Neutral Citation Number: [2024] EWCA Civ 811

Case No: CA-2023-000286

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE UPPER TRIBUNAL (LANDS CHANMBER)
UPPER TRIBUNAL JUDGE COOKE
[2022] UKUT 334 (lLC)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17/07/2024

Before :

LORD JUSTICE UNDERHILL
(Vice-President of the Court of Appeal (Civil Division))
LORD JUSTICE BEAN
and
LORD JUSTICE LEWIS

- -

Between :

TALLINGTON LAKES LIMITED	**Appellant**
- and -	
SOUTH KESTEVEN DISTRICT COUNCIL	**Respondent**

- -
- -

Neil Morgan (**Director**) for the **Appellant**
Jenny Wigley KC (instructed by **South Kesteven District Council**) for the **Respondent**

Hearing date: 27 June 2024

- -

APPROVED SUBJECT TO EDITORIAL CORRECTIONS

LORD JUSTICE LEWIS:

INTRODUCTION

1. This appeal concerns the proper interpretation and application of provisions of the Caravan Sites and Control of Development Act 1960 ("the 1960 Act"). In brief, the appellant, Tallington Lakes Limited, is the owner of land known as the Tallington Lakes and Leisure Park part of which is used as a caravan site ("the site"). The respondent local authority, South Kesteven District Council, has issued a site licence in respect of the site. The appellant did not pay the annual site licence fee. The respondent applied to the First-tier Tribunal ("the FTT") for an order requiring the respondent to pay.

2. Four preliminary issues were dealt with by the FTT following a hearing. The remaining issues were dealt with on the papers without a hearing. There was an appeal to the Upper Tribunal on three grounds. On the first ground, the Upper Tribunal held that the occupier of the site for the purposes of section 1 of the 1960 Act was the appellant, not a different company, Tallington Lakes Leisure Park Limited ("Lakes Leisure Ltd"), which had rights under an agreement dated 16 July 2004 to occupy the site. On the second ground, the Upper Tribunal held that the FTT should not have decided the application without an oral hearing. However, the Upper Tribunal decided to re-make the decision itself, not remit the case to the FTT, as it had all the material necessary to make the decision. On the third ground, the Upper Tribunal decided that the site was a relevant protected site for the purposes of section 5A of the 1960 Act as the site licence, and at least some of the relevant planning permissions, were not expressed to be granted for holiday use only and did not subject the land to conditions when there were periods when no caravan could be stationed on the land for human habitation. Consequently, the occupier of the site was liable to pay an annual licence fee.

3. The appellant has permission to appeal to this Court on three grounds, namely:

> "Ground 1 – no properly convened on notice hearing with the requisite evidence and documentation has ever taken place (in either the FTT or in the [Upper Tribunal] when deciding the site's [relevant protected site] status.
>
> "Ground 2 – [the appellant] is not the occupier of Tallington Lakes Leisure Park.
>
> Ground 3 – Tallington Lakes Leisure Park is not a relevant protected site ("RPS")."

4. Mr Neil Morgan is a director of the appellant company and Lakes Leisure Ltd. He has represented the appellant throughout these proceedings including at the hearing before this Court.

THE LEGAL FRAMEWORK

5. Section 1 of the 1960 Act requires the occupier of land used as a caravan site to have a site licence and a contravention of that obligation is a criminal offence. The material provisions of section 1 provide:

> "1.— Prohibition of use of land as caravan site without 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.
>
> (2) If the occupier of any land contravenes subsection (1) of this section he shall be guilty of an offence
>
> …..
>
> (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:
>
> Provided that where land amounting to not more than four hundred square yards in area is let under a tenancy entered into with a view to the use of the land as a caravan site, the expression *"occupier"* means in relation to that land the person who would be entitled to possession of the land but for the rights of any person under that tenancy.
>
> (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 provides for the making of an application for a site licence and confers powers on a local authority for the area where the land is situated to grant such licences. Section 5 provides powers for a local authority to attach conditions to a site licence. A person aggrieved by the conditions may appeal to the FTT within 28 days of the date of issue of a licence. Section 8 provides power for a local authority to alter the conditions attached to a site licence (whether by variation or cancellation of the existing conditions). A person aggrieved by any alteration of the conditions may appeal within 28 days to the FTT.

7. Section 5A of the 1960 provides powers for a local authority in England to charge a fee in respect of what is called a relevant protected site. The power is conferred by subsection 5A(1) and the definition of a relevant protected site is contained in subsection 5A(5). The material subsections provide:

> "5A Relevant protected sites: annual fee
>
> (1) A local authority in England who have issued a site licence in respect of a relevant protected site in their area may require the licence holder to pay an annual fee fixed by the local authority.
>
> …..
>
> (4) Where a licence holder fails to comply with an order under subsection (3) within the period of three months beginning with the date specified in the order for the purposes of that subsection, the local authority may apply to the tribunal for an order revoking the site licence.
>
> (5) In this Part, *"relevant protected site"* means 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, subject to subsection (6)—
>
> (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.

THE FACTUAL BACKGROUND

The 2013 Site Licence

8. Tallington Lakes and Leisure Park is in Lincolnshire. The appellant is the freehold owner. In May 2003, the respondent issued a site licence permitting the use of land as a caravan site. The land to which the site licence relates comprises, or at least includes, seven areas of land where planning permission exists for the use of the site for the stationing of caravans. The seven planning permissions were listed in Annex A to the site licence which states that the list "forms part of site licence number 84/2". Annex A showed the number of caravans permitted at particular locations. The conditions of the May 2003 licence provided that:

> "1) The total number of static holiday caravans sited shall not exceed 385.
>
> 2) This licence is issued subject to compliance with the standard South Kesteven District Council site licence conditions for static holiday caravans.
>
> 3) Static holiday caravans shall be sited in accordance with Annex A which forms part of this licence.

The Management and Trading Licence

9. On 16 July 2004, the appellant entered into an agreement, described as a "management & trading licence agreement" with its holding company and Lakes Leisure Ltd. Clause 2 recorded that the appellant was the owner of the land and that Lakes Leisure Ltd. "will manage and operate the Property and the Business and the Trading Assets as Licensee". The property was defined to include the lakes and leisure park. The trading assets were defined to include the property.

10. Clause 3.1 provides that during the management period, Lakes Leisure Ltd. "will occupy, use, manage operate and control the Property and the Business and the Trading Assets (to include all Business income and cash)". Clause 3.2 provided that title and ownership of the Property, Business and the Trading Assets remained with the appellant. Clause 4 is headed "Management & Trading Licence". Clause 4.1 provided that during the trading term, Lakes Leisure Ltd.:

> "shall be entitled to occupy and control the Property and exclusively use the Trading Assets and cash of the Business for purpose of managing, operating and trading the Business as Licensee."

11. Clause 4.5 provides that:

> "In consideration of these Management Services [the appellant and the holding company] shall pay to [Lakes Leisure Ltd.] the Management & Trading Licence Fee to be determined by the directors of [the appellant and the holding company] on demand any time after 1 January 2008.

The 2016 Revision

12. On 18 May 2016, the respondent issued the appellant with a revised site licence for the site. That document replaced the three original conditions with a schedule of conditions. The appellant did not appeal against the conditions. It did not seek to challenge the validity of the 2016 documentation in any other way such as bringing a claim for judicial review.

The Proceedings in the FTT

13. The respondent levied a licence fee for 2017 and 2018. Those fees amounted to £4,173.50. The appellant did not pay. On 8 July 2019, the respondent made an application to the FTT for an order requiring payment under section 5A(3) of the 1960 Act. On 23 September 2019, the appellant filed an application purporting to be an appeal against the site licence conditions contained in the revised site licence issued on 18 May 2016. A directions hearing was held and directions given. The directions required both applications (the order for payment and the application relating to appealing the 2016 document) be heard together. The directions identified four preliminary issues, the first two of which were:

> "(a) was the site licence dated 18 May 2016 correctly issued to [Tallington Lakes Ltd.]?

> (b) if yes, is [Tallington Lakes Ltd.] to be granted leave to appeal the licence conditions out of time?

14. Directions were also given about documents. Paragraph 4 of the directions dealt with documents relevant to the preliminary issues. Paragraph 5 dealt with documents in response on the preliminary issues "together with copies of any other relevant documents". Paragraph 6 of the directions provided that:

> "The bundle of documents and the responses supplied by each party in accordance with paragraphs 4 and 5 above shall be regarded as its entire case and must include all copies of all documents on which it seeks to rely including (but not limited to) such of the following are in its possession:
>
> Site licence(s) granted prior to 18 May 2016 in relation to the Park;
>
> All planning permissions granted in respect of the Park;
>
> …..".

15. There was an oral hearing, conducted remotely, by the FTT to determine the preliminary issues. By a decision dated 25 March 2021, with accompanying reasons, the FTT decided that:

> "1. The site licence dated 18 May 2016 was correctly issued to Tallington Lakes Limited.
>
> 2. [Tallington Lakes Limited] has not applied for and is not granted an extension of time to appeal the conditions attached to that licence.
>
> 3 . [Tallington Lakes Limited] is the correct respondent to the application number MAN/23/UG/PHP?2019/0001."

16. The FTT gave further directions on 18 October 2021 for the hearing of the application for an order for payment of the licence fee. The directions provided, amongst other things, for the parties to serve any additional statement of case supported by all relevant documents. They also said that the application would be determined without a hearing. Those directions were to become effective on 1 November 2021 unless a request was made by 29 October 2021 for alternative directions.

17. The appellant did not make a request for alternative directions. It did e-mail the regional judge and, in the course of that e-mail, said that "the suggestion that the substantive matters be decided without any hearing is absurd".

18. The FTT decided the application without an oral hearing. By a decision dated 17 December 2021, with reasons, it ordered the appellant to pay site licence fees in the sum of £4,137.50. The appellant applied to the FTT for permission to appeal to the Upper Tribunal but that application was refused by the FTT

The Appeal to the Upper Tribunal

19. The appellant applied to the Upper Tribunal for permission to appeal against the decisions of the FTT dated 25 March 2021 and 17 December 2021. By its decision dated 1 April 2022, the Upper Tribunal gave permission to appeal on three grounds only, namely did the FTT err in deciding (1) that the occupier of the site was the appellant not Lakes Leisure Ltd (2) not to hold an oral hearing (3) that the site was a relevant protected site. See the reasons of the Upper Tribunal, especially at paragraphs 6-7 and 9-12.

20. The Upper Tribunal did not grant permission to appeal against the refusal of an extension of time to appeal against the conditions attached to the 2016 revised site licence. Mr Morgan, who represented the appellant at the hearing of the appeal to this Court, argued that the Upper Tribunal had in fact granted such an extension of time. That submission is based on a mis-reading of paragraph 4 of the reasons of the Upper Tribunal granting permission to appeal. In paragraphs 2 to 4, the Upper Tribunal was dealing with the question of whether there had been any delay in making the application for permission to appeal to the Upper Tribunal against the FTT decision of the 25 March 2021 (which was the decision refusing an extension of time for appealing to the FTT against the conditions). The Upper Tribunal at paragraph 4 of its reasons granted an extension of time for the making of the application to it for permission to appeal. It then goes on to consider whether or not to grant permission to appeal. It did not grant permission to appeal against the refusal to extend time for appealing to the FTT against the conditions contained in the 2016 revised site licence.

21. The position is confirmed by the decision of the Upper Tribunal dated 21 June 2022. The appellant was ordered to provide revised grounds of appeal to reflect the grounds of appeal for which permission had been granted. The order makes it clear that the three grounds of appeal are those summarised at paragraph 18 above. The appellant did not have permission to appeal to the Upper Tribunal against the conditions attached to the revised site licence issued in 2016.

The Decision of the Upper Tribunal

22. In its decision at paragraph 3, the Upper Tribunal held as follows:

> "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 ?"

23. The reasons of the Upper Tribunal should be read in full. They can be summarised as follows. On the first issue, the Upper Tribunal held:

> "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."

24. The second issue concerned the FTT decision of the 17 December 2021 and the consideration of whether the site was a relevant protected site. There had been no oral hearing when that issue was decided. The Upper Tribunal referred to rule 31 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the FTT Rules") which required 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. The Upper Tribunal held that:

> "32. The appellant in its letter to the Regional Judge did express a very clear objection. Ms Wigley KC [counsel for the respondent] 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."

25. The Upper Tribunal then had to decide whether to remit the case to the FTT or re-make the decision: see section 12 of the Tribunal, Courts and Enforcement Act 2007. It considered the arguments and the evidence that had been adduced in relation to the question of whether the site was a relevant protected site. The Upper Tribunal described the hearing that took place in the morning. It noted that the parties had dealt with arguments as to the proper meaning of section 5A of the 1960 Act and had made arguments on the seven planning permissions referred to in the site licence issued in 2003 (which were all in evidence before the Upper Tribunal). The Upper Tribunal noted that, in his closing submissions after lunch, Mr Morgan, who was representing the appellant, took a different approach from that which he had taken during his submissions in the morning. He said the seven planning permissions were not agreed to be the relevant ones, and produced a list of planning permission. He relied upon one planning permission in particular that he said was for holiday use and that "on checking today it is a blanket permission for the entire site" and argued that the matter should go back to the FTT: see paragraph 49 of the Upper Tribunal judgment. Further factual matters and arguments are recorded at paragraphs 50 to 52. The Upper Tribunal decided not to remit the matter to the FTT but to re-make the decision essentially for the following reasons:

> "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."

26. On the third issue, the Upper Tribunal found that five of the seven planning permissions referred to in the site licence issued in 2003 arguably included restrictions on use which fell within section 5A(3) of the 1960 Act. Two included no restrictions of the sort referred to in section 5A(3). The Upper Tribunal concluded that:

> "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."

THE APPEAL

27. Permission had been granted to appeal on three grounds set out above at paragraph 3. Mr Morgan submitted an appellant's response to the respondent's skeleton together with a bundle of documents. Many were documents, such as the seven planning permissions, which were before the Upper Tribunal. Some, such as rates bills, were not. Strictly, Mr Morgan needed permission to rely on an additional skeleton and on new evidence not before the Upper Tribunal (see CPR 52.21). Nevertheless, we allowed Mr Morgan to refer at the hearing to the appellant's response and the documents even though he did not have permission to do so. We read those documents. Following the hearing, Mr Morgan sent, unrequested, another document entitled "Appellant's reply to respondent's submissions". I have read that document. It makes arguments that the revised site licence issued in 2016 is invalid. As that is not a matter on which the appellant has permission to appeal, those arguments did not assist in dealing with the three grounds of appeal.

GROUND 1 – THE FAIRNESS OF THE HEARINGS BELOW

Submissions

28. Mr Morgan submitted in his application for permission to appeal document that there had been significant procedural irregularity and procedural unfairness as no properly convened hearing took place in either the FTT or in the Upper Tribunal on 10 November 2022. In particular, he submitted that that hearing was the first trial of the issues and was done without the necessary evidence, trial preparation or trial submissions. The document makes further points and should be read as a whole. In his oral submissions, Mr Morgan submitted that he had never been able to put his whole case. He said that there existed what he described as a blanket permission for holiday use for the site which he believed replaced or superseded the seven planning permissions referred to in the site licence issued in 2003. He said that he had seen an electronic version of this planning permission some years ago on the appellant's computer system but, unfortunately, those providing the appellant with IT advice, assistance or services had accidentally deleted it.

29. In her written submissions, Ms Wigley KC explained that the directions issued by the FTT were intended to ensure that the parties provided all relevant documents as part of their case. The respondent, by means of a witness statement of Ms Coulthard, had exhibited, or referred to, all the planning permissions of which the respondent's officers were aware.

Discussion and Conclusion

30. The starting point is that the Upper Tribunal allowed the appeal and set aside the FTT decision of 17 December 2021 because there had been no oral hearing before the FTT when it dealt with the application and, in particular, with the question of whether the site was a relevant protected site within section 5A of the 1960 Act. The question for the Upper Tribunal was whether it should remit the case to the FTT or re-make the decision itself.

31. In that regard, the question is whether the Upper Tribunal erred in law by deciding to re-make the decision itself. First, in relation to evidence, the Upper Tribunal was entitled to come to the conclusion that it did have the relevant documentary material, including in particular, the site licence and the relevant planning permissions. In that regard, I bear in mind that the initial directions had required the parties to produce relevant documents, including all planning permissions. The respondent produced the seven planning permissions referred to in the site licence and referred, in its evidence, to other planning permissions that existed. If the appellant had considered that another planning permission existed he should either have produced it or taken steps to obtain a direction from the FTT that the respondent produce it. If I understood his submissions correctly, he said that he did not have a paper copy of the planning permission and the electronic copy had been accidentally deleted from the appellant's computer system. But assuming that to be so, the appellant could have taken steps to obtain a direction from the FTT under rule 6 of the FTT Rules requiring the respondent to produce a copy. There is no evidence that he did so. He did not refer to this planning permission in the documents that he submitted to the Upper Tribunal and he did not refer to it in his submissions during the morning of the hearing. He first referred to it in his closing submissions after lunch. The Upper Tribunal was entitled to take the view that this document had not been part of his case and had not been something that he had intended to rely on before the FTT. Furthermore, it is right to note that the Upper Tribunal gave

Mr Morgan 14 days after the hearing to make any further representations that he wished to make but he did not respond to that invitation.

32. Secondly, in relation to submissions, the appellant had ample opportunity to put his arguments in writing and orally on the meaning of section 5A and on the site licences and planning permissions that were in evidence. I am satisfied that the Upper Tribunal did not err in deciding to re-make the decision itself. It was entitled to conclude that it had all the relevant material it needed, and had had argument on that material, to enable it to decide the relevant protected site issue. I would dismiss this ground of appeal.

GROUND 2 – THE OCCUPIER OF THE SITE

Submissions

33. Mr Morgan in his application for permission to appeal document submitted that Lakes Leisure Ltd., not the appellant, was the occupier of the land. The document says, in essence, that since 16 July 2004 Lakes Leisure Ltd. had exclusively occupied the land under the management and trading licence and that that document had created an interest in land for Lakes Leisure Ltd. He submitted orally at the hearing that the question of who was the occupier was to be determined by what an informed, objective observer would consider the document to mean. Such an observer would consider that the management and trading agreement created a lease, not a licence, for the benefit of Lakes Leisure Ltd. and that amounted to an interest in the land.

34. Ms Wigley referred to the terms of section 1(3) of the 1960Act. As the freeholder owner, the appellant fell within the definition of occupier. The trading and management licence was a licence giving Lakes Leisure Ltd. the right to occupy for a particular purpose. It did not confer exclusive possession on Lakes Leisure Ltd. Ms Wigley relied upon *Street v Mountford* [1985] AC 809. Reference was also made to *Arnold v Britton* [2015] UKSC 36, [2015] AC 1619 on the approach to the interpretation of documents.

Discussion

35. Section 1(1) of the 1960 Act provides that no "occupier" of land shall cause or permit any land to be used as a caravan site unless he has a site licence. "Occupier" is defined by section 1(3) as "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 person under a licence.

36. First, the appellant is the registered proprietor of the freehold title to the land. It is entitled by virtue of that estate to possession of the land. Secondly, the question then becomes whether Lakes Leisure Ltd. has a lease of the land or simply a licence to occupy. If it is a licence, Lakes Leisure Ltd. would not be occupying pursuant to an estate or interest in land (and it would not be the occupier for the purposes of section 1) and the appellant would remain the occupier for the purposes of section 1. In brief summary, if an agreement confers exclusive possession at a rent, that will normally give rise to a lease (unless the relationship is explained by the existence of some other relationship). See the speech of Lord Templeman, with whom the other Law Lords agreed at p. 818C-E in *Street v Mountford.* The issue involves analysing the management and trading licence agreement and determining what rights were conferred by that agreement. That depends on what a reasonable person, having all the

background knowledge, would have understood the parties to mean by the language they used: see per Lord Neuberger at paragraph 15 of *Arnold v Britton*.

37. Here it is clear that the management and trading licence agreement does not confer on Lakes Leisure Ltd an exclusive right of occupation of the land on which caravans are situated. First, as its title indicates, it is a management and trading "licence agreement". It is not expressed to be a lease. Secondly, it confers on Lakes Leisure Ltd. the right to "manage and operate the Property" and "to occupy and control the Property" "as Licensee" (see clauses 2.1 and 4.1). Thirdly, the agreement is for Lakes Leisure Ltd. to "occupy, use, manage and operate and control the Property" and the Business Assets. That does not suggest that it is a right of exclusive occupation. Fourthly, clause 4.1, set out above, is significant. It confers a right "to occupy and control the Property" (which is not expressed to be exclusive occupation) and "exclusively use the Trading Assets [which includes the Property] for the purpose of managing, operating and trading the Business as Licensee". The occupation is not expressed to be exclusive occupation. The use is for the purpose of managing and operating the business, i.e. it is use for a particular purpose. The reference to "exclusively" is a reference to the only use to which Lakes Leisure Ltd. can put the property, that is, Lakes Leisure Ltd. could not use the Property for a purpose other than that specified in clause 4.1. The clause does not confer exclusive occupation on Lakes Leisure Ltd. in the sense of enabling it to exclude everyone else from the land. Fifthly, the appellant is to pay a fee to Lakes Leisure Ltd. for the services it provides and that is referred to as a "management & trading licence fee". All those factors, individually and cumulatively, confirm that the agreement is what it says it is: a licence. In the circumstances, therefore, Lakes Leisure Ltd. is not the occupier for the purposes of section 1. The appellant is the occupier. I would dismiss this ground of appeal.

GROUND 3 – RELEVANT PROTECTED SITE

Submissions

38. Mr Morgan submitted that the land was not a relevant protected site. He relied upon conditions 1, 2 and 3 of the 2003 site licence which referred to static holiday caravans. So far as the licence was revised, and new conditions substituted in 2016, he submitted that the 2016 licence revision was invalid. He further submitted that an overwhelming proportion of the site was subject to restrictions by which the land could only be used for holiday use or that there were times of the year when no caravan could be stationed for human habitation. The restrictions applied to approximately 88% of the caravans stationed on the site. Further, in relation to the two planning permissions which the Upper Tribunal found did not impose restrictions, they were silent. The government guidance provided that a site's exemption depended on what the planning permission permits, or if the permission is silent, on what the licence permits.

39. Ms Wigley relied upon the wording of section 5A(5) of the 1960 Act. The 2003 licence was for use as a caravan site not for holiday use only and the 2016 conditions did not impose restrictions so that there were times of the year when no caravan could be stationed on the land for human habitation. At least two of the planning permissions did not impose such restrictions. The Upper Tribunal rightly considered that the conditions restricting use had to apply to all of the land forming part of the site. These planning permissions did not do so.

Discussion and Conclusion

40. Section 5A(1) provides that a local authority which has issued a site licence in respect of a relevant protected site may require the licence holder to pay an annual fee. "Relevant protected site" is defined in section 5A(5). It means "land in respect of which a site licence is required" other than land in respect of which the relevant planning permission or 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.

41. The land in respect of which a site licence was required, and granted, in the present case comprised, or as a minimum included, all the areas of land subject to the seven planning permissions expressly identified in Annex A to the 2003 site licence.

42. I deal first with the site licence. That was issued in 2003. It was expressed to be a licence for use of the land as a caravan site. It was not expressed to be for holiday use only. The proviso in section 5A(5)(a) does not therefore apply and does not remove the land from the definition of relevant protected site. The use was described using different wording, namely as a mobile home site, in 2016 when the site licence was revised but that different wording does not bring the land to which the site licence relates within the scope of section 5A(5).

43. The 2016 revised site licence is not expressed in a way, and does not include any conditions, whereby there are times of the year when no caravan may be stationed on the land for human habitation. The proviso in section 5A(5)(b) does not therefore apply to the conditions as altered in 2016. Mr Morgan submitted that the 2016 document, or the conditions, are invalid. However, no challenge was made to the validity of the 2016 revision of the site licence. No appeal was made against the conditions when they were issued and the FTT refused to allow an appeal on that basis (and permission to appeal against that refusal was not granted). The issue of the validity of the 2016 conditions is, therefore, not an issue on this appeal.

44. For completeness, I would be inclined to consider that the conditions in the 2003 site licence did not fall within the proviso in section 5A(5) in any event. The conditions refer to static holiday caravans. But that phrase describes the caravans that may be stationed on the land not the use that may be made of them. Condition one restricts the number of static holiday caravans on the site to no more than 385. Condition two requires compliance with the respondent's site licence conditions for static holiday caravans. Condition three restricts the location of the static holiday caravans as they must be sited in accordance with Annex A (which describes the number of caravans that may be placed in particular locations). It is not, strictly, necessary to decide this as the conditions imposed in 2003 were revised in 2016 and the validity of the 2016 conditions (which do not impose restrictions falling within section 5A(5)) are, as I have said not an issue before this Court.

45. I turn next to the seven planning permissions. The Upper Tribunal found that five did, or arguably did, impose conditions of the sort falling within section 5A(5). Two did not impose any such restrictions. One, dated 21 August 2003, permits use of the land to which it relates for the "siting of 16 caravans". It is not expressed to restrict the use of those caravans for holiday use. It imposes no conditions as to periods when those 16 caravans could not be stationed for human habitation. The second grants permission for

"use of land for caravan park" – and again, is not expressed to be "for holiday use only". It has no relevant conditions. The land subject to those two planning permissions could, therefore, be used to station caravans for residential occupation all through the year.

46. I agree with the Upper Tribunal that the whole of the land for which the site licence is granted must fall outside the definition of a relevant protected site for the proviso in section 5A(5) to apply. Unless all of the land which is the subject of the site licence falls outside the scope of 5A(5), the annual licence is payable by the holder of the site licence issued by the local authority. Here, there are no are restrictions on at least two areas comprised within the land to which the site licence relates. The annual licence fee is, therefore, payable.

47. I make the following further observations on Mr Morgan's argument relating to silence and the government guidance. First, the law is contained in section 5 not the guidance. Secondly, the planning permissions are not silent as to the *use* that may be made of the land. They deal with that expressly: one is for use for siting 16 caravans, one is for use of land for a caravan site. Thirdly, silence on whether the use is holiday use only or whether the planning permissions are otherwise expressed or are subject to conditions restricting the periods when caravans may be stationed on the land for human habitation does not assist the appellant. For the proviso to apply, and the land to be removed from the definition of relevant protected site, the site licence or planning permission must "expressly" say it is for holiday use only, or be "so expressed or subject to conditions" limiting the periods of stationing caravans for human habitation. Silence is not sufficient to bring the land within the scope of the proviso in section5A(5)(a) or (b).

48. For those reasons, I would dismiss ground 3.

ANCILLARY OBSERVATIONS

49. In his oral submissions, Mr Morgan was at pains to stress that the three grounds of appeal were to be determined by reference to the documents and what they meant. He submitted that it was irrelevant whether caravans were in fact being used by people for residential purposes. The concern appeared, in part, to be that some of the evidence showed that some of the caravans were being used for residential not holiday purposes. There is a witness statement made by Mr Morgan on 28 November 2005, accompanied by a statement of truth, for use in proceedings before the VAT and Duties Tribunal in which he says that it cannot be said that the caravans are used for holiday purposes and the site has "always been a residential caravan site". At the hearing, Mr Morgan said he had not resiled from his witness statement and some people did live in caravans at the site all year round. That, he was adamant, was not the relevant issue as the issues depended on the law and the meaning of the relevant documents.

50. I have reached my conclusion on the three grounds of appeal by reference to the law and the relevant documents, including principally, the site licence documentation, the planning permissions and the management and trading licence. The conclusion has not been based on any consideration as to what, in practice, may be the factual position at the site.

CONCLUSION

51. I would dismiss this appeal. The Upper Tribunal was entitled to re-make the decision in the present case. The occupier of the land for the purpose of section 1 of the 1960 Act is the appellant. An annual licence fee is payable under section 5A as the respondent has issued a site licence in respect of a relevant protected site in their area.

LORD JUSTICE BEAN

52. I agree with both judgments.

LORD JUSTICE UNDERHILL

53. I agree that this appeal should be dismissed for the reasons given by Lewis LJ, but I wish to add further observations on grounds 1 and 3.

54. As to ground 1, I agree with Lewis LJ that there is no possible ground for impugning Judge Cooke's case management decision to proceed to hear and determine the "relevant protected site" issue herself. That was the sensible course provided only that the parties had had the opportunity to put the relevant materials before her. She carefully considered whether that was so and was plainly entitled, for the cogent reasons given at paras. 54-60 of her decision, to reject Mr Morgan's assertion, made for the first time at the hearing, that the various planning permissions referred to in the site licence had been replaced by a single blanket planning permission incorporating a "holiday purposes only" condition. Although that is sufficient to determine this ground, I should summarise the account given to us by Mr Morgan, which he does not appear to have given to the Judge, of the basis of his assertion that such a permission existed. He said that the planning permission in question had been obtained by the previous owners of the site, after the grant of the 2003 licence (which was on 11 September 2003), but before the Appellant's acquisition of the site later the same year; that he had never seen a hard copy of it but had seen a copy, presumably supplied by the previous owners, on the Appellant's computer system; but that that copy had been lost three or four years ago when the system was being tidied up. In my view, it is not plausible that Mr Morgan should have a reliable recollection of a document last seen in those circumstances, quite apart from the very late stage at which the account is given.

55. As to ground 3, the exception in section 5A (5) of the 1960 Act applies where either the site licence itself or the relevant planning permission is expressed to permit (in short) holiday use only. As regards the planning permission, like Lewis LJ I agree with the Judge that where different parts of the site are covered by different permissions the exception will only apply if all of the permissions contain the relevant condition, which was not the case here. That means that the appellant has to rely on the terms of the site licence. It is common ground that the 2016 licence is not expressed to permit holiday use only, which is why Mr Morgan wishes to argue that it is invalid and that the governing licence is the 2003 licence incorporating the original conditions. I agree with Lewis LJ that, for the reasons he gives, it is not open to the Appellant to advance any such argument on this appeal. But I would like to say a little more about the background. It appears from the Council's evidence that it was its understanding that the 2003 site licence was indeed for holiday use only. (Lewis LJ expresses the view at para. 44 above that that was not in fact the effect of the phrase "static *holiday* caravans": I am not sure that I agree, but it is, as he says, unnecessary to decide the point.) In early 2016 it came to believe that many of the caravans on the site were being lived in all the year round (as indeed Mr Morgan has himself declared – see para. 49 above). It wished

to impose new conditions appropriate for residential use and gave proper notice of an intention to alter the conditions of the licence under section 8 of the Act. The prescribed procedure requires a licence-holder to surrender the licence for endorsement of the varied conditions. The appellant failed to do so, which is apparently why the Council took the pragmatic course of issuing a fresh licence attaching the new conditions as a schedule in substitution for the original conditions. Ms Wigley submitted that the 2016 licence was properly to be regarded as. in substance though not in form, the 2003 licence but subject to the varied conditions. There was some discussion before us as to whether that was correct, but the question is academic since any challenge to the validity of the licence would have to have been made by judicial review at the time and the terms of the 2016 licence cannot now be impugned.

56. Mr Morgan submitted that the complexities both of the statutory licensing regime and of the various orders made in the Tribunal proceedings were too hard for him as a layman to be expected to understand and that the Council had acted oppressively in exploiting his lack of expertise. I found this unconvincing. Although the Council's earlier correspondence acknowledges some initial confusions, which it is not clear were its own fault, its correspondence leading to the issue of the 2016 licence seems to me to have been clear and appropriate. It should have been understandable by an intelligent layman reading it in good faith; and I do not regard Mr Morgan as unintelligent. The same goes for the various orders and decisions of both the First-tier and the Upper Tribunal. In any event, however, it was always open to him to seek legal advice, and/or representation, on what appears to be a matter of some importance to the Appellant's business (which is clearly not insubstantial). But it seems that he prefers to trust his own judgment in a way that leads to the kind of unattractive stance noted by Lewis LJ at para. 49 above.