FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/24UJ/PHI/2023/0490- 0500, 0502- 0505, 0507- 0511, 0513-0517
Property	**:**	7, 8, 9, 14, 16, 19, 20, 26, 27, ,27A, 29, 35, 41, 50, 52, 53, 72, 74, 75, 84, 90, 107, 110, 113 Drapers Copse, Claypits Lane, Dibden, Southampton, SO45 5TP
Applicant	**:**	General Estates Company Limited
Representative	**:**	Mr Paul Kelly Tozers Solicitors LLP
Respondent	**:**	The pitch occupiers of the relevant pitch numbers
Representative	**:**	N/A
Type of Application	**:**	Review of Pitch Fee: Mobile Homes Act 1983 (as amended)
Tribunal Member(s)	**:**	Judge J Dobson Mr M J F Donaldson FRICS Mr D Ashby MRICS
Date of Hearing	**:**	8th March 2024
Date of Re-convene	**:**	24th April 2024
Date of Decision	**:**	24th June 2024

DECISION

Summary of Decision

1. **The Tribunal determined that in respect of all pitches except those where the Written Statement produced a review date of 1st February or 2nd February- so pitches 29 and 41 on the one hand and 8 on the other- the pitch fee review date had been varied by course of conduct to 2nd January.**

2. **The Tribunal determined that the pitch fee review date had not been varied by course of conduct to 2nd January for pitches 29 and 41 but remained at 1st February. The Pitch Fee Review Notice and Form were not valid for giving the wrong review date and wrong RPI and hence the pitch fee remained at the previous level.**

3. **The Tribunal determined that it was reasonable for the pitch fee to be changed for the year beginning 1st February 2023 and for each of the pitches other than 29 and 41, save Pitch 8 where the change was reasonable from 2nd February 2023.**

4. **The Tribunal determined that the condition of the Park had deteriorated and the amenity had declined and such that the presumption of an increase in line with the retail price index did not arise. Further, that regard has not previously been had to the relevant matters in determining a pitch fee.**

5. **The Tribunal determined that the reasonable pitch fee involved a increase by 9.5% in respect of each pitch, except for 29 and 41.**

6. **The Applicant must bear the application fees for the applications in respect of pitches 29 and 41.**

7. **The other Respondents shall bear the application fees paid, being £20 per pitch, to be paid to the Applicant within 28 days of the order for repayment coming into effect (so within 42 days of issue of the Decision) unless a different order is made in the meantime.**

Background

8. The Applicant is the owner of Drapers Copse, Claypits Lane, Dibden, Southampton, SO45 5TP ("the Park"). The 24 Respondents are owners of park homes sited on the listed pitches. (6 other applications were originally made but subsequently withdrawn.) The Respondents are entitled to occupy the pitches under agreements of various dates, including assignments entered into by previous occupiers. The oldest agreement identified was from 20th September 1976 (Pitch 72). Where the exact dates had potential relevant, they are discussed below.

9. 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 [220- 227] granting a licence to the Applicant. The Licence allows for up to 100 units (it was not clear whether there were more units given the numbering of certain pitches exceeded 100, but no point had been taken about that).

10. A letter addressed to the occupier(s) of 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, each dated 20th December 2022 [e.g., 782- 790], seeking an increase by an amount which the Applicant says represents an adjustment in line with the Retail Price Index ("RPI"). That was mostly as 'late reviews' in that they were effective from 1st February 2023 onwards. The review date is said to be 2nd January, with the exception of 8 Drapers Copse, which had a review date of 2nd February [264] and indeed that date was stated on the Form [793] rather than 1st February. The fees were expressed as monthly sums. There was no reference on the Notices to any reviews being late ones, although analysis of the last review date and the date for the new fee to be payable may have revealed that. The Respondents did not agree to the increase.

11. The RPI was 14.2% taking "the RPI Adjustment", as described, as the percentage increase in the RPI over 12

months to October 2022, with the exception again of 8 Drapers Copse, at 14% over 12 months to November 2022. No recoverable costs or relevant deductions were applied. It was not indicated in the Form that any charges for water and sewerage, gas or electricity are included in the fee.

12. The pitch fee payable as from 2nd January 2022 or 2nd February 2022 or otherwise the late review date and the new monthly fee sought for the relevant pitches ("the Pitches") were as follows below. The Respondent's name and the asserted review date, and hence the date from which reviews were late where applicable, is set out also:

Pitch	Pitch occupier-Respondent	Asserted Review date	2022 pitch fee/ mth	Proposed 2023 / mth
7	H Horton	2nd January	£142.07	£162.24
8	SP Odgers	2ndFebruary	£200.00	£228.00
9	R Robson	2nd January	£168.78	£192.74
14	Batten Castles	2nd January	£178.06	£203.34
16	C Bull	2nd January	£134.67	£153.79
19	J McCann	2nd January	£134.67	£153.79
20	J Harwood	2nd January	£174.59	£199.38
26	G Gilroy	2nd January	£218.23	£249.21
27	R Kats	2nd January	£168.78	£192.74
27a	S Howden	2nd January	£142.07	£162.24
29	J Bartlett	2nd January	£178.06	£203.34
35	J Roberts	2nd January	£142.07	£162.24
41	L Bartlett	2nd January	£178.06	£203.34
50	S Phillips	2nd January	£134.67	£153.79
52	R Allo	2nd January	£142.07	£162.24
53	JH Waddilove	2nd January	£142.07	£162.24
72	R Dowson	2nd January	£142.07	£162.24
74	M Lucas	2nd January	£142.07	£162.24
75	S Slim	2nd January	£142.07	£162.24
84	PD Story	2nd January	£142.07	£162.24
90	GR Hibberd	2nd January	£142.07	£162.24
107	SR Caygill	2nd January	£146.29	£167.06
110	J Gould	2nd January	£142.07	£162.24
113	G Blake	2nd January	£142.07	£162.24

13. The Tribunal addresses the asserted review dates and any effects below.

Procedural History

14. The Applicant sought the determination of the pitch fee payable in respect of the above listed pitches by applications dated 24th April 2023 [e.g.,3- 10]. It was said that the Applicant had spent money on improvements in respect of upgrade to the electricity supply.

15. In terms of the procedural history, Directions were given on 7th November 2023, relevant insofar as it was identified that the Written Statement did not give a review date for pitches 16, 19 and 35. In addition, it was identified that no Statement was provided for 20, 27A and 52. The applications were struck out for non- compliance before later being re-instated. Objections were received from the Respondents such that the applications were listed for an oral hearing.

16. The Applicants submitted a PDF determination bundle comprising 1384 pages, which was copied to the Respondents. That included the applications and other documents for each relevant pitch including the Pitch Fee Review Notices and Forms and the Written Statements (where provided). In addition, two video files were provided.

17. Whilst the Tribunal makes it clear that it has read the bundle (and viewed the videos), 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.

The Inspection

18. Given that the inspection preceded the hearing, the Tribunal refers to that first. The inspection took place on the morning of 7th March 2024. The inspection was attended, in addition to the Tribunal members, by Mr Kelly, Mr James Percy of the Applicant and by Ms Sarah Howden, occupier of Pitch 27A. Mr Katts of Pitch 27 also attended for part. The Tribunal explained that the attendees were welcome to indicate areas

that they wished the Tribunal to view and that the Tribunal would look at those, but that the Tribunal would not wish to receive comment about any such areas except in the hearing itself and would not otherwise take any evidence or take account of what was said at the inspection.

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

20. The Tribunal of course saw the condition of the Park some approximately thirteen months or so 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 their condition and the wider condition of the Park as 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.

21. The inspection started towards the entrance to the Park at a small parking area. The Tribunal was taken along the various roads within the Park. The Tribunal noted quite a steep slope from pitches on the highest point of the Park to the pitches on the lower parts and then another slope to the entrance and parking by it of less note. The steeply sloping roads along which many of the pitches were situated included gratings above drains (although those were not on the side of the road to which the Tribunal considered water seemed likely to run, given the camber to the roads). There was a broken area of grid by pitch 19 which was not screwed down properly and was upstanding.

22. The sides of the roads were marked by moss and weeds in many places. There were cracked and broken areas of road and accumulated mud. The condition of the roads was poor. The parking area to the high point of the Park was notably muddy.

23. There were cleared pitches generally in unattractive condition. By way of specific and more notable examples, Pitch 105 was quite flooded and Pitch 96 had an old, worn and unoccupied home upon it. Some unoccupied pitches were somewhat worse than others.

24. There was a path linking two of the roads climbing up the Park and running just downhill of pitches 18 and 48. That had no lighting. There was an area of missing concrete by the path and other mossy slippery areas. Adjacent to that, in an unoccupied pitch was a large and appearing relatively deep, puddle of mossy water.

25. New meters and new lighting to the Park could be seen. Those look smart and modern (also shown in a photograph [1122].

26. There were various speed bumps along the roads. Some of those looked new, others were still visibly old and less likely to be effective, although this was a minor aspect.

27. The Tribunal also saw a garage area containing 30, or thereabouts, garages and also an area containing stored motor homes. There was a workshop or similar by the entrance to that area. A further set of apparently disused garages was situated off to the side from near the entrance to the Park and adjacent to, or almost adjacent, to the first set. Whilst the Tribunal perceives that the garages did not start off disused and were in a better condition than as at the inspection date, they were off to one side.

28. The Tribunal saw the noticeboard at the lower part of the Park. The fire risk assessment included was dated January 2020 and stated that it would be reviewed in January 2023. It need not be laboured that it is important that fire risk assessments are undertaken as required and that other issues may arise if that does not occur. If no assessment took place in 2023, it is urgently required. If it did take place, the result should be made known.

29. In general, most of the Park was seen to be in a reasonable condition, although there remained elements of concern and matters which detracted markedly.

The Hearing and after

30. The application was heard on 8th March 2024 at Havant Justice Centre in person. Mr Kelly appeared on behalf of the Applicant, accompanied by Mr Percy. None of the Respondents were in attendance.

31. Mr Percy had signed the Applicant's combined Statement of Case in response to the individual Respondent's case/ Witness Statement in respect of each pitch [1013- 1135] in his capacity as managing director of the Applicant. He also gave oral evidence in response to the Tribunal's questions.

32. Whilst the Respondents had not attended, the Tribunal had noted their case as set out in writing and hence the Tribunal put to Mr Kelly and Mr Percy matters which it considered relevant which arose from the Respondents. Much of that case related to deterioration in condition and reduction in amenity, although there was also an argument as to the level of RPI and the wider economic climate generally.

33. Towards the end of the hearing, the Tribunal raised a particular point about the correctness of the review dates, with a related side-issue about the stated practice of the Applicant to apply for late reviews each year, which the Tribunal found odd given that a site owner is permitted to undertake a late review but the 1983 Act suggests that to be a fall-back if the review date has been missed- the owner not being forced to miss out on the review entirely but losing some of the year because any higher fee does not apply from the original review date. There is no suggestion that late reviews are envisaged as regular practice year on year.

34. A number of related queries arose about the review dates. The Tribunal accepted that even an experienced practitioner in the field such as Mr Kelly may experience difficulty with dealing with those on the hoof and so that it was appropriate to provide the opportunity for him to consider the matters and respond in writing. The Tribunal therefore issued further Directions dated 8th March 2024 identifying, in what it hoped were clearer terms than had been possible in the hearing, the specific queries and directing that those be responded to. Mr Kelly did respond by way of Applicant's Submissions dated 25th March 2024. No response was

provided by or on behalf of any of the Respondents following that, whether by 9th April 2024 as provided for or otherwise.

35. The Tribunal re- convened as swiftly as a date could be found for that, although inevitably not immediately, once the date for any response from the Respondents had passed, to consider the submissions received and consider its determinations generally.

36. The Tribunal is grateful to Mr Kelly and Mr Percy for their assistance in this hearing and in writing and to the Respondents in writing for the assistance they all provided with identifying the issues in this case and relevant matters.

37. 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. 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.

38. The Tribunal is very much mindful that the hearing itself took place several weeks ago. It is appropriate to explain that it was not until 24th April that the Tribunal was able to re-convene to consider the written submissions of Mr Kelly. The target date for production of this Decision runs from that date.

39. Even so, the Tribunal accepts that the Decision is issued beyond that target date in consequence of heavy sitting and other commitments, The Tribunal does appreciate that the parties will have been awaiting the Decision. The Tribunal can only apologise for the degree of delay and any consequent inconvenience.

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 implied by the Statute, the main way of achieving that standardisation and regulation. The statutory implied terms are those in Chapter 2 of Part 1 of Schedule 1 to the 1983 Act.

41. 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.

42. 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.

43. As discussed further below, the review date can be varied, by altering the terms of the agreement. That may be in writing or orally or it may be inferred from conduct. However, the review date can never be less than 12 months before the previous review date.

44. 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.

45. 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.

46. 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."

47. 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.

48. 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.

49. The Tribunal shall 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. 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.

50. 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.
....."

51. "Regard" is not the clearest of terms and the effect of 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.

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 index being RPI has changed since the review dates but that change was not retrospective and so the level of the Consumer Prices Index (CPI) which now applies is not applicable to these pitch fee reviews.

54. 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;"

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

55. The Tribunal considers it appropriate to set out elements of the judgments of case authorities as follows below.

The pitch fee and approach to determination of it

56. The most recent relevant Upper Tribunal judgment is that in *Wylecrest Parks (Management) Limited v Whiteley and others and Alves and others* [2024] UKUT 55 (LC), given on 27th February 2024, only a few days before the hearing of this case and related to whether the presumption of an RPI/CPI increase had been displaced by decrease in amenity. That is discussed below. The judgement refers to other cases mentioned below, including quoting from various of them.

57. The Upper Tribunal in *John Sayer's Appeal* [2014] UKUT 0283 (LC) gave a detailed explanation of the application of the statutory provisions, in particular at paragraphs 22 and 23. 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."

58. In *Britanniacrest Limited v Bamborough* [2016] UKUT 0144 (LC) identified about the RPI presumption:

"31. ..... it is neither an entitlement nor a maximum, and in some cases it will only be a starting point of the determination."

59. 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.

60. In relation 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)."

61. In the Upper Tribunal (Lands Chamber) decision in *Vyse v Wyldecrest Parks Management Ltd* [2017] UKUT 24 (LC), HHJ Robinson adopted the above approach. The Judge in *Vyse* also set out why RPI was used, rather than seeking to consider every element of costs individually. 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 ..... 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."

62. The Judge also said as follows at paragraph 57:

"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…….. 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".

63. That broad legislative purpose therefore merits careful note and the broad merits of certainty are obvious. However, none of that can detract from the requirement to apply paragraph 18(1) and there are two sets of potential factors, the paragraph 18(1) factors on the one hand and other factors on the second hand. It neither instance, even if the Tribunal considers it reasonable for there to be a change, will the pitch fee determined necessarily reflect the change in RPI. That inevitably and intentionally reduces the certainty. Hence, the attraction of certainty cannot be elevated to preclude application of the other provisions of the Act.

64. Later, and significant in the context of this group of applications, it was explained given the wording and structure of the provision that:

"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……

"50. ……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."

65. 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 arisen in light of the statutory scheme. It stated in that regard in paragraph 50 that:

"If it were a consideration of equal weight to RPI, then applying the presumption, the scales would tip the balance in favour of RPI".

66. Mr Kelly specifically referred the Tribunal to the paragraphs of *Vyse* quoted and otherwise referred to above.

67. The last matter which merits mention from *Vyse* is the reference to a decision of the Court of Appeal in *Stroud v Weir Associates* [1987] 1 EGLR 190 that pitch fees on other sites were not a relevant factor to be taken into account.

68. The decision of the Upper Tribunal in *Wyldecrest Parks Management Limited v Kenyon and others* (LRX/103/2016) was given relatively contemporaneously but the Tribunal does not consider it necessary to from that judgment. 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.

69. 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). 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).

70. Returning then to *Whiteley,* it had been decided that the reduction in amenity at the site was sufficiently substantial to displace the statutory presumption and the appeals were against that. Martin Rodger KC observed that:

"17. Paragraphs 18, 19 and 20 of Schedule 2 explain what is to be taken into account in determining a new pitch fee. These provide the only guidance to the FTT on what it is to do if, having received an application from an owner or occupier, it considers it

is reasonable for the pitch fee to be changed. Unfortunately, they are not as informative as they might have been."

71. He later said:

"Where one of the factors in paragraph 18(1) is present, or where some other sufficiently weighty factor applies, the presumption does not operate or is displaced. Then the task of the tribunal is more difficult, because of the absence of any clear instruction on how the pitch fee is to be adjusted to take account of all relevant factors. The only standard which is mentioned in the implied terms, and which may be used as a guide by tribunals when they determine a new pitch fee, is what they consider to be reasonable."

72. Martin Rodger KC also said (paragraph 42):

"..... the tribunal will need to consider whether the factor which justifies a higher or lower increase than RPI/CPI affects all pitches equally. If it does not, then it is likely to be necessary for the tribunal to determine what is the reasonable pitch fee for each pitch, or each group of pitches affected to the same extent, rather than to adopt a blanket approach."

73. The Upper Tribunal additionally said, if there is to be a change,

"to set a new pitch fee which properly reflects the changed circumstances. Those changed circumstances obviously include the reduction in amenity, but they will also include any change in the value of money i.e. inflation since the last review took place. For it to be appropriate for there to be no change in the pitch fee at all it would be necessary for factors justifying a reduction to (at least approximately) cancel out inflation and any other factors justifying an increase."

74. The Upper Tribunal also held that the fee is for the pitch and that the personal characteristics of a particular are not part of what the fee is paid for.

75. The Upper Tribunal did not accept that it was necessary to divide the pitch fee between the right to station a home on the pitch, the right to use the common areas of the park, and the right to have those common areas maintained by the owner, saying it is not it's place to lay down a rule where Parliament had chosen not to.

76. The Upper Tribunal then gave the following guidance, the first part of which this Tribunal has arguably failed to follow:

> "71. In general, for cases where the presumption of an RPI/CPI increase has been displaced, tribunals should try to adopt a relatively simple approach, because the sums involved are modest and the material available is likely to be quite limited. Unless different pitches are affected to a materially different degree by a loss of amenity such that there is a good reason for differentiating between them in determining new pitch fees, tribunals should not feel obliged to do so. They should determine what in their view is a reasonable increase or a reasonable pitch fee having regard to the owner's expenditure on improvements, and to the loss of any amenity at the park or deterioration in its condition and having regard to the change in the general level of prices measured by RPI or CPI, and such other factors as they consider relevant. They should use whatever method of assessment they consider will best achieve that objective."

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. It is recorded in *Whiteley* that the First Tier Tribunal had adopted a working definition of "amenity" that it "refers to the quality or character of an area and elements that contribute to the overall enjoyment of an area", so very similar.

<u>The Pitch Fee Review Notice and Form</u>

80. In terms of the form and contents of a Pitch Fee Review Notice and Form, the earlier authority is a judgement of Judge McGrath in the Upper Tribunal in the case of *Small v Talbot* [2014] UKUT 0015. The Notice that had been served was held not to be valid for the reason that the owner's

Notice contained incorrect computations of the actual amount of the increase proposed and of the amount that the occupier would pay.

81. A degree of caution may be appropriate in applying that decision insofar as that at the time of the particular Notice, the requirement for the Notice to be accompanied by the prescribed Form had not been introduced, so the only document which was required and which would provide information to the park home owner was the Notice itself. However, the essential point stands.

82. The Upper Tribunal in *Wyldecrest Parks Management Limited v Truzzi- Franconi* [2023] UKUT 42 (LC), held that the Notice served in that case was valid because, even if there was any failing in the information provided (which the Upper Tribunal did not accept) it had in any event fulfilled its purpose despite the inaccuracy and so fell within the requirements explained in *Mannai Investment Co Ltd v Eagle Star Life Assurance Co Ltd* [1997] UKHL 19.

83. Somewhat more recently than *Mannai*, the question of validity of documents such as notices was considered by the Court of Appeal in *Natt v Osman* [2014] EWCA Civ 1520. The Court of Appeal considered the distinction between the validity of documents in "two broad categories", the second of which was:

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

84. At paragraph 31, it was said that the Court of Appeal cases show a consistent approach in the second set of cases, namely that the courts have interpreted the notice to see whether it actually complies with the strict requirements of the statute. If not, the court has, as a matter of statutory interpretation, held the notice to be wholly valid or wholly invalid. It was said:

> "[33] In cases such as the present, ..., the intention of the legislature as to the consequences of non-compliance with the statutory procedures (where not expressly stated in the statute) is to be ascertained in the light of the statutory scheme as a whole. In

some cases, for example, the court has held in favour of invalidity where the notice or the information which is missing from it is of critical importance in the context of the scheme.
[34] By contrast, the court has held in favour of validity where the information missing from the statutory notice is of secondary importance or merely ancillary."

85. The most recent decision is that made in *The Beaches Management Limited v Furbear and Others* [2024] UKUT 180 (LC) issued only in the last few days and hence somewhat after the hearing of this case and the Applicant's Submissions. That principally addressed the questions of whether the Pitch Fee Review Notice and Form have to be different documents and about requirements for signature by the site owner. There is nothing which adds anything specific for the purpose of this case.

Other decisions cited

86. Whilst it is not an authority and does not bind this Tribunal, the Respondents also referred to a previous decision of Judge Dobson and other Tribunal members- CHI/45UB/PHI/2023/0194 and 0196- in which it was essentially determined that the level of increase in the RPI and the wider economic situation was a factor which should be given sufficient weight in that instance to rebut the presumption of an increase in line with RPI. A copy was included in the bundle [1232- 1260]. That was one of a number of Decisions adopting that approach of which the Tribunal is aware.

87. In a similar vein, a number of further First Tier Tribunal decisions from a different region was included in the bundle- BIR/41UF/PHI/2021/0001 and others- which determined that the site owner could not defer an increase and then seek it at a later review (together with a further increase) [1261-1268].

Findings of Fact

88. The Tribunal sets out it findings of fact to which the above law must be applied. The relevant statements of the Applicant [1013- 1135] and the Respondents [1137- 1216] were considered but it is not practical to refer to individual pages, of which there are various for other elements asserted.

89. The condition of the Park was unsatisfactory by March 2024 to the extent that there were unsightly pitches, whether containing old unoccupied homes or empty, predominantly the latter, where those were in a poor condition. That included debris and flooding. The Tribunal notes both of those to be matters raised by certain of the Applicants.

90. In addition, there remained the drain cover causing a potential trip hazard where a fall was said to have been suffered. The Tribunal accepted the evidence of the regrettable fall, which was no doubt a shock and is indicated by the evidence to have caused injuries, and as a result of that drain cover. The Tribunal further finds there generally to have been areas of potential hazard in the course of works. The Tribunal cannot be precise about the condition in early 2023 but considers that the evidence demonstrates the condition of the Park to have been similar.

91. The Tribunal also records that Mr Percy said that the screws had become loose and that the grid had been screwed down (it was unclear by him or an employee). However, the Tribunal considered it abundantly obvious from the inspection that Mr Percy stated what should have happened rather than what did happen. The grid had either not been screwed down at all or, if it had been, the job had been done badly.

92. The Tribunal also found that as at early 2023 there were elements of deterioration demonstrated by the evidence but which were no longer visible by the date of the inspection. Notably in the intervening period, the Tribunal found there to have been electrical works in respect of meters and new lighting.

93. The Tribunal finds that there were problems with the old cables and power supply more generally in light of the Respondent's comments and the wider evidence. The Tribunal notes that Mr Percy accepted that some of the boxes were past their best, an acceptance of deterioration to them and that he said that works were required by an electrical report (not in the bundle) prepared in 2020 or 2021.

94. The Tribunal finds that the Applicant allowed the electrics to fall into a poor condition- and that was the essential position at the review dates- before attending to them.

95. The Tribunal finds that the issues with the electrical supply and related have been addressed. However, as at January/ the start of February 2023, the work was in progress. The Tribunal finds that the completion of that work has taken place after January/ February 2023 and that is when the benefit has accrued. In contrast, the Tribunal is unable to identify any work completed and of benefit as at early 2023. The work is identified as commencing in summer 2022 but the emails about electrical works [1124 onward] indicate the work to be in the relatively early stages at the start of 2023, although plainly in progress. An email [1231] dated 3rd January 2023 complains of effects over a three- week period and ongoing.

96. Mr Percy accepted in oral evidence that there had been disruption during the course of the works. The Tribunal unhesitatingly found that there had been in light of that and the other evidence. That had an effect whilst the works were ongoing as would be expected. The Tribunal accepted on balance that the power cuts may be consistent with Mr Percy's assertion of cables being cut when works were undertaken to roads.

97. In contrast, as at early 2023, the Tribunal finds the old systems were still operating. In addition, the Park was affected by works. The Tribunal notes and accepts the evidence of trenches for electrical or other cables and/ or for pipes, which it finds consistent with the work being undertaken. The Tribunal also accepts as a matter of fact that there were areas of storage of gravel and/ or materials. The amenity during the course of the works and as at early 2023 was somewhat reduced by those works.

98. The Tribunal is alive to the fact that any undertaking of works will involve people to undertake the work, tools or machinery of whatever description, some limits on areas accessible or otherwise on use of some areas, in all likelihood some noise and dust and debris and materials being present. The Tribunal finds that is unavoidable if anything is to be done to the Park and considers that it has to be set against

the advantages of the work being completed, which it considers below.

99. Additionally, there is recent road re- surfacing shown in photographs [1217] by the Applicant as at January 2024 and so in advance of the inspection. The Tribunal infers that prior to that, the area of road was in a poor condition and that condition is very likely to have been substantially similar in early 2023 as it was later that year. In like manner, the fact that the area outside the garages had recently been re-stoned was indicative of that having been inadequate previously.

100. The Tribunal nevertheless identified at the inspection issues with the road surface and with vegetation. The Tribunal also finds those problems to have existed as at the review dates.

101. There was additionally mention by Respondents of lack of maintenance of grassed areas and of weeds. Given the nature of such areas, the condition seen at the inspection could not be the same as it was at the review date. However, the Tribunal found on balance that the evidence of inadequate maintenance was sufficient to find the assertion of there having been such inadequate maintenance to be correct.

102. There was also deterioration seen at the inspection to the extent of the dangerous pathway but there is no direct evidence as to whether it existed as at early 2023 to be relevant to these pitch fees. The Tribunal noted that, for example, it was not individually mentioned by any Respondent in their written case. That said, the adjacent pitch, including right by the path is prominent in terms of standing water and so the likelihood is the area was referenced amongst the wider comments. The issue is also consistent with the broad thrust of evidence about the condition of the Park at the review date. On balance, the Tribunal found that the path was in a hazardous condition at the review date or dates. Mr Percy denied the presence of algae on the path, but it plainly was present.

103. The Tribunal also found on balance that the pitch had been affected by standing water at the review date. The Tribunal noted the oral evidence of Mr Percy that diggers

had been parked on the pitch in or about September 2023 and it had sunk. However, the Tribunal was not persuaded by Mr Percy's evidence and that the problem had entirely arisen since the review date.

104. The Tribunal was satisfied that those matters were not reflective of the condition of the Park in 2013/ 2014 and so constituted deterioration from that earlier condition such that they were appropriate to take account of. The evidence also supported them having existed in broadly similar terms as at early 2023 and not have arisen since.

105. Various other issues were identified by the Respondents. Various of them described the Park as a dumping ground, including in one instance specific mention of the dumping of white goods and another there being rubbish from other parks dumped on the Park. Whilst quantity of evidence is less important than quality of evidence, on balance the Tribunal found the several references to such matters to give cogency to the generality of the evidence and noted that Mr Percy accepted the storage of plant and materials on the Park which, whilst not of precisely the same character, also lent support to the correctness of the Respondent's comments. However, there was no evidence to gainsay that of Mr Percy that materials had been stored at the site and places in skips on site for at least 20 years.

106. In addition, various Respondents complained of inadequate drainage. The Tribunal has expressed some doubt as to adequacy above. Mr Percy also said in oral evidence that he accepted the uncertain merit in the grids at the wrong side of the road cambers. He said that the water runs down, into drainage and to a ditch in the recreation area. The Respondents' photographs showing areas of standing water did not suggest the arrangement to be entirely effective. However, they did not state that the situation had worsened over time and the Tribunal could not identify the nature of the drainage at a previous time and identify any deterioration to it from such a condition, so that part of the allegations was not made out.

107. In a similar vein, Mr Percy's statement refers to CCTV and other improved areas but does not explain that those

were dealt with by the relevant pitch review date and the Tribunal has no evidence on which it can find that they were.

108. Before the work in 2023 and onward which produced the condition seen by the Tribunal, the condition of the Park was in various ways relatively poor and lacking in attention. Whilst the Applicant is to be commended for the efforts since and the Tribunal notes that better drainage was said by Mr Percy to be being looked at for the future, it is the condition found to exist in early 2023 which is the relevant one for the purposes of the pitch fees to be determined.

109. Given the concerns which remained in March 2024 and given the matters attended to between early 2023 and then, the Tribunal found that the Park was not in a good condition as at the review date.

110. The Tribunal accepts that the Applicant has spent money on the Park in the recent past prior to the inspection. The Tribunal accepts the unchallenged written evidence of Mr Percy that amounted to in the region of £456,000 since February 2022. The Tribunal makes no finding as to how much of that had been spent prior to January or February 2023, there being no breakdown which enables that. The Tribunal does find that a good deal of the money has been spent since the start of February 2023. The Tribunal identifies that there were various elements of the Park which required attention and ones which still do. Whilst the Tribunal accepts that some money had been spent by the review dates on the electrical supply, the sum is unclear.

111. The Tribunal also found that not all of the overall figure was spent for the benefit of the Park and occupiers generally. Mr Percy's evidence stated that the figure excluded "some of the cost of developing and selling new homes". The reverse must also therefore apply, that is to say that the cost includes some of the cost of developing and selling new homes. There are various new homes shown in photographs as at the start of 2024 [1217, 1218]. Given that the sales provide revenue for the Applicant, principally immediately on the sale, those are costs for the Applicant to bear and are not relevant for these purposes. Mr Percy could not, after some efforts, state the correct split of the expenditure. As the Tribunal is unaware of the expenditure during the relevant period in the first

place, it does not seek to guess how much of the expenditure relates to such development and sales.

112. The Tribunal also accepts the written evidence of Mr Percy that the Applicant's costs have increased. That is to say generally over the last couple of years or so. The Tribunal accepts what Mr Percy said that some costs have increased above the rate of RPI and others at a lower rate. Insofar as Mr Percy particularly highlighted concrete and fencing costs, the Tribunal does not identify those as being particularly significant in respect of this Park as at early 2023. The Tribunal would also treat the cost of concrete with some caution in any event as being a cost which the Tribunal identifies with providing new pitches for sales, albeit the Tribunal would accept will have other uses. Mr Percy also conceded that costs are not allocated between parks, so there was no evidence of more specific assistance.

113. The evidence was not specific enough about the extent of any relevant increase prior to January/ February 2023 on the one hand and the extent after for that time for the Tribunal to be clear about the costs during the period from the 2022 review date to the 2023 review date, which is the period relevant for these purposes.

114. For the avoidance of doubt, the Tribunal finds that those matters were attended to after the review date but the improvement from the condition at the review date on dates to March 2024 are not relevant to this exercise. Hence whilst the Tribunal acknowledges steps taken by the Applicant to address matters, it must ignore for these purposes any of those since early 2023.

Review Dates

115. The Tribunal noted that whilst the Applicant asserted the review date to be 2nd January for the pitches, save for pitch 8, that was not a reflection of the Written Statements.

116. As identified above, the question of the correctness of the review dates was a matter raised by the Tribunal and not by a Respondents. Hence, the Tribunal exercised some caution in considering whether to raise the point. However, there was such an obvious contrast between the position in the written

statements (save where there were none) and the date asserted by the Applicant that the point was one which leapt out and which demanded explanation. In addition, and as identified in the Directions following the hearing, the issue in part arose from Mr Percy's oral evidence, which could not have been known about by the Respondents in advance. The Tribunal as an expert body is entitled to take points apparent to it and considers that it could scarcely have ignored an obvious and fundamental issue.

117. The position is different as between different pitches and groups of pitches. In the Applicant's Submissions, Mr Percy grouped those into sets A to E. The Tribunal had not devised those categories and does not find them to wholly assist but insofar as it is useful to, the Tribunal adopts the categories and takes them in alphabetical order.

118. Of the 24 pitches occupied by Respondents, the position in respect of the majority of them was that the stated date was not 2nd January but rather was one or other different date as follows:

i) 2 pitches had the review date stated as 2nd January- pitch 26 and 27- Category A
ii) 18 pitches had no stated review date- pitches 7, 14 16, 19, 20 (see below), 27A (see below) 35, 50, 52, 53, 72 (for which there was no document at all), 74, 75, 84, 90, 107, 110, 113- Category B and C
iii) 1 pitch had a review date stated as 1st January- pitch 9
iv) 2 pitches had a review date stated as 1st February- pitches 29 and 41.
v) 1 pitch had a review date stated as 2nd February- pitch 8

119. For pitch 14, there was a partial date of 1st of (no stated month) [323] and a date of 2nd January in the assignment schedule not used but neither of those of themselves provided an agreed review date. The Assignment for Pitch 53 gave a next review date of February 2016 (but no specific date) and so suggests a date in February was the correct date at that time, albeit with no indication of why, or indeed of when, it at all, the review date changed from then. The last Directions had indicated the review date for 53 to be February but it should be explained that reflected the date in the Assignment and nothing more.

120. As identified above, for 2 pitches, namely 20 and 27A, there was simply a blank document in the bundle, not a Written Statement bearing the name of any party. Matters go further than there simply being no written review dates for those.

121. The Tribunal has made strong observations in other cases about site owners placing in bundles blank documents as "draft agreements" or otherwise in a manner which suggests an agreement in a given form was entered into, whereas in fact no agreement is known to exist. Any suggestion there is a Written Statement and in a particular form where the site owner does not hold a copy of that (and has not been able to obtain one form the occupier) is either incorrect or at least not known to be correct and, most significantly, is want to mislead the Tribunal and could cause an incorrect outcome if the Tribunal were to be misled. The placing of a blank or draft document in the bundle is plainly a deliberate act.

122. In this instance, the Tribunal leaves matters there. Should it encounter the same from the Applicant or its representative in another case, they should not expect that approach to be taken again and rather should expect the matter to be pursued with appropriate bodies.

123. In terms of the review dates and whether those are accepted as 2nd January, the Tribunal repeats that different sets of circumstances require separate analysis. For the avoidance of doubt, the Tribunal refers to 2nd January deliberately, treating pitch 8 with a review date of 2nd February and a Notice stating that date differently.

124. The Tribunal accepted the RPI figure was the correct one as last published in advance of the date by which the Notice would have been required to be sent for a review date of 2nd January, or rather 2nd February for pitch 8. Hence, if those were indeed the correct review dates (from which reviews save for 8 were late) then the Notices were accepted as valid.

Category A, B and C pitches

125. The Written Statements lacking specific review dates were entered into on various different dates. The Applicant's

Submissions has divided those between agreements pre-dating any requirements as to the form of Notice (A) and those post- dating (B and C). The Tribunal does not consider that division necessary for the purpose of addressing them here as most aspects apply the same to each.

126. The Tribunal accepts that the provision in the Written Statements as to the review date is capable of being varied in writing, but there was no evidence of any written variation. So too by an oral variation of the term or by conduct.

127. The Applicant asserted that the date had been agreed orally for every pitch where the Written Statement did not give a review date. However, the Tribunal rejected that. There was nothing like the evidence of when such a variation took place and what was said that amounted to an agreement to vary for the Tribunal to find that contention made. Whilst Mr Kelly contended that it can be inferred that there was an oral agreement to vary, for that to apply to each pitch it would have to be inferred, in the absence of evidence, that in every instance an oral agreement was reached in a conversation between the Applicant and the occupier at the time. That is too speculative- indeed unlikely- for any inference to safely be drawn.

128. The only support that the Tribunal could identify was that the assignment of the pitch for Pitches 14 and 52 said that the next review date was 2nd January 2023. The latter assignment was in 2022. On the other hand, it is identified that for pitch 53, February is identified. The assignments for pitches 14 and 52 allow the possibility of oral but do not demonstrate an oral variation specifically.

129. A question was therefore whether there had been variation by conduct to 2nd January. The Applicant's Submissions cited 3 decisions of Tribunals sitting in other regions that there is an ability to vary by conduct. The Tribunal considers that the proposition is well- established and does not require discussion here.

130. The Tribunal accepted that the review of the pitch fee as at 2nd January by the Applicant and the payment of the fees repeatedly, in some instances the evidence suggested for many years, was sufficient to be able to amount to variation

where there was no stated review date, so in 18 instances. For the 2 pitches with written agreements giving a review date of 2nd January, the Tribunal accepts there is no evidence that changed.

131. The other question is whether the date could be changed in the manner asserted.

132. One of the matters observed by the Tribunal in its further Directions following the hearing is that the review dates must be at least 12 months apart. So, if the review date is February, it cannot be altered to January of the following year- the only way to bring the month forward is to miss the next year and then bring forward to January the year after, so 23 months after the last review. If the review date is January, the next review date can be the following January or any later date.

133. There is distinction to be drawn between the review date and the date from which the fee was payable- the fact that there may have been a late review and so the fee is payable only from say February, does not cause an issue with the next review date being January and a new fee being payable from January- it is the review date which cannot be less than 12 months from the previous review date, not a later date in the year when the new fee applies.

134. The Tribunal was troubled by the evidence of Mr Percy that reviews had always been undertaken with a review date of 2nd January, albeit late in practice, and identified in the Directions a query about whether there had been 12 months between review dates. For any pitch where the review date stated was later than January, or there had never been a review date given and so the default date was the same as the date of the agreement, at first blush a year would have to be missed in order for the review date to be brought forward to 2nd January. If the first review was in January within 12 months of the agreement, that would not have happened. No oral agreement or conduct could alter that.

135. The Tribunal accepts a Written Statement may state a review date which may be within 12 months of the agreement being entered into but that is because there is an agreed review date. It is in the absence of an agreed review date

where the review date is prescribed to be the anniversary of the entry into the written agreement that the issue arises. Mr Kelly asserted that there is no bar to agreeing a variation of the review date within the first 12 months of the agreement, which is correct as far as it goes. What it cannot do is vary to a date within twelve months of the date provided for in the Written Statement or implied into that by statute.

136. On a rather fine balance, the Tribunal was prepared to accept that there had been a variation by conduct where Written Statements did not provide a date without that falling foul of the requirement for a 12- month period between review dates.

137. The Tribunal concluded that Mr Percy's statement was sufficiently general and imprecise that it should not be determinative. Set against that, there was some basis for concluding that as no Respondent took any point, they accepted that the variation had been carried out appropriately and so the requirement for at least 12 months between one date and a varied one had been met. That said, there was nothing to indicate that any Respondent had understood the point and so the lack of query lent less weight than it might otherwise.

138. Taking matters overall, the Tribunal cautiously determined that it would accept the variation to have been able to be undertaken at the time it occurred.

139. The Tribunal had queried in the Directions whether any variation had really been to a review date of 2nd January if in fact the new fee had always been payable from 1st February and so whether in fact the variation had been to 1st February. However, on the premise that the date from which the new fee has been payable has always been expressed to arise from a later review, the Tribunal leaves that point.

Category D

140. Mr Kelly argued in the written Submissions that in a similar vein to the agreements lacking written review dates that it should be inferred that the parties to the agreements giving a date in writing of 1st February in fact orally agreed a different review date to that written and of 2nd January and

that took effect (he said the Applicant is entitled to infer that but presumably meant that the Tribunal would be entitled to, in that there was sufficient from which such an inference could be drawn). However, in contrast to the above, the Tribunal determined that the weight went against the Applicant's position.

141. The Tribunal had expressed the query in the Directions as can there be a late review with the review date of 2nd January where the date for the new fee is 1st February for the pitches where the original review date was 1st February in the Written Statement (pitches 29, 41 and possibly 53) and so the new fee is payable exactly when it was payable under the Written Statement? Or alternatively, is there simply a review at the 1st February date on an ongoing basis?

142. The Tribunal rejects the submission of an oral agreement. The Tribunal also declines to draw an inference for which it finds no support and indeed where it considers the evidence flies in the face of that.

143. No explanation was given as to why the parties might on the one hand enter into a written agreement stating 1st February and on the other orally agree a variation of that to 2nd January. There was no need for the parties to agree in writing the specific date of 1st February. If they wished to agree 2nd January, they were perfectly able to do so. At its simplest, the parties could have crossed out 1st February and replaced it with 2nd January. The term would be in writing and clear. There was no need for any lack of clarity as to the review date and any issue arising. That was where the Applicant has been a park home site owner for many years.

144. The Tribunal finds it an odd notion that the parties to an agreement might agree in writing 1st February, vary that in some fashion to 2nd January (if they did) and then accept a late review as at 1st February- so the date they started with in writing- from the agreed varied review date of 2nd January. That is a relatively complex and convoluted way to get to paying an increased pitch fee from exactly the date on which it was payable under the Written Statement.

145. The Tribunal finds it implausible that occurred. The Tribunal determines that there is not nearly adequate

supporting evidence and no ability to infer an implausible unsupported outcome. The Tribunal accepts that Mr Kelly did his best to propose a basis for what had been done but that required him to seek to make bricks out of straw, which even his valiant attempt failed at.

146. The Tribunal finds that the parties did not orally vary the review date. Neither does the Tribunal find that there was a course of conduct, not least on behalf of the pitch occupiers who simply continued to pay new pitch fees from the date their Written Statement provided them to. The review date for pitches 29 and 41 has always been 1st February.

147. That is significant because the relevant RPI was therefore that for November 2022 and not October 2022- see further below. The correct increase to propose was that in line with the November 2022 RPI and not the October 2022 RPI.

Category E

148. There were 2 pitches occupied by Respondents in relation to which the Written Statement gave the date of 2nd January which the Applicant asserted to be the review date for all pitches other than pitch 8, namely pitch 26, 27. Those can be dealt with in short order.

149. The Tribunal accepts 2nd January to be the review date. It is both the date stated in writing and the date which has been used for reviews- albeit the reviews have then been late ones. There is nothing to suggest any change has ever been made to that date.

Pitch 8

150. The Tribunal accepts that the review date for pitch 8 has always been 2nd February and was 2nd February for 2023. No more need be said about that one.

Deterioration and/or Decline?

151. 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 had been a deterioration in condition and a decline in amenity in the

terms set out in the Act as at January/ February 2023 (rejecting Mr Kelly's contrary submissions).

152. The Tribunal does not seek to repeat the findings about the condition. The Tribunal does make clear that there is no hint that the condition of the Park included difficulties with the matters identified by the Tribunal from the outset so that the poor elements were always poor. Hence its determination of deterioration.

153. The Tribunal considers that determination of deterioration 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.

154. 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. They have been.

155. 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.

156. 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.

157. 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.

158. 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 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.

159. The Tribunal accepted that there had been updating of the electrical supply. The Tribunal was also mindful that there had been other works to the Park at asserted significant cost which costs it had not sought to recover- although at least in part rightly so as they related to development for profit. There was no contrary evidence from the Respondents and so the Tribunal accepted the Applicant's case in general terms. The Tribunal considered that improvements (where not for the purpose of sales and profit) were matters to consider in weighing the overall condition of the park and any deterioration, if any, in that condition.

160. However, as explained above, the Tribunal was unable to identify relevant any improvements as at the review dates. Rather they have been since then and so are not relevant for the exercise the Tribunal is required to undertake.

161. Hence, taking matters overall, the Tribunal found that there had been some deterioration in the condition of the Park. The Tribunal also found that the nature of the deterioration was such that it also led to a decline in amenity.

162. The Tribunal did not find the presence of skips for debris from the works or other matters related solely to the undertaking of works to amount to deterioration with the site, much as they temporarily affected its condition.

The effect of the above determinations and the reasonable level of the pitch fees

Pitches 29 and 41

163. The simplest matter is that the Pitch Fee Review Notice and accompanying form for pitches 29 and 41 are not valid.

164. The review date stated is 2nd January 2023, which the Tribunal determines is not correct. The date stated should have been 1st February 2023.

165. The RPI stated in 14.2%, being the figure for October 2022 and the last published figure prior to the time a Notice would have needed to be served in advance of the review date, is wrong. The figure should have been 14%, being the figure for November 2022, published in December 2022 and the last figure published in advance of the actual Notice served. That Notice was not a late Notice but was served at the correct time and so it is the last RPI figure published in advance of that which is the relevant one.

166. Those are not small matters in the context of the information to be provided by the Notice. They produced the result that the Notice stated wrong pitch fee for the year 2023 onward and if the Respondents had not objected, the occupiers of Pitches 29 and 41 would have paid the wrong fees. Whilst the difference between 14% on the one hand and 14.2% on the other is slight, one is correct and produces the correct pitch fee: the other is wrong and does not.

167. The issues are not ones with the form of Notice and where the pitch occupier received the information intended even if imperfectly. They are much more akin to the issue in *Small*- the computation is wrong and the fee stated is wrong. The RPI and the fee produced are required to be correct. Those errors inevitably render the Notice invalid.

The other pitches

168. In relation to the other pitches, 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.

169. The Tribunal is mindful that it must have particular regard to paragraph 18(1) factors 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.

170. Regard also needs to be given to the fact that the site owner's 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 Tribunal is mindful that there is a balance to strike between the parties and that the site owner operates a business, so the operation of the Park has to be worthwhile to it. Equally, subject to finance, it cannot spend money it does not have.

171. The increase in cost of steps which were not taken by the review dates to attend to the Park and the lack of which 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. The Tribunal considered the disruption caused by the works but given the need for works and the benefit once those were completed, the Tribunal does not consider that there should be an effect arising for the period of the works in itself.

172. 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.

173. The Applicant will of course, in the event of a lack of change or any other sum less than the full increase in line with RPI, 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 a reduced level of pitch fee. That is not an irrelevant factor, but it is not considered nearly sufficient to dictate the answer. Any reduction from an RPI increase will also, unless a greater later increase occurs, have an effect year on year and 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.

174. The Tribunal determined pursuant to paragraph 16(b) of the 1983 Act it is reasonable for the pitch fee to be changed.

175. 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. 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. The Tribunal has been mindful that the weight to be given to the deterioration and decline must be enough to deal with a presumption which has been described as strong.

176. Nevertheless, the Tribunal determines that the appropriate regard to be given to the deterioration and decline found is such that the presumption of a pitch fee increase by the level of RPI as set out in paragraph 20 does not arise. The Tribunal did not find there to be any other factors which require consideration and alter the outcome- please see below regarding rate of RPI- other than the matters already discussed and the Applicant's costs.

177. The Tribunal considers that an increase at the same rate as RPI (absent a presumption) is not reasonable in light of the findings of fact made. The Tribunal accepts the effect of inflation on costs generally and has taken careful account of that but determines that is outweighed by the deterioration and decline found. The Tribunal noted that the Applicant had written to the Respondents offering a "goodwill gesture", as it was termed, of credit of a full month of fee [e.g., 1149], which the Applicant said would have the effect of the pitch fee rising by 4.68% (for that year although the starting point for the next year would ignore that "goodwill gesture"). Mr Percy had been asked about that in the hearing but denied

that 4.68% was therefore the reasonable level of increase and the Tribunal was cautious about what had been a settlement offer in effect.

178. The Tribunal considers that 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 not 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.

179. The Tribunal noted that it was said that £456,000 had been spent on maintenance excluding the costs if internal labour and some of the cost of developing and selling new homes, and also noted it was said that receipts for pitch fees had been £362,000.00. That is mentioned above. It is apparent from photographs of new homes that the Applicant has sold some homes and will have receipted the money from that. Such sales are an important part of the business of owners of such Parks and the Tribunal has little doubt that the better the condition of a park, the better prospect of sales and for better prices.

180. The Tribunal recognises that the condition of the Park is only one element of the matters for which a pitch fee is charged. 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. The Tribunal is aware 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. However, the fee is for a combination of elements and is not broken down in the Written Statements between each element and neither would the Tribunal expect it to be (the Tribunal does not recall ever receiving one). The fee is for the whole generally not a+b+c specifically.

181. But for the increase in the Applicant's costs and expenditure on the Park and the wider elements for which pitch fees are paid, the only factors may have been deterioration and decline and that may have resulted in little if any increase in the pitch fee and possibly a reduction in the fee. In the event, that is not the outcome. However, there must properly be a reductions in the level at which the pitch fee compared to that which would have been determined but for the deterioration and decline. That is to say the reasonable fee cannot be the full amount of RPI. It is to be hoped that deterioration in condition and decline in amenity does not continue. If it does beyond the condition found by the Tribunal, that will be likely to be impact further. Assuming that the condition is brought back to its previous level, the amenity should be where it ought to be.

182. The Tribunal determines that weighing the decline and deterioration against likely increase in costs, the level of pitch fee reasonable for each pitch is 9.5% higher than the fee for 2022. The Tribunal did not identify any other factors which altered the determination- whilst the Tribunal has considered carefully the potential ongoing impact on the Applicant's income and, whilst recognising that not necessarily to be irrelevant, the Tribunal does not consider it carries sufficient weight to alter the conclusion here.

183. The Tribunal should make it clear that whilst the different pitches are located in different places on the Park, it was not demonstrated that the was any matter which particularly affected one pitch differently to the others to any sufficient extent that a different approach should be taken in relation to one of more pitches as compared to those of the remainder of the Respondents Therefore, the same approach has been taken in relation to all.

184. In addition, whilst the Tribunal identifies that the review date is one month later for Pitch 8 than the other pitches, the Tribunal identifies nothing which altered during that period which causes the answer to be different for that pitch.

The increase in the RPI

185. The Tribunal does not consider it necessary to address whether any other weighty factors would rebut the RPI

presumption if it had arisen at any length. The presumption has not arisen. However, in the event that the Tribunal is wrong about its determination above, the Tribunal briefly indicates the approach that it would have taken.

186. The Tribunal is mindful that is has not so far said anything about the impact of the high rate of the RPI increase and the economic situation as it existed in early 2023, whereas it has addressed that at length in other decisions, including that in the bundle of CHI/45UB/PHI/2023/0194. That is the broad economic situation, as opposed to individual financial position of the occupiers of a given pitch, the latter of which the Tribunal does not identify as a factor which can be considered.

187. As noted in that decision, there had not been arguments raised of impact due to the extent of the rise in RPI and/ or the economic climate prior to pitch fee reviews from late 2022 and onwards into early 2023. The RPI at that time was particularly and unusually high as compared to other years, at least since 2013, and it is to be hoped will not arise again.

188. The Tribunal agrees that the relatively large increase in RPI is a relevant "other factor" which can therefore be considered and it is a factor of sufficient weight around the time of the review dates that the presumption of a rise in line with RPI may be rebutted, for the reasons expressed in CHI/45UB/PHI/2023/0194 and other decisions, which it is unnecessary to express in full.

189. It is fair to say that if the site owner undertook significant work during the period of sharply rising prices, it would have incurred rather more cost than it would have at an earlier period and could be disadvantaged by a lower rise in the pitch fee. If the site owner did not undertake much in the way of works, whilst such costs as it did incur will have risen, for example wages (but on the whole those were rising at rates below inflation), the rise by the high rate of RPI may have been advantageous to it. The effect will continue year on year.

190. Whilst there was some evidence from Mr Percy of increase in the Applicant's costs, the Applicant has failed to demonstrate that a pitch fee with an RPI increase on the

previous pitch fee is reasonable or as to the level of increase which would be reasonable, much in the manner of previous decisions.

191. The Tribunal considers that the increase determined appropriate in CHI/45UB/PHI/2023/0194 of 10% and thereabouts the same figure determined in other cases would also produce the reasonable pitch fee in this case. However, it will be appreciated that is above the figure which the Tribunal has already arrived at.

192. The Tribunal has considered whether the increase should be reduced further and hence the reasonable pitch fee be lower because of the effect of the above reasoning in addition to the effect of the deterioration and decline. The Tribunal determines that it should not.

193. The Tribunal had concluded in the other cases that a 10% increase produced the sum reasonable in light of the rate of RPI and economic climate. It effectively capped the increase in those cases on that basis, although "effectively" because the decisions were not expressed in that manner and did not attempt to set any cap of wider application. Given that the increase determined in this case already falls within that, the Tribunal determines that there is no need to go further or basis for doing so.

The pitch fees determined

194. The pitch fee for each relevant pitch for 2023 onwards is therefore as follows, in the cases of Pitches 29 and 41 at the level in 2022 in the absence of entitlement to any increase:

Pitch number	Pitch fee payable 1st February onwards (2nd February in the case of Pitch 8)
7	£155.52
8	£219.00
9	£184.82
14	£194.97
16	£147.47
19	£147.47
20	£191.18
26	£238.96

27	£184.82
27a	£155.52
29	£177.25
35	£155.52
41	£177.25
50	£147.47
52	£155.52
53	£155.52
72	£155.52
74	£155.52
75	£155.52
84	£155.52
90	£155.52
107	£160.19
110	£155.52
113	£155.52

Costs/ Fees

195. 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 has sought reimbursement of the application fee of £20.00 per application.

196. It will be appreciated that the Applicant has not achieved the full increase in pitch fee. However, it has achieved an increase and most of the increase sought. The Respondents did not agree the increase. The Tribunal therefore considers that the appropriate approach would be to award the Applicant the fee against each Respondent. However, as there have been no representations, the Tribunal takes the approach below.

197. The order that the Applicant recovers its fee of £20.00 against each Respondent will automatically come into force 14 days after issue of this Decision, unless within 7 days any Respondent makes any submissions that the fee should not be so paid, in which event the order is suspended against such Respondent until determination of those representations. The Tribunal may direct the Applicant to respond if appropriate.

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.