



Neutral Citation Number: [2024] UKUT 231 (LC)

Case No: LC-2024-392

IN THE UPPER TRIBUNAL (LANDS CHAMBER)

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

FTT REF: CHI/15UC/PH1/2022/0566

7 August 2024

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

PARK HOMES – PROCEDURE – pitch fee review – notice of application served by tribunal on only one of two joint respondents – notice of application served by email and diverted to junk folder – pitch fee determination made without participation by respondents – rules 16(1), 29(1) and 51, Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 – appeal allowed and determination set aside

BETWEEN:

IAN ARTHUR HURLEY (1)
PENELOPE CAROL JOYCE HOPE (2)

Appellants

-and-

TURNER'S REGENCY PARKS LTD

Respondent

25 Truro Heights,
Kenwyn Hill,
Truro

Martin Rodger KC, Deputy Chamber President

Decision on written representations

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No cases are referred to in this decision.

1. The appellants, Mr Hurley and Ms Hope, are both parties to a written agreement entitling them to station a mobile home on pitch 25 at the Truro Heights mobile home park. Truro Heights is owned by the respondent, Turner's Regency Parks Ltd (Turner's) and is a protected site for the purpose of the Mobile Homes Act 1983 (the 1983 Act).
2. The written agreement commenced on 23 May 2017 and provides for a review of the pitch fee on 1 April each year.
3. On 16 February 2023 Turner's served a pitch fee review notice on Mr Hurley and Ms Hope seeking agreement for an increase of 10.5% from 1 April 2023. Although the proposed increase was less than the relevant increase in RPI of 13.4% which could have been suggested, agreement was not reached between the parties.
4. On 31 May 2023 Turner's applied to the First-tier Tribunal (Property Chamber) (the FTT) for an order under paragraph 16(b) of Chapter 2 of Schedule 1 to the 1983 Act determining the amount of the pitch fee increase. The application named Mr Hurley and Ms Hope as respondents and gave their postal address and a single email address for Mr Hurley.
5. When the FTT receives a notice of application it is required by rule 29(1) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 to provide a copy of the application and any accompanying documents to the respondent. Where there is more than one respondent the FTT is required to provide a copy of the application to each respondent named in the application.
6. The FTT served a copy of the notice of application and supporting documents by email addressed to Mr Hurley, using the email address provide for him by Turner's. It did not serve the notice of application on Ms Hope by email, because it did not have an email address for her. Nor did it serve the application by post on either of the respondents.
7. Mr Hurley did not respond to the email sent to him. In this appeal he maintains that he did not become aware of the proceedings until he opened an email sent to him by the FTT on 8 May 2024 attaching its final decision of the same date. Mr Hurley has explained in his grounds of appeal that that email was diverted to his email's junk file, where he found it on 30 May 2024.
8. Ms Hope had not been served with a copy of the application and was not aware that a copy had been sent to Mr Hurley so she was unable to respond to it.
9. As neither Mr Hurley nor Ms Hope had responded to the application the FTT proceeded to make a decision on paper, without a hearing. On 8 May 2024 it issued a decision determining that Turner's proposed increase was reasonable and fixing a new pitch fee of £176.05 with effect from 1 April 2023. The decision came to MR Hurley's attention on 30 May and on the following day he and Ms Hope applied for permission to appeal which was granted by the FTT on 7 June.
10. Mr Hurley's case on the appeal is that he did not become aware of the proceedings until 30 May 2024, when he found the decision in his junk email folder attached to an email to him sent on 8 May. He was therefore denied the opportunity to participate and the decision should be set aside.

11. Ms Hope's case is that she was not able to participate in the proceedings because they were never served on her in any form, and that the decision should therefore be set aside.
12. In its response to the appeal Turner's has made two points.
13. First, that the form of application prescribed by the FTT for use by site owners for the determination of a new pitch fee, form PH9, provides space for only one email address. Turner's provided the email address it had for Mr Hurley (they do not say whether they also had a separate email address for Ms Hope but if they did it was not included).
14. Secondly, Turner's suggest that the problem in this case has been created by the FTT's choice to serve the proceedings by email rather than by post. Had the application form and supporting information been sent by post addressed to Mr Hurley and Ms Hope it is likely that they would have received it and been able to participate.
15. My analysis of the appeal is as follows.
16. The FTT was responsible for serving the notice of application and supporting documents, but it did not serve them on Ms Hope. An email sent to the email address of one respondent is not good service on another respondent unless the recipient has been authorised by the other to receive communications on their behalf. There is nothing to indicate in this case that Ms Hope had authorised Mr Hurley to receive material on her behalf. If the application had come to her attention at the appropriate time it may be that service via Mr Hurley would have been effective, but it is not necessary to decide that point. As Ms Hope did not in fact receive a copy of the notice of application sent to Mr Hurley by email, and as no copy was sent to her postal address, it is clear that there has been a serious procedural irregularity in her case. Although not every irregularity is necessarily fatal to a subsequent decision, one which has prevented a respondent from participating in the proceedings is sufficiently serious to require that the FTT's determination be set aside so far as it affects her. Since Mr Hurley and Ms Hope are jointly responsible for the pitch fee, it is necessary for the decision to be set aside in its entirety, and not simply in its application to Ms Hope.
17. As for Mr Hurley, for the reason I have given the decision must be set aside as it applies to him. But I would also have set the decision aside even if he had been the sole respondent.
18. I assume that the notice of application sent to Mr Hurley's email address by the FTT in June 2023 was diverted to a junk folder and later deleted without being read, as Mr Hurley has described. There is no reason to doubt Mr Hurley's account of events and it would be disproportionate to require a forensic examination of his email account to verify what he says. He acted very promptly when he says he first became aware of the decision and has continued to do so in connection with this appeal.
19. The FTT is entitled to serve documents by email; rule 16(1)(c) of the FTT Rules provides that documents sent by the FTT itself may be sent by such method as it may permit, and it has permitted service by email. But service by email is not without risk. Emails may be treated as spam or junk by the intended recipient's account and may be diverted or blocked. I do not consider that the intended recipient can be considered at fault if an email sent by a tribunal does not reach the addressee's inbox. The fact that Mr Hurley could have become aware of the application if he had paid greater attention to the contents of his junk folder is not a reason to treat him as having been aware of the proceedings even if, technically, they may have been served on him.

20. In general, it would not be in the interests of justice to allow an FTT decision to stand in circumstances where a sole respondent was not aware of the proceedings and had not had a proper opportunity to participate. For that reason, even if Mr Hurley had been the only respondent, I would have set the decision aside.
21. As for the two points made by Turner's in response to the appeal, I do not think the first is a strong one. Although form PH9 does not provide any directions about how an applicant should proceed where there is more than one respondent (for example by making it clear that the names, addresses and email addresses, where known, of every respondent should be included) it is possible to include more than one name and address, and more than one email address, in the available space on the form.
22. Turner's second point is a better one, but it does not change the outcome of the appeal. The FTT is required to serve a copy of an application notice on each respondent and it cannot be assumed that one respondent is authorised by another to act on their behalf in the receipt of legal proceedings. If the FTT has not been provided with an email address for a particular respondent it is necessary that service be achieved by some other method, the most obvious being by post. But the fact that non-service of the application on Ms Hope was not the responsibility of Turner's does not overcome the unfairness to Ms Hope of her being prevented from participating in the proceedings.
23. Finally, I take this opportunity to draw attention to rule 51 of the FTT Rules which allows the FTT to set aside a decision which disposes of proceedings if it considers that it is in the interests of justice to do so and if one or more of the conditions in rule 51(2) is satisfied. Those conditions include where a document relating to the proceedings was not sent to, or was not received at an appropriate time, by a party. In my judgment the circumstances of this case fall within that condition and it would have been perfectly proper for the FTT to have set aside its own decision and to have given directions for a response to the application by Mr Hurley and Ms Hope. That would have avoided the delay and expense of an appeal.
24. For these reasons I set aside the decision and remit the application for determination of a new pitch fee to the FTT for further consideration by the same or a different panel.

Martin Rodger KC
Deputy Chamber President
7 August 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.