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

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| **Case Reference** | **:** | **CHI/19UG/PHI/2023/0693**<br>**CHI/19UG/PHI/2023/0694** |
| **Property** | **:** | **27 & 28 Lookout Park**<br>**Corfe Road**<br>**Stoborough**<br>**Wareham**<br>**BH20 5AZ** |
| **Applicant** | **:** | **Southern Country Parks Ltd** |
| **Representative** | **:** | **Mr J Romans**<br>**Ms K Apps**<br>**Ms V Osler** |
| **Respondents** | **:** | **Mr B Willgress (number 27)**<br>**Mr & Mrs D C Martin (number 28)** |
| **Representative** | **:** | **None** |
| **Type of Application** | **:** | **Review of Pitch Fee: Mobile Homes Act 1983 (as amended)** |
| **Tribunal Members** | **:** | **Mr I R Perry FRICS**<br>**Mr M R Jenkinson**<br>**Mr J S Reichel MRICS** |
| **Date of Inspection and Hearing** | **:** | **28th October 2024** |
| **Date of Decision** | **:** | **28th October 2024** |

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**DECISION**

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**Summary of Decision**

**The Tribunal determines the pitch fee for 27 Lookout Park from 1st October 2023 is £234.28 per month.**

**The Tribunal determines the pitch fee for 28 Lookout Park from 1st October 2023 is £234.28 per month.**

## Procedural History

### 27 Lookout Park

1. On 13th December 2023 the Applicant site owner applied on Tribunal form PH09 for a determination of a revised pitch fee payable by the Respondent for 27 Lookout Park ("plot 27") with effect from 1st October 2023.

2. It was proposed that the pitch fee for the previous year, said to be £219.36 per month, would increase to a new figure of £234.28 per month. The proposed increase would be for 6.8%, this being the annual increase in the Consumer Price Index ("CPI") in July, published for August 2023, and is therefore the latest CPI available when the increase notice was issued.

### 28 Lookout Park

3. On 13th December 2023 the Applicant site owner also applied on Tribunal form PH09 for a determination of a revised pitch fee payable by the Respondent for 28 Lookout Park ("plot 28") with effect from 1st October 2023.

4. It was proposed that the pitch fee for the previous year, said to be £219.36 per month, would increase to a new figure of £234.28 per month. The proposed increase would be for 6.8%, this being the annual increase in the Consumer Price Index ("CPI") for July, published for August 2023, and is therefore the latest CPI available when the increase notice was issued.

## Background

5. Area A of Lookout Park ("the Park") is a protected site within the meaning of the Mobile Homes Act 1983 ("the 1983 Act"). The definition of a protected site in Part 1 of the Caravan Sites Act 1968 includes a site where a licence would be required under the Caravan Sites and Control of Development Act 1960 if the exemption of local authority sites were omitted.

6. The Respondents are entitled to station their Homes on a pitch within the Park by virtue of agreements under the 1983 Act, which include the statutory implied terms referred to below.

7. A Pitch Fee Review Notice with the prescribed form proposing the new pitch fee for plot 27 was served on Mr Willgress on 31st August 2023, proposing to increase the pitch fee by an amount which the Applicant says represents

an adjustment in line with the CPI, from £219.36 per month to £234.28 per month. The date of the notice is 31st August 2023.

8. A Pitch Fee Review Notice with the prescribed form proposing the new pitch fee for plot 28 was served on Mr & Mrs Martin on 31st August 2023, proposing to increase the pitch fee by an amount which the Applicant says represents an adjustment in line with the CPI, from £219.36 per month to £234.28 per month. The date of the notice is 31st August 2023.

9. The review date in the Agreements for both homes is 1st October in each year. No recoverable costs or relevant deductions were applied.

10. The Respondents did not agree to the increases and the cases were referred to the First-Tier Tribunal Property Chamber (Residential Property) on 13th December 2023.

11. The Tribunal issued directions for both cases on 22nd July 2024 identifying the disputes about the pitch fees and setting out dates for compliance by the parties preparatory to a determination on the papers.

12. On 5th August 2024 the Applicant's representative requested a hearing for the Applications. Further directions were issued by the Tribunal on 4th September 2024 and a hearing was arranged for 28th October 2024 to consider both cases, to be preceded by a site inspection.

13. The Tribunal emphasises that these reasons address **in summary form** the key issues raised by the parties. They do not recite each and every point referred to either in submissions or during any hearing. However, this does not imply that any points raised, or documents not specifically mentioned were disregarded. If a point or document was referred to in the evidence or submissions that was relevant to a specific issue, then it was considered by the Tribunal. The Tribunal concentrates on those issues which, in its opinion, are fundamental to the application.

## Written cases received

## 27 Lookout Park

14. The Tribunal was provided with an electronic bundle of some 224 pages in respect of plot 27. References within square brackets prefixed by 1. [] refer to the electronic numbered page within the bundle relating to plot 27. The bundle included the Application Form PH09, the Applicant's written statement, the Respondent's Reply Form, the Applicant's Reply Document and the Respondent's Document.

15. The written statement for plot 27 includes the start date of 23rd September 2020 with a pitch fee of £211.33 per month.

16. Mr Willgress's statement of case for plot 27 [1.191-1.224] states that the Site Maintenance Operator, Barry, left in November 2023 and that site maintenance has ceased.

17. Mr Willgress states that the CPI referred to in the notice dated 31st August 2023 is stated to be for August but that this was not possible as the figure for August was not released until 14th September 2023. He says that other residents have complained about this over the years, but no action has been taken by the park owner.

18. Mr Willgress states that his principal concerns are the movement of pedestrians and vehicles in/out and around the Park. He provides several photographs of damaged areas of tarmac around the Park. He also states that roads built in new areas of the Park are constructed to the minimum required width which does not allow parking, that no regard has been given to pedestrians, that there is insufficient lighting in all areas, that access for large vehicles such as waste collection and emergency services is not feasible and that plot 80 does not have a parking area.

19. Mr Willgress is also concerned that there are no warning signs for traffic within the first 80 metres of the Park entrance, that speed limit signs may be obscured by hedges, that no entry signs at the entrance of the Park are confusing, that there are only 4 designated visitor parking spaces, that areas around gas tanks should have warning signs and be kept clear of rubbish, flammable waste materials are kept behind the Estate Agent's Office and that rats have been seen coming from this enclosure.

20. Mr Willgress refers to areas that had been landscaped by residents and an area used by some residents as a social area which have been incorporated into recently developed pitches. He also includes photographs of other areas of the Park where materials have been stored.

21. Mr Willgress also refers to loss of amenity in respect of an area known as The Green which had been used by residents as a social area but has now been redeveloped as a pitch with a new home. Furthermore, he refers to the destruction of "the small wooded area" to make way for further residential units. This area is on the boundary between Areas A and C.

22. Mr Willgress includes a copy of a letter he wrote to the Park owner on 17th October 2023 referring to nuisance caused by redevelopment of parts of the Park, in particular noise, dust and a flow of commercial vehicles.

23. In his statement of case Mr Willgress also complains of the lack of communication from the Park owner, particularly referring to increases in electricity charges.

24. The Applicants response [1.62-1.78] includes reference to the wrong month being quoted within the notice which, at section 4 (B) reads "the CPI published for **August** 2023 which was 6.8%" when it should read "the CPI published for **July** 2023 which was 6.8%".

25. Within the Applicants reply document The Tribunal is referred to a number of Upper Tribunal decisions, *Vyse v Wyldecrest Parks (Management) Ltd* [2017] UKUT 24 (LC); *Wyldecrest Parks (Management) Ltd v Whitely* and Ors [2024] UKUT 55 (LC); *Wyldecrest Parks (Management) Ltd v Finch* [2024] UKUT 197 (LC); *The Beaches Management Ltd v Mr and Mrs Furbear* [2024] UKUT 180 (LC) and to a very recent Supreme Court decision *A1 Properties (Sunderland) Ltd v Tudor Studios RTM Company Ltd* [2024] UKSC 27.

26. In written response the Applicant says that there has been some wear and tear on road surfaces but there are no potholes, and the roads are generally in excellent condition, that there has been no significant change in driver warning signs, that the number of parking spaces has not reduced, the units in Area A that have been redeveloped all have 2 parking spaces and that the number of visitor spaces has not changed even though the number of homes on the Park has reduced.

27. The Applicant asserts that there is no issue with the gas storage area and no concerns have been raised by the relevant authority, that the storage area behind the office has been improved and he has not had any complaints about rats.

28. The Applicant further asserts that the general environment has been improved by the removal of single holiday static caravans on Area A which are being replaced with larger modern twin unit homes, with 2 parking spaces per plot, and that there has never been a designated communal area, formal or otherwise on Area A for residents to use. Neither has Area D been designated as an area to be accessed by residents from Area A.

29. The Applicant asserts that the area known colloquially as “The Green” was a small, grassed area that had previously been part of a pitch and had a hardstanding area which had later been grassed over with stones placed at the corners. The Applicant had allowed two residents, as a hobby, to work on areas within Area A carrying out gardening work during the recent pandemic. “The Green” had been adopted by some residents as an open-air social area but without permission of the Applicant. This area has now been redeveloped in 2022/2023 for a new park home.

30. The Applicant asserts that the woodland area referred to by Mr Willgress comprised the natural boundary between Area A and Area C which has been partially cleared to improve drainage, especially surface water drainage.

31. The Applicant further asserts that improvements have been carried out to the Park since it was purchased including the replacement of run down old homes, closing the games and arcade for holidaymakers and improvements to Area B which abuts Area A.

32. The Tribunal was also provided with a written statement from Ms Karen Wilson who operates as Right Choice Park and Leisure Homes Limited and

Right Choice Developments Limited. Mrs Wilson operates a sales business dealing with park and leisure homes.

33. Mrs Wilson's statement was broadly in agreement with the assertions made by Mr Romans. Mrs Wilson was not in attendance at the Hearing so could not be questioned.

## 28 Lookout Park

34. The Tribunal was provided with an electronic bundle of some 221 pages in respect of plot 28. References within square brackets prefixed by 2. [] refer to the electronic numbered page within the bundle relating to plot 28. The bundle included the Application Form PH09, the Applicant's written statement, the Respondent's Reply Form, the Applicant's Reply Document and the Respondent's Document.

35. The written statement for plot 28 includes the start date of 21st January 2020 with a pitch fee of £208 per calendar month.

36. Mr & Mrs Martin clearly set out their case in respect of plot 28 [2.201-2.221] beginning with a history of their occupation from January 2020, just before the first pandemic lockdown.

37. Mr & Mrs Martin refer to development works on the site that have been ongoing through their occupation, the loss of previously landscaped areas incorporated into redeveloped plots, the loss of The Green, the fencing off of part of the site where they had previously walked but where construction materials are presently stored, loss of visual amenity as The Green now has a new home on it also causing a loss of value to their property, lack of lighting, issues with traffic flow particularly when large but necessary vehicles are on site, flooding outside some homes where drainage has been amended as part of redevelopment, and limited visitor parking.

38. Within the Applicants reply document The Tribunal is referred to a number of Upper Tribunal decisions, *Vyse v Wyldecrest Parks (Management) Ltd* [2017] UKUT 24 (LC); *Wyldecrest Parks (Management) Ltd v Whitely* and Ors [2024] UKUT 55 (LC); *Wyldecrest Parks (Management) Ltd v Finch* [2024] UKUT 197 (LC); *The Beaches Management Ltd v Mr and Mrs Furbear* [2024] UKUT 180 (LC) and to a very recent Supreme Court decision *A1 Properties (Sunderland) Ltd v Tudor Studios RTM Company Ltd* [2024] UKSC 27.

39. The Applicant had also submitted a signed statement from Mr Romans who is the sole director of the Applicant, Southern Country Parks.

## The Inspection

40. At 10.00am on 28th October 2024 the Tribunal inspected the Park with Mr Wellness of plot 27, Mr J Romans the sole director of Southern Country

Parks Ltd and its legal representatives Ms Apps and Ms Osler. Mr & Mrs Martin did not accompany the Tribunal.

41. The Park is situated about 1½ miles south of Wareham and about 11 miles by road from Poole. The road at the front of the Park runs approximately southwest to northeast and the Park comprises four main areas.

42. A useful plan of the Park showing the various Areas and features was contained within the bundle [1.126.]

43. Area A, where both plots are situated, is on the southeast side of the Park, nearest to the entrance. It is an undisputed fact that Area A is a protected site as defined in the Mobile Homes Act 1983. Area B can be described as being in the centre of the Park. Area C is a site for holiday caravans and caravan storage situated on the west of the site and Area D which is fenced off is on the north of the site.

44. Close to the entrance to the Park, but within the Park, is a shop/site office with parking spaces supplying day to day requirements. To the west of Area B there is a former amusement centre now used as an office for the site manager.

45. The Tribunal walked within Areas A & B, were able to view Areas C & D and made note of points raised by the parties within their submissions.

46. The Tribunal noted that some of the visitors and traffic to the shop was from the wider public, found that the Park is generally well maintained, and noted plot 30 has been installed on the site of 'The Green'. Some new plots/homes have been created at the southwest part of Area A with a new roadway but are not yet occupied, and many of the homes on Area B have been removed and either redeveloped or awaiting redevelopment. A new fence has been erected in the area referred to within the papers as woodland which forms a division between Areas A and C. Area D is fenced off from the rest of the site by Heras fencing and is closed. In two places the Tribunal noted small sheets of steel on the roadway protecting drain covers beneath them.

## The relevant Law and the Tribunal's jurisdiction

47. One of the important objectives of the 1983 Act was to standardise and regulate the terms under which mobile homes are occupied on protected sites.

48. All agreements to which the 1983 Act applies incorporate standard terms which are implied by the Statute, the main way of achieving that standardisation and regulation. In the case of protected sites in England the statutory implied terms are those in Chapter 2 of Part 1 of Schedule 1 to the 1983 Act.

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

50. 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 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") does so, more specifically in regulation 2. A late review can also take place, provided at least 28 days' notice is given.

51. The Mobile Homes Act 2013 ("the 2013 Act") which came into force on 26th May 2013 strengthened the regime. Section 11 introduced a requirement for a site owner to provide a Pitch Review Form in a prescribed form to the occupiers of mobile homes with the Pitch Review Notice.

52. 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."

53. Consequently, if the increase in the Pitch Fee is agreed to by the occupier of the pitch, that is the end of the matter. If the occupier does not agree, the pitch fee can only be changed (increased or decreased) if and to the extent that the Tribunal so determines.

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

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

56. Paragraph 18 provides that:

> "18(1) When determining the amount of the pitch fee particular regard shall be had to-
> (a) any sums expended by the owner since the last review date on improvements .....
> (aa) and 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....."

57. Paragraph 20A(1) introduced a presumption that the Pitch Fee shall not change by a percentage which is more than any percentage increase or decrease in the RPI since the last review date, at least unless that would be unreasonable having regard to matters set out in paragraph 18(1) (so improvements and deteriorations/reductions). The provision says the following:

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

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

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

> "22. The effect of these provisions as a whole is that, unless a change in the pitch fee is agreed between the owner of the site and the occupier, the pitch fee will remain at the same level unless the RPT considers it reasonable for the fee to be changed. If the RPT decides that it is reasonable for the fee to be changed, then the amount of the change is in its discretion, provided that it must have "particular regard" to the factors in paragraph 18(1), and that it must not take into account of the costs referred to in paragraph 19 incurred by the owner in connection with expanding the site. It must also apply the presumption in paragraph 20(1) that there shall be an increase (or decrease) no greater than the percentage change in the RPI since the last review date unless that would be unreasonable having regard to the factors in paragraph 18(1). In practice that presumption usually means that annual RPI increases are treated as a right of the owner.
>
> 23. Although annual RPI increases are usually uncontroversial, it should be noted that the effect of paragraph 20(1) is to create a limit, by reference to RPI,

> on the increase or decrease in the pitch fee. There is no invariable entitlement to such an increase, even where none of the factors referred to in paragraph 18(1) is present to render such an increase unreasonable. The overarching consideration is whether the RPT considers it reasonable for the pitch fee to be changed; it is that condition, specified in paragraph 16(b), which must be satisfied before any increase may be made (other than one which is agreed). It follows that if there are weighty factors not referred to in paragraph 18(1) which nonetheless cause the RPT to consider it reasonable for the pitch fee to be changed, the presumption in paragraph 20(1) that any variation will be limited by reference to the change in the RPI since the last review date may be displaced."

60. Those paragraphs therefore emphasise that there are two particular questions to be answered by the Tribunal. The first is whether any increase in the Pitch Fee at all is reasonable. The second is about the amount of the new Pitch Fee, applying the presumption stated in the 1983 Act but also other factors where appropriate (although the case pre-dated the 2013 Act changes).

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

> "A pitch fee is defined by paragraph 29 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."

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

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

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

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

64. More generally, the Upper Tribunal identified three basic principles which it was said shape the scheme in place - annual review at the review date, in the absence of agreement, no change unless the First Tier Tribunal

considers a change reasonable and determines the fee and the presumption discussed above.

65. The Upper Tribunal (Lands Chamber) decision in *Vyse v Wyldecrest Parks Management Ltd* [2017] UKUT 24 (LC) HHJ Robinson said:

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

66. It was further re-iterated that:

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

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

67. The Upper Tribunal identified that a material consideration as a matter of law "does not necessarily mean" that the presumption should be displaced. Further explanation was given in paragraph 50 that:

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

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

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

69. In addition, referring to the presumption of change, in line with RPI, it was said:

> "56. ..... In my judgment there is good reason for that.

> 57. There are a substantial number of mobile home sites in England occupied pursuant to pitch agreements which provide for relatively modest pitch fees. The legislative framework for determining any change in pitch fee provides a narrow basis on which to do so which no doubt provides an element of certainty and consistency that is of benefit to site owners and pitch occupiers alike. The costs of litigating about changes in pitch fee in the FTT and in the Tribunal are not insubstantial and will almost invariably be disproportionate to any sum in issue. I accept the submission of Mr Savory that an interpretation which results in uncertainty and argument at many pitch fee reviews is to be avoided and that the application of RPI is straightforward and provides certainty for all parties."

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

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

71. The final relevant part in Vyse is:

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

72. We also note the decision of the Upper Tribunal in *Wyldecrest Parks Management Limited v Kenyon and others* (LRX/103/2016). In paragraph 31 it was said about the provisions in the 1983 Act that:

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

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

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

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

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

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

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

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

77. The Tribunal also notes the decision of the Upper Tribunal in *Wickland (Holdings) Limited v Amelia Esterhuyse* [2023] UKUT 147 (LC) UTLC Case Number: LC-2022-617. The circumstances of that case are inevitably not the same as this but is useful in considering what may be regarded as a weighty matter sufficient enough to displace the presumption of an increase in line with the CPI.

78. In this case it was agreed that shortly after Ms Esterhuyse took occupation of her mobile home, she became aware of cracks to the hardstanding

beneath her home. The base was repaired by the park owner. Ms Esterhuyse refused to agree the increase as she considered that her home was still moving and shifting and not levelled which caused ongoing damage. The local authority agreed with her and a Notice was served requiring the park owner to employ a fully qualified structural engineer to inspect the hardstanding thoroughly and carry out works to guarantee structural integrity of the hardstanding.

79. When the pitch fee review was served the appellant had not carried out the work and Ms Esterhuyse was going to have to move out of her mobile home as the home would need to be moved for the works to be completed.

80. The Eastern Region of this Tribunal was required to decide whether a change in the pitch fee was reasonable and, if so, it must determine the new pitch fee. The Tribunal needed to decide whether it would be unreasonable for the pitch fee to be increased on the basis of an increase in the RPI.

81. The Tribunal considered that the factors which might replace the presumption are not limited to those set out in paragraph 18(1) of the Act but may include other factors.

> "By definition, this must be a factor to which considerable weight attaches…. It is not possible to be prescriptive."
>
> "The factors which may displace the presumption are not limited to those set out in paragraph 18(1) but may include other factors".

82. The FTT decided that the presumption on an increase in RPI was displaced by the Applicants failure to carry out the necessary repairs and by the distress and worry caused to Ms Esterhuyse.

83. The decision was appealed to the Upper Tribunal. The appeal failed. The Tribunal had applied the correct test and had correctly applied it. The position with regard to weighty factors and the rebuttal of the presumption was set out.

84. The Tribunal is aware that there have been later decisions of the Upper Tribunal relating to paragraph 18 and the question of whether the RPI presumption has arisen and about asserted deterioration in the condition of the given site and that the Upper Tribunal has made a number of observations and set out very useful guidelines and guidance, repeating the observation made in *Britanniacres*t that the Act itself gives little.

85. However, the Tribunal does not consider that they could add anything to its decision in this particular case.

86. The Tribunal considers that there is a rebuttable presumption that the Pitch Fee determined will necessarily reflect the change in CPI. The Mobile Homes (Pitch Fees) Act 2023 changed the basis for calculating pitch fees for

park homes in England and Wales from the Retail Price Index to CPI with effect from 2nd July 2023.

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

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

89. The Applicant's representative referred to some of the above case authorities. However, they are all established ones on matters involved in this case and the Tribunal is required to apply the law and take account of decisions relevant to the decision to be made in this case.

90. The Tribunal has a rather different jurisdiction under section 4 of the Act as follows:

"(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.

91. That provision is very sweeping, although it does contain the two elements that there has to be a question arising and there have to be proceedings brought.

92. The very recent Supreme Court decision in *A1 Properties (Sunderland) Ltd v Tudor Studios RTM Company Ltd* [2024] UKSC 27 examines errors in statutory notices in the context of RTM.

93. Although this case related to the service of notice in a Right to Manage ("RTM") case an important precedent has been set. The RTM had failed to serve a notice on a party to the proceedings. The First-tier Tribunal held that failure to do so did not invalidate the RTM claim. The Upper Tribunal reached the same conclusion but granted permission to appeal which was 'leapfrogged' to the Supreme Court. Because the relevant legislation did not stipulate what the effect of non-compliance would be the Court took the view that the overall purpose of the legislation should be considered by the Court and the Court should consider, from the specific facts of the case,

what prejudice or injustice might arise if the validity of the statutory process was affirmed despite the non-compliance.

## The Hearing

94. The Application was heard on 28th October 2024 at Bournemouth Combined Court. Ms Osler appeared for the Applicant and the Respondents conducted their own case.

95. This decision includes a precis of the hearing only and is not a verbatim record of every matter raised or discussed. These reasons address **in summary form** the key issues raised by the parties. They do not recite each and every point referred to either in submissions or during any hearing. However, this does not imply that any points raised, or documents not specifically mentioned were disregarded. If a point or document was referred to in the evidence or submissions that was relevant to a specific issue, then it was considered by the Tribunal. The Tribunal concentrates on those issues which, in its opinion, are fundamental to the application.

96. Ms Osler explained that the two cases were very similar and as such could be considered together. The electronic bundles for the two cases had been almost identical. She referred the Tribunal to screenshots taken from Google earth [1.110-1.120] and to other photographs within the bundles.

97. [1.121-1.125] show the Park entrance, [1.126] is a site plan showing the various areas, [1.121] shows the office/shop, [1.132[ shows visitor parking, [1.134] shows the beginning of the main driveway, [1.140] shows plot 27 on the left, [1.141[ shows plots 27, 28 and 30, [1.143] shows the parking for plot 28 and the deck of plot 30, [1.145] shows plot 30 where The Green once was, [1.146] shows plot 30 and the new plots at the southwest of Area A, [1.152] shows Area C viewed from the new plots at the southwest of Area A, [1.161] shows the building now used as an office, [1.167] shows a type of static caravan formerly on Area B.

98. Ms Osler explained that it was her client's case that the Park had slowly been improved since it had acquired the Park in 2014 with the replacement of old homes and improvements to roads, drainage and lighting where new homes have been installed.

99. Ms Osler explained that the 39 plots that had been situated on Area B was being reduced to only 26 plots, each of which would have 2 parking spaces. This would result in less traffic and less pressure on parking. She also reminded the Tribunal that it was the responsibility of the Tribunal to make its decision based on the inspection at today's date. *Wyldecrest Parks (Management) Ltd v Finch* [2024] UKUT 197 (LC).

100. Evidence was given by Mr J Romans who is the sole director of the Applicant. He confirmed his statement [1.224] and accepted that the CPI

referred to in the notices for both plots was July 2023 which was published in August 2023.

101. Mr Romans confirmed that neither of the homeowners had paid the proposed increases which had been notified in 2022 and he had not made any application to the Tribunal in respect of those increases.

102. Mr Romans explained that during the lockdowns associated with the Coronavirus pandemic he had been asked by other plot owners whether they might carry out some minor landscaping works to the Park as recreation. He stated that he had given them such permission but based on them having to stop using the space as and when he decided, that the permission was only temporary and pending further redevelopment.

103. Similar consideration was given to the residents using the area known as The Green for open air social gatherings, but at no point had that area been allocated as an ongoing facility for Park residents.

104. All three of the Respondents took the opportunity to question Mr Romans. He stated that he thought the contractors who had taken over the maintenance were doing a better job than had been done by his previous direct employee, Barry, that no road signs had been removed, that 5mph signs had now been added to the road surface, that the new homes within Area A have surface water drainage, that the wooded area referred to by the respondents was in fact some scrubland with a few trees and that he was content that any contractors used on the Park were responsible for their own health and safety.

105. Mrs Martin asked Mr Romans why he had not given Park residents the statutory 28 days' notice in respect of some works to the site. Mr Romans response was that he had not been aware of that requirement.

106. In summing up Ms Osler reminded the Tribunal that there was a statutory presumption that a pitch fee would increase in line with the CPI unless there was a deterioration in the amenity of the site, or of the condition of the site or there was another weighty matter that should preclude such an increase.

107. Ms Osler reiterated that the former amusement arcade was now being used as an office rather than as an amusement centre for visiting caravanners which would reduce noise and traffic, that plot 30 which had been used as a social area had never been designated as such, that parts of the site now have improved drainage, that the number of units on Area B was being reduced, that the access remains as before except that there are now more speed notices, that the visual amenity of the site has improved with the installation of better homes and with new plots having two parking spaces, that there has been no change in the road system, that the storage area has been tidied, that the shrubbery area described as woodland was a small and relatively insignificant area, that lighting is being improved with new units,

and that any noise from social areas has been reduced as areas are not now available for gathering.

108. Mr Willgress asserted that the improved signage and tidying the storage area has only just been done, that there is a lot more traffic to the shop, that the loss of The Green has reduced community spirit and that he remains concerned about several health and safety issues.

109. Mr Martin explained to the Tribunal that he and his wife had purchased their home without ever having visited the Park. He said that this was the fourth consecutive year of development works, that Mr Romans having allowed the use of the Green was an implied consent for its ongoing use, that the installation of new homes has blocked his view of the east of the Park, and that he has suffered four years of dust and noise from development to such an extent that he and his wife cannot use the outside area on his plot.

**Consideration and Determination**

110. The Tribunal thanks the parties for their submissions and the way in which their respective cases were made at the Hearing. We have carefully considered all that we have seen, all that was said and all the documents within the bundles and later submissions.

111. The Tribunal noted that there had been a minor error within the pitch fee notices but that the correct percentage had been quoted. Referring specifically to the principles recently laid out by the Supreme Court in *A1 Properties (Sunderland) Ltd v Tudor Studios RTM Company Ltd* [2024] UKSC 27 the Tribunal determined that the error was not sufficient to invalidate the notices.

112. The Tribunal finds that the Park is generally well maintained, and it is evident that there is an ongoing programme of development and renewal of Park homes which will reduce the number of residents, increase the amount of overall car parking, drainage and lighting. In the long term the amenities of the site and its condition are being steadily improved.

113. The former amusement building has been redesignated as an office for the manager which should reduce any noise from holidaymakers on the holiday park, Area C, using those facilities.

114. The Tribunal notes that there will be some noise and dust nuisance whilst building works are being carried out, but the Tribunal considers that these are transient and are not constant 24 hours a day or 7 days a week. The works have already been ongoing for several years so it cannot be argued that there had been a deterioration during the previous 12 month period.

115. The Tribunal finds that the use of the area known as The Green during and after lockdown was a temporary permission given by the Applicant so that the installation of a new home on that area is not a loss of amenity. Similarly, the permission given for two Park residents to cultivate and plant

small areas around the Park was not intended as a permanent arrangement, indeed it would have been contrary to the Park owners interests to grant such a permission.

116. Accordingly, the Tribunal determines that there has not been a deterioration in the condition or amenities of the site and there is no other evidence of a weighty matter which would displace the presumption for a CPI increase.

117. The Tribunal determines that the pitch fee for plots 27 & 28 should both be increased by the appropriate CPI figure as at the date of the annual increase.

118. Notwithstanding this decision the Tribunal notes that the Respondents have concerns about some health and safety issues with contractors on site. Mr Willgress in particular is concerned about ecological issues. The Tribunal does not consider these to affect the amenity of the site although the Applicant might sensibly take note of them.

119. All three Respondents rue what they see as a poor level of communication between the Applicant and Park residents. The Tribunal hopes that this might improve in the future.

**The Tribunal determines the pitch fee for 27 Lookout Park from 1st October 2023 is £234.28 per month.**

**The Tribunal determines the pitch fee for 28 Lookout Park from 1st October 2023 is £234.28 per month.**

## 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 28day 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.