Neutral Citation Number: [2025] UKUT 00018 (LC)

Case No: LC-2024-645

IN THE UPPER TRIBUNAL (LANDS CHAMBER)
AN APPEAL AGAINST A DECISION OF THE FIRST-TIER TRIBUNAL PROPERTY CHAMBER
FTT Refs: CHI/19UD/PH1/2023/0625-627 and 631

Royal Courts of Justice,
Strand, London WC2A 2LL
20 January 2025

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

PARK HOMES – PITCH FEE REVIEW – flooding affecting some pitches only – intermittent deterioration or loss of amenity – whether incapable of displacing presumption of RPI increase – requirement to undertake valuation where presumption displaced – obligation to provide reasons for nil increase – para.18, Ch.2, Sch.1, Mobile Homes Act 1983 – appeal allowed in part

BETWEEN:

SOUTHERN COUNTRY PARKS LIMITED

Appellant

-and-

MRS EILEEN BIRD (1)
MR AND MRS BURDEN (2)
MR C.J. YOUNG AND MISS SAXTON (3)
MRS KAY FAY (4)

Respondent

s

Hillbury Park,
Alderholt,
Hampshire

Martin Rodger KC,
Deputy Chamber President
6 January 2025

Victoria Osler, instructed by Apps Legal, for the appellant
The respondents did not attend the hearing

The following cases are referred to in this decision:

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

Introduction

1. This appeal raises two issues about the sort of decrease in the amenity of a protected site which can displace the statutory presumption that pitch fees payable by occupiers of mobile homes will increase annually in accordance with inflation. It also illustrates the difficulty facing the First-tier Tribunal, Property Chamber (the FTT) when it is asked to determine a new pitch fee in a case where the statutory presumption has been displaced.

2. The appeal is against a decision of the FTT made in respect of four pitches on a protected site at Hillbury Park in Hampshire (the Park). The owner of the Park, Southern County Parks Ltd, initiated an annual review of pitch fees with effect from 1 July 2023 by serving notices in respect of all 72 pitches on the Park proposing an increase of 11.4%, in line with the increase in the retail prices index for the year to April 2023. The occupiers of four pitches refused to agree these increases and the owner applied to the FTT for a determination of the new pitch fees for those pitches.

3. In its decision published on 18 July 2024 the FTT determined that there should be no increase in the pitch fees payable by Ms Saxton and Mr Young for No. 4a, or by Mrs Fay for No. 69, and that the increase for No. 13, occupied by Mrs Bird, and for No. 16, occupied by Mr and Mrs Burden, should be 5.7%.

4. The FTT was satisfied that the nil increase in the pitch fees for Nos. 4a and 69 was appropriate because of problems which the occupiers of those pitches had experienced during and after periods of heavy rainfall when water failed to drain away and instead accumulated on their pitches or on the road immediately in front of them. The pitches are at opposite ends of the Park but experienced similar localised difficulties.

5. No. 69 immediately adjoins No. 4a, while No. 13 is at a little distance from it, but in common with the rest of the Park they depend for their only access in and out on the road running in front of No. 4a. It was the tendency of that road to flood from time to time which, in the FTT's view, justified limiting the increase for those pitches to only half of the annual rate of inflation.

6. The FTT took the view that the localised and intermittent inundation or waterlogging of individual pitches or difficulties of access had all got worse and were a "decrease in the amenity of the site" within the meaning of paragraph 18(1)(aa) of the statutory implied terms on which the pitches were occupied. In view of that decrease in amenity it concluded that the pitch fees should not increase by the rate of inflation but should be frozen for a year for those most seriously affected, and, for others, should be limited to half the rate which would apply if the presumption of an RPI increase had not been displaced.

7. The Park owner's main case on this appeal, for which permission was given by the FTT, is that it was not open to the FTT to treat so localised and intermittent a problem as a relevant decrease in amenity. Ms Victoria Osler, who appears on behalf of the owner, argues that only a decrease in amenity which affects the whole or a substantial part of a protected site all or most of the time is within the scope of paragraph 18(1)(aa). She also challenges the FTT's approach to valuation and suggests that the panel moved

impermissibly from a decision that there had been a significant decrease in amenity to its conclusion that there should be no increase or only a restricted increase without asking itself what, if any, increase would be reasonable having regard to all of the relevant circumstances.

8. None of the residents of the Park attended the hearing of the appeal, although all of them other than Mrs Bird had filed respondent's notices explaining why they considered the FTT's decision was correct. At the hearing Ms Osler withdrew the appeal in relation to Mrs Bird's pitch, No. 13, because she has recently sold her home and moved away from the Park so that the pitch fee determined by the FTT for her pitch is no longer payable in any event.

Pitch fee reviews under the 1983 Act

9. The terms which govern the review of pitch fees are found in paragraphs 16 to 20 of Chapter 2 of Schedule 1 to the Mobile Homes Act 1983 which are implied into every agreement for the occupation of a pitch on protected sites in England. The Park is a protected site.

10. 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."

11. Pitch fees can be reviewed annually under the procedure in paragraph 17 by the owner giving notice of its proposed increase at least 28 days before it is due to take effect. If the occupier agrees to the proposal the new fee becomes payable. If the occupier does not agree, the owner may apply to the FTT for an order determining the amount of the new pitch fee.

12. Paragraphs 18, 19 and 20 provide guidance on the factors which may be taken into account when a pitch fee is reviewed. Paragraph 18(1) specifies that, when determining the amount of the new pitch fee "particular regard" shall be had to a number of matters including, by paragraph 18(1)(aa):

> "(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);"

Paragraph 18(1) came into force on 25 May 2013. Paragraph 19 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).

13. The Tribunal has given guidance on the application of these provisions in many cases to which it is not necessary to refer. 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."

14. The Tribunal has often made it clear that the determination of a new pitch fee involves a judgment about what the reasonable increase should be in all the relevant circumstances. Where the presumption of an RPI increase applies the task is usually straightforward, but where the presumption has been displaced by any of the factors in paragraph 18(1), including a decrease in the amenity of the site, the FTT's job is more difficult. But an assessment must still be made, as I explained in *Wyldecrest v Whitley*, at [46]:

> "Nothing in paragraphs 18 or 20A of the implied terms provides that the pitch fee must either increase by a rate equal to the change in RPI/CPI or stay the same, with no other outcome being possible. The purpose of disapplying the presumption of an RPI/CPI increase where there has been a loss of amenity is not to punish the park owner for reducing amenities (which they may have been entirely within their rights to do) but to set a new pitch fee which properly reflects the changed circumstances. Those changed circumstances obviously include the reduction in amenity, but they will also include any change in the value of money i.e. inflation since the last review took place. For it to be appropriate for there to be no change in the pitch fee at all it would be necessary for factors justifying a reduction to (at least approximately) cancel out inflation and any other factors justifying an increase."

The FTT's decision

15. I have already briefly explained what the FTT decided and the basis on which it did so. It included in its decision a detailed discussion of the relevant legal principles. It described what it had observed during its inspection, when it had been raining moderately, and said that it had "found the site to be in reasonable condition". It went on to refer to a number of "ongoing improvements" including the removal of an old shed and some garages,

which had freed land for additional parking, and some repairs to roads and paths and recent road markings and signage around the Park.

16. The FTT then observed that many former open areas of the Park had been paved over which had exacerbated drainage issues, including an absence of storm drains to cope with surface water. These problems had become worse and had "arisen incrementally rather than being caused by a particular event". It was now clear from the photographic evidence "that there are now particular problems on Mr and Mrs Burden's property (Plot 16) and in front of Miss Saxon and Mr Young's property (Plot 4a)." The FTT's critical findings were in paragraph 86 and 88 of its decision, namely that the flooding in front of 4a was:

> "serious enough to qualify as a deterioration in the amenity of the site as it particularly affects Plot 4a. Accordingly the Tribunal determines that the amenities for Plot 4a are sufficiently prejudiced to justify a freeze of the pitch fee at its previous level of £216.27 per month."

As for 16:

> "[T]he flooding of Plot 16 as shown in photographs, and the effects of that flooding, was also serious enough to constitute a deterioration in the amenity of the site for that Plot, sufficiently prejudiced to justify a freeze of the pitch fee at its previous level of £191.56 per month."

17. The FTT then considered the application on the other two pitches and reached this conclusion:

> "During its inspection the Tribunal had found the Park to be generally in reasonable order and noted that some improvements had been made over time, although there was clearly scope for future improvements.
>
> [T]he flooding issue on the access road does affect everyone entering or leaving the site, albeit less severely than Miss Saxton and Mr Young, and has now become serious enough to qualify as a deterioration in the overall amenity of the site. The Tribunal considers it reasonable for the park home owners to expect the park owner to provide adequate and serviceable drainage as described in the park licence.
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> Accordingly the Tribunal determined that the increase in pitch fee for Mrs Bird (Plot 13) and Miss Fay (Plot 69) shall be limited to 50% of the proposed figure, that is an increase of 5.7%."

Grounds of appeal

18. The FTT granted permission to appeal on seven grounds, but after the discontinuance of the appeal in relation to No.13 and a certain amount of simplification Miss Osler based her argument on four propositions which give rise to the following issues:

1. Whether, before the statutory presumption of an RPI increase can be displaced on the basis of a deterioration in the condition of a site or a decrease in amenity, the FTT must be satisfied that the whole of the site has deteriorated, not simply one aspect of it.

2. Whether a "transitory state of affairs" can amount to a relevant deterioration, or whether there must instead be a permanent deterioration which affects the fabric of the site itself.

3. Whether the FTT had sufficiently considered what a reasonable pitch fee should be, or had simply decided that the statutory presumption had been displaced and stopped there, without carrying out a valuation.

4. Whether the FTT had taken into account irrelevant matters which had not been put to the parties for comment during the hearing.

Issue 1: Must a deterioration or decrease in amenity affect the whole or most of the site before the presumption of an RPI increase will be displaced?

19. This issue raises a question of interpretation of paragraph 18(1)(aa) in circumstances where, at least in relation to Nos. 4a and 16, the pitch fee freeze , or nil increase, was justified by a factor which was specific to an individual pitch.

20. The whole Park was affected by the accumulation of water in front of No. 4a, but Nos. 4a and 16 were particularly affected by the drainage problem not simply because of the condition of the access but additionally by the inundation of the pitches themselves. The evidence was that this inundation caused damage to the paving, fences, steps and a greenhouse at No.16. In the case of No. 4a there was water damage to the hatches in the floor of the home which necessitated remedial action by Mr Young including the construction of a drainage channel across the pitch and small dams to divert water into it.

21. Miss Osler submitted that the only decrease in amenity which was capable of being relevant for the purpose of paragraph 18(1)(aa) was a decrease in the amenity of the site, and that a decrease in the amenity of an individual pitch was irrelevant. I do not accept that submission. The FTT is required by paragraph 18(1)(aa) to have "particular regard [to] … *any* deterioration in the condition, and *any* decrease in the amenity, of the site". The site includes each and every part of it, and therefore includes each individual pitch, and I can see no reason why "any decrease in the amenity of the site" should not include a decrease in the amenity of a single pitch. After all, the purpose of the exercise is to set a new pitch fee for a particular pitch and it would be illogical to leave out of account a deterioration or decrease which seriously affected that pitch, just because it had no impact on any other pitch.

22. Miss Osler suggested that it would still be possible to take account of the condition of an individual pitch because the factors listed in paragraph 18(1) are not the only matters to which the FTT may have regard. But they are the matters to which the FTT is directed to have "particular regard" and I can see no reason to give them a restricted interpretation when a more natural reading of the statute is available.

23. Of course, it is not every deterioration in the condition of the site or deterioration in its amenity which will displace the presumption of an RPI increase; the deterioration or decrease must be sufficient (when considered together with any other relevant factors in paragraph 18(1)) to make it unreasonable for the presumption to apply (see paragraph 20(A1)). The implied terms leave it to the FTT to determine whether any particular deterioration or decrease is sufficiently serious to have that effect. The FTT was therefore entitled in this case to find that there had been a relevant decrease in amenity for specific plots and to rely on that decrease as displacing the presumption of an RPI increase.

Issue 2: Must a decrease or deterioration be permanent to displace the presumption?

24. The answer to the second ground of appeal is the same as the answer to the first. Any deterioration or decrease may be relevant for the purpose of paragraph 18(1)(aa), provided it is considered by the FTT to be sufficient to make it unreasonable for the presumption to apply. The fact that the amenity of the site may only be affected intermittently by a particular problem will be relevant in answering that question, but there is no threshold of permanence, frequency or intensity which must be met before a deterioration or decrease can in principle be taken into account. The only measure of seriousness is set by the words of paragraph 20(A1) itself, "unless this would be unreasonable having regard to paragraph 18(1), there is a presumption …".

Issue 3: Did the FTT ask itself the right question before deciding there should be no increase or only a restricted increase?

25. This issue is an issue of law about the FTT's approach to the valuation it was required to undertake after it had decided that the presumption of an RPI increase had been displaced. It arises because a finding by the FTT that it is unreasonable in the circumstances to apply the presumption is not a complete answer to the question which it is required to determine. That question is: what increase in the pitch fee for each individual pitch would be reasonable at this review date? When the presumption applies it will provide the answer; but when the presumption has been displaced the answer must be arrived at by the FTT undertaking an assessment which takes account of all relevant considerations.

26. The Tribunal explained what was required in the passage from *Wyldecrest v Whitely* referred to above. In that case the FTT had been satisfied that there had been a relevant loss of amenity at two parks which made it unreasonable for pitch fees to be increased by RPI. The FTT's conclusion was upheld by this Tribunal but the decisions were nevertheless set aside and the cases remitted to the original tribunals because they had either adopted a binary approach i.e. that the pitch fee could either increase by RPI or not increase at all, with no room for an intermediate position, or they had given insufficient reasons to explain why they had considered that a nil-increase was appropriate.

27. As has often be noted, the tribunal's task is not to determine what fee the pitch would command if it was available under a new agreement, it is to determine by how much it would be reasonable for the fee which the parties originally agreed to be further increased. The Act gives no guidance on how that should be done, other than (it can be inferred) that the new fee should be the one which the tribunal considers to be reasonable for the pitch. In *Wyldecrest v Whitely*, at [67], I rejected an argument that the reasonable pitch fee might

depend on the personal characteristics of the occupier of the pitch. I also suggested that tribunals would be justified in adopting a relatively simple approach and should not feel obliged to differentiate between different pitches unless they were affected to a materially different degree by a relevant loss of amenity. Beyond those quite simple points I was unable to give any more helpful guidance to tribunals than this, at [71]:

> "They should determine what in their view is a reasonable increase or a reasonable pitch fee having regard to the owner's expenditure on improvements, and to the loss of any amenity at the park or deterioration in its condition and having regard to the change in the general level of prices measured by RPI or CPI, and such other factors as they consider relevant. They should use whatever method of assessment they consider will best achieve that objective."

28. Although the approach to be adopted may be simple, it is still essential that the FTT explain what it is doing and why. In a case like this, that involves making it clear to the parties why the presumption of an RPI increase has been displaced, as the FTT, but it also involves explaining the next stage of the assessment. The Park owner's complaint under the final ground of appeal in this case is the same as in *Whitely*, that the FTT either adopted a binary approach and, having been satisfied that the presumption was displaced, had automatically ordered a nil increase, or had given no explanation of what it had done so that its reasons could be understood.

29. In this case the FTT gave itself a detailed direction on the law and referred to a number of this Tribunal's decisions in which the pitch review process was explained. In paragraphs 59 and 60 the FTT explained first that there was no limit to the matters which could potentially be given weight if the presumption was disapplied, and then that "The pitch fee will be the amount the Tribunal determines taking account of any relevant matters", which "may be the amount sought to be charged by the site owner or may be a different amount". Those passages suggest that the FTT had well in mind that, if the statutory presumption was disapplied, it was required to make a determination of the appropriate increase having regard to all relevant matters.

30. But in the critical passages of its decision in which it determined that there should be no increase for Nos.4a and 16 the FTT made no such assessment. In paragraph 86 it said only that the flooding at No. 4a had been "serious enough" to amount to a deterioration in the amenity of the site and that "[a]ccordingly" the amenities of the pitch were "sufficiently prejudiced to justify a freeze of the pitch fee at its previous level". In relation to No. 16 the flooding "sufficiently prejudiced [the pitch] to justify a freeze of the pitch fee". In neither of these passages did the FTT identify any other factor it had taken into account in determining the new pitch fee. The FTT had earlier drawn attention to the fact that the Park was in a reasonable condition and that certain improvements had been made. Those were matters which would have supported an increase, at a time of high inflation, but there was no reference to them in the critical passages of the decision and no indication that they had been taken into account in the valuation process. Nor did the FTT suggest that it had considered whether the impact of the deterioration or loss of amenity was equivalent in valuation terms to the RPI increase which it had decided should be foregone.

31. At a time of very high inflation the financial impact of a nil increase is substantial; its effect will be compounded into the future since each subsequent RPI increase on review will be calculated from a lower base. It is therefore particularly important in a period of high inflation that a decision to entirely cancel out an inflation increase should be properly explained. In the cases of Nos. 4a and 16 I am not satisfied that the FTT did explain its decision adequately and there is real doubt about the process by which it decided a nil increase was appropriate. For No 4a, an RPI increase would have been almost £25 a month on a pitch fee of £216. The increase at No. 69 would have been more than £21 a month on a fee of £191. It was incumbent on the FTT to explain why it considered that increases in the reasonable pitch of that magnitude were cancelled out by the problems of intermittent flooding of the road and inundation of the pitches themselves. One way of looking at the question might be to ask whether, if the challenge had been made in a year when inflation was nominal, would the FTT have considered that a reduction of £25 or £19 in the pitch fee was reasonable to reflect the deterioration in amenity?

32. The FTT's decision in relation to No. 69 was more nuanced as it allowed an increase equivalent to 50% of the RPI increase, but once again the decision lacks any real explanation how the FTT arrived at that figure and what other matters, if any, it had taken into account.

33. I should emphasise that the FTT was entitled to freeze the pitch fee for Nos. 4a and 16 and restrict the increase for No.69 if it considered that the impact the drainage problems had on the pitches reduced their value by 11.4% or 5.7% respectively. But it could only reach that conclusion after taking account of all relevant matters, including the impact of inflation on the value of money and the improvements and changes which had been made to the Park. The Tribunal and the parties cannot be confident that was done in this case and for that reason it is necessary to set aside the FTT's determination of the increase and remit the applications to it so that it may reconsider its figures and either explain how it arrived at them or substitute different figures which, on consideration of all relevant matters, it decides are reasonable.

Issue 4: Did the FTT take into account irrelevant considerations?

34. I can deal with this issue briefly. It is said that the FTT took into account matters which it ought not to have done. These were features which it observed during its inspection of the Park (the presence of sandbags), and an obligation in the site licence to provide adequate drainage. It was not suggested that these were necessarily irrelevant facts but that the FTT was not entitled even to refer to them in its decision without first having drawn specific attention to them during the hearing. I reject that suggestion. The FTT was entitled to record what it saw during its inspection, or what it could read in the site licence, without first pointing it out. The parties may be taken to have seen any feature which was apparent to the FTT on its inspection and to be aware of the contents of the site licence which was in evidence. If the FTT considered that something was of particular importance in valuation terms, but neither party had referred to it, it would be good practice to ask for their comments; whether it would be unfair to place weight on such a matter without doing so would depend on the circumstances. But there is no suggestion in the decision that either of these points of detail was thought by the FTT to be of particular importance.

Disposal

35. For the reasons I have given I allow the appeals in respect of Nos. 4a, 16 and 69 and remit the determination of new pitch fees to the FTT for further consideration. That reconsideration should be carried out by the same panel as determined the original applications and should not require a further hearing or further submissions by the parties, unless the FTT considers these are necessary to enable it to reach a conclusion. The only matter for reconsideration and explanation should be the amount of any increase and it should not be necessary for the FTT to reconsider its original conclusion that the presumption of an RPI increase had been displaced.

Martin Rodger KC,

Deputy Chamber President

20 January 2025

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.