



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference	:	CHI/18UH/PHI/2023/0580-0600
Property	:	1, 5, 7, 23, 24, 30, 33, 34, 37, 38, 39, 41, 42, 45, 46, 47, 49, 51 Mulberry Court, Picket Piece, Andover, SP11 6LX
Applicant	:	Southern Country Parks Ltd
Representative	:	Victoria Osler of Counsel Instructed by Apps Legal Ltd
Respondent	:	The pitch occupiers of the relevant pitch numbers
Representative	:	Mr Salisbury – Pitch 68
Type of Application	:	Review of Pitch Fee: Mobile Homes Act 1983 (as amended)
Tribunal Members	:	Mrs J Coupe FRICS Mr C Davies FRICS Mr P Smith FRICS
Date & Venue of Hearing	:	6 June 2024 Basingstoke County Court, RG21 4AB
Date of Decision	:	16 August 2024

DECISION

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Summary of Decision

The Tribunal determines that the proposed pitch fee for each of the Respondents is reasonable and is payable from the 1 April 2023.

The reasons for the Tribunal's decision are set out below.

REASONS

Background

1. The Applicant is the owner of Mulberry Court, Picket Piece, Andover, SP11 6LX ("the Park"). The 18 Respondents are owners of mobile homes sited on the listed pitches. The Respondents are entitled to occupy the pitches under agreements of various dates. Nothing turns on the dates of the agreements and nor is there dispute as to the Respondent's right to occupy the respective pitches.
2. The Park is a protected site within the meaning of the Mobile Homes Act 1983 ("the 1983 Act"). The definition, found 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.
3. By way of a Caravan Site Licence in favour of Wyke Down Limited, dated 6 August 2014, Basingstoke and Deane Borough Council Maidstone Borough Council granted permission, pursuant to Section 3 of the Caravan Sites and Control of Development Act 1960 for 125 caravans to be sited on the Park at any one time. [71] The Site Licence was transferred to Mr John Romans of John Romans Park Homes Ltd on 5 October 2015. [70] Mr Romans is the sole Director of the Applicant company. Currently there are 55 occupied mobile homes on the Park.
4. On 28 February 2023 a letter addressed to each Respondent was served by way of a Pitch Fee Review Notice with the prescribed Form, detailing the proposed new pitch fee and its calculation, with effect from 1 April 2023.
5. The Applicant calculated the adjustment in line with the Retail Prices Index ("RPI") from, what they stated was February 2023, that being 13.4%. 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.
6. With the exception of Pitch 24, the pitch fee review Notices were identical in terms of the proposed new pitch fee and effective date, that being, in each instance, an increase from £701.63 to £795.65 per quarter payable from 1 April 2023. The proposed increase in pitch fee in regard to Pitch 24 is £841.95 to £954.77 per quarter, payable from 1 April 2023.
7. The Respondents did not agree to the increase and, on 28 June 2023, the Applicant sought a Tribunal determination of each matter. No challenge as to the validity of the Notice was raised by any Respondent.

8. These reasons address in **summary form** the key issues raised by the parties. They do not recite each point referred to in submissions but concentrate on those issues which, in the Tribunal's view, are fundamental to the determination.

The Law

9. The relevant law is set out in the Mobile Homes Act 1983 (as amended) ("the Act").
10. Section 1(1) of the Act provides as follows:
(1) This Act applies to any agreement under which a person ("the occupier") is entitled –
(a) To station a mobile home on land forming part of a protected site; and
(b) To occupy the mobile home as his only or main residence.
11. The Tribunal derives its jurisdiction to determine disputes in these matters by virtue of Section 4(1) of the Act which states as follows:
(1) In relation to a protected site a tribunal has jurisdiction –
(a) To determine any question arising under this Act or any agreement to which it applies; and
(b) To entertain any proceedings brought under this Act or any such agreement,

Subject to subsection (2) to (6)
12. Under the Act, terms are implied into all agreements to which the Act applies. Those implied terms are set out in Chapter 2 of Part 1 of Schedule 1 of the Act.
13. The relevant terms for the purposes of a pitch fee review are set out at paragraphs 16-20 of that part of the Schedule. In summary, a review of a pitch fee is governed by three statutory principles:
- i. The pitch fee can only be changed either with the agreement of the occupier or by determination by the Tribunal;
 - ii. The pitch fee shall be reviewed annually as at the review date;
 - iii. A presumption that the fee will increase or decrease in line with the variation in the Retail Price Index ("RPI").
14. Paragraph 16 states that a pitch fee can only be changed in accordance with paragraph 17, either –

(a) With the agreement of the occupier, 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."
15. Paragraph 17(4)(a) states that where the occupier does not agree to the proposed new pitch fee *"the owner [or . . . the occupier] may apply to the [appropriate judicial body] for an order under paragraph 16(b) determining the*

amount of the new pitch fee.”

16. Paragraph 17(5) provides that *“An application under sub-paragraph (4)(a) may be made at any time after the end of the period of 28 days beginning with the review date [but . . .] no later than three months after the review date[.]”*
17. Paragraph 18 requires the Tribunal, in determining the new pitch fee, to have regard to particular factors:
 - i. Any sums expended by the site owner since the last review date on improvements;
 - ii. Any deterioration in the condition and any decrease in the amenity of the site;
 - iii. Any reduction in the services provided by the site owner and any deterioration in the quality of those services;
 - iv. Any legislative changes affecting costs.

The Inspection

18. The inspection preceded the hearing on the morning of 6 June 2024 and was attended, in addition to the Tribunal members, by Mr Romans, Director of the Applicant, Ms Osler of Counsel and Ms Apps, instructing Solicitor. Mr Salisbury represented the Respondents and was accompanied by Mr Lambert, Respondent of No. 47 Mulberry Court.
19. Mr Salisbury adopted the position of the joint Respondents’ representative in place of Mr Raishbrook upon notification of such to the Tribunal and the other party on 24 April 2024. Also, in attendance were Mr Jonathan Dunn, co-Director of Cissonius Developments, and Mr Elliot Chambers, site manager at the relevant date. The inspection took approximately one hour.
20. The Tribunal Chairman explained that the attendees were welcome to indicate areas that they wished the Tribunal to view and upon which they would later rely on in the hearing but that the Tribunal would not take any evidence during the inspection nor have regard to any comment passed at the inspection.
21. The Tribunal observed the overall condition of the Park as highlighted by each party within their written submissions but did not undertake a formal survey of any part of the Park.
22. The Tribunal is mindful that the inspection was carried out some considerable time after the date upon which the Pitch Fee Review Notice was served and from the date upon which the proposed new pitch fee became payable. The inspection is only capable of showing the condition of the Park as at the date of inspection and not as at any other date. That said, it was helpful for the Tribunal to view not only the configuration and amenity of the site but as an aid to visualisation when the parties later referred to specific factors during the hearing.

23. The site is located off Walworth Road in Wyke Down, close to Picket Piece. To the north of the Park is the railway line, the boundary of which is maintained by British Rail. The Park slopes downwards towards the railway line. To the east of the Park, and directly adjacent to it, is a commercial storage compound, a golf driving range, a commercial unit, and Wyke Down Country pub dating from 1873 and a car park.
24. The storage compound, pub and golf driving range are located on land owned by the Applicant and leased to third parties. Twenty acres of farmland immediately to the east of the driving range and upon part of which motorcycles race is also within the Applicant's ownership but, again, is leased to a third party.
25. The inspection commenced from the site entrance, accessed via electric gates, where the Tribunal observed the difficulty in exiting the Park onto a country lane with limited visibility and fast-moving traffic. The Tribunal were shown two mirrors, a reflective bollard, and lighting installed to assist with visibility. Vegetation was noted to be closely cut.
26. On entering the site, the Tribunal observed two 8mph signs and signage indicating the location of mobile homes.
27. Directly opposite the entrance, the Tribunal observed an open space of communal ground, known as "the Green". Prior to the inspection the Respondents had identified areas of uneven ground and various protrusions by way of small flags placed in the ground.
28. The Tribunal walked the entirety of the site with each party pointing out features later relied upon in the hearing.
29. The Applicant indicated the hammerhead road system introduced approximately one year ago.
30. A large pile of spoil, unmade roadways, various alleged trip hazards and overgrown vegetation approximately 2-4 feet in height were pointed out by the Respondents.
31. A separate entrance for construction traffic was identified.
32. The Applicant explained the layout of the site drainage system and identified the inspection chambers. No foul smells were noted.
33. The Respondents identified what they termed poor design and workmanship in relation to a number of retaining fences on sloping boundary lines between units. No movement was evident to the Tribunal on the day of inspection.
34. A steel framed pedestrian gate with security keypad, providing access to the public house carpark, was shown to the Tribunal.
35. The proximity of the commercial ventures on land adjacent the Park were shown to the Tribunal, as was the approximate location of the land, some two fields distance, where the motorcycle noise disturbance allegedly

emanates from.

The Hearing

36. The hearing was attended by all parties present at the site inspection and, additionally, a number of residents from Mulberry Court.

The Applicant's Submissions & Evidence

37. Each Respondent's written statement setting out the terms of their agreement includes provision for the payment of a pitch fee on a quarterly basis and an annual review of the pitch fee on 1 April.
38. On 28 February 2023 the Applicant served a pitch fee review Notice, and associated documentation, on each Respondent proposing to review the pitch fee from 1 April 2023 in line with the percentage change in RPI of 13.4%, that being the figure for January 2023, as published in February 2023. The Respondent's did not agree the new pitch so, in due course, the Applicant applied to the Tribunal for determination of such.
39. The Applicant relies upon the Upper Tribunal decision in *Vyse v Wyldecrest (Management) Ltd* [2017] UKUT 24 (LC) where it was held that the starting point is that there is a presumption that a pitch fee shall not increase or decrease by more than the relevant RPI percentage unless it is unreasonable to do so; that the presumption operates unless it is displaced by other competing matters which renders an increase unreasonable; and that particular regard must be had to matters at paragraph 18(1) but other "weighty matters" may also displace the presumption.
40. The Applicant also relies upon the Upper Tribunal decision in *Wyldecrest Parks (Management) Ltd v Whiteley and Ors* [2024] UKUT 55(LC) where Martin Rodgers KC summarised what is to be taken into account in determining a pitch fee in the following terms:
- "In summary, where none of the factors in paragraph 18(1) is present, and no other factor of sufficient (considerable) weight can be identified to displace the presumption of an RPI increase, the task of the tribunal is to apply the presumption and to increase the pitch fee in line with inflation. 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."
41. Relevant to these applications are the following subsections of Paragraph 18:
- 1(aa) any deterioration in the condition, and any decrease in the amenity, of the site or any adjoining land which is occupied or controlled by the owner since the date on which this paragraph came into force (in so far as regard has not previously been had to that deterioration or decrease for the purposes of this sub-paragraph);
- 1(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 (in so far as regard has not previously been had to that reduction or deterioration for the purposes of this sub-paragraph);

42. The Respondents challenge the reviewed pitch fee on the basis that the presumption of an inflationary increase has been displaced. For reasons which follow, the Applicant disagrees.
43. Witness evidence on behalf of the Applicant was submitted by Mr Romans, sole Director of the Applicant; by Mr Dunn, co-Director of Cissonius Developments; and by Mr Chambers, site manager at the relevant time. Each witness spoke to their respective statement and each addressed the points within their knowledge that were relied upon by the Respondents.
44. The Tribunal finds it convenient to list the factors complained of by the Respondents in the order addressed by the Applicant.

Applicant's general statement

45. The Applicant purchased the Park in or around October 2015, along with the adjacent pub and farmhouse.
46. In or around 2021/2022, the Applicant acquired the storage compound, golf driving range and around 20 acres of farmland.
47. Prior to the Applicant's acquisition, the site was operated as a touring and camping caravan site. Having obtained a site licence for 125 residential units the Applicant, in March 2018, entered into an agreement with Cissonius Developments Ltd to redevelop the site as a park home estate, and to market and sell the park homes. The physical redevelopment of the site being carried out by a firm known as Jaytrack.
48. On an informal basis, Cissonius Developments Ltd manage and maintain the Park.
49. The Applicant has no involvement with the sales of new homes on the Park, such remit falling to Cissonius Developments Ltd and another company, Full Parks Ltd.
50. The site is to be developed in 5 phases, with phases 1 to 4, including the infrastructure and all concrete bases for the sitting of the mobile homes, now complete. There are 55 occupied park homes on the Park.
51. Each Respondent was aware at point of purchase that they would be moving onto a live development site which, by its very nature, would involve an element of disruption and noise disturbance whilst works were undertaken and the Park completed.
52. The Applicant had not anticipated a downturn in the market which resulted in a reduction in demand for new homes and ultimately an extension of the time period for completion of the development. Market conditions, they argue, are outside of their control.

Disturbance from adjoining land

53. Whilst acknowledging that motorcycles do, on occasion (typically at weekends) race on nearby land owned by the Applicant, this land is neither adjacent the Park and nor, being leased to a third party, is under the control of the Applicant. Furthermore, the Respondents have submitted no

evidence of the alleged disturbance.

54. Similarly, in respect of alleged noise disturbance generated by the public house and other adjacent commercial ventures, such land is not within the control of the Applicant and nor have the Respondents submitted any evidence of purported disturbance.

Lack of farm shop and bus stop

55. The Respondents refer to a commitment by the developer of both a farm shop and a local bus stop, neither of which materialised. The Respondents advance no evidence that such an undertaking was made on the part of the Applicant. Furthermore, the lack of either facility cannot amount to a deterioration in the condition of the Park nor any decrease in the amenity of the site, as neither facility ever existed.

Roads

56. The Respondents were aware on purchasing their homes that the Park remained under development. The roads serving the Respondent's homes are even and free of potholes. The roads are maintained and regularly swept, with mud and oil cleared whenever necessary.

57. When the fifth and final stage of the development is complete, all roads will be dressed with a tarmac surface. However, until such time as heavy work traffic has ceased using the roads it would be nonsensical to undertake such work. The Applicant acknowledges that completion of the site has been significantly delayed due to the economic climate and a fall in demand for homes. However, the Applicant remains committed to finishing the roads in due course. In the meantime, the Applicant argues that the roads are functional.

58. In regard to drainage, Mr Dunn stated that this is embedded in a permeable driveway, with additional storm drains installed where necessary. Whilst acknowledging that kerb stones are on occasion damaged by works traffic, these are replaced promptly.

59. In reply to concerns raised by the Applicant on the point of emergency access, the Applicant stated that the road layout and width comply with the Site Licence and that no reports have been received from either the Local Authority or Emergency Services of any difficulties in accessing homes on the Park.

60. The installation of a hammerhead has improved both access and parking in that immediate vicinity.

61. In summary, whilst the road surfaces remain in part unfinished, the Respondents have not proven this to be a deterioration in the condition of the site.

Inadequate mobile home signage

62. Signage has neither changed nor deteriorated since the Respondents occupied the site.

Safety

63. It is not within the gift of the Applicant to alter the speed restriction on Walworth Road. Nor is it incumbent on the Applicant to provide a second site entrance. Attempts have been made by the Applicant to improve safety in exiting the Park through the installation of mirrors, reflectors and lighting above the site signage.

Fire

64. A fire risk assessment was completed in January 2024, the action points from which have been addressed.

Lighting

65. Site lighting is considered adequate. Timers have been fitted to street lighting in response to complaints from residents whose homes are sited in direct line of the lights.

Security

66. The site is secured by a gated entrance with resident only access. During the day the gates are open, whilst at night, for security purposes, the gates are closed. The Applicant accepts that the gates malfunctioned for a period of time but are now in good repair. No evidence has been advanced that any crime was committed during the down period.
67. Security has been improved by the replacement of the timber gate leading to the pub car park with a sturdy composite gate with keypad access.

The Green

68. LPG tanks serving phases 1 to 3 of the development are located beneath the communal green, access to which is gained by green lids and manhole covers.
69. In November 2023, upon installation of mains drainage, the septic tank installed beneath the Green was removed. Unavoidable disturbance of the surface to the Green was caused however such disruption was temporary, whereas the connection to mains drainage is considered a permanent and significant improvement. The upgrade to the drainage system also eradicated the complaint of foul odours.

Ground works

70. By their own admission, the Respondents were aware that they were moving onto a site under construction and must therefore have anticipated that such works would create a degree of dust and noise. Works on site are limited to standard working hours of 8am – 4.30pm Monday to Friday. No works are undertaken at weekends. Furthermore, regular maintenance of the site, including any empty plots, has helped to reduce the impact of any development works.

Summary

71. The Applicant states that the Respondents have failed to demonstrate that any of the paragraph 18(1) factors apply in this matter and neither is there any other factor of sufficient weight to displace the RPI presumption. Accordingly, the Tribunal was invited to confirm the proposed increase in pitch fee, calculated in accordance with the appropriate percentage change

in RPI.

The Respondent's Submissions

72. The Respondent spoke to a document dated 8 April 2024, as prepared by Martin Raishbrook in his capacity as 'Mulberry Court Spokesperson/representative' and which states, at paragraph 2, "This document represents the views of the Mulberry Court Respondents, who have all read and approved it". The documents continue, at paragraph 4 with "We are basing our claims on Loss of Amenities in several instances." A series of photographs were appended to the document.
73. The Respondents did not rely upon any witness evidence.
74. The Respondents state that, contrary to advertising literature provided at point of purchase and on the Park's website, the Park is not a peaceful residential development within a safe and secure environment. Instead, residents experience noise pollution from motorcycles racing "in a local field", from commercial vehicles entering and exiting the pub car park, and from car-boot sales operating from the same car park. All this occurring on land owned by the Applicant. [22].
75. The Respondents state that "at the Sales Pitch" many residents were told that there would be a Farm Shop for daily essentials and that the bus stop would be re-routed to pick them up, possibly in the pub car park. As of yet this has not happened and the nearest bus stop remains some ½ mile distance via a country lane with no pavement and a 60mph speed limit. [22]
76. Statute provides that an inflationary increase to the pitch fee in line with RPI is a maximum but that such figure is not compulsory.
77. The Respondents state that whilst all residents were aware they were moving onto a "live building site", Mulberry Court, often resembles a rubbish dump and, for a long period, the site appeared abandoned.
78. The Respondent qualifies the content of his document by saying that "The vast majority of what we state below was in place as of April 1st 2023, but we have also taken the opportunity to refer to some issues that have arisen over the last 12 months. They all indicate the PO's attitude to the residents". [23]

Roads

79. Mr Salisbury explained that, whilst in the main, the site roads are considered adequate, some roads still await their final topcoat tarmac dressing, whilst roads to the West of the Park remain unsurfaced. Instances have occurred where mud and oil have been left on the roads and, on occasion, the clean up operation has been significantly delayed. There are no footpaths on the development and kerb-stones, described as "cheap and not fit for purpose" by the Respondents are regularly in need of replacement due to damage. Trip hazards have been created where inadequate repairs to road surfaces have been undertaken.

80. A temporary turnaround area outside plot 24 was eventually replaced by a permanent one. However, the delay caused “mega disruption for 14 homes”. [24]
81. The Respondent states that road drainage was non-existent for approximately 4.5 years, resulting in regular pooling. Although some drainage has now been installed, this in itself creates a trip hazard.

Planning

82. The home numbering system on Mulberry Court is confusing and visitors’ signage is inadequate.
83. The linking of the road between plot 51 and plot 75 was never explained to the purchaser of plot 51 who assumed, from plans provided, that they were moving to a cul-de-sac location. The width and layout of the road is problematic, and there was no engagement or consultations with those home owners affected. Some parts of the road network are difficult to navigate for emergency vehicles, delivery vehicles, residents and the like.

Safety

84. The width of the site entrance is considered inadequate, as is visibility when exiting the Park, particularly as Walsworth Road is a 60mph lane frequented by heavy vehicles. It is suggested that a second entrance at the Western end of the site should be created and further attention paid to maintaining hedges adjacent and opposite the entrance. Mr Salisbury accepted that the installation of mirrors, a reflective bollard and lighting by the Applicant were welcomed but argued that safety could still be improved.
85. The Respondents state that site traffic regularly exceeds the 8mph restriction and that additional signage is required.
86. In March 2020, two Fire Points were installed on the Green, prior to which, and contrary to the Site Licence conditions, no fire-fighting equipment was available. Four years ago, fire extinguishers were fitted. Additional Fire Points have been installed in recent months. Mr Salisbury stated that the Applicant’s apparent lack of attention to fire safety resulted in residents feeling unsafe and at risk.
87. Lighting – Lighting was only installed in November 2019 and soon after malfunctioned. Although repaired and additional lighting installed, the lighting remains inadequate and ineffective.

Park Entrance and Security

88. The site entrance electric gates, installed in May 2019 and commissioned in July of the same year, are open between the hours of 07.00/08.00 until 18.00/19.00 (dependent on the time of year) and are closed overnight. On occasion, due to malfunctioning, they have been found permanently open, for example during Winter 2022/23 when they remained open for approximately 2.5 months resulting in compromised security. Prior to the replacement of the pedestrian gate between the Park and the pub, the timber gate fell into disrepair thereby risking security on the Park.

89. A number of residents live alone and security on the Park is of increased concern, particularly to women.

The Green

90. The Green is said to have been left in a parlous state with uneven surfaces which cause a trip hazard, resulting in two known falls.
91. The area of recreational ground is considered inadequate and in contravention of the Site Licence which requires “where it is practical, suitable space equivalent to approximately 1/10th of the total area of the site shall be allocated for recreational purposes”.
92. The Park was connected to mains drainage in November 2023 following which the removal of the septic tank created “havoc and devastation” to the Green. Use of the Green was limited for two months over the Christmas period. The works damaged the boundary of plot 24 which is yet to be rectified.

Sewerage and Gas Tanks

93. The Respondent repeated the collective concerns over alleged trip hazards created by inspection chamber lids to the below ground tanks. In March 2020, without engagement or consultation with the residents, excavations for additional LPG gas tanks beneath the Green commenced. Such work caused disruption and inconvenience to the residents extending to four months. During this period fifty percent of the Green was unavailable for residents use.
94. In 2019 the septic tank malfunctioned, resulting in particularly strong and unpleasant odours. Various attempts to rectify the issue alleviated the symptoms but failed to eradicate the problem. The issue was rectified in November 2022 but caused inconvenience to residents in the interim period and severely limited the enjoyment of the Green.

Ground Works

95. The ongoing constructions works have created noise, dust and disturbance to residents, worsened by dry cutting of paving slabs in close proximity of residents’ homes.
96. Major (unspecified) incidents caused interruptions to residents’ water and gas supplies. A question was posed as to whether the water pump will be adequate when new homes come online.
97. Mulberry Court slopes downward from South to North, with, in one instance a 4’-5’ difference in ground level between plots. The Respondents’ state that inadequate remedial works have been undertaken by the Applicant, which are likely to cause future problems not only to the particular pitch but to others across the site.
98. Around March 2023 further pads and drives forming part of phase 4 were developed. However, works were left part completed and an eyesore for extended periods. A pile of spoil from the drainage excavation works remains on site some 5 months after completion of the works and is described as a “blot on the landscape.”

Pitch Fees

99. Referring to the examples listed in the preceding paragraphs the Respondents state that the Applicant has failed to meet their repair and maintenance liabilities, as required under the pitch Agreements, for not only the year in question but also in regard to previous years. Furthermore, the Applicant has failed to disclose to the Respondents documentary evidence in regard to costs for utilities or other services payable by the occupier to the owner under the terms of their Agreement.
100. The Respondents are under a duty to maintain their homes in a clean and tidy condition but are being prevented from doing so whilst dust continues to be created by ongoing building works.

Findings of Fact & Determination

101. Tribunal Directions dated 26 February 2024 required the Respondents to submit any objection to the proposed pitch fee document and any witness statements or documents they wish to rely on to the Tribunal and the other party by 25 March 2024. Further Directions were issued on 13 March 2024. On 18 April 2024 Directions setting the matter down for a hearing and the requirements for a hearing bundle of documents were issued. Paragraph 14 of the latter Directions stated, in bold, that the Tribunal would only consider documents in the bundle.
102. In oral submissions Mr Salisbury, acting as a representative of the Respondents, repeatedly, and it should be said, with good intention, raised various points outside of those included in the bundle and referred to documentation not previously disclosed to the Applicant or Tribunal. Whilst a degree of latitude was afforded Mr Salisbury in his advocacy the Tribunal could only take account of the evidence and witness statements before it.
103. However, in pursuit of the overriding objective of the Tribunal to deal with matters fairly and justly, the Chairman suggested and, having taken instructions, Ms Osler agreed, that Mr Lambert who, as a named Respondent to the proceedings was in attendance at the hearing and who had accompanied Mr Salisbury during the site inspection, be afforded an opportunity to provide oral witness evidence and be cross-examined, despite having not submitted a witness statement. Having taken the lunch break to consider the proposal, Mr Salisbury advised the Tribunal that Mr Lambert declined the invitation. The Tribunal's findings are therefore based upon the evidence before it, the site inspection and the oral submissions of each advocate.
104. The pitch fee review Notices ("the Notices") were issued on 28 February 2023 with the proposed new fee payable from 1 April 2023. The Notices state that the Applicant applied the RPI figure for February 2023 of 13.4%. The Respondents raised no challenge to the validity of the Notices. The Tribunal finds that the appropriate month to have applied was January 2023. However, the figure of 13.4% is the correct figure. It strikes the Tribunal that the inclusion of "February" as opposed to "January" was a clerical error as the figure adopted was that of January 2023. As nothing turns on the point and nor did the Respondents challenge it, the Tribunal finds the figure of 13.4% to be the correct figure for consideration.

105. The Tribunal reminds itself that paragraph 18(1) of the Act requires the Tribunal to determine whether there has been any deterioration in the condition and any decrease in the amenity of the site or any adjoining land which is occupied or controlled by the owner of the site, and/or whether there has been any reduction in the services provided by the site owner and any deterioration in the quality of those services. Furthermore, whether any other weighty factors displace the presumption in favour of an inflationary increase in pitch fee calculated in accordance with RPI.
106. The Tribunal further reminds itself that the inspection only demonstrated the condition of the Park on that day and not on the relevant date of the pitch fee review, albeit many of the points advanced by the Respondents were likely to have been equally evident on both dates.
107. Before making our findings of fact upon the evidence before us, we return, briefly, to the point made earlier about the lack of any witness statements from the Respondents and the difficulties this posed for the Tribunal. Whilst the Tribunal took account of Mr Raishbrook's written submissions, as adopted by Mr Salisbury, and Mr Salisbury's commendable efforts of advocacy, much of the Respondents' submissions relied upon hearsay or historic events of which little or no evidence was provided.
108. The Respondents state their challenge to be based upon "claims on Loss of Amenities in several instances". However, the Respondents written and oral submissions also extend into consideration of factors relating to an alleged deterioration in the condition of the site and hence such points will also be considered in these reasons.
109. The Tribunal found the site as described by both parties, that being a "live, building site" which remains under development, albeit the final phase of works appearing to be temporarily mothballed, awaiting an upturn in economic conditions.
110. Commencing from the entrance to the Park, the Tribunal witnessed the high speed with which traffic, including heavy vehicles, pass the entrance to Mulberry Court and the difficulty thus arising in safely exiting the site onto a country lane. The Tribunal found that the Applicant had attempted to alleviate the hazard by installing safety measures including mirrors, reflector and lighting.
111. The Tribunal finds itself in agreement with the Applicant, in that a reduction of the speed limit on Walworth Road is outside of their gift and, instead, an issue that would require referring to the relevant public authority. Additionally, whilst the Tribunal acknowledges the problem identified by the Respondents, the Tribunal does not find that the issue qualifies as either a deterioration in the condition or a decrease in the amenity of the site, nor that the issue is a reduction in the services supplied or a deterioration thereof.
112. We further find that resident's access to the site is limited to the one entry point off Walworth Road, the difficulties of which have previously been set out. The Tribunal has no evidence before it that residents are entitled to a second entrance and, accordingly, whilst a second entrance would

undoubtedly be convenient, the lack of such cannot amount to a deterioration in the condition or a decrease in the amenity of the site, nor a reduction in the services supplied or a deterioration thereof

113. The Respondents states that the Applicant misrepresented the Park within advertising literature and on its website. No evidence of such was advanced by the Respondents and the Tribunal therefore makes no findings on the point. However, irrespective of the above, any allegation of property misdescription would not be an issue to be pleaded in front of this Tribunal and, instead, would be a matter for determination in the County Court. Accordingly, the Tribunal does not find that the point qualifies as either a deterioration in the condition or a decrease in the amenity of the site, nor that the issue is a reduction in the services supplied or a deterioration thereof.
114. The Respondents allege that the racing of motorcycles on land owned by the Applicant creates a noise disturbance. Whilst the Tribunal accept that such activity is likely to cause an annoyance there was no evidence before the Tribunal in such regard, for example, by way of sound recordings or video footage. Neither was evidence adduced that the matter had been referred to the Environmental Health Department or other enforcement bodies. Furthermore, at the site inspection Mr Salisbury was unable to identify the exact field upon which the racing was staged, instead referring to it occurring within the land owned by the Applicant. Accordingly, the Tribunal finds there is no evidence upon which to find that the racing of motorcycles on unidentified land is causing a decrease in the amenity of the site.
115. Turning next to the Respondent's argument concerning land being under the control of the Applicant. The Tribunal notes the absence of any evidence of a written agreement between the Applicant and the third party who allegedly lease land adjacent the Park and upon which various activities are agreed to occur. However, Mr Roman provided a written statement and gave oral evidence on the point, neither of which were challenged by the Respondents in cross examination. On the basis of evidence before it, the Tribunal finds it common ground between the parties that the land upon which the motorcycles race is under the ownership of the Applicant. However, the Tribunal finds that the land is neither occupied nor controlled by the Applicant.
116. The Tribunal finds that any noise or other disturbance created by car-boot sales operating from the pub car park or any activity associated with the business of running the pub and car park has not been proven by way of evidence or witness statements from the Respondents. As per paragraph 115 above, the Tribunal finds that the land, whilst owned by the Applicant, is neither occupied nor under the control of the Applicant.
117. The Respondents refer to a verbal undertaking or understanding from sales literature that the Park would be served by a farm shop and a local bus stop, neither of which materialised. No evidence of such was put before the Tribunal, nor any witness statement to such effect. Accordingly, the Tribunal does not find that the point qualifies as either a deterioration in the condition or a decrease in the amenity of the site, nor that the issue is a reduction in the services supplied or a deterioration thereof.

118. On such point, the Tribunal disagrees with Ms Osler's argument that the absence of a farm shop and bus stop is not capable of amounting to a decrease in amenity as neither facility ever existed. Having regard to this being a new development, had the Respondents proven to the Tribunal that the previous pitch fee had been agreed on the basis that such facilities would, in due course, form part of the offering, the absence of these could potentially have been argued to be a decrease in amenity. However, in this instance nothing turns on the point as the Respondents failed to persuade the Tribunal of any undertaking on the part of the Applicant that such facilities would be provided or that the Respondents relied on any such statement when purchasing their home.
119. Following the site inspection, the Tribunal finds that both the site and access roads remain incomplete, in particular, the roads lack a final tarmac top dressing and that some drain inspection covers are raised. The Tribunal also finds that damage has occurred to some kerb-stones and plot boundaries as a consequence of works traffic. Overgrown vegetation and the spoil heap were noted.
120. At the hearing, the Applicant's witnesses gave oral evidence that maintenance and remedial works were undertaken in a timely manner. Whilst minor damage was noted by the Tribunal to the garden of one plot, (caused, we are told, by heavy works traffic), such matter is one for resolution between the pitch owner and site owner and not a factor affecting the Park or pitch fee. The Tribunal further finds that whilst the roads are unmade and that drain covers protrude, the access roads nevertheless remain functional. In regard to the weeds and spoil heap, whilst aesthetically unwelcome, the Tribunal find neither of sufficient weight. Accordingly, the Tribunal do not find there is evidence amounting to a deterioration in the condition or a decrease in the amenity of the site, nor a reduction in the services supplied or a deterioration thereof in regard to the site roads.
121. Moving next to the fire safety concerns raised by the Respondent. The problem faced by the Tribunal in regard to such argument was a paucity of evidence on the part of the Respondents. The Applicant conceded that the Fire Risk Assessment was not undertaken until January 2024, and by default was therefore outstanding at the pertinent date. The Respondents relied on a lack of fire-fighting equipment as a breach of the site licence.
122. Whilst failure to adhere to the requirements of the site licence may be regarded as a weighty factor of which the Tribunal should take note, no such argument was advanced by the Respondent. Compliance and safety are obviously of high importance. However, no evidence was adduced of the alleged breach of site licence nor was any statement from the local authority that they considered the matter a breach of licence, or that they intended pursuing action against the Applicant in such regard, put before the Tribunal. The Tribunal is therefore unable to make any finding in favour of the Respondent on the point.
123. In regard to site lighting, which the Respondent argued is inadequate, the Tribunal finds that the Respondents have failed to present sufficient evidence to persuade the Tribunal that such point is either a deterioration in the condition or a decrease in the amenity of the site, nor that the issue is a

reduction in the services supplied or a deterioration thereof.

124. The Respondents argue that the drainage works to the Green were both disruptive and prevented their use of the communal area. Whilst the Tribunal dismiss Ms Osler's suggestion that the residents have no entitlement to use the Green as illogical, nevertheless the Tribunal does not find that a relatively short period of disruption, incidentally arising from works which could be argued an improvement, is sufficient to qualify as either a deterioration in the condition or a decrease in the amenity of the site, nor that the issue is a reduction in the services supplied or a deterioration thereof. Likewise, the Tribunal finds the uneven surface of the Green an insufficient factor to displace the RPI presumption or qualify as a weighty factor.
125. The Tribunal deals briefly with the Respondent's contention that the use of concrete gravel boards and wooden fencing is not feasible in effecting structural stability between homes sited on varying gradients. The remedial works shown to the Tribunal during inspection appeared to be holding. No movement was evident. The evidence adduced by the Respondents was that the Applicant had carried out structural works to the affected homes, albeit they argued that such works were substandard. In response, the Applicant said that their actions proved that repairs were affected when required. Accordingly, the Tribunal found no evidence, at the pertinent date, of either a deterioration in the condition or a decrease in the amenity of the site, nor that the issue is a reduction in the services supplied or a deterioration thereof.
126. Inadequate signage – further to the site inspection the Tribunal finds signage adequate, albeit with room for improvement. Accordingly, the Tribunal do not find evidence amounting to a deterioration in the condition or a decrease in the amenity of the site, nor a reduction in the services supplied or a deterioration thereof in regard to signage.
127. The Respondents argue that the malfunctioning gates and the damaged pedestrian gate amount to a breach of security and a safety risk. Whilst the Tribunal accepts that both matters could cause concern, the Respondent did not rely on any witness statements from residents as such nor any evidence of crimes committed on site during the relevant period. The Tribunal favours the Applicant's argument that whilst repairs to the entrance gates took longer than anticipated, such factor is not sufficient to displace the RPI assumption or to be considered a sufficiently weighty factor.

The effect of the above determinations and the pitch fees

128. The first question to be addressed by the Tribunal is whether there should be any change from the pitch fee for 1 April 2023 onward and, if so, what that change should be.
129. Having considered the evidence and submissions before it and having regard to the fact that costs in running and maintaining the site, albeit that the site remains unfinished, will have increased from the previous year, the Tribunal is satisfied that it is reasonable that the pitch fee should be changed.

130. The Tribunal finds that the Respondents have failed to persuade the Tribunal that the presumption in favour of an increase in line with the relevant RPI should be displaced.

131. Accordingly, the Tribunal confirms the proposed pitch fees, payable with effect from 1 April 2023, as follows:

Pitch 1:	£795.65 per quarter
Pitch 5:	£795.65 per quarter
Pitch 7:	£795.65 per quarter
Pitch 23:	£795.65 per quarter
Pitch 24:	£954.77 per quarter
Pitch 30:	£795.65 per quarter
Pitch 33:	£795.65 per quarter
Pitch 34:	£795.65 per quarter
Pitch 37:	£795.65 per quarter
Pitch 38:	£795.65 per quarter
Pitch 39:	£795.65 per quarter
Pitch 41:	£795.65 per quarter
Pitch 42:	£795.65 per quarter
Pitch 45:	£795.65 per quarter
Pitch 46:	£795.65 per quarter
Pitch 47:	£795.65 per quarter
Pitch 49:	£795.65 per quarter
Pitch 51:	£795.65 per quarter

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk 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.

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.