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Case No: LC-2024-412

IN THE UPPER TRIBUNAL (LANDS CHAMBER)

AN APPEAL AGAINST A DECISION OF THE FIRST-TIER TRIBUNAL (PROPERTY CHAMBER)

FTT REF: CHI/29UL/MNR/2024/0066

12 September 2024

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007
AN APPEAL FROM A DECISION FOR THE FIRST-TIER TRIBUNAL (PROPERTY CHAMBER)

PARK HOMES – PITCH FEE REVIEW – reasons for displacing the presumption of change in line with the RPI – deterioration in the amenity od the site - level of change in the index itself not a relevant factor

BETWEEN:

TEIGNBRIDGE DISTRICT COUNCIL

Appellant

-and-

MR FRANCIS CLARK

Respondent

Pitch number 6,
Haldon Ridge,
Kennford,
Exeter EX6 7XA

Upper Tribunal Judge Elizabeth Cooke
Decision on written representations

Mr Jonathan Ward for the appellant, instructed by Cobb Warren solicitors.

The following cases are referred to in the decision:

Britanniacrest Limited v Bamborough [2016] UKUT 0144 (LC)
Charles Simpson Organisation Ltd v Redshaw (2010) 2514 (CH)
Vyse v Wyldecrest Parks (Management) Ltd 2017 [UKUT] 24

Introduction

1. This is an appeal from the First-tier Tribunal's determination of the pitch fee for the pitch where Mr Clark lives in his mobile home at Haldon Ridge, a site owned by the appellant, Teignbridge District Council. Permission to appeal was given by the FTT, and the appeal has been determined under the Tribunal's written representations procedure. Mr Clark has chosen not to participate as a respondent and so I have had written representations only from the appellant, drafted by Mr Jonathan Ward of counsel, to whom I am grateful.

The factual and legal background

2. Mr Clark is entitled to occupy his pitch and station his mobile home at Haldon Ridge under a written agreement dated 6th December 2014. It is not in dispute that this is an agreement to which the Mobile Homes Act 1983 applies. The provisions of that Act therefore determine how and to what extent the pitch fee paid by Mr Clark can be changed.

3. The "pitch fee" is defined in paragraph 29 of Schedule 1, Part 1, Chapter 2, to the Mobile Homes Act1983, 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 use of the common areas of the protected site and their maintenance, but does not include amounts due in respect of gas, electricity, water and sewerage or other services, unless the agreement expressly provides that the pitch fee includes such amounts"

4. The provisions about changing the pitch fee are in paragraphs 16 to 20 of Schedule 1, Part 1, Chapter 2 (to which I refer from now on just as "the Schedule"). The pitch fee can only be changed by following the procedure set out in paragraph 17 of the Schedule, and then only with either the agreement of the occupier or if the FTT, on an application by the site owner, considers it reasonable for the fee to be changed and makes an order determining the amount of the new fee..

5. On 27 January 2023 the appellant sent to Mr Clark a pitch fee review notice and form, complying with the requirements of paragraph 17, proposing an increase in the pitch fee with effect from 3 April 2023 from £61.5 to £69.74, an increase of 13.4% in line with the increase in the RPI in December 2022. The form noted that the pitch fee was last reviewed on 1 April 2019.

6. Mr Clark did not agree the proposed new pitch fee and therefore the appellant applied to the FTT for a determination.

7. As to the level of the new fee, paragraph 18 of the Schedule says this (so far as relevant):

> "(1) When determining the amount of the new pitch fee particular regard shall be had to—
>
> (a) any sums expended by the owner since the last review date on improvements— …
>
> (aa) in the case of a protected site in England, any deterioration in the condition, and any decrease in the amenity, of the site or any adjoining land which is occupied or controlled by the owner since the date on which this paragraph came into force (in so far as regard has not

previously been had to that deterioration or decrease for the purposes of this subparagraph);

(ab) in the case of a protected site in England, any reduction in the services that the owner supplies to the site, pitch or mobile home, and any deterioration in the quality of those services, since the date on which this paragraph came into force (in so far as regard has not previously been had to that reduction or deterioration for the purposes of this subparagraph);

…

(1A) But, in the case of a pitch in England, no regard shall be had, when determining the amount of the new pitch fee, to any costs incurred by the owner since the last review date for the purpose of compliance with the amendments made to this Act by the Mobile Homes Act 2013.

8. Paragraph 20 says this (again, omitting irrelevant passages):

> "(A1) In the case of a protected site in England, 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 no more than any percentage increase or decrease in the retail prices index calculated by reference only to—
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> (a) the latest index, and
>
> (b) the index published for the month which was 12 months before that to which the latest index relates."

9. That provision has now been amended to refer to the consumer prices index, but at the time relevant to this appeal the text remained as above and the retail prices index is the relevant index for the purposes of this appeal.

10. The effect of those provisions taken together is that if the FTT decides that it is reasonable for the pitch fee to change, then there is a presumption that it shall increase or decrease in line with the latest change in the RPI, unless the FTT decides that that would be unreasonable having regard to paragraph 18(1). Paragraph 18(1) requires the FTT to have regard "in particular" to certain factors, which of course means that other factors can also be taken into account. In *Britanniacrest Limited v Bamborough* [2016] UKUT 0144 (LC) the Tribunal (the Deputy President, Martin Rodger QC and Mr Peter McCrea FRICS) said:

> "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."

11. In *Vyse v Wyldecrest Parks (Management) Ltd* 2017 [UKUT] 24, Tribunal (HHJ Alice Robinson) explained that if none of the matters raised in paragraph 18(1) of the statutory implied terms applies and would justify departing from the statutory presumption, then the statutory presumption arises and the Tribunal must consider whether any "other factor" should displace it. The Upper Tribunal held that : - "...by definition, this must be a factor to which considerable weight attaches..."

12. What the FTT can not do in deciding on a change 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.

The FTT's decision

13. The FTT heard evidence about the site from Mr Madge, an officer of the appellant, and from Mr Clark. Both spoke about the condition of the site and the services provided there; Mr Clark also said that an increase in line with the RPI would cause hardship because of the cost of living crisis.

14. In its decision the FTT set out the relevant law. It noted that the pitch fee had not been changed since 2019 and therefore determined that it was reasonable for the local authority to seek an increase and went on to consider what that increase should be.

15. The FTT said:

> "46. In terms of 'Decrease in amenity', the Tribunal adopted the definition of 'amenity' as set out by Kitchen J in the case of *Charles Simpson Organisation Ltd v Redshaw* (2010) 2514 (CH):-
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> > "In my judgment, the word "amenity" in the phrase "amenity of the protected site" in paragraph 18(1)(b) simply means the quality of being agreeable or pleasant. The Court must therefore have particular regard to any decrease in the pleasantness of the site or those features of the site which are agreeable from the perspective of the particular occupier in issue."
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> 47. The Tribunal accepted Mr. Clark's evidence that the site had become very much less of a pleasant place to live during the relevant period, as he described abandoned vehicles, vandalism, anti-social behaviour and dangerous dogs being allowed to roam unchecked. Whilst there was evidence from Mr. Madge that the Council had tried to tackle these problems, and Mr. Clark had some sympathy for the Council's position, the reality was that Haldon Ridge had 'got worse'.
>
> 48. Accordingly, although it is right that the deterioration was as a result of the behaviour of certain individuals, the reality for Mr. Clark was that the Council had not succeeded in managing or preventing these problems and he had to live in a less pleasant and agreeable environment. The Tribunal therefore found that there had been a decrease in amenity such as to displace the statutory presumption of a pitch fee increase in line with the RPI.
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> …50. The Tribunal noted that it was significant that Mr. Madge conceded that there had been difficulties with sending staff to the site to deal with general maintenance because of health and safety issues and anti-social behaviour. Therefore the Tribunal was minded to accept the evidence of Mr. Clark that the caretaking and maintenance had been less effective during the relevant year.
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> 51. In terms of any reduction or deterioration in the rest of the services provided, the Tribunal accepted the evidence of Mr. Madge that in fact the Council had devoted more time and energy in trying to manage the site and maintain the

services than ever, and therefore no finding was made that there had been a reduction or deterioration in the actual quality of those services.

52. Finally, the Tribunal found that the RPI increase (of 13.4%) in that particular year (to December 2022) had been exceptional, and there had been less extreme fluctuations in the years before and after the Review. It was clear that the rise in the cost of living had impacted those living on limited income most severely, and the Tribunal found that this was a factor of significant weight in determining the appropriate pitch fee increase in this case.

16. The FTT concluded that there was good reason to depart from the statutory presumption because of issues relating to the condition and amenity of the site; they were not so severe as to warrant a nil increase but the correct adjustment would be an increase of 8% rather than the proposed 13.4%.

The appeal

17. The appellant has permission from the FTT to appeal the decision on the following grounds:

> **Ground 1** The Tribunal reaches a decision which is irrational in that it finds there has been a deterioration in amenity affecting the statutory presumption, despite the amenity being affected (if at all) by actions of the residents. The Tribunal finds that as a consequence of the conduct of the residents there is an increase in resources dedicated to the provision of services and accordingly there is no reduction or deterioration in respect of the provision of services. These two findings cannot be reconciled. The Tribunal should have concluded that if there was a deterioration in condition or amenity that it was attributable to resident conduct and accordingly that it should not have been taken into account in determining the new pitch fee.
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> **Ground 2** Without prejudice to the foregoing, the Tribunal erred in law in failing to direct itself to the question of whether there was a decrease in amenity or condition which had arisen since the date on which paragraph 18(1)(aa) of Schedule 1 to Mobile Homes Act 1983 came in to force (specifically in or around 2013) and which had not already been taken in to account.
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> **Ground 3** The Tribunal erred in law in considering that the fact that the RPI figure of 13.4% in the index review period would impact those on limited income should be a significant factor in determining the appropriate pitch fee. Respectfully, that is to exceed the discretion afforded to it by the statutory regime.

18. I take those grounds in turn.

Ground 1: was the decision irrational?

19. There are a number of strands within this ground of appeal.

20. One is that it was inconsistent for the FTT to find that there was a decrease in amenity yet no reduction or deterioration in the provision of services for the occupiers. That can be dealt with shortly: there is no inconsistency. The level or quality of services provided on a

site may remain constant, or even increase, yet amenity may decrease for reasons unrelated to the provision of services by the site owner. I see no inconsistency there.

21. In written submissions Mr Ward argued that the FTT was wrong to rely upon what was said in *Charles Simpson v Redshaw* (paragraph 46, quoted above at paragraph 15), on the basis that it was a decision on permission to appeal and is not binding on the FTT, and in any event was about a different issue. I see no substance in that point either; the FTT did not say it was bound by *Charles Simpson v Redshaw* and seems to me to have used wording from that decision as a convenient way of paraphrasing or teasing out what is meant by "amenity". It did not need to do so; amenity is not difficult to understand. But I see no error of law in the reference to *Charles Simpson v Redshaw.*

22. At the heart of this ground is the proposition that the FTT ought not to have had regard to a decrease in amenity which was brought about by other residents on the site rather than by the site owner.

23. The statute requires the FTT to have particular regard to "any deterioration in the condition, and any decrease in the amenity, of the site". It says nothing about causation. The focus is on what the occupier is paying for; it will be recalled that the pitch fee is defined (paragraph 29 of the Schedule, quoted at paragraph 3 above) as payment "for the right to station the mobile home on the pitch and for use of the common areas of the protected site and their maintenance". Amenity is obviously relevant to what one pays for a site, whatever the reason why it is as is it. In the present case Mr Clark complained of "abandoned vehicles, anti-social behaviour and dangerous dogs being allowed to roam unchecked"; that falls squarely within amenity, and in my judgment also a "deterioration in condition" of the site.

24. Mr Ward argued that "if the site owner cannot be expected to have done any more to preserve the condition and amenity by provision of services exceeding the minimum requirement, and the conduct of others who live on the site has caused a deterioration in condition, then any deterioration of condition or amenity … cannot be such as to render it unreasonable to apply the statutory presumption."

25. I disagree with that submission for two reasons. One is that the FTT did not find that the appellant could not be expected to have done more to preserve the condition and amenity of the site. It simply said that there had been no reduction in the quality of the services (paragraph 51, quoted at paragraph 15 above), as a result of the fact that the council, in the face of anti-social behaviour by some residents, had "devoted more time and energy in trying to manage the site and maintain the services than ever". But despite that, the FTT accepted Mr Clark's evidence that caretaking and maintenance had become less effective. The appellant was doing more, but it had not prevented the decrease in amenity.

26. The other reason why I disagree with Mr Ward's submission is that the statute says nothing about causation. That means, I accept, that the statute places the financial consequences of externalities – whether weather conditions or anti-social behaviour or any other cause of a deterioration in the site – on the site owner rather than the occupiers. That is hardly surprising, and certainly not irrational.

27. Mr Ward also argued that the FTT's decision was wrong because it amounted to the determination of a reasonable fee in all the circumstances; but again I disagree, The FTT's decision was firmly rooted in the specific words of the statute and the considerations set out paragraph 18(1)(aa).

28. Finally Mr Ward argued that it cannot have been the intention of the legislature that residents themselves could prevent a site owner from maintaining a site by behaving anti-socially and thereby prevent an increase in pitch fee. Mr Ward made it clear that it is not suggested that Mr Clark himself had done anything wrong; and that is the important point. The FTT is not limited in the range of factors it can take into consideration, and where an occupier has himself or herself contributed to the deterioration in condition or amenity of the site then that would be an important factor. But that is not the case here and the point is not relevant to this appeal and this respondent.

29. I find nothing irrational in the fact that the FTT found that the amenity of the site had deteriorated despite the appellant having put more resources into it and maintained its services. This ground of appeal fails..

Ground 2: the timing of the decrease in amenity and whether it had already been taken into account.

30. In full, this ground is that "the Tribunal erred in law in failing to direct itself to the question of whether there was a decrease in amenity or condition which had arisen since the date on which paragraph 18(1)(aa) of Schedule 1 to Mobile Homes Act 1983 came in to force (specifically in or around 2013) and which had not already been taken in to account."

31. In my judgment there is no substance in this ground. The pitch fee had not been changed since 2019, and it is apparent from the decision that the deterioration in the site had been recent. Mr Clark's evidence is reported by the FTT as referring to deterioration "recently", and Mr Madge referred to problems "during the relevant period". In its paragraph 50 (paragraph 15 above) the FTT referred to what Mr Clark had told them about "the relevant year", and in its refusal of permission to appeal the FTT referred to Mr Clark having given evidence about "the last couple of years". The FTT having referred to the statutory provisions and quoted paragraph 18 of the Schedule was certainly aware of the timing issue, and in my judgment despite the absence of any explicit statement by the FTT that the timing requirements of paragraph 18(1)(aa) were met it is safe to infer that the difficulties reported by Mr Clark had arisen since the last pitch fee review, four years before the present one; accordingly they had arisen long after the relevant statutory provisions came into force in 2013 and had not previously been taken into account. This ground of appeal fails.

Ground 3: did the FTT exceed its discretion in considering the impact of the unusually high rise in the RPI?

32. This ground refers to what the FTT said at its paragraph 52, which I repeat for convenience:

> "the Tribunal found that the RPI increase (of 13.4%) in that particular year (to December 2022) had been exceptional, and there had been less extreme fluctuations in the years before and after the Review. It was clear that the rise in the cost of living had impacted those living on limited income most severely, and the Tribunal found that this was a factor of significant weight in determining the appropriate pitch fee increase in this case."

33. Mr Ward acknowledged that the FTT was entitled to take into account factors beyond those listed in paragraph 18; but the level of increase in the RPI in the relevant period is,

he said, not one of them and in giving significant weight to this factor the FTT exceeded the bounds of its discretion.

34. I agree that there is no authority for the level of the RPI change being taken into account in determining whether the paragraph 20 presumption should be displaced. Other decisions of the FTT may have done so but are not authoritative. Is it nevertheless a factor that the FTT may take into account? Mr Ward argued that to do so is to subvert the statutory regime.

35. I agree. The statutory regime uses the RPI (nowadays the CPI) as the basis for the paragraph 20 presumption, and whilst an increase in line with the index is not an entitlement of the site owner the presumption provides an easy, uncontentious and objective method of calculating the increase where nothing unusual has happened in relation to the site. That easy calculation would be made complicated, and dispute would inevitably be provoked, if the level of change in the RPI were a factor that might displace the presumption. If it were such a factor then a number of other questions would arise: should there, conversely, be a bigger increase in the pitch fee if the change in the RPI is unusually low? If there is an unusually high increase is the presumption displaced for all occupiers, or only for those who can show that they are likely to be in difficulties as a result? How high is "exceptional", as the FTT put it here? That latter question cannot be answered without consideration of economic factors and possibly expert economic evidence, making proceedings disproportionately complex and expensive. I do not believe that it could have been the intention of the legislature that the FTT should have to explore any of these questions or that the parties should be free to argue about them.

36. I take the view that in giving weight to the "exceptional" level of increase in the RPI the FTT took into account an irrelevant consideration, and its decision is set aside.

Conclusion

37. The appeal succeeds. It is not possible for me to substitute the Tribunal's own judgment for the FTT's decision, because I have not heard Mr Clark's evidence about the condition and amenity of the site (it was given orally and not in a witness statement) and I cannot know how much of the difference between 13.4% and 8% was due to the level of the RPI increase. The matter is therefore remitted to the FTT for the same panel to remake its decision, taking no account of the level of increase in the RPI. I am sorry that means further delay for the parties, but there should be no need for a further hearing since the panel has all the material it ow needs.

Upper Tribunal Judge Elizabeth Cooke

12 September 2024

Right of appeal

Any party has a right of appeal to the Court of Appeal on any point of law arising from this decision. The right of appeal may be exercised only with permission. An application for permission to appeal to the Court of Appeal must be sent or delivered to the Tribunal so that it is received within 1 month after the date on which this decision is sent to the parties (unless an application for costs is made within 14 days of the decision being sent to the parties, in which case an application for permission to appeal must be made within 1 month of the date on which the Tribunal's decision on costs is sent to the parties). An application for permission to appeal must identify the decision of the Tribunal to which it relates, identify the alleged error or errors

of law in the decision, and state the result the party making the application is seeking. If the Tribunal refuses permission to appeal a further application may then be made to the Court of Appeal for permission.