

UPPER TRIBUNAL (LANDS CHAMBER)



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TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

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

PARK HOMES – PITCH FEE REVIEW – Mobile Homes Act 1983 - review date – where the last review date was not on the review date stated in the agreement – validity of notice – prescribed forms

BETWEEN:

WYLDECREST PARKS (MANAGEMENT) LTD

Appellant

-and-

MRS JULIE TRUZZI-FRANCONI

Respondent

**Re: 6 Wickens Meadow Park,
Rye Lane,
Dunton Green,
Sevenoaks,
Kent, TN14 5JB**

**Upper Tribunal Judge Elizabeth Cooke
Determination on written representations
Decision Date: 10 February 2023**

The appellant was not legally represented.
Mr Paul Oakley for the respondent, instructed by Markel Law LLP.

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The following cases are referred to in this decision:

Mannai Investment Co Ltd v Eagle Star Life Assurance Co Ltd [1997] UKHL 19

Mooney v Whiteland [2023] EWCA Civ 67

Introduction

1. This is an appeal from a decision of the First-tier Tribunal (“the FTT”) that a pitch fee review notice given by the appellant to the respondent in respect of her mobile home was invalid.
2. The appeal has been determined under the Tribunal’s written representations procedure. The appellant has been represented by its director Mr David Sunderland; written submissions were drafted for the respondent by Mr Paul Oakley of counsel.

The background

3. The appellant Wyldecrest Parks (Management) Limited is the owner of Wickens Meadow Park, near Sevenoaks, a site for residential mobile homes. The respondent Mrs Truzzi-Franconi lives there on pitch number 6 by agreement with the appellant. The Mobile Homes Act 1983 provides that that agreement contains the implied terms set out in Chapter 2 of Schedule 1 to that Act.

4. Paragraph 16 of Schedule 1 (Chapter 2) provides:

“The pitch fee can only be changed in accordance with paragraph 17, either—

(a) with the agreement of the occupier, or

(b) if [the First-tier Tribunal], 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.”

5. It is important to note therefore that the pitch fee will be changed only if either the occupier agrees or the FTT says so. This is not a situation where (as is the case for example for assured periodic tenancies under section 13 of the Housing Act 1988) the site owner’s demand for an increased fee will take effect unless an application is made by the occupier.

6. Paragraph 17 says this:

“(1) The pitch fee shall be reviewed annually as at the review date.

(2) At least 28 clear days before the review date the owner shall serve on the occupier a written notice setting out his proposals in respect of the new pitch fee.

(2A) In the case of a protected site in England, a notice under subparagraph (2) which proposes an increase in the pitch fee is of no effect unless it is accompanied by a document which complies with paragraph 25A.

(3) If the occupier agrees to the proposed new pitch fee, it shall be payable as from the review date.

(4) If the occupier does not agree to the proposed new pitch fee—

(a) the owner or (in the case of a protected site in England) the occupier may apply to [the FTT] for an order ... determining the amount of the new pitch fee;

(b) the occupier shall continue to pay the current pitch fee to the owner until such time as the new pitch fee is agreed by the occupier or an order determining the amount of the new pitch fee is made by the [the FTT] under paragraph 16; and

(c) the new pitch fee shall be payable as from the review date but the occupier shall not be treated as being in arrears until the 28th day after the date on which the new pitch fee is agreed or, as the case may be, the 28th day after the date of [the FTT] order determining the amount of the new pitch fee.

(5) An application under sub-paragraph (4)(a) may be made at any time after the end of the period of 28 days beginning with the review date but, in the case of an application in relation to a protected site in England, no later than three months after the review date.”

7. So a site owner who wants to raise the pitch fee must serve a notice at least 28 days before the review date. The notice must be accompanied by a document complying with paragraph 25A. If the occupier of the mobile home agrees then the new fee becomes payable on the review date. If the occupier does not agree, then either party may apply to the FTT within three months of the review date; and as we noted above, in the absence of agreement and if no application is made the review notice has no effect.
8. Paragraph 17(6) and following make provision for service of a late notice where the owner has missed the deadline for service in paragraph 17(2). If the occupier agrees to the new fee then it takes effect 28 days after service of the review notice, but if there is no agreement then there is again provision for application to the FTT.
9. Paragraph 25A provides that the document referred to in paragraph 17(2A) must “be in such form as the Secretary of State may by regulations prescribe ...”
10. Regulations have indeed prescribed; they are the Mobile Homes (Pitch Fees) (Prescribed Form) (England) Regulations 2013/1505. Paragraph 2 of those regulations states that the document referred to in paragraph 17(2A) of Schedule 1 of the Mobile Homes Act 1983 “shall be in the form prescribed in the Schedule to these Regulations or in a form substantially to the like effect.” The Schedule to the regulations then prescribes a form, consisting of a number of sections with blanks for the person serving the notice to fill in, and some notes.
11. Going back to the 1983 Act, paragraph 29 of Schedule 1 (Chapter 2) adds a definition:

““*review date*” means the date specified in the written statement as the date on which the pitch fee will be reviewed in each year, or if no such date is specified, each anniversary of the date the agreement commenced.”

12. There is no commencement date given in the respondent’s agreement, but the review date is said to be 1 February in each year.

The FTT’s decision

13. On 21 November 2021 the appellant served a pitch fee review notice on the respondent and three other residents at Wickens Meadow Park. The notice stated that the pitch fee would be increased by 6.6%, being the increase in the RPI over the past year, and £0.814 being a proportion of the local authority licence fee that the appellant had to pay. In the respondent’s case that would have taken her pitch fee from £110.34 per month to £117.77 per month.
14. Each review notice stated that the new fee was to be payable from 1 January 2022, which was the review date stated in three of the four occupiers’ agreements but not, as we have seen, the date stated in the respondent’s agreement.
15. The occupiers did not agree the new fee, and so the appellant made four applications to the FTT for a determination of the four pitch fees, and the FTT heard them all together on 26 July 2022.
16. At the start of the hearing the judge and members asked for comment on a concern they had about the validity of the notice in the respondent’s case only. As it explained in its decision at paragraph 13(c):

“the notice of increase served and relied on by the applicants gave a review date of 01/01/22 and stated that this was the date that the proposed pitch fee was to take effect from. It explicitly stated that the last review date had been 01/01/2021.”

17. The FTT took the view that since paragraph 17(1) of Schedule 1 (Chapter 2) to the 1983 Act required that the pitch fee be reviewed annually on the review date, the wrong review date had been given. It explained to the parties that if the notice is not valid the FTT has no jurisdiction, and it adjourned briefly for the parties to consider the point.
18. Mr Sunderland, faced with this unexpected point which the respondent (represented by counsel) had not taken, pointed out that the pitch fee had been reviewed on 1 January 2021 and said that therefore the review date had been changed by agreement. Previous proceedings in the FTT and in the Upper Tribunal between the same parties had proceeded despite without any question being raised about the review date. The previous review was in fact 1 January 2021, and Mr Sunderland pointed out that in view of that he was “stuck either way” (FTT decision paragraph 22): if he had served a notice giving the review date as 1 February that could equally have been objected to.

19. The FTT rejected Mr Sunderland’s argument that the implied terms allowed the pitch fee review date to be a date previously used by the parties. In its decision at paragraph 18 it said:

“The terms of the Act, and resulting implied terms, clearly defined what the review date was, and it was not referable to or reliant on the date used in the previous year.”
20. The FTT accepted that the fee had been reviewed on 1 January 2021, but held that that did not by itself amount to an agreement to change the review date. It noted that there had been previous proceedings between the parties and said that the review date had not been in issue in those proceedings.
21. The FTT went on to say that the statement in the notice that the review date was 1 January was not a typographical error and that it did affect the validity of the notice. It said:

“It cannot be said that by looking at the notice a reasonable recipient would know that the review date intended was actually 1/02. Indeed that was not the position the Applicants sought to argue. Indeed their intention was to implement any change in the pitch fee from the 01/01 date.”
22. Therefore, said the FTT, the review date stated in the notice was wrong and the notice was invalid. “The Tribunal therefore dismissed the application in relation to plot 6 and Mrs Truzzi-Franconi”; the FTT noted that a late notice could still be served.

The arguments in the appeal

23. Mr Sunderland in his grounds of appeal argued that the respondent, who was represented by counsel, had made no objection to the review date stated in the notice and indeed had made no objection to a review date of 1 January in each year from 2016 onwards. The appellant could not have anticipated that the date would be a problem for 2022. Mr Sunderland argued that the FTT’s decision could be corrected under the slip rule.
24. Mr Sunderland is not a lawyer and the Tribunal granted permission to appeal on the ground that it was arguable that the effect of the incorrect statement of the review date in the prescribed form did not invalidate the notice but simply meant that the increased pitch fee would take effect only from the review date.
25. The respondent’s grounds of objection focused on procedural points, in particular Mr Sunderland’s plea for correction under the slip rule, which I agree is unavailable but that is an understandable error by an unrepresented litigant and does not go to the substance of the appeal. Mr Oakley in the grounds of objection went on to say that at the hearing before the FTT (where Mr Oakley represented the respondent) Mr Sunderland withdrew the application once the FTT had raised its point about jurisdiction and that therefore in seeking to appeal it the respondent was “wrongly seeking to override the respondent’s convention rights under Art 6 of the ECHR.” Mr Oakley also sought to argue that the FTT’s decision was a discretionary one with which the Tribunal should not interfere.

26. The grounds of opposition do not engage either with Mr Sunderland's argument that the previous dealings between the parties had had the effect of changing the review date or with the legal issue on which permission has been granted.

Discussion

27. I can dispose of the respondent's points briefly. First, it is clear from the FTT's decision that the application in respect of pitch 6 was dismissed. Formally it was not withdrawn; if it had been there would have been no need to dismiss it. Mr Sunderland may have conceded at the hearing before the FTT that he could not overcome the point the FTT was making, but the FTT's decision states that the application was dismissed. The appellant was therefore free to ask permission to appeal.
28. Furthermore the FTT's decision was not discretionary. The validity or otherwise of a notice is not a matter of discretion, but a matter of law, depending as it does upon construction of the statute, the regulations and the notice itself.
29. Turning then to the FTT's decision, it is obviously troubling that the point about jurisdiction was sprung upon Mr Sunderland at the hearing, and that the FTT proceeded immediately – albeit after some discussion - to dismiss the application. This was a difficult point, and wholly unexpected (not having been spotted by counsel for the respondent). It was one which Mr Sunderland was not equipped to counter, and on which both the parties and the FTT itself could usefully have had time to reflect. It would have been open to the FTT to decide the substantive issues about the level of the pitch fee and then give the parties time to make representations about its jurisdiction to decide the fee in the respondent's case.
30. Moreover, there may be substance in Mr Sunderland's point that the agreement had been varied by the parties' course of dealing over some years. The respondent's grounds of opposition do not challenge the specific assertion at paragraph 8(vi) of the grounds of appeal that the review date of 1 January has been accepted for some six years.
31. One possible outcome of this appeal would be to set aside the FTT's decision on the grounds of procedural unfairness and remit the matter to the FTT for evidence to be heard on whether one of the terms of the parties' agreement, namely the review date, has been varied by the parties' conduct or convention.
32. However, I have concluded that the notice was in fact valid and that the FTT's finding of invalidity was wrong.
33. To explain that I have to turn to the prescribed form itself.
34. One oddity is that paragraph 17 of the implied terms (see paragraph 6 above) requires the pitch fee review notice to be accompanied by the prescribed form. Here there seems to have been just the prescribed form. Nothing turns on that and there has been no suggestion that there is anything missing; the form seems to be designed to function as the pitch fee review

notice itself, making provision in text boxes for the site owner to supply the necessary information and then providing extensive notes for the assistance of both parties.

35. The first three text boxes of the notice served on 21 November 2021 read as follows, with the words filled in by the appellant in bold and the rest of the words being the printed form:

<p>FORM TO ACCOMPANY A PITCH FEE REVIEW NOTICE</p> <p>Form prescribed under paragraph 25A(1) of Chapter 2 of Part 1 of Schedule 1 to the Mobile Homes Act 1983</p>
<p>Important note: this form, or a form substantially to the like effect, must be sent with the pitch fee review notice where the site owner proposes to increase the pitch fee otherwise the pitch fee review will not be valid. The form can also be used when the site owner proposes to reduce the pitch fee.</p> <p>Both the site owner and the occupier(s) should read the notes at the end of this form as they contain important information about pitch fee reviews.</p>
<p>Section 1: Parties</p> <p>From: Wyldecrest Parks Management Ltd</p> <p>To: Mrs Truzzi-Franconi</p>
<p>Section 2: Proposed new pitch fee</p> <p>We propose to increase your pitch fee for:</p> <p>6 Wickens Meadow Park, Rye Lane, Dunton Green, Sevenoaks, Kent TN14 5JB</p> <p>The last review date was: 01 January 2021</p> <p>The current pitch fee is £110.34 per month</p> <p>The proposed new pitch fee is £117.77 per month</p>

Section 3: Date new pitch fee proposed to take effect (effective date)

The review date is twelve months after the last review date.

The effective date is the date when it is proposed the new pitch fee is payable from, which may be on the review date or, in the case of a late review, a later date.

- The proposed pitch fee will take effect on the review date on **01 January 2022**
- The proposed pitch fee will take effect on **N/A**, which is later than the review date.

Note: for further information on the review, late reviews and the effective date see the notes at the end of the form

36. The rest of the text boxes enable the site owner to set out the way the new pitch fee is calculated.
37. The notes at the end of the form repeat the definition of the review date in paragraph 29 of the implied terms (see paragraph 11 above), namely that it is the review date stated in the agreement or the anniversary of the commencement of the agreement.
38. However, what the prescribed form asks for in section 2 is neither the review date stated in the agreement nor the date of commencement of the agreement but the “the last review date”. It has to do that to cater for the possibility of late reviews. Mr Sunderland in filling in the form gave 1 January 2021 because that was when the pitch fee was last reviewed (that much was not in dispute in the FTT). He gave the correct date and any other date would have been inaccurate.
39. The form itself then states in section 3 that the review date is twelve months after the last review date. That is not right in a case where the last review was a late review. Nor is it correct in a case where, for whatever reason, the pitch fee has been reviewed by agreement at a date earlier in the year than the review date stated in the agreement. As the FTT said, the statute defines the review date and it is not referable to the date used in the previous year,
40. The form then gives the site owner two options at the bullet points in section 3: the new fee is to take effect either on the review date or on a later date. The appellant opted for the review date, which it said was 1 January 2022.
41. It is difficult to see how the appellant can be faulted for doing so when the form itself, three lines above, states categorically that the review date is twelve months after the last review date.
42. Obviously the appellant could at that point have paused, read the notes, concluded that the form itself was wrong, and then either filled in the date 1 February 2022 beside the first

bullet point (thus contradicting the printed words of the form) or have gone for the second bullet point and put 1 February 2022, which the form would then have stated incorrectly was “later than the review date”.

43. As Mr Sunderland said, he was stuck either way.
44. The authorities about mistakes in notices direct the courts to ask whether a reasonable recipient would have understood what the appellant was saying (*Mannai Investmoent Co Ltd v Eagle Star Life Assurance Co Ltd* [1997] UKHL 19); in *Mooney v Whiteland* [2023] EWCA Civ 67 the Court of Appeal added an important proviso to that principle, namely that in order to be valid a notice but fulfil the purpose for which it is to be given. The facts in that case were that a notice of rent increase was given to an assured tenant. Section 13(2) of the Housing Act 1988 provides that the landlord may serve notice in the prescribed form proposing a new rent to take effect at the beginning of a new period of the tenancy. The tenancy was a weekly tenancy running from Monday to Monday, and the notice stated that the new rent was to take effect on a Friday. The notice was held to be invalid because it did not enable the tenant to assess whether the landlord had complied with the requirement of section 13(2), and it produced uncertainty about the date in a context where the increase would take effect unless the tenant challenged it by applying to a rent assessment committee.
45. The present case is rather different because the source of the error is different. The site owner has done exactly what the implied terms in the statute require, namely:

“17(2) At least 28 clear days before the review date the owner shall serve on the occupier a written notice setting out his proposals in respect of the new pitch fee.

(2A) In the case of a protected site in England, a notice under subparagraph (2) which proposes an increase in the pitch fee is of no effect unless it is accompanied by a document which complies with paragraph 25A.”
46. And as we have seen Mr Sunderland followed through what the form said. The form required him either to contradict the form itself by stating that the review date was on a date that was not twelve months after the last review, or to give the February date at the second bullet point while telling the occupier – in the printed words of the form – that that was a date later than the review date. It cannot be fair to find that the notice was invalid by reason of the inaccuracy in the review date, when the form itself generated that outcome by making a misleading statement.
47. To find that the notice was valid is consistent with the authorities; the notice fulfilled its purpose despite the inaccuracy, because the occupier could see that the site owner had done what the statute required, and understood what the site owner wanted to do. The occupier was not put at risk by the inaccurate date because (in contrast to *Mooney v Whiteland*) this was not a case where the rent would take effect if the occupier failed to make an application to the FTT.
48. Accordingly I find that the pitch fee review notice was valid. The FTT’s decision that it was invalid was an error of law and is set aside.

49. It would be open to the Tribunal to remit the matter to the FTT for a determination of whether the review date in the agreement had been changed by the parties' course of conduct over the last several years, so that if it had then the new fee could take effect from 1 January 2022. But in view of the amount involved that would be disproportionate. Instead I substitute the Tribunal's own decision that the new fee ran from 1 February 2022, the review date in the agreement.
50. It is clearly desirable for this appeal to bring finality, by also determining the amount of the pitch fee for the year from 1 February 2022.
51. In the FTT all four occupiers raised the same issues about the proposed increased pitch fee. The respondent represented the other three occupiers in the FTT once her own application had been dismissed. The FTT found that the proposed 6% RPI increase and the additional £0.814 per month in respect of the licence fee were payable. There has been no appeal from those findings. The Tribunal has not heard argument about the respondent's pitch fee but in light of the FTT's findings in relation to the other three occupiers I invite the parties within 14 days of receipt of this decision to let me know if there is any reason why the revised pitch fee from 1 February 2022 should not be £117.77 per month.

Upper Tribunal Judge Elizabeth Cooke
10 February 2023

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.