FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CAM/22UH/PHC/2018/0006**
Property	**:**	31 The Elms, Lippitts Hill, High Beach, Loughton, Essex IG104AW
Applicant	**:**	Elms Caravan Company Ltd
represented by	**:**	Paul Kelly, solicitor, of Tozers LLP
Respondent	**:**	Yvonne Stanes
represented by	**:**	Terry Hill
Type of Application	**:**	by a park home site owner for determination of any question arising under the Mobile Homes Act 1983 or agreement to which it applies [MHA 1983, s.4]
Tribunal Members	**:**	G K Sinclair, M Hardman FRICS IRRV (Hons) & A Ring
Date and venue of Hearing	**:**	Monday 18th February 2019 at Hallmark Hotel London Chigwell Prince Regent
Date of decision	**:**	25th February 2019

DECISION

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1. In this case the applicant site owner invites the tribunal :
   a. To determine that the respondent pitch occupier is in breach of express term 3(g) in Part IV of her written statement
   b. To determine that she is in breach of express term 3(h)
   c. Having found either or both breaches proved, to issue such direction as it considers appropriate under s.230(5A)(c) of the Housing Act 2004.

2. The respondent having admitted in her statement of case that she proceeded with building work without first seeking or obtaining the site owner's consent, the tribunal finds a breach of express term 3(g) proved.

3. Upon the tribunal indicating at the hearing that it was satisfied that Ms Stanes was in breach of 3(g), but that 3(h) raised more problematic issues, the applicant invited the tribunal not to consider the latter allegation and proceed only with determining what direction (if any) it should make using its general power under section 230. On reflection, however, it appears to the tribunal that section 230 applies to tribunals dealing with property in Wales, and that it should apply the very similar provisions appearing in section 231A of the Act.

4. After discussion with both parties, and explaining to the respondent the limited relief sought by the applicant, and by consent, the tribunal directs :

   That the respondent obtain within six weeks from the date of this decision a written report from a suitably qualified expert into the specific fire risk (if any) created by the cladding of the subject mobile home with lapped softwood cladding finished with intumescent paint, where the gap between the subject premises and those properties on adjoining pitches (excluding any porch) is less than the usual 6 metres and, on one side, less than 5.25 metres. If any remedial measures can or ought reasonably be taken to reduce any such risk then the report should identify the same.

Background

5. The Elms Mobile Home Park is a site licensed under the Caravan Sites and Control of Development Act 1960 and situate in a rural location at Loughton; east of the William Girling reservoir, west of Epping Forest, and just within the M25. The site has been licensed for many years, with one amended site licence in the hearing bundle [20/143] bearing the name of Waltham Holy Cross Urban District Council at its head. As that authority disappeared with local government reform in the early 1970s one must conclude that the site has been operational for more than 45 years at least. It is likely to have been running since the 1960s or earlier, with Dr Zabell (a director of the applicant site owner) commenting during the inspection that the now redundant brick shower and toilet block immediately behind the respondent's pitch 31 was used when the site was originally a holiday park.

6. The old site licence referred to above sets out in paragraph 1 the gross density of the site – 20 units to the acre – and a limit of no more than 35 in total save for one additional unit for occupation by a person employed by the licensee for management purposes. As recorded on the face of the document, on 3rd June 1991 permission was given for an additional 4 units.

7. Paragraph 2 states that every mobile home shall be not less than 20 feet from any

other mobile home but that, if a non-standard home were to be replaced by one of standard size and it was not possible to reposition the home so as to maintain that minimum spacing, application could be made to the licensing authority for permission to reduce the distance to not less than 18 feet.[1]

8. The site owner believes that at some unknown point in time a number of single units, which would originally have been the most common, were replaced – with the site owner's consent or acquiescence – by larger double units. The effect of this would be to reduce the spacing between units.

9. Whether this affected the subject premises is not known, as at all times it was a double unit, but according to the plan at [2/11] the minimum distance between units 31 and 32 (on a corner pitch) is 5.57 metres (ignoring a small porch) while that between 31 and 30 (on the other side, but sited so that they are not parallel) ranges from 5.22 metres at the rear to as little as 4.66 metres at their respective front corners.

10. Paragraph 2 of the current site licence, issued by Epping Forest District Council on 14th November 2012 [3/12 @ 15], states that :
    (i) Except in the case mentioned in sub paragraph (iii) of this paragraph and subject to sub paragraph (iv), every park home must where practicable be stationed at a distance of not less than 6 metres (the separation distance) from any other park home which is occupied as a separate residence. However, any park home that contravenes this condition at the date on this licence will be allowed…
    (ii) *[minimum and maximum distances of park home from a park road]*
    (iii) Where a park home has retrospectively been fitted with cladding from Class 1 fire rated materials to its facing walls, then the separation distance between it and an adjacent park home may be reduced to a minimum of 5.25 metres…

11. Had the applicant not abandoned its application based on express term 3(g) in the respondent's written statement then aspects of sub paragraph (iv) may also have been considered relevant.

12. So too would be the content of an "information note", apparently from Epping Forest District Council and bearing the reference SD/05102017 [4/24 @ 25], about fire risks and the type of cladding that it regards as acceptable where the separation distance is less than 5.25 metres. The intended legal status of this document is unclear.

13. The *causas belli* leading to this application began when, as admitted in the Reply [12/106, para 5], the site owner gave permission for the installation of fire-resistant wooden cladding by the respondent's neighbour at 30 The Elms in 2015. Permission had been sought before the work was undertaken, and it was granted "…in accordance with the circumstances perceived by the applicant at that time. The local authority had not issued the current guidance." In 2018, acting on the assumption that if no objection had been raised to her neighbour installing such cladding then the same should apply to her, the respondent proceeded to install

[1] Current licence requirements are expressed as metric measurements. 20 feet equates to 6.096m; 18 feet to 5.486m

it on her mobile home and, when asked to stop by the site owner, she continued.

14. The site owner, after consulting the local authority, asked the respondent to obtain a fire safety report into the cladding with fire-retardant paint. After much email correspondence and a suggestion from the local authority the respondent sought a report from Mike Fleckney BSc PG Cert FRSPH MinsSTR MIFireE MIFSM MIHM of Rapier Fire and Rescue Consultants; and the applicant obtained a more general fire risk assessment from a health and safety expert, Peter Thomas MSc CMIOSH CBIFM, of PDT. The latter addressed fire risk issues affecting the park home site generally.

15. Neither report is particularly helpful or addresses the specific question of the fire safety of the cladding and/or any risk created in a separation gap of less than 5.25 metres. Hence the applicant seeks a direction that the respondent obtain a better fire safety report.

Material provisions in the written statement

16. The written statement under the Mobile Homes Act 1983 which governs the relationship between site owner and occupier replaces an agreement pre-dating the Act and commencing on 1st April 1976. The present document contains, at the Third Schedule, a form of assignment by Mr K Belcher (occupier) to Mr Luck (assignee) dated 28th June 1988. A more recent attachment, described as a Schedule 4 Assignment Form under the Mobile Homes (Selling and Gifting) (England) Regulations 2013, records a further assignment by Mr & Mrs Luck to Yvonne Pearl Stanes on 16th December 2016.

17. In the First Schedule the mobile home is described as follows :
    a. Make : Sandringham Model : Cottage
    b. Specified number of permanent berths : Four
    c. Length and width of Mobile Home : 22' x 19'

18. Part IV contains the express terms of the agreement. By clause 3 the occupier undertakes, *inter alia* :
    (e) To keep the mobile home in a sound state of repair and condition and to keep the exterior thereof clean and tidy PROVIDED ALWAYS that if the occupier fails to comply with the terms of this clause then the owner may give 28 days' notice in writing requiring the occupier to comply with such terms and if the occupier has not taken all reasonable steps to comply with this clause within such period then upon the expiry thereof the owner may enter upon the pitch and carry out such work as may be necessary and the cost of all such work shall be payable by the occupier forthwith
    (g) Not without the written consent of the owner to carry out any building works or erect any porches sheds garages outbuildings fences or other structures on the pitch
    (h) Not to do or cause to be done anything upon any part of the park which would constitute a breach of any of the conditions of any site licence applicable from time to time to the park and to comply with any enactments orders regulations and bye-laws which relate to the park the pitch or the mobile home whether national local or any other competent authority.

Applicable law

19. Save for one issue material to this application the relevant principles of law are to be found in the Mobile Homes Act 1983 (as amended).

20. By section 1 of the Act :

(1) This Act applies to any agreement under which a person ("the occupier") is entitled –
  (a) to station a mobile home on land forming part of a protected site; and
  (b) to occupy the mobile home as his only or main residence.

(2) Before making an agreement to which this Act applies, the owner of the protected site ("the owner") shall give to the proposed occupier under the agreement a written statement which –
  (a) specifies the names and addresses of the parties;
  (b) includes particulars of the land on which the proposed occupier is to be entitled to station the mobile home that are sufficient to identify that land;
  (c) sets out the express terms to be contained in the agreement (including any site rules (see section 2C));
  (d) sets out the terms to be implied by section 2(1) below; and
  (e) complies with such other requirements as may be prescribed by regulations made by the Secretary of State.

(3) The written statement required by subsection (2) above must be given –
  (a) not later than 28 days before the date on which any agreement for the sale of the mobile home to the proposed occupier is made, or
  (b) (if no such agreement is made before the making of the agreement to which this Act applies) not later than 28 days before the date on which the agreement to which this Act applies is made.

(4) *[not relevant]*

(5) If any express term other than a site rule (see section 2C) –
  (a) is contained in an agreement to which this Act applies, but
  (b) was not set out in a written statement given to the proposed occupier in accordance with subsections (2) to (4) above,

  the term is unenforceable by the owner…

21. By section 4 of the Act a tribunal has jurisdiction to determine the issues which have been raised and it is therefore the "appropriate judicial body" referred to in the above provisions, and as defined in section 5.

22. Finally, lurking in the Housing Act 2004 at section 230(5A)(c) is a provision that the applicant invites the tribunal to make use of. However, section 230(1) raises a material limitation by stating :

(1) A residential property tribunal exercising any jurisdiction *in respect of premises situated in Wales* by virtue of any enactment has, in addition to any specific powers exercisable by it in exercising that jurisdiction in respect of premises situated in Wales, the general power mentioned in subsection (2). *[emphasis added]*

23. The relevant provision would instead appear to be section 231A, the material parts of which read as follows :

(1) The First-tier Tribunal and Upper Tribunal exercising any jurisdiction

conferred by or under the Caravan Sites and Control of Development Act 1960, the Mobile Homes Act 1983, the Housing Act 1985 or this Act has, in addition to any specific powers exercisable by them in exercising that jurisdiction, the general power mentioned in subsection (2).

(2) The tribunal's general power is a power to give such directions as the tribunal considers necessary or desirable for securing the just, expeditious and economical disposal of the proceedings or any issue in or in connection with them.

(3) *[not relevant]*

(3A) When exercising jurisdiction under the Caravan Sites and Control of Development Act 1960, the directions which may be given by a tribunal under its general power include (where appropriate) directions requiring the payment of money by one party to the proceedings to another by way of compensation, damages or otherwise.

(4) When exercising jurisdiction under the Mobile Homes Act 1983, the directions which may be given by the tribunal under its general power include (where appropriate)—

(a) directions requiring the payment of money by one party to the proceedings to another by way of compensation, damages or otherwise;

(b) directions requiring the arrears of pitch fees or the recovery of overpayments of pitch fees to be paid in such manner and by such date as may be specified in the directions;

(c) directions requiring cleaning, repairs, restoration, re-positioning or other works to be carried out in connection with a mobile home, pitch or protected site in such manner as may be specified in the directions;

(d) directions requiring the establishment, provision or maintenance of any service or amenity in connection with a mobile home, pitch or protected site in such manner as may be specified in the directions.

(5) In subsection (4)—

"mobile home" and "protected site" have the same meaning as in the Mobile Homes Act 1983 (see section 5 of that Act);

"pitch" has the meaning given by paragraph 1(4) of Chapter 1 of Part 1 of Schedule 1 to that Act;

"pitch fee" has the meaning given in paragraph 29 of Chapter 2, paragraph 13 of Chapter 3, or paragraph 27 of Chapter 4, of Part 1 of Schedule 1 to that Act, as the case may be.

Inspection and hearing

24. The tribunal inspected the park home site on the morning of and prior to the hearing. The parties and their representatives were present throughout, and the layout and spacing of various units was noted, as too was the fact that a number of other units are now timber-clad. There are no unoccupied pitches left on the site, thus depriving the parties of one option for resolving the inadequate spacing issue.

25. Although the respondent was represented at the hearing by her friend and fellow park home site occupier, Mr Hill, no legal advice appeared either to have been taken or deployed in the filing of a statement of case. The tribunal therefore had

to explain the limitations of its role, namely to determine whether a breach of a term of the written statement had taken place. If so, then if the site owner wished to use that finding as grounds for terminating the agreement it would be for a court to consider (rather as in forfeiture proceedings concerning leases) whether the matters that Ms Stanes sought to raise in argument in past correspondence with the applicant site owner and now before the tribunal were relevant to its consideration of **that** issue.

26. Both parties accepted that the installation of an external timber frame to support insulation panels faced with lapped timber cladding was more extensive than mere maintenance or decoration and properly came within the definition of building works.

27. The tribunal informed the respondent that, on the facts as openly admitted by her in her statement of case and prior correspondence with the applicant, she had not sought permission before carrying out such works, and none had been given. On the contrary, she had been told to stop. She was therefore strictly in breach of express term 3(g), which both she and Mr Hill accepted.

28. Upon this finding being contrasted with term 3(h), which involved consideration of :
    a. the words "where practicable" in paragraph 2(I) of the site licence
    b. the fact that the site owner had created the unacceptable separation distances between the three adjoining units
    c. the further fact that in 2015 the site owner had granted permission for exactly the same works at unit 30
    d. a question about the precise legal status of the "guidance" being offered by the local authority, and
    e. the fact that the local authority had not chosen to take any enforcement action over the alleged breach of the site licence,

    Mr Kelly took instructions from his client and invited the tribunal not to proceed with consideration of this second alleged breach. The applicant was content to proceed to the remedy stage on the now-admitted breach of 3(g).

29. Mr Kelly explained that his client accepted that this was a problem to be solved; not merely a dispute between the parties. His client did not wish to terminate the respondent's occupation, nor to condemn her to living in an under-insulated home next to one that – in different times, when fire safety was not so much at the forefront of property owners' minds – had been permitted to undertake the work now at issue.

30. All that was wanted was a general direction by the tribunal under s.230 that she obtain a fire safety report that would deal with the local authority's concerns and could be shown to it. It was accepted that neither report obtained so far dealt with the precise point, but Mr Kelly observed that his client had approached its expert, Mr Thomas, and he had said he was willing to return and produce such a report if the respondent asked.

31. There was some discussion about timing of such a report, and the tribunal made clear that the respondent could choose Mr Thomas, Mr Fleckney or someone else entirely. The tribunal would not compel her to use the other side's expert. It was

agreed that six weeks was a reasonable time in which to obtain and serve such a report on the applicant.

Discussion and findings

32. The tribunal considers that this is an unfortunate state of affairs which was created long before the applicant's current director, Dr Zabell, or the respondent became involved with the site contractually. Some of the pitches on the site are quite expansive, yet the lack of space on 30, 31 and 32 has been known for a very long time. It is a shame that nothing was done about it by relocating one mobile home on to a new pitch entirely and merging the three adjoining pitches into two larger ones. That could have provided a permanent solution, thus avoiding any challenges from the site licensing authority and enabling the occupiers to enjoy their homes without fear of disturbance. Unfortunately there are no longer any vacant pitches on the site.

33. In default of that option the direction sought is perhaps the best and only solution available, as it may enable the respondent (who is attempting to sell her home) to bring its insulation standards up to date, but this tribunal is in no position to tie the hands of the licensing authority.

34. The tribunal therefore finds that the respondent is in breach of express term 3(g) of her written statement, makes no finding concerning express term 3(h), and issues a general direction, pursuant to s.231A(2) of the Housing Act 2004 :

> That the respondent obtain within six weeks from the date of this decision a written report from a suitably qualified expert into the specific fire risk (if any) created by the cladding of the subject mobile home with lapped softwood cladding finished with intumescent paint, where the gap between the subject premises and those properties on adjoining pitches (excluding any porch) is less than the usual 6 metres and, on one side, less than 5.25 metres. If any remedial measures can or ought reasonably be taken to reduce any such risk then the report should identify the same.

Dated 25th February 2019

Graham Sinclair

Graham Sinclair
First-tier Tribunal Judge