FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/19UC/PHI/2023/0639 & 0640
Property	**:**	9 and 10 Greenacres Residential Park, Croft Road, Christchurch, Dorset, BH23 3QH
Applicant	**:**	Kathleen Conway
Representative	**:**	-----
Respondent	**:**	Jean Newman (9) Joan Foster (10)
Representative	**:**	Mark Newman for Jean Newman
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 M Jenkinson
Date of Hearing	**:**	4th June 2024
Date of Decision	**:**	3rd July 2024

DECISION

Summary of Decision

1. **The Tribunal determined that it was reasonable for the pitch fee to be changed for the year beginning 1st May 2023 in respect of Pitches 9 and Pitch 10, but taking effect from 24th July 2023.**

2. **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.**

3. **The Tribunal determined that the reasonable pitch fee involved an increase by 10%, such that the reasonable fees are £176.65 per month for pitch 9 and £190.99 for pitch 10.**

4. **The Applicant must bear the application fees.**

Background

5. The Applicant is the owner of Greenacres Residential Park, Croft Road, Christchurch, Dorset, BH23 3QH ("the Park"). The 2 Respondents are owners of park homes sited on pitches 9 and 10 respectively. The Respondents are entitled to occupy the pitches under agreements containing terms which should be set out in Written Statements.

6. 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 to the Applicant was provided [15-9 and 13-10] and allows for up to 10 units.

7. A Prescribed Form addressed to the occupier(s) of each pitch was served by way of a Pitch Fee Review Notice or accompanying such a Notice- see further below- detailing the proposed new pitch fee for each individual pitch and calculation of it, each dated 20th June 2023 [22-9 and 45-10],

seeking an increase by an amount which the Applicant says represents an adjustment in line with the Retail Price Index ("RPI"). The fees were expressed as monthly sums. The Respondents did not agree to the increase. The reviews were said to be late reviews, the review date pursuant to the being said to be 1st May for Pitch 9. There was no written statement provided, however. The Written Statement [20-10] gave a date of 1st April for Pitch 10 (but see below).

8. The RPI was said in each case to be 13.8 % taking "the RPI Adjustment" as described, as the percentage increase in the RPI over 12 months to February 2023. The application form indicates that 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.

9. The pitch fee payable sought were £182.75 per month for Pitch 9 and £197.59 per month for Pitch 10 payable by the particular Respondent as from 24 July 2023. The previous pitch fee per month for Pitch 9 was £160.59 and the previous fee for Pitch 10 £173.63.

Procedural History

10. The Applicant sought the determination of the pitch fee payable in respect of the above listed pitches by applications dated 22 August 2023 [2-9 and 2-10].

11. In terms of the procedural history, Directions were given in each case and in identical terms on 14th March 2024 [10- 9 and 9-10], envisaging a paper determination and no inspection of the Park. An objection was received in respect of each pitch such that further Directions were given in each case on 2nd May 2024 (not in the bundle) again in identical terms, in which the applications were listed for an oral hearing and an inspection was provided for.

12. The objection on behalf of Mrs Newman was detailed [30-9 to 42-9] and so is not recounted in full. Various documents [41-9 to -9], including photographs [44-9 to 47-9, 53-9, 56-9, 57-9, 59-9 and 61-9] were attached. The issues identified were with the road, the sewerage and with boundary fencing and it was indicated that all 3 issues were "ongoing and

unresolved". It was also noted that 5 of the ten homes are privately owned, including those owned by the Respondents, and five are rented out by the Applicant. The objection explained that £160.59 was the pitch fee last agreed to. In addition, it was said that there had been failings with Notice and/ or Forms in 2019, 2022 and earlier in 2023. Other documents about earlier increases from 1st May (or attempted increases) were attached.

13. Ms Foster set out her objection in a short email dated 12th April 2024 in which she said, "We have had long-standing issues with the poor state of the roadway on the site. Sewerage blockages. In the past we have been bullied with comments re we were not allowed to set up a Residents Association, but we did!"

14. The Applicant submitted a PDF determination bundle for each application separately, comprising 113 pages for Pitch 9 and 57 pages for Pitch 10. That included the applications and other documents for each relevant pitch including the Pitch Fee Review Forms and a partial Written Statement for Pitch 10 [20-10]. The bundle for Pitch 10 did not, however, include the reply form in which Ms Foster objected, nor her short email dated 12th April 2024. It did include a reply to the objection for Mrs Newman [65-9 to 68-9] plus attached documents [69-9 to 99-9], particularly several regarding sewerage and related matters.

15. 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 above and below by page numbers being the first page of any given document, followed by a hyphen and then the relevant pitch number, all in square brackets [e.g., 1-9 or 2-10], much as that is a little unwieldy but in the absence of an identifiably better method of distinguishing, and with reference to PDF bundle page-numbering of the bundle for the given pitch, both above and below. That is predominantly the bundle for Pitch 9.

The Inspection

16. The inspection took place on the morning of 4th June 2024. The inspection was attended, in addition to the Tribunal members, by Mr Mark Newman and Ms Foster. The Applicant did not attend. 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.

17. The Tribunal observed the overall condition of the Park as highlighted by 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.

18. The Tribunal of course saw the condition of the Park some approximately 10 months or so after the date from which the new pitch fee is payable and approaching 12 months from the date of the Pitch Fee Review Form. 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.

19. The inspection started towards the entrance to the Park and proceeded through the remainder. As the licence for only 10 homes indicates, the Park is a very small one. There is a short road from the public road running from the entrance between two homes and their pitches and then with limbs right and left. Looked at from the entrance, the right limb is short and the left limb the main one. There are no other roads leading off. The pitches are located one or other side of those limbs of the road.

20. The Tribunal saw the owned home and pitch to right (viewed looking into the Park)- being that of Ms Foster and that to the left. The one to the left appeared unoccupied with the home and pitch being in less than ideal condition, although the home, whilst older style, generally looked worn rather than say derelict. The porch area facing Pitch 10 was perhaps in the least visually attractive condition. Certain of the other pitches and homes looked as if better care and maintenance ought to be undertaken. Ms Newman's pitch was located to other side of Ms Foster's pitch, to the edge of the Park.

21. The Tribunal saw the fencing by Pitch 9, which was in apparently good condition. The Tribunal also saw the fencing by Pitch 10, similarly.

22. There were 3 inspection chambers along the road which were seen to be fitted with plastic covers and where there was also relatively new looking concrete around or close to the inspection chambers. Save for that concreting, there was no work to the roadway which obviously appeared recent. There appeared to have been work undertaken to pipes, perhaps new pipes laid in that sections of narrow lengths of the road surface were obvious as markedly lighter than the remainder of the read. The ground had not been compacted down well and suffered from some unevenness and cracking.

23. The road was generally not in particularly good condition, also suffering from some degrading to the sides in places and unevenness. The manhole cover by the entrance stood somewhat proud of the road around it. There were weeds growing through various cracks to the road surface.

The Hearing

24. The application was heard on 4th June 2024 at Bournemouth Combined Court in person from 12noon until 2.15pm. There was again no attendance by or on behalf of the Applicant. The Respondents were in attendance.

25. Whilst the Applicant had not attended, the Tribunal had noted her case as set out in writing and hence the Tribunal raised matters which it considered relevant which arose from that or which otherwise merited clarification.

26. Nevertheless, the written reply to the Mrs Newman's objections was not signed with a statement of truth or indeed signed at all. That could not be resolved in the absence of the Applicant to orally confirm her believe in the truth of the matters stated. The Tribunal could not therefore accept that document- and hence its contents in evidence. No further reference is therefore made to it.

27. In addition, insofar as there were matters which could amount to evidence on behalf of the Applicant, in effect the documents attached to the reply to objection, the Tribunal was able to note those as documents but considered that it had to treat them with some caution in the absence of the Respondents- and indeed the Tribunal to any extent appropriate- being able to question the Respondents about them. Given that Mr Newman had expressed comments about documents from the Respondent in writing and the documents were not accepted, that was significant.

28. There were two items of additional evidence which Mr Newman sought to refer to or provide. However, as the date for provision of evidence had long passed, no application had been made and there was no opportunity for Applicant to address new evidence which she could not have known might arise at the hearing, the Tribunal determined that it would be unfair to admit that further evidence and so did not permit Mr Newman to provide it.

29. In addition, and also given that the Applicant did not attend, the Tribunal summarises below the oral evidence and submissions received on behalf of the Respondent.

30. The Tribunal additionally clarified the basis for Mr Mark Newman being able to represent his mother. It was explained that he held a Lasting Power of Attorney to deal with the financial affairs of Mrs Newman, although there are no capacity issues. Other details were explored. The Tribunal determined that it was appropriate to accept Mr Newman as his mother's representative.

31. The Tribunal is grateful to Mr Newman and Ms Foster for their assistance in the hearing.

32. 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 oral and other evidence and submissions received

33. Ms Foster gave evidence first. The Tribunal checked that she accepted that the review date of 1st May. She said that there had been some discrepancy over dates when she purchased from the previous pitch occupier, but she was content that the date had changed and took no issue with the date.

34. Ms Foster explained that she had experienced the same problem as indicated by Mr Newman about the toilet in his mother's home. That is to say that the toilet would back fill with foul water.

35. Ms Foster was unhappy with the condition of the pitch and home the other side of the entrance road, which she indicated was not the subject of an agreement and belonged solely to the Applicant. She said that she had been told at the time of her own purchase that the home on that pitch was to be demolished. It had replaced a very old home which had burned down. That demolition has not taken place to date 14 years from her purchase of her home. It looks unsightly and detracts from her enjoyment of her home and pitch.

36. She was additionally unhappy about an incident which had occurred involving the Applicant on one occasion in respect of white fencing by Pitch 10 which she said the Applicant required her to fix but which Ms Foster maintained was not her responsibility. The fencing had been replaced approximately 4 years ago. Aside from the nature of the incident itself, Ms Foster was unhappy that the Applicant had not accepted her responsibilities. However, that had been some time before the relevant review date and was not mentioned in Ms Foster's objection.

37. Finally, Ms Foster referred to another point made in her objection, namely that she had informed the Applicant that she intended to set up a residents' association. The Applicant had, she said, stated that Ms Foster was not allowed to do so.

However, Ms Foster had spoken to her MP, the chair of the Parliamentary committee regarding park homes, who said that she was allowed. Ms Foster said she had passed that on to the Applicant who had then been horrible to her.

38. Mr Newman then gave evidence to the extent that he had knowledge of issues. He also accepted 1st May as the correct review date.

39. Mr Newman said that the broken manhole cover had been caused to break by a Tesco delivery van. He said that two covers were replaced in 2017. The whole road length had covers redone in 2017, Mr Newman said. More recently two damaged plastic covers had been replaced with further plastic ones.

40. Whilst the Applicant asserted the covers to be correct, Mr Newman said, he considers that they are not. He provided documentary evidence that the certain plastic covers were only suitable for pedestrian areas and others for lightly trafficked road and private car parks.

41. The concreting around the covers had, Mr Newman said, only been undertaken the week before the Tribunal's inspection.

42. In addition, the written objection contended that in June 2023, so after the review date, tarmac was applied to a sinking trench in the roadway.

43. In respect of fencing, Mr Newman said that the condition had been pointed out to the then site owner when he visited. The owners originally said that the fence was the responsibility of Mrs Newman. By 2015, the condition of the side fence panels were said in the written objection to be decayed beyond repair. Mrs Newman paid for replacement fencing at her cost, about which Mr Newman was unhappy, although he accepted the fencing as fine.

44. Separately, there was other decay and then damage in 2020 and 2021. Mrs Newman also paid for replacement fencing in consequence of that.

45. The two issues which Mr Newman advanced in respect of the fencing were that the Applicant had not refunded the amount paid by his mother for the new fencing and that the Applicant had not accepted responsibility for the fencing. He also did not accept the Applicant's assertion that she had not received communication about the fencing.

46. Mr Newman explained in relation to the sewerage that there was no current problem and had not been since March 2023. He did not know the details of the work undertaken around that time.

47. He did not accept that the sewerage was necessarily fine and considered that there may be a problem again. He also said that the home on Pitch 6- where an issue had arisen, is not occupied. Mr Newman suggested it was chance that problems had not arisen since.

48. Mr Newman also explained more about previous problems, notably with backing up and the toilet to his mother's home back-filling with foul water, which he considered had been caused by a blockage. Mr Newman also said that whilst the Applicant had indicated the blockage to be caused by tree roots- see more below- that had only been found correct on one occasion. Mr Newman did not accept that there may be an issue with items flushed down the toilet by any pitch occupier, as he said had also been suggested.

49. The written objection identified those problems commencing in 2021. Other details were provided, including events in March but also that Wessex Water had identified problems with tree roots in the road outside the Park and had cleared those, albeit Mrs Newman continued to experience problems with backing up for a further few days. In light of the lack of identified problems since March 2023, any further details do not need to be recounted here.

50. Despite the lack of further problems, and as touched upon above, Mr Newman was dubious about the documentation produced by the Respondent. He specifically referred in oral evidence to a drainage inspection document said to relate to an inspection in January 2023. He had also contacted Canford Drains who had confirmed that the document provided by the Applicant was a quote and not an invoice. Mr

Newman believed that any work had been undertaken not by that company but by the Applicant's family.

51. Of course, the Tribunal heard no evidence from the Applicant in relation to those matters. It may be that the documents and their veracity could have been significant if there had been matters which may have turned on them. In the event it will suffice to say that there was a document from Canford Drains and separately there were documents from company called T.A.P.S. (the latter related to the drainage inspection asserted).

52. In response to clarification sought by the Tribunal, Mr Newman explained that the Pitch Fee Review Forms had been sent with a letter from the Applicant's solicitor, Blacks Solicitors of Leeds, and in June 2023. Mr Newman set out something of the contents, which suggested the letter explained it to be notice of a late review in the terms set out in the Form.

53. Mr Newman did not take issue with the review date of 1st May for Pitch 9 and also indicated that he was content that the correct RPI had been applied. Ms Foster did not demur about the second point (her Written Statement already provided for review on 1st May, which she accepted as correct).

The relevant Law and the Tribunal's jurisdiction

Statute and Regulations

54. 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.

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

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

57. The review date is either the specific date identified in the Written Statement of terms if the agreement gives a date- not all do- or it is the anniversary of the date on which the agreement was entered into.

58. However, the review date can later be varied, by altering the terms of the agreement. That may be in writing or orally or it may be inferred from conduct. In the latter instance, that is most commonly because the site owner has sought to review the pitch fee on a different date for a period of time, which may be several years, and the pitch occupiers have year on year accepted that without challenge.

59. The limit to the above is that the review date can never be less than 12 months before the previous review date. If a site owner wishes to bring the review date to an earlier point in the year, the site owner will effectively have to miss a part year so that the date is at least 12 months after the previous review date.

60. 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.

61. 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.

62. 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."

63. 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.

64. 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.

65. 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.

66. 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.
> ....."

67. "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.

68. 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."

69. 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.

70. The relevant measure of RPI (or CPI) is the last monthly figure published by the date on which a Notice is required to be served in advance of the review date.

71. 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

72. There are various case authorities, principally from the Upper Tribunal. The Tribunal does not in this instance consider it necessary to set out elements of the judgments at any length. Instead, the Tribunal summarises briefly the principals which emerge, as follows:

- 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 Tribunal considers it reasonable for the fee to be changed.
- 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.
- 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).
- If the Tribunal 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.
- 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. They are not as informative as they might have been.

- There is lack of clear instruction in the Act about 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 a Tribunal when they determine a new pitch fee, is what they consider to be reasonable.
- 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 Where such services are reduced, or the quality diminishes, the Act requires that reduction or deterioration to be taken into account- as a factor justifying either a reduction in the pitch fee or a smaller increase than would otherwise be allowed.
- The fee must properly reflect the changed circumstances. Those changed circumstances 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.
- Deterioration is that since 2014 when the provision came into force (provided that it has not already been taken account of) and not only that since the last pitch fee review.
- 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.
- Otherwise, the Tribunal must 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.
- 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 and it is necessary to consider whether any 'other factor' displaces it. Such other factor(s) must be sufficiently weighty if they are to

rebut a presumption which has arisen in light of the statutory scheme. If it were a consideration of equal weight to RPI, then applying the presumption, the scales would tip the balance in favour of RPI".

- 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.
- Pitch fees on other sites were not a relevant factor to be taken into account.
- 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.
- The fee is for the pitch and that the personal characteristics of a particular are not part of what the fee is paid for.
- It is not 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, Parliament had chosen not to require that.
- 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.
- The Tribunal 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.

73. There is nothing identifiable 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". 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."

Findings of Fact

74. The Tribunal sets out its findings of fact to which the above law must be applied.

75. The condition of the Park was moderate. The pitches not the subject of licence agreements with pitch occupiers who owned their homes were not generally in attractive states. The pitch to the left of the entrance road (as viewed from the entrance) was in somewhat unattractive condition and the home somewhat worn as identified at the inspection. That did nothing for the feel of the Park, as being one of the first things seen.

76. The Tribunal found that the condition of the road was imperfect in light of the unevenness, degradation and the tripping hazards, for example the manhole cover by the entrance to the Park.

77. The Tribunal accepted the evidence that concreting had been carried out around the covers since the review date and accepted the evidence of the condition of the areas as at that date. The Tribunal also accepted the evidence that a trench had been sinking in 2023 and tarmac applied but after the review date, such that an issue was present as at the review date.

78. The Tribunal found those areas had been unsightly and presented something of a tripping hazard prior to that work. The Tribunal had insufficient evidence about size, depth or condition more generally, on which to make any more specific finding about the formerly sinking trench.

79. The Tribunal also on the whole preferred the evidence of Mr Newman to the written comments of the Applicant with regard to the suitability of manhole and similar covers along the main part of the road. The Tribunal further applied its expertise in identifying that the covers were suitable for pedestrian traffic but not for regular vehicle use.

80. However, the Tribunal found that the roadway is a lightly trafficked one. That does not mean that every instance of vehicle use is by a vehicle which is light, rather it relates to the extent of usage. The most notable features were that the road serves only 10 pitches, provides no access other than to the residential road which leads into it and is sufficiently far from a major route that the Tribunal found it very unlikely that anyone other than the 10 pitch occupiers and their visitors (whether friends and family or for deliveries) would use the road.

81. Those covers are likely to last for a shorter time than more substantial ones would. However, there was no damage to the covers at the time of the inspection, there was no identified relevant damage at the review date and there was nothing problematic with the covers specifically, other than their likely longevity.

82. In respect of the sewerage, the Tribunal found that no problem with that had been demonstrated as at the pitch review date.

83. The Tribunal accepted that there had been issues previously, particularly in and around 2010 and 2017 as explained by Mrs Newman's objection and those had understandably caused concern to the Respondents. However, those are not relevant to the pitch fees in question, notwithstanding that they would have been relevant to determinations in respect of pitch fees for previous years.

84. The Tribunal noted Mr Newman's doubts about works undertaken in respect of the sewers and apparent blockages. However, whoever had undertaken the work and whatever they had done, and whilst there may still be an issue with the sewerage but the effects of which are not apparent, the simple fact was that no further identifiable difficulties had arisen. Hence the evidence supported work having been successful, irrespective of what that was and who undertook it, so that no issue remained as at the review date.

85. The Tribunal made no findings about any drainage inspection in January 2023 or as to the Canford Drains document given that the matter relevant to it in terms of the condition of the Park was that condition as at the review date. Given the finding above, what may or may not have been done before that date could not usefully add to that.

86. With regard to the fencing, the inspection again only demonstrated the condition as the inspection date. The Tribunal was able to have regard to the photographs of the condition as at the dates those were taken and to the other evidence on behalf of Ms Foster and Mrs Newman.

87. As to Pitch 10, the Tribunal noted and accepted Ms Foster's evidence that it had been replaced approximately 4 years prior to the hearing date, and hence approximately 3 years prior to the review date. There was no ongoing and unresolved issue found by the Tribunal as to condition which arose at the review date, where the relevant question was about the fencing in situ at the review.

88. With regard to the fencing by pitch 9, the Tribunal accepted that had it been replaced by Mrs Newman and the circumstances leading to that. The Tribunal again found no issue arose with the condition as at the review date.

89. The Tribunal noted the nature of the issues which Mr Newman had about that the replacement of fencing, accepting that he did. There was no evidence that the Applicant had accepted that she was responsible for the fencing.

90. Whilst the Tribunal accepted that there had been a historic problem, the evidence was that had been addressed long

before the review date and that no deterioration arose in relation to that fencing at the time relevant to the determination. The issues as to payment and responsibility were separate to the condition of the fencing as at the review date.

91. The Tribunal, without it must be emphasised casting doubt on Ms Foster's evidence, does not consider it appropriate to make any finding about the incident mentioned some way before the review date.

92. Whilst the Tribunal had sought some clarification about the information sent by the Applicant regarding the review and new pitch fee, the Tribunal made no specific findings as to whether the letter sent to the Respondents with the Pitch Fee Review Form constituted a Pitch Fee Review Notice, although it noted the evidence of Mr Newman. The Tribunal determined that there was no need for it to do so. The Tribunal similarly made no specific finding as to the appropriate RPI, again noting the position of Mr Newman. Even if any finding had been required, it would be problematic to address what would have been a new matter in the absence of the Applicant who did not know any point might arise.

93. For the avoidance of doubt, the Tribunal's comments above should not be taken to suggest that it considers there to be any issue with the Notice or RPI, any more than it should be taken that the Tribunal considers the opposite. Rather the Tribunal's position is exactly as stated, that the matter is not one on which it needs to make any finding (or other determination) because nothing has been raised on which a determination is required.

94. The Tribunal noted that the Respondents both accepted the review date as 1st May and insofar as relevant that the documents indicated that had been agreed by Ms Newman by course of conduct in paying from that date in the past (although no increase had been agreed in any event in more recent years). It was not necessary to make any finding given that date was not in issue.

Deterioration and/or Decline?

95. 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 1st May 2023.

96. The Tribunal does not seek to repeat the findings about the condition. Nevertheless, the Tribunal does make clear that the deterioration identified as at the review date is that to the roadway and in general to pitches not the subject of agreements with park home owners. Not therefore including the sewerage or fencing.

97. The Tribunal does make clear that there is no hint that the condition of the Park included difficulties with those matters identified by the Tribunal from the outset so that the poor elements were always poor. Hence its determination of deterioration.

98. 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.

99. 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.

100. 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.

101. 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.

102. 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.

103. 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.

104. Hence, taking matters overall, the Tribunal found that there had been some deterioration in the condition of the Park as at the review date, although not the most significant. The Tribunal also found that the nature of the deterioration was such that it also led to a decline in amenity.

Other factors- other matters raised by the Respondents

105. The Tribunal identified that the issues in respect of establishing a residents' association and potentially other conduct if it occurred close to the pitch fee review date could potentially be other factors which might rebut the presumption of a rise in line with RPI if that presumption arose.

106. They could also be factors to which regard should be had in considering whether the presumption had arisen in the first place. Whilst they were not factors to which the Tribunal was required to have "particular regard", necessarily the need to have that level of regard to specified matters left open the ability to also have regard to other matters. That said, some care may be needed in considering such other matters in the context of whether the presumption arose on the one hand and in relation to rebuttal of it on the other.

107. Given that the incident referred to by Ms Foster was not around the review date and given the nature of the residents' association issue, the Tribunal did not consider the former as

a matter to which regard should be had and the latter was a matter of only minor weight.

108. The Tribunal determined that another issue mentioned in the objection of Mrs Newman was also a matter of very little weight and with no effect. That was that the pitch fee had been described in communications as ground rent.

109. A pitch fee is not ground rent. It encompasses elements which ground rent does not- see the definition of pitch fee above. However, it is not impossible to see that the pitch fee might be incorrectly described- it does include use of the pitch- and there is nothing which demonstrates that was intended to be malicious or misleading.

110. In a similar vein, the Applicant no doubt wished the intended greater fee to be paid but it did not need to be unless agreed by the occupier or determined by the Tribunal. The communications at least arguably went too far in asserting that the increased fee had to be paid- in law it did not.

111. However, the Tribunal considers that whilst the Applicant ought to understand the law in respect of pitch fees as a site owner, the incorrect assertion is not a matter which ought to sound in relation to the pitch fee itself and the Tribunal therefore determined is not a matter to which regard should be had here.

112. Not dissimilarly, the fact of previous demands which were incorrect or served with insufficient notice and/ or were otherwise not agreed to- and for completeness the Tribunal finds that the previous proposed increases were not agreed to- is also determined not to be a matter of more than little weight and not a matter which affects the outcome when set against the matters to which particular regard should be had.

113. If it had been, the greater significance may well have been identified in the fact that the Applicant had not achieved increases in the pitch fee on occasions when she may well have achieved such an increase in the event of valid demands, served in time and following which a determination by the Tribunal was sought. However, as the Applicant did not seek to pursue matters when she could

have, the Tribunal considers the point carries little weight- as it returns to below.

114. The Tribunal has noted the fact that Mrs Newman had paid for replacement fencing having been informed by the site owner that it was her responsibility. However, the Tribunal prefers not to make any determinations as to the correctness or otherwise of that or any consequential matters in case anything might proceed in another forum. It is sufficient to record that the Tribunal again considers the matter would not carry weight in the context of a pitch fee review (and hence does not require any findings or determinations to be made).

115. Finally, whilst references are made in the written objection to issues as to the Applicant's address and contact details, those are also not matters which the Tribunal determines carry weight in a pitch fee review so as to have any impact on the determination of the pitch fee required of the Tribunal.

116. For the avoidance of doubt the matters, none of the matters in this section would have been weight factors to rebut a presumption of a rise in line with RPI, whether individually or collectively.

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

117. The first question is whether there should be any change from the pitch fee for 1st May 2023 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.

118. The Tribunal is mindful that it must have particular regard to paragraph 18(1) factors- and indeed other factors as identified above- 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.

119. Whilst the Tribunal noted that the pitch fee had not increased in 2020, 2021 or 2022 because, at least for pitch 9, Ms Newman had refused to pay the increased fee and the Applicant had not sought any determination by the Tribunal, as indicated above, the Tribunal did not place any weight on that.

120. It was open in respect of those years to the Applicant to seek a determination of the pitch fee. The Applicant chose not to do so and to leave the pitch fee as it was. The Tribunal simply follows the result of that choice. Equally, it is said in the 2nd Respondent's objection that Ms Newman had refused to pay the increase in 2020 and 2021 because of problems with the roadway and then in 2022 for that reason and because of the sewerage and the fence. As identified above, the fence and sewerage are not relevant to the fee for the particular review date.

121. However, the more general point to make is that Tribunal has never previously taken account of the condition of the any of those elements of the Park, because the question of the fee and any argued deterioration has never been placed before it.

122. 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.

123. 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.

124. 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.

125. 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 she sought for the period July 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.

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

127. 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.

128. 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. It was quite a fine balance as to whether the weight was sufficient and the Tribunal gave careful thought to whether there was weight to be given but not enough to prevent the presumption nevertheless arising.

129. 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.

130. 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.

131. The Tribunal considers that in failing to maintain the level of maintenance, the level of cost incurred reduced. 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 and such an exercise would be likely to be onerous. Nevertheless, plainly if not all appropriate maintenance is being undertaken, cost for such maintenance is not being incurred.

132. 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.

133. The Tribunal determines that there ought to be a reduction 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 is not the full amount of RPI. That said, the Tribunal considers that reasonable effect is a relatively modest degree of reduction in the rate of increase of the fee.

134. The Tribunal determines that weighing the decline and deterioration against likely increase in costs and considering carefully the statutory provisions and case authorities as a whole, the level of pitch fee reasonable for each pitch is 10% higher than the previous fee. That is most of the increase sought by the Applicant, but it will be appreciated is not the entirety of it.

135. The Tribunal should make it clear that the Park is a very small one and 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 the pitches as compared to the other. The Tribunal acknowledges that the less than entirely satisfactory condition of pitch 1 and the home on affects Ms Foster more than Mrs Newman, the distinction is not sufficient to alter the overall result. Therefore, the same approach has been taken in relation to both pitches.

The pitch fees determined

136. The pitch fee for each relevant pitch from the review date and onwards is therefore £176.65 per month for pitch 9 and £190.99 for pitch 10, although only payable from the late date of the review in practice.

137. The Tribunal notes that the Written Statement for Pitch 10 provided for a weekly pitch fee. However, the documentation provided indicates that the pitch fees have been charged as monthly sums for a significant time- albeit the precise time is unclear.

138. There is no suggestion that the overall fee for the given year was altered at the time of any change to calculating monthly rather than weekly. Given that no issue has identifiably been taken about fees being calculated monthly, the Tribunal finds that there must have been a variation of the terms by conduct and does not consider it necessary to explore the matter further.

Costs/ Fees

139. 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.

140. 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. That said, the Applicant failed to attend the inspection or the hearing and so the Tribunal did not receive the benefit of any clarification of the Applicant's case. Neither were the Respondents or the Tribunal able to ask any questions or put any matters to the Applicant. That did not assist the process. The Applicant failed to comply with her duties to assist the Tribunal in the case.

141. The Tribunal considers that it is properly able to take account of that in the broad determination of the question of who should bear the pitch fees. The Tribunal has is minded to consider that the appropriate approach is that the Applicant ought to bear the fee against each Respondent. However, as there have been no representations, the Tribunal takes the approach below.

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