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Case No: LC-2024-355

IN THE UPPER TRIBUNAL (LANDS CHAMBER)

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

FTT REF: CAM/34UH/PHR/2023/0001

15 November 2024

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

PARK HOMES – PROCEDURE – transfer of licence – new licence – appeal against conditions – sections 7 and 8 of the Caravan Sites and Control of Development Act 1960 – whether a document is to be construed as a transferred licence or as a newly granted licence

BETWEEN:

WYLDECREST PARKS MANAGEMENT LTD

Appellant

-and-

NORTH NORTHAMPTONSHIRE COUNCIL

Respondent

Wilby Park, Main Road, Wilby, Northants, NN8 2UL

Upper Tribunal Judge Elizabeth Cooke
Decision on written representations

Mr David Sunderland for the appellant

Mr Shomik Datta for the respondent, instructed by North Northamptonshire Council Legal Services

The following case was referred to in this decision:

AI Properties (Sunderland) Limited v Tudor Studios RTM Co Ltd [2024] UKSC 27;
White v South Derbyshire DC [2012] EWHC 3495 (Admin)

Introduction

1. This appeal is brought by Wyldecrest Parks Management Limited against a decision of the First-tier Tribunal to strike out its appeal under section 7 of the Caravan Sites and Control of Development Act 1960 against conditions attached to a licence to operate a protected site for residential mobile homes. The appeal was struck out on the ground that the wrong application had been made; the FTT found that the appellant had not been granted a new licence but that an existing licence had been transferred from the previous owner of the site, and that therefore the appeal should have been brought under section 8 of the 1960 Act.
2. The appeal has been decided under the Tribunal's written representations procedure; written representations for the appellant were written by Mr David Sunderland, one of its directors, and for the respondent by Mr Shomik Datta of counsel.

The legal background

3. Wilby Park is a residential caravan site and it is not in dispute that it cannot be operated without a licence issued by the local authority under the Caravan Sites and Control of Development Act 1960.
4. Section 3 of the 1960 Act makes provision for an application for a licence to be made to a local authority. Conditions may be attached to the licence (section 5), and usually are. Section 7 says this about conditions attached to a new licence:

“(1) Any person aggrieved by any condition ... subject to which a site licence has been issued to him in respect of any land may, within twenty-eight days of the date on which the licence was so issued, appeal to ... [the FTT]; and the court or tribunal, if satisfied ... that the condition is unduly burdensome, may vary or cancel the condition.”

5. Section 8 is about the alteration of conditions attached to an existing licence:

“(1) The conditions attached to a site licence may be altered at any time ... 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.

...

(2) Where the holder of a site licence is aggrieved by any alteration of the conditions attached thereto or by the refusal of the local authority of an application by him for the alteration of those conditions, he may, within twenty-eight days of the date on which written notification of the alteration or refusal is received by him, appeal to [the FTT] and [the FTT] may, if they allow the appeal, give to the local authority such directions as may be necessary to give effect to their decision.”

6. So in either case, whether a licence holder wishes to appeal conditions attached to a new licence or to appeal the local authority's refusal to vary conditions attached to an existing licence, there is an appeal to the FTT.

7. Section 10 of the 1960 Act makes provision for the transfer of a site licence from one person to another:

“(1) When the holder of a site licence in respect of any land ceases to be the occupier of the land, he may, with the consent of the local authority in whose area the land is situated, transfer the licence to the person who then becomes the occupier of the land.

...

(2) Where a local authority give their consent to the transfer of a site licence, they shall endorse on the licence the name of the person to whom it is to be transferred and the date agreed between the parties to the transfer as the date on which that person is, for the purposes of this Part of this Act, to be treated as having become the holder of the licence.”

The factual background and the FTT’s decision

8. The first licence for Wilby Park was issued in 1960 and there have been various licences to different owners of the site over the years. On 15 September 1997 a licence was issued by the Wellingborough Borough Council (the respondent’s statutory predecessor) to Mssrs Norman, Adrian, Nigel and Christopher Barney. On 1 April 2003 a licence was issued to Wilbrook Parks Limited, whose directors were listed on the face of the licence as Mr CP Barney, Mrs MY Barney and Mrs JM Barney. Neither the 1997 licence nor the 2003 licence bore a reference number.

9. On 1 April 2017 the Wellingborough Council issued a document headed

“Caravan Sites and Control of Development Act 1960 (s3)
Mobile Homes Site Licence
Licence Number 17/01792/EHMOB”

10. It set out the site name and address and stated that the council “grants this licence” to Wilbrook Parks Limited, pursuant to section 3 of the 1960 Act, subject to the attached conditions. The document concludes:

“Date of this variation: 1 April 2017
Date of original licence: 15 September 1997”

11. That document therefore makes clear that it is a variation of a licence already granted. The reference to variation and to an original licence indicates that it is a variation of the licence granted in 1997, and that the 2003 document was regarded as the transfer of the licence previously held by one of the directors of Wilbrook Parks Limited along with others.

12. On 6 August 2021 Wilbrook Parks Limited was purchased by Best Holdings Group Limited, and on 12 August 2021 an application was made by the appellant to the respondent local authority for consent to the transfer of the licence to the appellant, also a subsidiary of Best Holdings, pursuant to section 10 of the 1960 Act. The agreed transfer date was 6 August 2021. There were various problems with the application, not least that the application should have been made by Wilbrook Parks Limited; there is a dispute as to whether those problems were communicated to the appellant, but at any rate no transfer

was forthcoming. On a number of occasions the appellant, through Mr Sunderland, chased the respondent about it.

13. Meanwhile the parties were engaged in correspondence about the licence conditions, and in December 2022 Mr Sunderland made an application to vary the conditions by removing the limit on the number of homes allowed to be stationed on the park.
14. In March 2023 the respondent asked for a new application form for the consent to the transfer of the licence to be completed, signed by a director of Wilbrook Parks Limited, and the appellant on 29 March 2023 returned the original form with the signature of Mr Alfie Best as such director added to it.
15. On 5 April 2023 the respondent wrote to the appellant an email which the appellant says was a rejection of the amended application.
16. On 5 April 2023 the appellant applied for a new licence for Wilby Park, albeit using the form, and paying the fee, appropriate for a transfer request and not for an application for a new licence.
17. On 13 April 2023 Mr Sunderland sent an email to the respondent explaining that the appellant had now applied for a new site licence and said “you don’t need to bother transferring the current licence”; and he asked for a refund of the fee.
18. On 20 April 2023 the respondent issued a document to the appellant; this is the document the appellant says was a new licence and the FTT found was a transferred licence. It is headed:

“Site Licence
Caravan Sites and Control of Development Act 1960 (s3)/ Mobile Homes Act
2013
Mobile Homes Site Licence
Licence Number 15/02727/EHCASI”

It sets out the site name and address, states that it is granted pursuant to section 3 of the 1960 Act subject to the attached conditions to the appellant “who has entitlement to the benefit of planning permission/ lawful development certificate number WR/68/206 for the use of [the site] as a caravan site.” It is signed by Mrs Amanda Wilcox as head of Environmental Health for the respondent, and concludes:

“Issue Date: 20 April 2023
Issue reference No: 23/00663/EHMOB.”

Conditions were indeed attached, and were identical to those attached to the document of 1 April 2017.

19. That document was not sent to the appellant until 18 May 2023, but in view of what it says I take it that it was issued on 20 April 2023.

20. On 25 April 2023 the respondent wrote to the appellant to say that it did not understand why the transfer request had been withdrawn and that the licence was in the process of being issued. That letter also said that the application for a new licence was not regarded as a valid application because there was an existing licence in place and the correct procedure was to apply for a transfer, and also because the incorrect form had been used and the wrong fee paid. On 12 May 2023 the respondent wrote to the appellant refusing the application of 5 April for those reasons.
21. On 16 May the respondent wrote to the appellant stating that it had not refused the transfer application and that “a licence has been produced by the administration team and is currently being checked before sending it out to you”. On 17 May the appellant made an application under section 6 of the 1960 Act to the FTT appealing the refusal to grant a licence.
22. On 18 May 2023 three things happened:
 - a. the document issued on 20 April 2023 was sent to the appellant.
 - b. the appellant then withdrew its application under section 6 to the FTT and
 - c. the appellant then appealed to the FTT under section 7 of the 1960 Act against the 16 of the conditions attached to that document, on the ground that they were unduly burdensome, unnecessary, or impossible to achieve.
23. The FTT gave standard directions in the appeal, and the parties exchanged iterative drafts of a Scott Schedule of the disputed conditions in which they set out their positions and comment. Ms Catherine Clooney, an Environmental Protection Officer for the respondent, made a witness statement on 18 December 2023. She went through the licensing history of the site and the respondent’s correspondence with Mr Sunderland. The bulk of the witness statement is about the numerous disputed conditions, and in particular the vexed question of the number of caravans to be stationed on the site, and I do not need to go into the substance of that dispute. But three things are important to this appeal and are abundantly clear. One is that the respondent regarded the disputed document as a transfer of the existing licence, not as a new licence. Another is that Ms Clooney was aware that the appeal was brought under section 7 of the 1960 Act, and did not suggest that that was a problem. A third is that there was extensive and detailed correspondence between the appellant and the respondent about the disputed conditions.
24. The appellant’s statement of case in the FTT proceedings was dated 24 January 2024. It stated that the appeal was made under section 7, set out the events that had led up to the document being sent to the appellant (including what Mr Sunderland regarded as the rejection of the transfer application), and complained that the conditions replicated those attached to the previous licence without giving the appellant the opportunity to make representations. It then went on to respond to what Ms Clooney said about the conditions.
25. Neither Ms Clooney’s statement nor the appellant’s statement of case engaged in any discussion about whether the document issued on 20 April 2023 was a new licence or a transfer of an existing licence; it is clear that the appellant regarded it as a new licence and

the respondent as a transfer but there is no indication that either regarded the other's perception of the document as problematic.

The FTT's decision

26. The FTT made a site visit and conducted a hearing on 11 and 12 March 2024 which, according to the Mr Sunderland, was occupied largely in argument about the licence conditions. It seems that on the second day the point was made that the appeal had been brought under section 7 which provides for the appeal of conditions attached to a new licence, whereas the respondent's position was that the document issued on 20 April 2023 was not a new licence. Following argument about the consequences of that the FTT issued a decision striking out the appellant's case.

27. In that decision the FTT set out the events leading up to the issue of the disputed document, and the relevant provisions of the 1960 Act, and then said this:

“31. As stated above, it became clear during the hearing that the applicant's case depended on their argument that the licence issued on 20 April 2023 was a new licence. Mr Sunderland submitted that if the Tribunal decided the licence was in fact a transfer, section 7 of the 1960 Act had no application. The correct process would be for the applicant to apply for a variation and appeal under section 8 if they were aggrieved by any refusal (or from any variation of the conditions) by the council.

...

34. The tribunal agree with [the respondent] that the correspondence outlined above supports the council's case that the licence was transferred as opposed to newly issued. ... It is unfortunate that the licence itself did not comply with section 10 but that omission can and should be remedied by the council. There is no prejudice to the applicant who had already agreed the transfer date of 6 August 2021.

...

36. The tribunal agrees with Mr Sunderland that in the circumstances the tribunal cannot entertain his application under section 7. The applicant has of course already applied for a variation of the condition in respect of the number of caravans (see paragraph 14) but it appears that this request has not yet been dealt with by the council. Both parties have considered the disputed conditions at length as part of this application and some concessions have been made on both sides. It is therefore hoped that the parties can agree a variation in respect of most of the conditions in dispute but in the event that the applicant is “aggrieved” by the decision they can of course apply to the tribunal under section 8.”

28. The application for variation of the condition in the number of caravans is the one mentioned at paragraph 13 above; the Tribunal has no information about what has happened to that application. The appellant has permission to appeal the striking out of his appeal under section 7 on the ground that the document issued on 20 April 2023 was indeed a new licence and that his application should not have been struck out.

The arguments in the appeal

29. The appellant argues that by 20 April 2023 the appellant's application for a transfer had been rejected and that therefore the document issued must have been a new licence for which the appellant had applied. Moreover, the respondent was aware of the appellant's case in the FTT and took no point about the application under section 7 until three-quarters of the way through the hearing after the proceedings had been on foot for 10 months, and that was too late in the process for the respondent to change its case. The document itself, says Mr Sunderland, is not an existing licence endorsed as required by section 10 of the 1960 Act; it is a new licence with a new number, and its date is not the date of transfer agreed by the appellant and Wilbrook Parks Limited (which was 6 August 2021). It referred to a certificate of lawful development issued in 2021, after the issue of the 2017 licence.
30. The respondent's position is that the FTT was correct; moreover it points to its letter of 16 May 2023 which can have left the appellant in no doubt that its application for a transfer had not, as the appellant contended, been rejected. The transfer application, by contrast, *was* expressly rejected. Mr Datta argued that the FTT's finding about the document was a finding of fact which the FTT made in light of the "factual matrix", and that on the usual principles the Tribunal should be slow to interfere with that finding. Moreover, guidance given by DCLG in 2015 states that a new licence is required only where there has been a boundary change, or where there has been a change of ownership and the local authority wants to add new conditions, neither of which was the case here. The appellant was aware of the guidance. Any refusal of a transfer application must set out clear reasons, and none were given here because the transfer application was not refused.
31. As to the form of the document, Mr Datta argued that either the omission of the material required by section 10(2) of the 1960 Act can be added by way of correction of an error, or the document is ultra vires and a nullity, as in the case of *White v South Derbyshire DC* [2012] EWHC 3495 (Admin) – an unattractive conclusion that the FTT was right to avoid. The different licence number is not material because the Act does not require licences to have a number. The date of 20 April 2023 was also an error and could be rectified as the FTT suggested.
32. Finally Mr Datta maintained that the respondent did not change its position; it was clear throughout that the respondent took the view that the previous licence had been transferred and that the disputed document was not a new licence.

Discussion and conclusion

33. The decision to strike out the appellant's appeal in the FTT on the ground that it was brought under section 7 instead of section 8 is difficult to understand. There is no reason to suppose, and it has not been suggested, that the FTT did not have jurisdiction if the wrong application form was used. In substance what the appellant was doing was appealing to the FTT the conditions attached to the document issued on 20 April 2017, whether that document was a new licence or not. If it was not, then the FTT could simply have treated the appeal as having been brought under section 8; the requirement for a prior application to the local authority for a change in the conditions was amply satisfied by the lengthy correspondence about the conditions that had passed between the parties. This is not a case where there has been an error or omission in following a statutory procedure prescribed

for the acquisition of rights (which would engage the case law about such errors, in particular *AI Properties (Sunderland) Limited v Tudor Studios RTM Co Ltd* [2024] UKSC 27); the problem, if there was one, was simply the use of the wrong application form before the FTT.

34. The respondent had been untroubled by the use of that form and by the framing of the appeal as one brought under section 7. I agree that it had made it clear all along that it did not regard the document as a new licence, but its case in the FTT was not that the appeal should therefore be struck out. On the contrary, the point was not taken in Ms Clooney's witness statement and the respondent complied with the FTT's directions and engaged in the Scott Schedule process without seeking to have the application struck out. It is very difficult to see why it was fair for it to be allowed to raise a procedural objection at the eleventh hour and on the second day of the substantive hearing. It is equally difficult to see how the striking out of the appeal was consistent with the FTT's overriding objective to deal with cases fairly and justly by "avoiding unnecessary formality and seeking flexibility in the proceedings" (rule 3(2)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. I note that, according to the FTT, it was Mr Sunderland's own suggestion that the application be struck out if the document was not a new licence; I do not understand why he would have made that suggestion nor why the FTT acceded to it.
35. As it is, the application was struck out and months have been wasted, and it seems to me that even if the FTT was right about the status of the document the striking out of the application was a very surprising response.
36. However and in any event the FTT in my judgment was wrong about the legal effect of the disputed document. That finding was a decision of law. I agree that the FTT's findings about the "factual matrix" cannot be disturbed on appeal. And in any event it was clearly right to find that the respondent did not refuse the transfer application; its letter of 5 April 2023 was ambiguous, in that it required "a fresh application", but then went on to refer to the previous correspondence about the transfer application and to remind the appellant that information the respondent had requested was still outstanding. As the respondent says, subsequent correspondence made it clear that the transfer application had not been refused. The application for a new licence was rejected on 12 May 2023. Moreover the DCLG guidance states that the appropriate response to a change in ownership where there is no boundary change and no change in the conditions is to transfer the licence.
37. So much for the facts. But the question is not what the respondent intended to issue, nor what the DCLG guidance says it should have issued, but what it issued. That is a question of construction of the document issued on 20 April 2023 and of the legal consequences of what the document says. And there is no possible construction of that document except as a new licence.
38. Had the licence in the name of Wilbrook Parks Limited been transferred, then the respondent would have provided to the appellant a copy of the previous licence, endorsed with the name of the new licence holder and with the date agreed by the transferor and transferee to be the one from which the transfer took effect, as section 10 of the 1960 Act requires. It is impossible to construe the document of 20 April 2023 as the licence issued to Wilbrook Parks Limited endorsed with those details. The failure to comply with section 10 of the 1960 Act is not, as the FTT said, an "omission" that can be rectified. This is a completely different document. It states on its face that it is a licence granted to the

appellant under section 3 of the 1960 Act; it has a different reference number from the 2017 reference, and that cannot be ignored just because it is not a statutory requirement when the whole purpose of a reference number is to enable different licences to be distinguished from each other. And it refers to a planning decision that h=was not in existence when the 2017 licence was issued.

39. I have given consideration to the respondent's suggestion that the document is in fact ultra vires and void, because at the date of its issue there was no valid application for a licence. But the decision in *White v South Derbyshire* related to a licence that could not have been granted because the purported licensee had no planning permission for the use of the site; section 3 of the 1960 Act says that a licence may be granted "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 granted under [the relevant town and country planning statute]". That was not the case here, and it has not been argued that the fact that the application had been rejected made the grant of a new licence ultra vires.
40. Accordingly the FTT's decision is set aside and the appellant's application to appeal the conditions attached to the new licence issued on 20 April 2023 is reinstated.

Upper Tribunal Judge Elizabeth Cooke

15 November 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.