



Neutral Citation Number: [2024] UKUT 197 (LC)

Case No: LC-2023-745

IN THE UPPER TRIBUNAL (LANDS CHAMBER)

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

FTT REF: CH1/18UE/PHI/2023/0024-0036

10 July 2024

**TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007**

*PARK HOMES – PITCH FEE REVIEW – whether pitch fee may be reduced on review – condition of site – point of reference for consideration of deterioration of site and reduction of amenity – whether deterioration pre-dating a previous review may be taken into account – Whether reduction to reflect a temporary deterioration may be restored on a future review – para.18, Ch.2, Pt.1, Sch.1, Mobile Homes Act 1983 – appeal dismissed*

**BETWEEN:**

**WYLDECREST PARKS (MANAGEMENT) LIMITED**

**Appellant**

**-and-**

**MS D FINCH AND OTHERS**

**Respondents**

**Berrynarbor Park, Sterridge Valley,  
Ilfracombe,  
Devon**

**Martin Rodger KC, Deputy Chamber President**

**26 June 2024**

**Exeter Tribunal Hearing Centre**

Mr Payne, instructed by LSL Solicitors, for the appellant

Mr Richard Gordon-Wilson, sixth respondent, for the respondents

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The following case is referred to in this decision:

*Wyldecrest Parks (Management) Ltd v Whitley* [2024] UKUT 55 (LC)

## **Introduction**

1. This appeal raises three short points about the review of pitch fees under the Mobile Homes Act 1983 (the 1983 Act).
2. The appellant (Wyldecrest) is the owner of Bernarbor Park, near Ilfracombe in Devon (the Park), which is a protected site for the purposes of the 1983 Act. The respondents are the owners of mobile homes situated on 12 separate pitches on the Park.
3. Pitch fees on the Park are reviewable with effect from 1 January each year. By a decision issued on 25 September 2023 the First-tier Tribunal (Property Chamber) (the FTT) reduced the pitch fees payable by the respondents with effect from 1 January 2023 to the level at which they had been set on 1 January 2021. The reason for that reduction was that the FTT was satisfied that following the appellant's acquisition from a previous owner in 2020 the condition and amenity of the Park had deteriorated significantly from its former condition, which it described as having been "pristine".
4. The FTT granted the appellant permission to appeal on three grounds, to which I will come shortly. At the hearing of the appeal the appellant was represented by Mr Payne. The respondents were represented by Mr Richard Gordon-Wilson, one of the residents of the Park and himself a respondent.

## **Pitch fee reviews under the 1983 Act**

5. Like all occupiers of homes on protected sites, the respondents' occupation of their pitches is governed mainly by terms implied by statute and found in Chapter 2 of Part 1 of Schedule 1 of the 1983 Act. The terms which regulate the review of pitch fees are paragraphs 16 to 20.
6. Paragraph 16 provides that the pitch fee may only be changed by agreement or, in the absence of agreement, by the FTT if it "considers it reasonable for the pitch fee to be changed and makes an order determining the amount of the new pitch fee."
7. The procedure for increasing a pitch fee is specified in paragraph 17 which provides for annual reviews from a review date which in this case is 1 January. The owner must give notice of its proposed increase using a prescribed form at least 28 days before it is due to take effect. If the occupier agrees to the proposed fee it becomes payable from that date. If the occupier does not agree, the owner may apply to the FTT for an order determining the amount of the new pitch fee.
8. Paragraphs 18, 19 and 20 provide guidance to the FTT on the factors which may be taken into account when conducting a review.
9. Paragraph 18(1) specifies that, when determining the amount of the new pitch fee "particular regard" shall be had to a number of matters. Of particular relevance to this appeal are the matters identified in paragraph 18(1)(aa) and (bb), namely:  
  
    “(aa) [...], any deterioration in the condition, and any decrease in the amenity, of the site or any adjoining land which is occupied or controlled by the owner since the date on which this paragraph came into force (in so far as regard has

not previously been had to that deterioration or decrease for the purposes of this subparagraph);

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

10. Other matters to be taken into account include sums spent by the site owner since the last review date on improvements for the benefit of the occupiers and to which, after consultation, a majority has not objected. Paragraph 18(3) explains that, where the pitch fee has not previously been reviewed, references to “the last review date” are to be read as references to the date when the agreement commenced.
11. Paragraph 19 then identifies certain costs which may not be taken into account in determining a new pitch fee. Finally, paragraph 20 creates a statutory presumption that unless it would be unreasonable to do so having regard to paragraph 18(1) the pitch fee will increase or decrease by not more than the percentage increase or decrease in the retail prices index for the previous 12 months (with effect from 2 July 2023 the relevant index became the consumers prices index).
12. The Tribunal has often given guidance on the application of these provisions. The effect of this guidance was recently summarised in *Wyldecrest Parks (Management) Ltd v Whitley* [2024] UKUT 55 (LC), at [28]:

“In summary, where none of the factors in paragraph 18(1) is present, and no other factor of sufficient (considerable) weight can be identified to displace the presumption of an RPI increase, the task of the tribunal is to apply the presumption and to increase the pitch fee in line with inflation. Where one of the factors in paragraph 18(1) is present, or where some other sufficiently weighty factor applies, the presumption does not operate or is displaced. Then the task of the tribunal is more difficult, because of the absence of any clear instruction on how the pitch fee is to be adjusted to take account of all relevant factors. The only standard which is mentioned in the implied terms, and which may be used as a guide by tribunals when they determine a new pitch fee, is what they consider to be reasonable. Paragraph 16 provides that, if the parties cannot agree, the pitch fee may only be changed by the FTT if it "considers it reasonable for the pitch fee to be changed and makes an order determining the amount of the new pitch fee." The obvious inference from paragraph 16 is that the new pitch fee is to be the fee which the tribunal considers to be reasonable.”

### **The issues**

13. The FTT took the unusual decision in this case not only to refuse the 2023 14% RPI increase proposed by Wyldecrest but to reduce the pitch fees to the level they had been before the previous 6% increase which had taken effect by agreement in January 2022. The combined effect of its decision was that with effect from 1 January 2023 the occupiers’ pitch fees were approximately 20% lower than they would have been if the presumption of an RPI increase had been applied in the usual way.

14. Wyldecrest sought the FTT's permission to appeal, relying on rather discursive grounds of appeal. The FTT summarised what it took to be the main points of the application and granted permission on three of them. There was some mismatch between the FTT's summary and the grounds which Wyldecrest wanted to argue, but the issues focussed on by Mr Payne, who appeared on behalf of Wyldecrest at the appeal, were the following:
  1. The extent to which the FTT was entitled to reduce the pitch fee below the level which had been agreed for 2022.
  2. Whether the FTT had been entitled to treat the previous "pristine" state of the Park as the relevant point of reference when considering whether there had been a deterioration in its condition for the purpose of paragraph 18(1)(aa).
  3. Whether the reduction in the pitch fee could be reversed if, in future, the condition of the Park improved.

### **Issue 1: The reduction in the pitch fee**

15. In his written argument Mr Payne did not suggest that the FTT could not reduce the pitch fee at all. He submitted instead that it was not entitled to reduce the pitch fee below the level that had last been agreed by the parties (either at the last review or when the agreement was entered into if there had not yet been a review).
16. The justification for that restriction was said to be the parties' freedom to enter into a contract, which the Tribunal should not interfere with. Reliance was also placed on the direction in paragraph 18(1)(aa) and (ab) to have regard to deterioration only "in so far as regard has not previously been had to that deterioration or decrease for the purposes of this subparagraph". The same limitation was included in the notes to the pitch fee review form prescribed by the Mobile Homes (Pitch Fees) (Prescribed Form) (England) Regulations 2023. Mr Payne suggested that this placed an onus on the site owner to take account of any deterioration when proposing an increase. In evidence filed in support of the application to the FTT it was suggested by Wyldecrest that its staff had considered the condition of the Park and taken it into account before proposing the 6% RPI increase which took effect in January 2022 and which had not been opposed. It was therefore submitted that any deterioration before the date of that increase could not be taken into account by the FTT when it considered the 2023 review.
17. On behalf of the respondents Mr Gordon-Wilson explained (as he had to the FTT) that in 2021, before the January 2022 review, the respondents had pointed out to Wyldecrest that the condition of the Park had begun to deteriorate since its acquisition the previous year. A full time gardener and maintenance man had been made redundant and specialist equipment had been disposed of. Maintenance of the grounds had become irregular and unskilled. As the FTT found in its decision, Mr Hancox, who was Wyldecrest's Operations Manager, promised in December 2021 that the deterioration would be addressed by fortnightly grounds maintenance. Mr Gordon-Wilson explained that, on the strength of that undertaking, the respondents had decided not to dispute the 2022 increase, which took effect without reference to the FTT. Unfortunately, the promise made by Mr Hancox was not then fulfilled and the condition of the Park continued to deteriorate.
18. I do not accept Mr Payne's submission that the FTT has no jurisdiction to reduce a pitch fee below the level previously agreed between the parties on the last review or at the

commencement of the agreement. Paragraph 18(1)(aa) does not include any such limitation. The FTT's task is described in paragraph 16 and is to determine whether it "considers it reasonable for the pitch fee to be changed"; if it does it then "makes an order determining the amount of the new pitch fee."

19. The first point to note is that paragraph 16 refers to the pitch fee being "changed", and Mr Payne was therefore right to avoid any submission that the fee could not be reduced. A pitch fee may be changed either by increasing or reducing it.
20. The second is that the amount of any increase or reduction is not limited by the change in RPI since the last review. As the Tribunal has explained, paragraph 20 introduces a presumption that the pitch fee will change in line with RPI, but that presumption does not apply if an increase of that magnitude would be unreasonable having regard to the factors mentioned in paragraph 18(1). The presumption may also be displaced if some other weighty factor means that its application would be unreasonable. If one of the factors in paragraph 18 means that an increase up to RPI, or an increase limited by RPI, would not be reasonable, then a higher or lower increase can be permitted.
21. Finally, there is no justification for treating the fee last agreed between the parties as a limit below which the pitch fee cannot be reduced. If, in the first year of a new agreement there was no significant increase in RPI but the condition of the site deteriorated substantially, paragraph 18(1)(aa) would clearly be engaged, and the presumption of an RPI increase would not apply if that would be unreasonable having regard to the extent of the deterioration. The pitch fee, and the same is true and could then be reduced below the level agreed when the pitch was first occupied. The same is true at each subsequent review, so that the fee can be reduced below the level previously agreed or determined if that is necessary to ensure that the pitch fee is a reasonable one.
22. Nor do I accept Mr Payne's submission that the FTT is bound by a site provider's unilateral declaration that a deterioration in the condition of the site was taken into account when it proposed a previous increase (whether or not that increase was at or below the RPI rate) and so cannot be taken into account again. Paragraph 18(1)(aa) and (ab) direct the FTT to have regard to deterioration since that 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". The sub-paragraph there being referred to is sub-paragraph 18(1), which begins with the words "When determining the amount of the new pitch fee", before listing matters to which regard must be had. Those words indicate that the sub-paragraph is concerned with the *determination* of pitch fees.
23. Determination is one of the two methods by which paragraph 16 permits a pitch fee to be changed: the first is "with the agreement of the occupier", and the second is if the FTT "makes an order determining the amount of the new pitch fee". Only the FTT determines a pitch fee, and an agreement by the owner and the occupier is not a determination and is not governed by paragraph 18(1). The notes to the prescribed form to which Mr Payne referred are informative rather than mandatory and the FTT is not bound by an owner's unilateral pronouncement that a deterioration in the condition of the site was taken into account when it proposed a previous increase. Unless the owner's proposal is agreed by the occupiers, it remains simply a proposal, but even if it is agreed it is not a determination for the purpose of paragraph 18(1). The parties are free to agree a new pitch fee on any basis they choose and the FTT is not bound by their agreement on the extent to which a deterioration in the condition of the site should be reflected in a change in the pitch fee.

No doubt the FTT would take into account an agreement between the parties at a previous review when considering whether a deterioration in the site's condition meant that it was reasonable to displace the presumption of an RPI increase but it would still be required to make up its own mind on the reasonable pitch fee when it applied paragraph 18(1)(aa) to a subsequent determination.

24. Finally, on this ground of appeal, Mr Payne referred to paragraph 29 of the implied terms which explains that the pitch fee is "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 protected site and their maintenance". He wished to argue that the use of the common areas was only part of the package of rights for which the pitch fee was paid and that the FTT had been wrong in principle to wipe out the whole of the current and previous RPI increases because of only one element of that package. I do not think that argument is open to him. There is much that might have been said about the quantum of the adjustment made by the FTT to reflect the deterioration of the Park, but Wyldecrest asked it for permission to appeal on valuation and the FTT refused. No request was then made to this Tribunal for permission and I am satisfied that valuation issues are therefore not within the scope of the appeal.
25. The FTT was therefore entitled to reduce the pitch fee to whatever extent it considered was reasonable, and was not required to limit the reduction so as to preserve the figure agreed between the parties for the January 2022 review.

## **Issue 2: The assessment of deterioration**

26. The FTT found that the condition of the Park had been "pristine" while it was under its previous ownership and that it had deteriorated from that condition in the period of less than three years since Wyldecrest had taken over. When it visited the Park it made detailed findings about its current condition, but the following summary is sufficient to set the scene for the second ground of appeal:

" ... the condition of the Park is by no means dreadful. The pitches themselves were well-maintained. The trees, shrubs and grassed areas and the general original landscaping scheme are still apparent. However, they are not controlled and are significantly affected by brambles, weeds and grasses and what the Tribunal finds to be a general lack of maintenance."

27. Mr Payne submitted that the FTT had erred in law in considering a change in the condition of the Park from "pristine" to "by no means dreadful" to be a "deterioration" for the purpose of paragraph 18(1). He did not challenge the FTT's findings of fact that there had been a negative change, but instead focussed on the standard of maintenance which he submitted it ought to have had in mind when considering if there had been a deterioration.
28. Mr Payne referred to paragraph 22 in the implied terms of the pitch agreement which oblige the owner to "maintain in a clean and tidy condition those parts of the protected site, including access ways, site boundary fences and trees, which are not the responsibility of any occupier of a mobile home stationed on the protected site." An owner which kept a site in a clean and tidy condition would satisfy its contractual obligation and, Mr Payne suggested, occupiers of pitches on the site were not entitled to expect any higher standard. In maintaining the Park in pristine condition, Wyldecrest's predecessor had therefore gone beyond what was required of it by the pitch agreements. When considering whether there

had been a deterioration in the condition of a site, Mr Payne submitted that the FTT should have asked itself only whether the Park had fallen below the minimum contractual standard of cleanliness and tidiness which the occupiers were entitled to. Only a deterioration below that standard should be taken into account. Additionally, he suggested, changes which were not changes in standards of cleanliness or tidiness should be ignored. To the extent that the FTT had taken into account wider matters of condition, or a deterioration of the Park from a previous pristine state to a merely contractually compliant state it had been in error and its assessment should be reconsidered.

29. I reject these submissions. Paragraph 18(1)(aa) is quite clear. Regard must be had to “*any* deterioration in the condition, and *any* decrease in the amenity, of the site”. The only relevant considerations are: first, whether the site was previously in a superior condition from which it has deteriorated since the paragraph came into force in 2013; secondly, whether that deterioration has been taken into account in a previous pitch fee determination; and, if not, thirdly, whether it would be unreasonable to implement the usual RPI increase in view of that deterioration. The proper comparison is between the current condition of the site and its previous condition, and not between its current condition and some notional minimum compliant standard.
30. Although no submission to that effect was developed by Mr Payne it was implicit in his argument on this issue that Wyldecrest considers that the contractual obligation to maintain the Park “in a clean and tidy condition” does not require it to undertake work to trees, shrubs and landscaped areas, or that it requires only minimal work to these features. If that is Wyldecrest’s view, it is not one with which I agree. Trees are specifically mentioned in the maintenance obligation and there is no reason why, as a matter of language, the proper maintenance of plants and landscaped areas should not be regarded as keeping them in a clean and tidy condition. Quite apart from the scope of the site owner’s obligations, a reduction in garden maintenance might amount to a reduction in the services the owner provides to the site, which might in turn be a matter falling within paragraph 18(1)(ab).

### **Issue 3: Can the reduction be restored on a future review?**

31. This issue does not arise out of the FTT’s decision, but Mr Payne made submissions on it and it may assist the parties and the FTT in future if I express the views I have provisionally formed.
32. In its decision the FTT referred to the possibility that the reduction in pitch fee which it imposed might be reversed in future (although it also suggested that this might amount to an improvement on which consultation would be required). Mr Payne sought confirmation that such a reversal would be possible. What he had in mind was that, if the condition of the Park was improved so that it reached the minimum standard required by the implied terms, the pitch fee might then be increased at a future review to restore it to the level it would have reached had the 2023 review not resulted in a reduction. That restored level would then form the base level for the next RPI increase.
33. In principle, a temporary reduction in amenity or deterioration in condition ought to be capable of being remedied and, when it is, any previous curtailment of the pitch fee should no longer have effect if that is reasonable. If a pitch fee was reduced in one year because of a deterioration in the condition of a site or its amenity, and that deterioration was cured in whole or in part in a subsequent year, I do not see why the FTT could not adjust the



pitch fee to take account of the change by awarding an above RPI increase. That approach has been applied by the FTT in at least one other case involving Wyldecrest, and it is a permissible one.

34. The amount of any adjustment would be a matter for the FTT, asking itself what would be a reasonable pitch fee in all the circumstances. I do not think it likely that simply catching up on work which had previously been neglected would amount to an improvement requiring consultation (or which would justify an increase related to expenditure in its own right). But in this case, even if Wyldecrest is right that the former pristine condition was more than the occupiers were entitled to under their agreements, it is likely that the full amount by which the pitch fee was reduced in January 2023 could only be retrieved by a permanent restoration of the Park to its previous very high standard.

Martin Rodger KC,  
Deputy Chamber President  
10 July 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.

## **Respondents**

2. Mr and Mrs Gleeson
3. Mr and Mrs Ryan
4. Mr and Mrs Bath
5. Mr D Hopper
6. Mr and Mrs Gordon-Wilson
7. Mr and Mrs Pocock
8. Mr and Mrs Hughes
9. Mr P and Mrs P McKinnon
10. Mr and Mrs Stone
11. Mr L Findon
12. Mr C and Mrs J Caswell