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| A black and white logo  Description automatically generated |  | FIRST-TIER TRIBUNAL**PROPERTY CHAMBER****(RESIDENTIAL PROPERTY)** |
| **Case Reference** | **:** | **CHI/19UD/PHI/2024/0060-65** |
| **Property** | **:** | **Numbers 1,3,4,6,9 & 10 Organford Manor****Country Park****Organford Lane****Poole****Dorset****BH16 6ES** |
| **Applicant** | **:** | **Organford Manor Country Park Limited** |
| **Representative** | **:** | **Ms K Apps (Apps Legal Limited)****Ms V Osler (Counsel)** |
| **Respondents** | **:** | **Mr and Mrs Eldridge (Number 1)****Ms M Graham (Number 3)****Mr Patterson & Ms Gray (Number 4)****Mr & Mrs Turner (Number 6)****Mr & Mrs Butler (Number 9)****Mr & Mrs B Kennett (Number 10)** |
| **Representative** | **:** | **None** |
| **Type of Application** | **:** | **Review of Pitch Fee: Mobile Homes Act****1983 (as amended)** |
| **Tribunal Members** | **:** | **Mr I R Perry FRICS** **Mr M J Ayres FRICS** |
| **Date of Inspection****and Hearing** | **:** | **14th November 2024** |
| **Date of Decision** | **:** | **21st November 2024** |

**DECISION**

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# Summary of Decision

**The Tribunal determines the pitch fee for Numbers 1,3,4,6,9 & 10 Organford Manor Country Park from 1st January 2024 is £280.41 each per month.**

# Procedural History

1. On 25th March 2024 the Applicant’s representative applied on Tribunal forms PH9 for a determination of a revised pitch fee payable by the Respondents for their respective pitches with effect from 1st January 2024.
2. It was proposed that the pitch fee for each plot for the previous year, said to be £268.08, would increase to a new figure of £280.41 per month. The proposed increase would be 4.60%, this being the annual increase in the Consumer Price Index (“CPI”) in October 2023, published in November 2023, which was therefore the latest CPI available when the increase notices were issued on 18th November 2023.
3. Initial Directions were issued by the Tribunal in April 2024 to the effect that the applications and supporting documents should stand as the Applicant’s statement of case and should be sent to the Respondents with a copy of the Initial Directions which included reply forms for each Respondent to complete.
4. The Applicant confirmed on 13th June 2024 that the holding directions had been served on the Respondents. All the Respondents submitted the aforementioned reply forms objecting to the Applications and requesting that a hearing be set down.
5. Further Directions were issued on 12th September 2024 which gave the Respondents the opportunity to appoint a representative to correspond with the Tribunal.
6. A hearing was arranged for 14th November 2024 to consider all six cases which was to be preceded by a site inspection.

**Background**

1. Organford Manor Country Park (“the Park”) is a residential park home estate licenced by Dorset Council under the Caravan Sites and Control of Development Act 1960 within the meaning of the Mobile Homes Act 1983 (“the Act”).
2. The Park is set amongst open countryside about 6 miles west of Poole and is described as incorporating two sections linked by an internal road with the lowest half of the site including the main entrance from Organford Road.
3. The lower area of the Park itself is named as four smaller courts, namely Poppy Court, Rose Court, Tulip Court and Orchid Court. All the Respondents live within Orchid Court.
4. The Tribunal was provided with an electronic bundle of some 458 pages. References within square brackets [ ] refer to the electronic numbered page within the bundle.
5. The Park was purchased by the present owners in 2014 and has been redeveloped into the present park home estate with some 130 park homes sited on it. There is a level, fenced and grassed field of about 3.5 acres which is not part of the Park but has the benefit of planning permission for caravan site use and is currently made available to residents of the Park as a dog walking area. A site plan was provided [405].
6. All 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.Water and sewerage services are payable within the pitch fee, electricity and gas are payable in addition to the pitch fee.
7. In recent years planning permission was granted for a caravan site on a parcel of land immediately to the south of the Park (“South land”) [401], between the Park and Organford Road, and between Orchid Court and Organford Road. The Tribunal is told that this was previously an open grassed area which included part of the sewage system. It is now the site of 11 additional homes.
8. The Tribunal inspected the site at 10.00a.m. on Thursday 14th November 2024 with the Ms Apps, Ms Osler, Mrs Eldridge (Plot 1), Ms Graham (Plot 3), Mr J Jobling (Park Manager) and his colleague Mr P Morrison. The weather was clear and dry. At the inspection the Tribunal was provided with a block plan of the lower part of the site by the Applicants representative. A hearing was later held at Bournemouth Combined Court of Justice commencing at about 12.00 noon.
9. 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**

1. The Respondents had provided a single combined statement [445] with supporting letters that they had sent to Mr Jobling on 20th March 2024, 30th April 2024 and 28th June 2024 all of which set out their position regarding an increase in the pitch fee. [452-458].
2. The Respondents refer to the loss of amenity relating to the South land which has been developed and which they describe as a social gathering area. They refer to the loss of some roadside lighting, cracking to the Park roads, flooding on parts of the road, months of noise, mess and possible damage to their homes caused by vibration from heavy goods vehicles, loss of aspect over the South land and the length of time taken to complete the development of the South land.
3. The Respondents suggest that the value of their homes has been reduced because of the South land being developed.
4. The Tribunal also received a written reply statement from the Applicant [308-324] which notes that the Respondents do not take issue with the pitch fee review documentation, or the relevant CPI percentage used in the calculation.
5. The Applicant refers to the South land that has been the subject of the recent development asserting that this was a relatively small area of land given the overall size of the Park and that it has at no time been regarded as part of the Park. Before 2022 the land was not part of the protected site although it had one of the operational sewage pumps at its centre.
6. The Applicant states that the development works have not been continuous or constant, that steps have been taken to minimise disruption and there is no evidence of any damage to any of the park homes.
7. The Applicant states that there has been no cracking of the road, no evidence of flooding and that surface water drainage has been improved, that only 3 lights out of a total of 73 lights on the Park have been out of action and that they will be reactivated when the development is completed, that the Park has been improved with a new sewage system and ANPR entry system.
8. The Applicant further states that the property values in Orchard Court have not been affected by the development and provides a letter from Simon Dixon of Dorset Park Homes as evidence to this [444].
9. The Tribunal was provided with a written statement from Mr Jobling with a brief history of the Park, including that the dog walking area has only been available since about August 2016 when the present owner bought the Park.
10. Mr Jobling says that the pitch fee was only increased in 2023 by 11% when the relevant Retail Price Index (“RPI”) at the time was 14.2%. He further states that of the 126 occupied homes on the Park only 6 have objected to the fee increase, the owners in this case who all live in Orchid Court.
11. Mr Jobling also states that the South land was not part of the Park until May 2022 and did not have planning permission, and whilst the Park owners arranged for the grass to be cut it was not a designated recreation area for Park residents to use. There was no signage or benches on the land to encourage its use as have been provided on the dog walking field.
12. Mr Jobling stated that some residents had informed the Park owner that on one occasion in the past they intended to use the land for a party, possibly the Queen’s platinum jubilee in 2022. This had been a one-off statement rather than a formal request.
13. Planning permission was obtained to site 11 park homes on the South land. 10 concrete bases have been constructed and 9 new homes sited. 5 new homes have been sold. Some landscaping work is yet to be completed.
14. Mr Jobling states that work on the new development began in July 2023, that residents were informed and are regularly updated and that he tries to give residents 7 days’ notice of when a new home is arriving as this inevitably causes some disruption to traffic flow. He states that the first phase of 5 new homes had been completed by September 2023, save for the landscaping.
15. Phase 2 of the development began in March 2024 with 4 new homes sited between April and June 2024.
16. Mr Jobling states that every effort has been made to minimise disruption to Park residents during the development including stone and hardcore being delivered in large loads diverted to the Park owners nearby farm property and then moved to the Park itself in smaller dumper trucks, and the new homes themselves were also double handled using smaller 4 x 4 vehicles to bring them to their final position rather than low loaders.
17. Mr Jobling explained in his statement that the 3 low level bollard lights that are not presently working will be reinstated after the development is finished and that in his opinion none of the roads in the Park are in poor condition.
18. Mr Jobling states that the natural drainage in the new development area has been improved with new storm drains and all of the new homes being directly connected to underground pipework rather than merely discharging onto the pitches themselves.
19. He states that he has not received any complaints about standing water or flooding issues, has no knowledge of any homes on the site damaged by vibration from heavy goods vehicles, that there are no roads on the Park in poor condition and that in his opinion there has been no reduction in the value of any of the Park homes as a consequence of the development works. It should be said that Mr Jobling is also responsible for the sale of homes on the development.
20. Mr Jobling also refers to other works on the site since it was purchased by the Applicant, in addition to the new sewerage treatment plant. These include additional Aco drains, the provision of 2 defibrillators (one was paid for by residents, but the park owner is responsible for ongoing maintenance and service), a new ANPR camera system linked to the entrance barrier and an associated intercom, speed calming measures, signage and white lining, improved roads to the lower part of the site and bricking in the skirting to many homes.
21. In conclusion Mr Jobling sets out the regular maintenance and services that the Park owner carries out to maintain the site as seen.
22. 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); *Teignbridge District Council v Clark* [2024] UKUT 00279 (LC); *Britaniacrest Ltd v Bamborough* [2026] UKUT 144 (LC) and *Hardman and Partners v Fox and othe*rs [2019] UKUT 0248 (LC).
23. Copies of these decisions were supplied to the Respondents and the Tribunal as separate documents, and most are referred to in the Tribunal’s summary of the law at paragraphs 57-101 below.
24. In addition to these Ms Osler refers to *Teignbridge District Council v Clark* [2024] UKUT 00279 (LC) in which Judge Cooke summarised the pitch fee process in paragraph 12 as :

“What the FTT cannot do in deciding on a charge in the pitch fee is to simply impose what it regards as a reasonable fee. It must follow the reasoning process set out in the statute and determine whether it would be reasonable for the current fee to change and if, following paragraphs 18 and 20, by how much.”

1. Ms Osler also refers to *Hardman and Partners v Fox and others* [2019] UKUT 0248 (LC) at paragraph 40 which says

“In other words, it is consideration paid by the occupier for the right to live in the mobile home on the pitch. It is described as a single fee, and there is no reference in the implied terms to its comprising a number of items or including specific charges. The exercise that the FTT carried out was, in practical terms, very likely the determination it might make in the more familiar context of a leasehold flat when asked to decide upon the payability and reasonableness of service charges. That is not what the draftsman of the implied terms seems to have thought would normally happen. The pitch fee should fluctuate by no more than the RPI (now CPI) although it might go up or down more than that modest percentage if the site is improved, or the quality of the site deteriorates, or where compliance with a new enactment imposes a cost on the site owner. The very fact that absent such circumstances it is supposed to fluctuate by no more than the RPI suggests that it is not intended to be a collection of individual items, and that it should not fluctuate with the cost of individual services (as does a service charge contained in the lease of a dwelling, as defined by section 18 (1)(a) of the Landlord and Tenant Act 1985).”

**The Inspection**

1. The members of the Tribunal inspected the site as arranged and invited the Parties to point out any issues that they wished to draw to the Tribunal’s particular attention.
2. In particular the Tribunal were pointed to the pillars at the entrance to the site which had been rebuilt in a slightly different position [349], to an indented area adjoining a traffic calming bump, the one-way traffic system, 3 low level street lights that are not working [360], an area referred to in the papers as flooding, the dog walking area [370] a damaged kerb and the area around the new homes not yet landscaped [366-367].
3. The Tribunal also noted the Automatic Number Plate Recognition system at the main entrance, [349-350], site signage [351, 352,363], road signage, and general good standard of roads and markings.
4. The Tribunal was also directed to some road cracking, a damaged kerb, that pitch 10 is below the level of the new homes at plots 28-30 which might cause the pitch to flood, and to some weeds growing at the side of an opening into the dog walking field. The Tribunal noted that plot 10 is already below the existing road level.
5. The Tribunal noted that an Aco drain had recently been installed in front of plots 7 & 8, and the area that is stated in the papers that floods was covered by metal plates.

 **The Hearing**

1. The Hearing took place after the site inspection and commenced at approximately 12.00 noon.
2. 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 every item of detail, nor do they 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.
3. Ms Osler outlined the case for the Applicant and reminded the Tribunal that the Respondents had not disputed any of the notices or correspondence relating to the pitch fee increase, nor had they disputed the correct CPI percentage that would apply. She suggested that the Tribunal had two initial questions to answer. Firstly, whether any increase in the pitch fee was reasonable and secondly by what percentage should the increase be made if the Tribunal decided that there had been a deterioration in condition or decrease in amenity.
4. Ms Osler suggested that there had been no reduction in amenity of the site as compared with previous years, that any noise or dust from the development was transitory, that there were no previous rights or agreements for the Respondents to use the area that had been developed, that the Park owners have improved amenity of the site since their purchase in 2014 and in particular a field has been set aside for dog walkers and other Park home owners to use, albeit not as part of any formal agreement.
5. Ms Osler stated that the Park owner had done its best to minimise disruption and nuisance during the development, that any cracks in the roads were minor, that there was little evidence of flooding and that a new Aco drain has been installed, that only 3 out of 73 lights are not working-and they will be reconnected when the development is finished, and that the Park owner has carried out a number of improvements, and continues to do so.
6. The Respondents had agreed that Mrs Turner (number 6) would speak on their behalf. She explained that the purported loss of the South land was not the Respondents main issue and that they accepted this land was gone. The Respondents are mostly exercised by the nuisance and disturbance caused during the development works and they are particularly frustrated that the Park owner is unable to give a fixed date for when the works will be complete. They assert that the works have now been going on for some 17 months and there is still no firm date for completion.
7. Mrs Turner explained that the new Aco drain in Orchid Court where flooding had occurred had only been completed the day before the inspection.
8. Mr Jobling was asked a number of questions; in particular what steps had been taken to minimise damage to any of the Park homes by heavy vehicles. He replied that, except for concrete lorries, materials and the homes themselves had been delivered to a nearby farm and then transported to site as smaller loads.
9. He explained that before the development the grass on the South land had been regularly cut although it was not part of the designated site and that mitigation works had been carried out as part of the development to minimise the amount of mud generated or spread to the Park roads. He also said that he anticipated that the development works would be completed by the end of 2024 or perhaps January 2025, although the landscaping around the individual new homes would be the responsibility of the new owners when their purchase was complete.
10. Both parties were given an opportunity to summarise their case. Miss Graham also spoke for the Respondents and reiterated their frustration at the disturbance caused by and the length of time taken for the development on the South land which had particularly affected those living in Orchid Court.
11. Ms Osler thanked the Respondents for their courtesy in the way they had conducted their case and Miss Graham concluded that she and her neighbours enjoyed living in the Park.

**The relevant Law and the Tribunal’s jurisdiction**

1. 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.
2. 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.
3. 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.
4. 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.
5. The Mobile Homes Act 2013 (“the 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.
6. 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.”

1. 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.
2. 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.
3. 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.
4. Paragraph 18 provides that:

“18(1) When determining the amount of the pitch fee particular regard shall be had to-

1. 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.…………”

1. 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

1. index published for the month which was 12 months before that to which the latest index relates.”
2. 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.
3. 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.”

1. 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).
2. 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.”

1. 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”

1. 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.”

1. 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.
2. 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.”

1. 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.

1. 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.”

1. 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.”

1. 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.”

1. 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.”

1. 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, *Britaniacrest* (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.”

1. 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.”

1. 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.
2. 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.

* 1. 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.
	2. No weight may be given in any case to the factors identified in paragraphs 18(1A) and 19.
	3. 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.
	4. 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.
	5. 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.”
1. 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”.

1. 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.”

1. 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.
2. 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.
3. 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.
4. 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.
5. 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”.

1. 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.
2. 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.
3. 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 *Britaniacres*t that the Act itself gives little.
4. However, the Tribunal does not consider that they could add anything to its decision in this particular case.
5. 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.
6. 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.
7. 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.
8. 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.
9. 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.

1. 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.

# Consideration and Determination

1. The Tribunal thanks the parties for their submissions and the way in which their respective cases were made in preparation for the Inspection and Hearing. We have carefully considered all that we have seen, all that was said, all the documents within the bundles and the submissions at the Hearing.
2. From its inspection the Tribunal finds that the Park is generally well maintained and it is evident that, in the long term, the amenities of the site and its condition are being steadily improved.
3. The Tribunal had been directed to road damage next to the road bump just inside the Park entrance. The Tribunal found this barely discernible and do not consider it a serious issue when considering the amenity of the site.
4. The Tribunal had been directed to cracks to the road within Orchard Court. In front of Number 10 there was a very small, cracked area around a surface water drain and close by a small area of kerb had been damaged. These minor blemishes stand out as the rest of the roads are in such good condition however they are very minor and the Tribunal does not consider these to be serious issues relating to the amenity of the site.
5. The Tribunal noted that a new Aco drain had been provided in Orchid Court to alleviate the suggested flooding. The Tribunal had noted some pooling of water in front of Numbers 7 and 8 [362] but did not consider that this amounted to flooding that would seriously impact on the amenity of the site. The Tribunal noted that in any case a new drain has now been provided at that position.
6. It is not disputed that three low level streetlights are not working. The Tribunal notes that it is 3 lights out of a total of 73 lights on the Park that are not working which cannot be considered a serious reduction in the site amenities. The Applicant has made it clear that the lights are to be reconnected when the development works are complete.
7. The Tribunal was directed to a very small area of nettles growing close to an entrance to the dog walking area as evidence of reduced upkeep of the site. The Tribunal did not consider that this was a serious issue and found that the site was well maintained.
8. The Tribunal considered whether the development of the South land was a loss of amenity of the site. The Applicant has made it clear that although it had regularly mown the grass on the land and a sewage treatment plant was at the centre of the land, the land itself did not form part of the site and at no time had it been offered as amenity land for the Park residents. The building of 11 new homes on the area was not a loss of amenity of the site as a whole.
9. The Tribunal considered whether the views from any of the Applicants homes had been sufficiently prejudiced to be considered a weighty matter which might justify a variance from a pitch fee increase in line with the CPI.
10. No evidence had been provided of what constituted the southerly aspect from any of the Applicants homes before the development of the South land. The Tribunal could only speculate that the view had been of a mown area in front of the Organford Lane and that the area included the sewage pump. The new homes now situated on the South land are all new and of good quality. The final landscaping works are not yet complete but there is no suggestion by the Respondent that these will be of any lesser quality than the homes on the rest of the Park. Accordingly, the Tribunal determines that this is not a sufficiently weighty matter to disturb the expectation of an increase in the pitch fee in line with the CPI.
11. The Tribunal determines that the pitch fee for each of the Respondents properties will be increased from 1st January 2024 by 4.6% this being the CPI for October 2023 published in November 2023.

**The Tribunal determines the Pitch Fee for Numbers 1,3,4,6,9 & 10 Organford Manor Country Park from 1st January 2024 is £280.41 each 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.