Applicant's written case did not deny that the 26 parking spaces had been removed and there was no suggestion that anything other than parking had been in the place of the identified new homes. There was no engagement with the difficulties the Respondents asserted. Mr Small in oral evidence said maybe 5 spaces had been removed. The Tribunal rejects that evidence.

112. The Tribunal accepts that 26 parking spaces, or at least a figure approaching that, were removed. The Tribunal finds that the removal of a significant number of parking spaces did have an impact on the ability of visitors to park vehicles, both family and friends and also carers. The Tribunal does not find it difficult to accept there being residents assisted by carers. The Tribunal does not find there to have been any specific agreement for a given number of spaces but finds the spaces when the Park was created and agreements entered into to be a feature of the Park and part of its condition.

General

113. It was raised in cross examination of Mr Small green areas where the residents could sit had been removed and that work which was to be undertaken to a former office area to be used by the residents had not happened. In addition, Mr Liddon put to Mr Small that a light outside his home is broken. However, the Tribunal does not identify those to have been raised in the proceedings prior to the hearing date- and the date of the light ceasing to work was not established- and in any event concluded that the matters would have been unlikely to affect the overall outcome. No more is said about them.

114. The Tribunal allows for the condition as at the Pitch Fee Review Notice date having potentially been different and better than as at the inspection in February 2024and takes account of continued decline after the Notice date not being relevant to the determination required.

115. Having considered carefully the evidence presented on behalf of the Respondents, the Tribunal is also entirely satisfied that the condition of the above elements at the time of the pitch fee review was similar to that

seen at the inspection and that by the inspection there had been a modest degree of further deterioration rather than any significant change and rather than any element of deterioration being new. Hence insofar as it was appropriate to do so, the inspection lent support to the condition of the Park as described by the Respondents at the time of the review.

116. The Tribunal finds that the Park looks tired, somewhat unloved and inadequately cared for. The Tribunal considers that the Park requires greater attention than it has been given in the recent period prior to the pitch fee review date. There is no substantial single element, rather the Tribunal's determination reflects deterioration in the number of different aspects of the Park in totality.

117. Mr Liddon said in closing that the Respondents would be happy to pay a fair increase in the pitch fees if the works were undertaken. Mr Small and Mr Self said that costs were rising and the Applicant was not seeking to overcharge but to keep things at the same level.

Deterioration and/or Decline?

118. The Tribunal determines that the factors in paragraph 18(1) of the Act apply in light of the facts found by the Tribunal. The Tribunal determines that there has been a deterioration in condition and a decline in amenity in the terms set out in the Act.

119. For completeness, the Tribunal records that the Applicant did not assert that any of the deterioration and decline identified by the Tribunal had been considered previously.

120. 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.

121. The Tribunal adopts the judgement of Kitchen J. regarding 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.

122. 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 for example quite deliberately on the part of the site owner by way of ongoing development. However, it is not easy to identify a situation in which the condition has deteriorated but yet the pleasantness of the site is unaffected.

123. 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.

124. 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.

125. The Tribunal determines that the evidence supports the condition of the Park having been better in the past.

126. The electrical stores demonstrated rot. The Tribunal infers that they were not rotten when first put in place- it is hard to credit that they might have been installed in that condition. The road surfaces contained potholes and other uneven areas which were entirely reflective of wear and tear and inadequate maintenance and in no way gave any hint that the surfaces had originally been laid in that manner- indeed it is inconceivable the Applicant would have accepted such a standard of workmanship. Whilst the Tribunal has said above that roads cannot be expected to remain as laid down and there may be wear without that properly amounting to deterioration for these purposes, the roads on the Park overall fell below that.

127. In contrast, the Tribunal has found that by the pitch fee review date, the condition of the Park was that elements had deteriorated.

128. The Tribunal accepts that lack of smart meters in itself is not a deterioration, there never having been such meters. It is an effect of the deterioration of the electrical stores and relevant to the weight to be given to that.

129. The Tribunal determines that the initial reduction in condition will have appeared to have been a modest one. It will have taken time for the reduction generally to become more established. However, that occurred over time. 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. The deterioration has led to a decline in amenity- in the agreeableness and pleasantness of the Park.

130. The Tribunal considers the deterioration to be appreciable- not describable as substantial and certainly not the worst the Tribunal has seen but equally more than merely minor and certainly not negligible.

131. The removal of parking spaces was, in contrast, not a gradual process but rather a specific action. The Tribunal finds that remained the same from the time of removal to the date of the pitch fee review and ongoing. The Tribunal finds that the removal of what it understands on the evidence to have been the majority of the visitor parking spaces and consequent impact on the ease of visitors parking- and at least potential difficulty with

finding a space within the reduced provision- did amount to a decline in amenity.

132. The Tribunal determines that the decline in amenity arising from the deterioration and the removal of parking spaces in combination is also appreciable. The Respondents' Skeleton Argument asserted "significant", which the Tribunal regards as greater than appreciable and an over-statement.

133. The Tribunal does not consider that the fact that the implied terms make no reference to any specific condition of the Park 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.

134. The Tribunal also notes the content of the Applicant's statements of case that the Site Licence imposes obligations and that it is suggested those are more onerous than the implied terms. The Applicant refers to the local authority having not taken any enforcement action in relation to the Park, which it is asserted is "an important forensic marker that those allegations are baseless, and certainly not sufficient to displace the statutory presumption".

135. The Tribunal rejects that argument. The Tribunal received no evidence as to the extent of any involvement of the local authority and in particular none as to why it may or may not have taken any action. In any event, the Tribunal saw for itself the Park and had the advantage of receiving evidence. It is neither necessary or appropriate to attribute significance to what the local authority may have considered to be the appropriate approach, if it considered the matter at all, in respect of enforcement action under different provisions.

136. The Tribunal considers that the deterioration and decline affects each of the Applicants to a broadly similar extent taking matters in the round. Inevitably, each specific matter will have a different level of impact on every individual. However, the Tribunal determines that any distinction between one pitch fee occupier and another will have been minimal given that there are themes across the Park as a whole, rather than, for example, any specific area of the Park being appreciably different to the remainder. The Tribunal accepts that in particular instances of parks 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 considerably to the complexity of such cases, where the amounts involved and the approach explained as appropriate by the Upper Tribunal to other matters in respect of the pitch fee is to take a broader approach. The Tribunal for those reasons does not consider it appropriate here to seek to distinguish one pitch from the next in terms of effects and impact on pitch fee.

137. The Tribunal has not found there to be a reduction in the services provided to the Park. The Respondents also argued their case on the basis of reduction in services but the Tribunal determines that none of the

matters referred to above amount to services- and the Respondents did not sufficiently explain any argument that they were.

138. By way of example, the amount of visitor parking is an element of the overall Park and a reduction in it may reduce the amenity to the residents by way of causing concerns as to the ability of visitors to Park and any effects arising from that. However, notwithstanding that the Respondents case that the removal of car parking spaces amounted to a reduction in services, the Tribunal does not find the parking to fall within the term services.

139. Given that the Tribunal has determined there to be the other deterioration and decline as explained above, the Tribunal does not consider it necessary to say more about services.

The effect of the above determinations and the pitch fees

140. The first question is whether there should be any change from the pitch fee for 1st January 2022 onward at all and then secondly if so, what that change should be. The question of any change must be answered mindful of the presumption of an increase by the rate of RPI, and so the presumption of a change, subject to that presumption being rebutted.

141. The question in respect of paragraph 18(1) factors found is whether they render it reasonable for the RPI presumption not to apply. The Tribunal is mindful that it must have particular regard to deterioration and decline but there is no necessary outcome from that. 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 and so leave the presumption in place. 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.

142. 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 Applicant- 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, subject to any effective negotiation by the original purchaser. The Tribunal 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.

143. 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.

144. The Tribunal carefully considered whether the appropriate approach was to leave the pitch fee at its current level or to either reduce the pitch fee or increase it but by an amount lower than RPI. 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. 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.

145. The Applicant will of course, in the event of a lack of change, receive a fee below the level that it sought for the period 1st January 2023 onward and, insofar as it incurs 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.

146. Any reduction from an RPI increase will also, unless a greater later increase occurs, have an effect year on year. 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. although that must inevitably be balanced by the other considerations. It is scarcely irrelevant that the park owner will have allowed both 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. The Tribunal takes full account of the above matters in its approach.

147. The Tribunal determines that the particular regard to be had and the extent of that the decline and deterioration do make it appropriate that the RPI presumption should not apply. 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.

148. The Tribunal determined pursuant to paragraph 16(b) of the 1983 Act that it is not reasonable for the pitch fee to be changed.

149. The Tribunal considers that an increase at the same rate as RPI (absent a presumption) is not reasonable, indeed would plainly be unreasonable,

in light of the findings of fact made. The Tribunal 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.

150. Either of those approaches would necessarily involve the Tribunal first determining that it is reasonable that the pitch fee should change. Having taken careful account of the likely increase in costs for matters attended to, management cost and maintaining a profit margin on the one hand and the level of deterioration and decline on the other hand, the Tribunal has determined that the appropriate answer to the over- arching question is that is not reasonable for the pitch fee to change and hence the level of the pitch fees should not alter from the level as at January 2022.

151. As that is the answer to the over- arching question, any further matters which would be relevant in the event of a change to the pitch fees are not relevant in the event.

152. The Tribunal makes it clear that it has considered carefully the potential ongoing impact on the Applicant's income but, 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. In failing to maintain the level of maintenance, the Applicant must have reduced the level of cost incurred to meet that. Some cost which previous pitch fees were intended to meet was no longer being incurred by the Applicant. The Tribunal is mindful that the case authorities have 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. Nevertheless, plainly if not all appropriate maintenance is being undertaken, cost for such maintenance is not being incurred.

153. The Tribunal recognises that the condition of the Park is only one element of the matters for which a pitch fee is charged and that no determination has been made that, for example, the value of the right to use the pitch has fallen in itself or that other elements have failed to be provided. The Tribunal has not reduced the pitch fee and whilst the increase is not payable, the pitch fee remains payable at the level previously.

154. The Tribunal also acknowledges that the Respondents argued as an alternative that the elements of deterioration and decline amounted to weighty factors which should rebut the presumption of an increase at the rate of increase in the RPI. However, that argument necessarily only required consideration if the Tribunal found the regard to be had to those matters not to be such as to prevent the presumption applying.

155. Given that the Tribunal has found that the presumption did not apply, any potential rebuttal of it is not relevant. However, and for completeness, the Tribunal considers it likely that if the matters had not been paragraph 18(1) matters but only relevant as weighty factors, the effect of giving

appropriate consideration of them would have caused the same or a similar result to have been produced.

156. The pitch fee for each relevant pitch for 1st January 2023 onwards therefore remains unchanged as follows:

6A Third Avenue	£103.62
1 Alexander Walk	£128.41
1A Alexander Walk	£124.33
3 Alexander Walk	£120.64
4 Alexander Walk	£154.92
6 Alexander Walk	£170.68
7 Alexander Walk	£119.87
1 Cromwell Terrace	£160.20
2 Cromwell Terrace	£168.85
2A Cromwell Terrace	£135.38
3 Cromwell Terrace	£147.90
4 Cromwell Terrace	£118.91
1 Nelson Way	£108.37
4 Nelson Way	£136.37
7 Nelson Way	£183.40
11 Nelson Way	£131.68
12 Nelson Way	£176.06
3 Drake Avenue	£140.05
6 Drake Avenue	£138.71
7 Drake Avenue	£139.14
8 Drake Avenue	£155.64
11 Drake Avenue	£149.65
2B Marlborough Drive	£173.65
4A Marlborough Drive	£137.71
6 Marlborough Drive	£126.13
7 Marlborough Drive	£164.14
8 Marlborough Drive	£146.82
9 Marlborough Drive	£148.32
14 Marlborough Drive	£135.68
15 Marlborough Drive	£156.69
16 Marlborough Drive	£159.95
17 Marlborough Drive	£158.12
18 Marlborough Drive	£170.25
19 Marlborough Drive	£141.86
5 Montgomery Road	£135.42
6 Montgomery Road	£156.86
7 Montgomery Road	£146.47
8 Montgomery Road	£130.02
10 Montgomery Road	£146.36
3 Wellington Close	£154.46
4 Wellington Close	£115.20
5 Wellington Close	£161.87
6 Wellington Close	£161.10
8 Wellington Close	£142.53
9 Wellington Close	£142.53

157. The Tribunal notes that the occupier Respondents of 3 Cromwell Terrace, 6 Drake Avenue and 4A Marlborough Drive have sadly passed away since the pitch fee review date. However, the Tribunal does not know the exact dates. In the circumstances, the Tribunal considers it appropriate to make the determination in respect of those pitches given the lack of agreement at the relevant date.

158. 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.

Costs/ Fees

159. 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.

160. The Applicant has sought reimbursement of the application fee of £20.00 per application.

161. It will be appreciated that the pitch fees have not been changed as the Applicant sought. The Tribunal has found failings being found with the maintenance of the Park. The Applicant ought to have identified that and to have addressed those matters and ought not to have sought an increase where the Park had deteriorated and amenity declined.

162. The question of who has won and who has lost is not the entire answer. Nevertheless, any reader will inevitably conclude that the Applicant has lost, seeking an increase in pitch fee which the Tribunal has found not to be reasonable. Whilst not the entire answer, the outcome is inevitably a relevant consideration and the nature of the outcome in this instance firmly so.

163. The Tribunal considers that the weight of other relevant factors is also in favour of the Applicants not recovering the fees. The most significant, and the Tribunal tends to the view likely to have been sufficient alone, is the misleading “draft” Written Statements included in the bundle. Indeed, merely disallowing fees is likely to be regarded as considerably insufficient if such behaviour is repeated.

164. The Tribunal unhesitatingly refuses 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.