UPPER TRIBUNAL (LANDS CHAMBER)

UT Neutral citation number: [2022] UKUT 334 (LC)   UTLC Case Numbers: LC-2022-88

Location: Royal Courts of Justice, Strand,
London WC2A 2LL

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

PARK HOMES – PROCEDURE – correct holder of a licence for a relevant protected site – FTT making a decision without a hearing without a party's consent – whether the site was a protected site – whether a planning permission is "expressed to be granted for holiday use only" or "expressed or subject to such conditions that there are times of the year when no caravan may be stationed on the land for human habitation" (section 5A(5) of the Caravan Sites and Control of Development Act 1960

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

BETWEEN:

TALLINGTON LAKES LIMITED

Appellant

-and-

SOUTH KESTEVEN DISTRICT COUNCIL

Respondent

Re: Tallington Lakes Leisure Park,
Barholm Road,
Tallington,
Lincolnshire,
PE9 4RJ

Judge Elizabeth Cooke
Heard on: 10 November 2022
Decision Date: 16 December 2022

Mr Neil Morgan for the appellant
Ms Jenny Wigley KC for the respondent

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Introduction

1. This is an appeal by the freehold owner of Tallington Lakes, a leisure park in Lincolnshire, against a decision of the First-tier Tribunal ("the FTT") in December 2021 requiring it to pay a fee to the respondent, South Kesteven District Council, in respect of its site licence, and against the FTT's decision in March 2021 on a preliminary issue in the same proceedings.

2. The appellant was represented at the appeal hearing by Mr Neil Morgan, its director and owner. The respondent was represented by Ms Jenny Wigley KC. I am grateful to them both.

3. The issues in the appeal are:

   a. Was the site licence correctly issued to the appellant rather than to the company that manages the site?

   b. Should the FTT have made its decision without a hearing in December 2021, when the appellant had requested a hearing?

   c. Is the site a "relevant protected site" as defined in section 5A(5) of the Caravan Sites and Control of Development Act 1960?

The factual background and procedural history

4. Tallington Lakes is a leisure park where numerous outdoor activities are carried on, and a static caravan site. There is a dispute as to whether any of the caravans are in permanent residential use, and that point is not for decision in this appeal.

5. Section 1 of the Caravan Sites and Control of Development Act 1960 requires the occupier of land used as a caravan site to hold a site licence:

> "(1) Subject to the provisions of this Part of this Act, no occupier of land shall after the commencement of this Act cause or permit any part of the land to be used as a caravan site unless he is the holder of a site licence (that is to say, a licence under this Part of this Act authorising the use of land as a caravan site) for the time being in force as respects the land so used.
>
> (4) In this Part of this Act the expression *"caravan site"* means land on which a caravan is stationed for the purposes of human habitation and land which is used in conjunction with land on which a caravan is so stationed."

6. Section 3 of the 1960 Act makes provision for applications for and the grant of site licences. Section 3(3) says:

> "(3) A local authority may on an application under this section issue a site licence in respect of the land if, and only if, the applicant is, at the time when the site licence is issued, entitled to the benefit of a permission for the use of the land as a caravan site … otherwise than by a development order.

So site licences are closely linked with planning permission.

7. The appellant' was granted a site licence (licence number 84/2) in 2003, in response to its application. The application was for a seasonal caravan site, in use from 1 March to 31 January each year. The licence recited that the appellant had planning permission for "the use of the said land as a caravan site"; it was granted subject to a condition "that the total number of static holiday caravans sited shall not exceed 385." A list of planning permissions was scheduled to the licence, and there were seven altogether, whose terms we shall consider later; I refer to them as "the 7 Permissions" so as to identify the seven permissions referred to in licence 84/2.

8. Section 8 of the 1960 Act enables a local authority to change the conditions attached to a site licence:

> "(1) The conditions attached to a site licence may be altered at any time (whether by the variation or cancellation of existing conditions, or by the addition of new conditions, or by a combination of any such methods) by the local authority, but before exercising their powers under this subsection the local authority shall afford to the holder of the licence an opportunity of making representations."

9. In April 2014 the Mobile Homes Act 2013 came into force; it amended and updated the licensing and regulatory regime for caravan sites, and one of the changes it made was to enable local authorities to charge an annual fee to the holder of a licence for a "relevant protected site", defined in section 5A(5) of the 1960 Act as:

> "land in respect of which a site licence is required under this Part, other than land in respect of which the relevant planning permission under Part 3 of the Town and Country Planning Act 1990 or the site licence is …—
>
> > (a) expressed to be granted for holiday use only, or
> >
> > (b) otherwise so expressed or subject to such conditions that there are times of the year when no caravan may be stationed on the land for human habitation."

10. The omitted words relate to an exception that is not relevant here. The definition is in identical terms to the definition of a "protected site" in section 1(2) of the Caravan Sites Act 1968; where an agreement entitles a person to station a mobile home on land forming part of a protected site, and to occupy it as their only or main residence, then the Mobile

Homes Act 1983 applies to that agreement and the person has the benefit of the regulatory regime and security of tenure provided for in the 1983 Act.

11. The respondent formed the view that that the site was being used for residential occupation. In March 2016 it wrote to the appellant asking it to surrender its licence for alteration so that conditions appropriate to residential occupation could be imposed (as provided for in section 11 of the 1960 Act). It received a reply from Tallington Lakes Leisure Parks Limited stating that the site was not a residential site; no surrender was made. In April 2016 the respondent told the appellant that it was going to alter the conditions of the licence, sending a copy of the conditions to be imposed and inviting representations as section 8 of the 1960 Act requires. No representations were made.

12. An altered site licence (now numbered 84/3) was issued on 18 May 2016 and sent to the appellant. It recited the 7 Permissions again, and stated that it "permits the land situated at Tallington Lakes … to be used as a Mobile Home Site subject to the Schedule of Conditions attached hereto for not more than 385 caravans at any one time", and there is an extensive schedule of conditions attached.

13. Section 7(1) of the 1960 Act enables the licence holder to appeal to the FTT against any of the conditions attached to the licence within 28 days of its issue; no appeal was made.

14. The respondent did not charge the appellant a fee for the issue of the licence nor for the first year of its operation; but it later invoiced it for the annual fees for 2017 and 2018. Those fees remain unpaid, amounting to £4,173.50.

15. Section 5A(3) of the 1960 Act enables the local authority, when the fee is overdue, to apply to the FTT for an order that the licence holder pay it; where such an order is made and then not complied with the local authority may apply to the FTT for an order revoking the licence. On 8 July 2019 the respondent applied to the FTT for an order that the appellant pay the unpaid licence fees.

16. The appellant did not file a response to this application, but on 23 September 2019 made an application purporting to be an appeal against the licence conditions imposed in 2016 and requesting dismissal of the respondent's application. The FTT directed that the two applications be heard together, and directed the determination of a number of preliminary issues. The one relevant to this appeal is that the appellant asserted that it is not the correct licence holder, and that instead the licence holder should be Tallington Lakes Leisure Park Limited which is the company managing the site. The FTT conducted a video hearing at which it noted that the appellant was not seeking to appeal any of the conditions; the FTT issued a decision on 25 March 2021 in which it determined that the licence was correctly issued to the appellant, Tallington Lakes Limited, and that the appellant had not asked for and was not granted an extension of time to appeal against the licence conditions. In its account of the facts in the opening paragraphs of the decision on the preliminary issues the FTT stated that the licence issued in 2016 was a licence to operate a "Relevant Permitted Site", by which it no doubt meant a relevant protected site, but if I have understood correctly it had not heard argument on the point and did not make a determination to that effect.

17. The FTT issued draft directions on 18 October 2021, stating that it would determine the respondent's application without a hearing and that the directions would become effective on 1 November 2021 unless either party by 29 October 2021 requested alternative directions, The appellant did not request alternative directions but wrote on 18 October 2021 to the regional judge to complain about the FTT judge who had issued the draft directions, stating among other things that the direction that the application be decided on the papers is "absurd". On 17 December 2021 the FTT issued its final decision. It stated in its description of the background that the 2016 licence "was a licence to operate a Relevant Permitted Site", and it ordered the appellant to pay the fees, on the basis that they were correctly charged and invoiced.

18. The appellant sought permission to appeal on a number of grounds and was granted permission by the Upper Tribunal on three: first, on the ground that the licence was not correctly issued to it but should have been issued to Tallington Lakes Leisure Park Limited; second, that the FTT should not have determined the application in December 2021 without a hearing; and third, that the site is not a relevant protected site.

The grounds of appeal: (1) is the appellant the correct licence holder

19. Section 1 of the 1960 Act makes provision for site licensing, as we have seen, and forbids an "occupier of land" to cause or permit it to be used as a caravan site unless he holds a licence (paragraph 5 above). Section 1(3) defines an "occupier" as follows:

> "(3) In this Part of this Act the expression *"occupier"* means, in relation to any land, the person who, by virtue of an estate or interest therein held by him, is entitled to possession thereof or would be so entitled but for the rights of any other person under any licence granted in respect of the land."

20. The subsection goes on to make an exception for the holder of a tenancy of not more than 400 square yards of land.

21. Ms Wigley KC relied upon the words "by virtue of an estate of interest therein"; a person without a freehold or leasehold estate is not within the definition of "occupier".

22. The appellant is the freeholder of the site and has held the licence since 2003. But the appellant now says that it is not the occupier of the site. Mr Morgan argued that "occupier" in section 1(1) means "the person or entity who actually and de facto occupies the land and operates it as a caravan park", which in this case is Tallington Lakes Leisure Park Limited. He said that this is the longstanding and universally applied meaning of the term.

23. He relies upon section 10(4) of the 1960 Act:

> "(4) Where any person becomes, by operation of law, entitled to an estate or interest in land in respect of which a site licence is in force and is, by virtue of his holding that estate or interest, the occupier of the land within the meaning of this Part of this Act he shall, for the purposes of this Part of this Act, be treated as

having become the holder of the licence on the day on which he became the occupier of the land, and the local authority in whose area the land is situated shall, if an application in that behalf is made to them, endorse his name and the said date on the licence."

24. The appellant argued that because the statute deals expressly with an occupier by operation of law, it must be the case that some occupiers are occupiers for a different reason, for example a management agreement.

25. Mr Morgan has misunderstood section 10, which is about transfers of licences. Section 10 is about how a licence can be transferred when the licence holder ceases to be the occupier of the land, and there are two possibilities. First, section 10(1) is relevant where the occupier of land changes because of some deliberate act, for example a sale, and it enables a licence holder who ceases to be the occupier of land to transfer it to the person who has become the occupier. Second, section 10(4) deals with the situation where the occupier changes not because of a deliberate act but by operation of law, for example when the occupier dies. Section 10 does not say anything about who can hold a site licence.

26. Mr Morgan also referred to the wording of application forms for licences, such as the respondent's own. The form asks if the applicant is an individual or a business, and Mr Morgan argued that if the applicant had to be a freeholder or leaseholder the form would ask if it was a freeholder or leaseholder. I do not agree; the local authority has regulatory reasons for asking about the nature of the proposed licence holder, but that does not change the statutory requirement. The form asks the applicant to state its "interest in land (give particulars of lease or tenancy, if any)", which Mr Morgan said implies that the applicant may have no interest in the land. Again this does not assist, because the point of the "if any" is that the applicant may be the freeholder.

27. As Ms Wigley KC pointed out, it is notable that section 12(2) of the 1960 Act grants the occupier under section 1(3) the right, as against any person claiming under a licence or under a tenancy excluded by section 1(3) (see paragraph 20 above), to enter on the land and do anything reasonably required for the purpose of complying with any conditions; it follows that a licensee is not the occupier even if its licence would enable it to exclude the freeholder or leaseholder but for section 12(2).

28. The wording of section 1(3) of the 1960 Act is clear and unambiguous; the occupier has to occupy the land "by virtue of an estate or interest therein", meaning a legal or equitable estate or interest; the wording is not broad enough to encompass a licensee or the manager under a management contract.

29. Accordingly the appeal fails on ground 1; the occupier and the correct licence holder is the appellant as the freeholder of the site.

The grounds of appeal: (2) should the FTT have made a decision without a hearing in December 2021?

30. Once the preliminary issue had been decided the FTT had to decide the respondent's application for an order that the appellant pay the outstanding fees. As I said above, it issued draft directions for a determination to be made on the papers, with an invitation for the parties to request alternative directions. The FTT did not accept the appellant's letter to the Regional Judge as such a request.

31. Rule 31 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 requires the FTT to hold a hearing before making a decision, unless each party has consented to it doing so without a hearing. A party may be taken to have consented if "no objection has been received" within a stated time.

32. The appellant in its letter to the Regional Judge did express a very clear objection. Ms Wigley KC has confirmed that the respondent makes no submissions on this ground of appeal.

33. I find that the appellant did object, within time. The second ground of appeals succeeds; the FTT should not have decided the respondent's application on the papers in December 2021 and its decision is set aside.

The grounds of appeal: (3) is Tallington Lakes a "relevant protected site"?

34. The third ground of appeal is that Tallington Lakes is not a relevant protected site; if it is not, then the respondent is not entitled to charge a fee for the licence under section 5A of the 1960 Act. As I have set aside the FTT's decision of 17 December 2021, I have to decide whether to remit the matter to the FTT for it to make a fresh decision after a hearing, or to substitute the Upper Tribunal's decision on the third ground. Mr Morgan said at the start of the hearing that he wanted me to remit the matter, although he had set out his arguments about the third ground at length both in his skeleton argument and in a supplemental skeleton that he filed in response to Ms Wigley KC's skeleton. She asked me to substitute the Tribunal's own decision on this ground

35. I explained to the parties at the hearing that I would hear the appeal on whether the site is a relevant protected site, if the Tribunal had sufficient material on which to hear it. I said that I took the view that the Tribunal had all the relevant material in front of it and that since both parties had set out their arguments on this ground in their skeleton arguments I could decide the appeal on this point. Mr Morgan agreed that I should proceed on that basis.

The arguments about ground 3 in the grounds of appeal, the parties' skeletons and at the hearing before lunch

36. At the hearing of the appeal Mr Morgan and Ms Wigley KC presented their arguments about ground 3, following the lines they had taken in their pleadings. I set out those arguments before dealing under a separate head with a different argument presented by Mr Morgan in his closing submissions after lunch.

37. It is worth reiterating the definition of a relevant protected site in section 5A of the 1960 Act:

> "land in respect of which a site licence is required under this Part, other than land in respect of which the relevant planning permission under Part 3 of the Town and Country Planning Act 1990 or the site licence is …—
>
> (a) expressed to be granted for holiday use only, or
>
> (b) otherwise so expressed or subject to such conditions that there are times of the year when no caravan may be stationed on the land for human habitation."

38. It is not in dispute that Tallington Lakes is land in respect of which a site licence is required, The respondent takes the view that neither the 2003 licence 84/2, nor the 2016 version 84/3, is expressed to be granted for holiday use only and neither imposes a restriction on the stationing of caravans for human habitation. The reference in licence 84/2 to static holiday caravans in the condition did not restrict the site to holiday use.

39. Ms Wigley KC's argument focused on whether the planning permissions for the site are expressed in the terms stipulated by section 5A(a) and (b). She took the singular "relevant planning permission" to include the plural since more than one permission is in force across the area covered by the licence, in accordance with section 6 of the Interpretation Act 1979 which provides that "words in the singular include the plural and words in the plural include the singular" unless the contrary intention appears. For the exception in section 5A to apply, Ms Wigley argued, all the planning permissions must be expressed as in section 5A(a) or (b).

40. And so we come back to the 7 Permissions referred to in the 2003 and 2016 versions of the licence. Each licence, as I said above, lists seven planning permissions, and what they say is as follows:

    a. <u>SK75/1668/87/2895</u>, dated 8 March 1988, permitted "use of land for siting of 34 static caravans for leisure homes", and the only condition relates to the date the development must begin.

    b. <u>SK93/0189/75/8,</u> not dated on the copy in the bundle but said to be in response to an application made on 23 February 1993, permits "use of building as Clubhouse and use of land for caravan park" with a condition that "No caravan on the site shall be occupied between 31 January and 1 March in any year", the reason for which is said to be "to prevent permanent residential occupation of the site".

    c. <u>SO2/1640/75</u>, dated 21 August 2003, permits "siting of 16 caravans" and has no relevant conditions.

    d. <u>SK92/1328/75/52,</u> dated 26 October 1993, permits "use of land for caravan park" and has the same occupancy condition as SK93/0189/75/8 above.

e. SK93/1200/75/47, dated 4 January 1994, permits “use of land for caravan park” and has no relevant restrictions.

f. SO2/1037/75, dated 21 August 2003, permits “use of land as leisure caravan park” with no relevant conditions.

g. S00/0407/75, dated 11 July 2000, permits “use of land for caravan park and has the same occupancy condition as SK93/0189/75/8 and SK82/1328/75/52 above.

41. Ms Wigley KC said that none of these permissions is expressed to be granted for holiday use only, and none restricts the times of the year in which a caravan may be stationed on land for human habitation. If the relevant conditions are considered to have the effect described in section 5A (a) or (b) she maintains that there are significant parts of the site that are not subject to any such condition.

42. Ms Wigley KC pointed to the DCLG Guidance for local authorities, “Mobile Homes Act 2013: a best practice guide for local authorities on enforcement of the new site licensing regime” (at www.gov.uk) which states, at paragraph 13 of its Appendix 1 “Definition of relevant protected sites”:

> “There are some sites where the planning permission and/or site licence permits both use for holiday and permanent residential purposes. Such sites are relevant protected sites, because the relevant consent is not exclusively for holiday purposes.”

43. Tallington Lakes, she said, is just such a site.

44. She also referred to evidence that the site is used for residential purposes, including a witness statement made by Mr Morgan in other proceedings (relating to VAT) in 2005. As I said above it is not for the Tribunal to make any findings about that; the issue before me depends upon the terms of the planning permission.

45. Mr Morgan argued that the 2003 licence 84/2 was expressed to be granted for holiday use only, and said that the respondent has attempted, illegitimately, to put the cart before the horse by issuing what was in effect a new licence in an attempt to turn the site into a relevant protected site rather than responding to the facts. He said that the issue of a licence for a “Mobile Home Site” did not make the site into a relevant protected site; he also referred to section 5 of the 1960 Act which sets out the types of conditions that may be imposed, pointing out that a condition that changes the use or the nature of occupation of the site is not one of them.

46. Mr Morgan relied upon the DCLG Guidance at paragraph 2.2 which states:

> “Any licensable caravan site will be a relevant protected site unless it is specifically exempted from being so. A site is exempted if it has planning permission or a site licence for exclusive holiday use or there are

restrictions preventing it from being used on a permanent residential basis".

47. Tallington Lakes, he said, has a full house of exemptions. The majority of the pitches are restricted as to when a caravan can be stationed on the land for human habitation (planning permissions b, d and g above); the site licence 84/2 was solely for static holiday caravans; all of the appellant's sales agreement executed with its customers state that the site licence is not residential.

48. At the hearing Mr Morgan went through the planning permissions. He argued that most of them (five out of seven) are either expressed to be granted for holiday use only (items a and f above, as Mr Morgan reads them, and also item b because in his view the reference to a clubhouse entails holiday use) or stipulate times of the year when caravans may not be stationed on the land for human habitation. He pointed out that according to the respondent, 258 out of 385 caravans (67% of them) are subject to seasonal occupancy conditions. In Mr Morgan's view in assessing whether the site is a relevant protected site under section 5A of the 1960 Act the Tribunal should look at what the majority of the planning permissions do. He regarded it as a "huge leap" to take the minority of the caravans and the miniority of permissions and then conclude that this is a residential site.

Mr Morgan's further argument in closing

49. As I mentioned above, Mr Morgan and Ms Wigley KC presented their cases in turn during the morning of the hearing; the Tribunal then paused for lunch and Mr Morgan made his closing submissions after lunch. At this point he took a different approach and said that the 7 Permissions were not agreed to be the relevant ones. He produced a list of planning permissions which Ms Wigley KC said had not been seen before. He relied on one in particular, which he said was for holiday use and that "on checking today it is a blanket permission for the entire site". He renewed his argument that the matter should have been sent back to the FTT, so that there could be a hearing at which evidence could be heard about the extent of the planning permissions and as to which were the relevant ones.

50. It is not in dispute that other planning permissions have been granted for the site or parts of it; the witness statement submitted to the FTT by the respondent's Head of Environmental, Ms Coulthard, listed the 7 Permissions which she regarded as the ones relevant to the licence and also listed a number of others, said to be for the most part expired or unimplemented. Up until this point in the hearing Mr Morgan had not suggested that the 7 Permissions referred to in the two site licences were not the correct permissions. He mentioned during the morning that there were other planning permissions for the land covered by the licence, which he did not know about off the top of his head, but he did not pursue the point other than to say that the situation was messy. There was no suggestion that the 7 Permissions were not the permissions that enabled the licence to be granted (see section 3(3) of the 1960 Act, paragraph 6 above), either in the course of argument at the hearing, or in the grounds of appeal, or in Mr Morgan's skeleton arguments.

51. Mr Morgan argued that in refusing to let him expand on his grounds of appeal after permission was granted the Tribunal had prevented him from introducing evidence about the planning permissions, all of which would have been explored had the FTT held a hearing.

52. Mr Morgan had an appointment at 3 in the afternoon and so was anxious for the hearing to be brought to an end. He said that he felt that he was being treated unfairly because he was a litigant in person. Following the hearing the Tribunal wrote to Mr Morgan inviting him within 14 days to make any further representations he wished to make on behalf of the appellant about ground 3 (whether the site is a relevant protected site), and to produce any further documents needed to support his argument. No response was received to that invitation.

The Tribunal's conclusions

53. I have to decide first whether in light of Mr Morgan's new argument in the afternoon of the hearing I should remit the matter to the FTT.

54. Ground 2 succeeded and resulted in the setting aside of the FTT's decision. The Tribunal can only substitute its own decision on ground 3 if it has the material to decide it. Despite Mr Morgan's wish for the matter to be remitted to the FTT, he did not suggest until the afternoon of the hearing that the 7 Permissions were not the correct permissions on the basis of which the site licence was granted.

55. Mr Morgan never filed any evidence to that effect in the FTT; that was because he chose not to comply with the FTT's directions to file evidence for the final determination, because he disagreed with the direction that the determination be made without a hearing. Had he been legally represented that would be the end of the matter, but as he is unrepresented I overlook that omission.

56. There is no suggestion in Mr Morgan's grounds of appeal that the 7 Permissions are not the right ones.

57. In June 2022 following the grant of permission to appeal Mr Morgan tried to file new and expanded grounds of appeal on the three grounds on which he had been given permission. His revised grounds were rejected because the Tribunal had directed, in giving permission, that he simply edit his grounds to remove the ones for which permission had not been given. He now says that the Tribunal prevented him from introducing fresh evidence at that point; and it is true that he was not allowed to file fresh evidence (the appeal being a review of the FTT's decision) but there is no hint in the revised grounds that he tried to file of any suggestion that the 7 Permissions were not the right ones and indeed those grounds refer to the permissions in the plural. And as I have already said there was no such suggestion either in Mr Morgan's skeleton arguments or at the hearing before lunch.

58. The respondent does not deny that there have been a number of other permissions for the land in respect of which the licence was issued. It issued the licence 84/2 in 2003 on the

basis that the 7 Permissions were the relevant ones, because others had expired or had never been implemented, and that was not challenged in 2003. Nor was it challenged in 2016, understandably because the list was the same.

59. My very strong impression at the hearing, particularly from Mr Morgan's words "on checking today", was that the new argument in the afternoon was a new idea. It had never been part of Mr Morgan's case that there was a single planning permission for the entire site covered by the licence, that was expressed to be for holiday use only, and it had never been something he had planned to argue at a hearing before the FTT. I believe that he seized at the last minute upon a planning permission which appeared to fit the bill. It would be unfair to the respondent to have the matter remitted to the FTT for a further hearing on the basis of a last minute surmise on Mr Morgan's part. It would be particularly unfair to do so when Mr Morgan has not availed himself of the opportunity (which need not have been given to him, since it was his own appointment that meant the hearing had to finish early) to produce further argument and indeed a copy of the relevant planning permission. I conclude from the fact that he did not do so that that there is in fact no planning permission that will assist his case.

60. Accordingly I determine the matter on the basis of the parties' arguments made before the lunch break on the day of the hearing and in their written material before that.

61. First, was the 2003 licence 84/2 expressed to be granted for holiday use only, so that the site was not a protected site in 2016 before the change of conditions? I agree with the respondent that it was not. It is a licence for use of the land as a caravan site (paragraph 7 above). The conditions limit the number of static holiday caravans that can be stationed there, but do not restrict the use of the site to holiday use only. The condition leaves open the possibility of other caravans being stationed on the site, and does not prevent residential occupation of the holiday caravans.

62. Second, I agree with Mr Morgan's arguments that neither the terms of the 2016 licence 84/3 for a "Mobile Homes Site" nor the new conditions attached to the licence in 2016 can change the nature of the site. The respondent does not say they do.

63. Third, Mr Morgan's reliance upon the sales agreements between the appellant and its customers does not assist the appellant, because the statutory definition sets out the exceptions in terms of the licence and the planning permissions only, Restrictions imposed by the appellant upon itself are not relevant.

64. Next I turn to the DCLG guidance, upon which both parties relied. It would of course be expected to be consistent with the law although it is not itself the law. Mr Morgan quotes paragraph 2.2, which is introductory and phrased in general terms. It does refer to a site being "specifically exempted", and the terms of the specific exemption have to be applied. Appendix A to the guidance is about the definition of a relevant protected site; its paragraph 13 (paragraph 41 above) is consistent with section 5A(5), the effect of which is that if the licence or the planning permission(s) for a site state that it is for holiday use "only" or provide that there are times of the year when caravans cannot be stationed on the site for human habitation, then it is not relevant protected site. It does not

allow for an exemption when only part of the site is subject to those restrictions, and therefore a site whose licence or planning permission(s) permit mixed use is, as this paragraph states, a relevant protected site.

65. That takes us to the planning permissions, some of which are ambiguous. I take them one by one:

    a. SK75/1668/87/2895, dated 8 March 1988, permitted "use of land for siting of 34 static caravans for leisure homes", and the only condition relates to the date the development must begin.

       This is ambiguous but could be construed as referring to holiday use since the caravans are identified as "leisure caravans".

    b. SK93/0189/75/8 not dated on the copy in the bundle but said to be in response to an application made on 23 February 1993, permits "use of building as Clubhouse and use of land for caravan park" with a condition that "No caravan on the site shall be occupied between 31 January and 1 March in any year", the reason for which is said to be "to prevent permanent residential occupation of the site".

       The reference to a clubhouse is not a reference to holiday use, and I disagree with Mr Morgan on that point.

       There is no restriction on the stationing of caravans, only on their occupancy, but I agree with Mr Morgan that the condition means that during February the caravans may not be "stationed on the land for human habitation".

    c. SO2/1640/75, dated 21 August 2003, permits "siting of 16 caravans" and has no relevant conditions.

       This permission has no relevant restrictions.

    d. SK92/1328/75/52, dated 26 October 1993, permits "use of land for caravan park" and has the same occupancy condition as SK93/0189/75/8 above.

       I make the same observations on this condition as above.

    e. SK93/1200/75/47, dated 4 January 1994, permits "use of land for caravan park" and has no relevant restrictions.

       This permission has no relevant restrictions.

    f. SO2/1037/75, dated 21 August 2003, permits "use of land as leisure caravan park" with no relevant conditions.

Arguably this is a restriction to holiday use.

g. S00/0407/75, dated 11 July 2000, permits "use of land for caravan park and has the same occupancy condition as SK93/0189/75/8 and SK82/1328/75/52 above.

h. I make the same observations on this condition as above.

66. Arguably, therefore, two of the permissions restrict the site to holiday use. Three of the others restrict the times in the year when caravans can be stationed there for human habitation. Two of the permissions are wholly unrestricted.

67. I agree with Ms Wigley's construction of section 5A(5): in order for the land the subject of the licence to fall outside the definition of a relevant protected site either the licence or the planning permission – which means the permission or permissions that cover the site and by virtue of which the licence is granted – must be expressed to be for holiday use only, across the whole site, or must be on terms that "that there are times of the year when no caravan may be stationed on the land for human habitation" across the whole site. Where the licence and planning permissions allow mixed use that includes residential, the site is a relevant protected site.

68. The site is a relevant protected site as defined in section 5A(5) of the 1960 Act and the appeal fails on ground 3.

Conclusion

69. Accordingly although I have set aside the FTT's decision I have substituted the Tribunal's own decision that the fees are payable as charged, and the Tribunal requires that they be paid by the appellant within 28 days of the date of this decision.

Judge Elizabeth Cooke

16 December 2022

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.