First-tier Tribunal
Property Chamber
(Residential Property)

Case reference	**:**	**CHI/24UC/PHC/2020/0001**
Site	**:**	**Whitehall Park,** **Liphook Road,** **Bordon,** **Hants. GU35 9DS**
Park Home addresses	**:**	**2, 25, 31, 32, 33, 39, 40 & 41 Whitehall Park**
Applicants	**:**	**Mr. A. J. Gray (2)** **Mrs. Angela J. Friend (25)** **Mr. D. Williamson (31)** **A. R. Robinson (32)** **Mrs. B. Anderson (33)** **Mrs. P. Bloor (39)** **Christina Dresler (40)** **Mr. N. Pardon (41)**
Represented by		**Christina Dresler (lay representative)**
Respondent	**:**	**Tingdene Parks Ltd.**
Represented by		**Ryan & Frost, solicitors**
Date of Application	**:**	**4th February 2020**
Type of application	**:**	**to determine questions arising under the Mobile Homes Act 1983 ("the 1983 Act") or the agreements to which it applies**
The Tribunal	**:**	**Judge Edgington**

DECISION

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1. The Tribunal's interpretation of the questions raised by the Applicants for determination, and the decisions of the Tribunal are:-

   Question: Are the Applicants in breach of their occupation agreements with Mr. Darko Emersic by maintaining their pitches in their current state

   Decision: No, but if an Applicant refuses to allow the Respondent to undertake work to comply with the licence conditions, they will be in breach.

Question: If so, are they required to:

(a) Carry out any work to their pitches outside the statutory implied terms?

(b) Reimburse the Respondent for any costs incurred in their obligations under the site licence issued to them by East Hants District Council in 2017

Decision:

(a) Yes in respect of any express terms of their occupation agreements which are not overridden by implied terms

(b) No, but the cost of any work could be reflected in a future pitch fee upon review (see below).

Question: Are they entitled to an order for damages for loss of home value, amenity, security and privacy?

Decision: No

Question: Are they entitled to a reduction in pitch fees for loss of value to homes, amenity, security and privacy?

Decision: Possibly a reduction in pitch fees following the next review if there has actually been a reduction in amenity although (i) this is unlikely if the only reason for the alterations is to comply with licence conditions to reduce the spread of fire and (ii) this can only be determined when the pitch fees come up for review. No entitlement to damages for loss of value to homes etc. simply by the Respondent complying with the site licence.

Reasons

Introduction

2. The Applicants occupy pitches on the site and in 2017, two things happened. Firstly the site 'operator' changed from Darko Emersic and Anne Marie Emersic to the Respondent and secondly, the local authority changed the terms of the site licence. The statement of Jeremy Pearson, the Operations and Development Manager of the Respondent dated February 2020 in the bundle, says that the Respondent is the leasehold owner of the site. Even though it is not the freehold owner, I shall assume that it is the technical site owner for the purpose of this decision.

3. As a result of the change in the terms of the licence, the occupiers have been told to change their boundary fences/hedges and trees to comply with the new terms. If they fail to do so, the Respondent has said that it will undertake the work and charge the relevant occupier for the cost of such work. Indeed such work may already have been started and/or completed by the Respondent. The Applicants object to the changes and demand compensation if they have to be implemented.

4. The Tribunal issued two directions orders timetabling the case to a final determination. This ordered both parties to file and serve evidence to help both them and the Tribunal. The parties have agreed to a paper

determination and the Tribunal has given notice that a decision would be made on or after 23rd June 2020 after the filing of evidence and representations has been completed. It also said that there would be no visual inspection of the site in view of the current public health emergency but notice was given that photographs could be submitted and the Tribunal may look at the site on the internet.

5. I am extremely grateful for the bundle provided and the eight photographs plus the site plan. I have also looked at the site on Google Earth. It appears to be a pleasantly situated site out in the country more or less surrounded by trees and fields.

6. Needless to say, I have considered all the papers and photographs submitted including a statement of case from the National Association for Park Home Residents dated the 22nd June. I am sorry that I have not been able to set out all the Applicants' full names and titles. I have done the best I can from the documents in the bundle.

The General Law

7. Section 4 of the **Mobile Homes Act 1983** as amended ("the 1983 Act") gives this Tribunal the power "*to determine any question arising under the Act or any agreement to which it applies*". Enforcement is a matter for the County Court.

8. Section 3 of the 1983 Act clarifies that "*an agreement to which this Act applies shall be binding on and enure for the benefit of any successor in title of the owner and any person claiming through or under the owner or any such successor*". The owner is defined as being the site owner. This, in effect, deals with the first point raised by the Applicants. As they all appear to have entered into their occupation agreements with the previous site owner, they should know that such agreements remain intact even though the site owner has changed.

9. The Respondent will know and the Applicants should be aware that the law relating to mobile homes has changed in recent years. In particular the **Mobile Homes Act 2013** ("the 2013 Act") made considerable changes in a bid to make the site licences more appropriate and enforceable (allied to the payment of new fees). A new section 9A was made to the **Caravan Sites and Control of Development Act 1960** which introduced compliance notices and made it a criminal offence for a site owner not to comply.

The Occupation Agreements

10. I have seen a copy of what appears to be one complete occupation agreement in the bundle and assume that all are in basically the same terms. There are both express and implied terms. Express terms will always be overridden by the implied terms if there is conflict. In essence, the occupiers agree to keep the pitches and all fences, sheds, outbuildings and gardens in a neat and tidy condition. If that is not done, then the site owner can give 28 days' notice and then enter the pitch and undertake such work at the occupier's expense.

11. Of particular relevance to this application, the occupier agrees that he or she will not do anything which would constitute a breach of any term of the site licence. This is a preventative measure to stop occupiers taking action which would be a breach. There is no equivalent positive requirement to take action to comply with a change in licence terms. That is reasonable and logical because if the pitch is in a neat and tidy condition, such action would involve the occupier taking action to change things such as hedges and trees – and possible fences – which are owned by the site owner. Such possible trespass to land and goods could bring the occupier into direct conflict with either the site owner or the local authority which would be a quite unreasonable imposition.

12. In addition to preventing action which would constitute a breach of licence conditions, an occupier is also required to comply with enactments, rules and regulations. However, this does not impose any additional requirement in relation to the site licence than is set out above.

13. The site owner agrees to keep the rest of the site in good condition.

14. I have been concerned to see what is in the site rules which form part of the occupation agreement. There was a substantial change introduced by the 2013 Act which provides that any site rules cease to have effect on 26th May 2014. There is then a specific and detailed procedure to be gone through before new site rules take effect.

15. There are several versions of the site rules in the bundle and one of them, at pages 64 and 83, includes "*Dividing fences between homes must not exceed 3' (91.6cm) in height unless approved by the Owner*". I was extremely puzzled by this because there is no date on those rules and they are a new provision as compared with previous versions.

16. In his statement for the Respondent, Mr. Pearson makes no mention of when these rules were allegedly brought into effect. I must therefore infer that they were not brought into effect by the Respondent because there is no mention of the elaborate process which would have been necessary. However, it seems clear to me that this new provision was an attempt to ensure compliance with the new site licence which was only brought into effect in 2017 after the Respondent had taken over as site owner. If so, and the process for approval of site rules was not complied with, then this new rule has no effect.

Discussion

17. I can see exactly what has happened in this case. This is a very rural site. It is quite small compared to some others and is in pleasant and peaceful surroundings. One of the previous owners, Mr. Darko Emersic, seems to have been very relaxed about allowing people to erect fences and allow hedges and trees between pitches. There is no question that if the site licence had not changed, then the Applicants would have my blessing and that of the Respondent, and be allowed to carry on as before subject, of course, to any health and safety issues.

18. The problem is that the present site owner obtained the site and was then faced with what appear to be quite dramatic changes to the terms of the licence granted on 1st July 1997 by the one granted on the 17th February 2017. Copies of both are in the bundle as is a copy of the licence dated 19th June 1979. There was the possibility of appealing against the licence conditions and I am unaware as to whether anyone took up that opportunity. I have to assume not. Some of the Applicants say that they were unaware of these changes until 2019 i.e. some 2 years after the licence became enforceable. If so, that is unfortunate and reflects badly on site management by the Respondent.

19. East Hampshire District Council has followed the path of most other councils and has tightened up on health and safety issues. In particular they include a condition that "*fences and hedges, where allowed and forming the boundary between adjacent caravans, should be a maximum of 1 metre high*". In their letter of the 22nd October 2019 the council say that this maximum height is "*to manage the risk of fire spread*". Obviously I am in no position to comment on this assertion. Trees must also be kept down to 'eave height'.

20. A letter was written by the Council to the Respondent on 18th February 2019 pointing out various breaches. There then seems to have been a negotiation because the Respondent wrote subsequently to the residents saying that a compromise had been reached in that any one metre fence could now be topped with a one metre trellis. There is then some confusion because they refer to a 'half-way house' because the one metre fence could be four feet with a two foot trellis provided there was full compliance when the park home is sold. Additionally, it is stipulated that any trellis cannot have any plants going through it.

21. East Hampshire Council then served a Compliance Notice on the Respondent dated the 23rd January 2020. That Notice sets out quite a large number of pitches where fences, hedges and trees are simply too high and the Respondent is ordered to ensure compliance with the licence. The document in the bundle after the Notice is a copy of a letter from the Respondent to the residents.

22. It is also noted that the National Society for Park Home Residents has been involved in correspondence with the Respondent's solicitors. Their letter of the 21st April makes allegations that the work undertaken or to be undertaken on behalf of the Respondent need not be undertaken in some respects as it does not refer to boundary fences/hedges between caravans. It also suggests that the relevant licence condition is unenforceable.

23. In a subsequent letter of 3rd May 2020, they say that they are awaiting instructions. However, the rest of the letter discusses ways in which the licence conditions should be amended and repeats allegations that the provision relating to the height of fences is unenforceable.

Conclusions

24. The freehold or long leasehold ownership of each pitch belongs to the site owner, not the occupier. Even when fences or outbuildings have

been erected by occupiers, ownership usually reverts to the site owner when the park home is sold and/or removed. Planted hedges and trees will always remain in the ownership of the owner of the pitch i.e. the Respondent.

25. The evidence from the Applicants shows that at least 2 of the pitches had fences erected by and owned by the previous site owner. Of the others, it seems clear that permission was granted to several to renew the fences. There is nothing in the express or implied terms of the occupation agreements seen by me that suggest a general principle that fences are owned by anyone other than the site owner. As far as hedges and trees are concerned there is a specific provision that on disposing of the park home, the trees and hedges must be left as they are i.e. as I have said above, they are owned by the site owner.

26. It is the site owner's responsibility to comply with the terms of the site licence. The only obligation on the part of the occupier is not to do or cause to be done anything that would constitute a breach of the licence. If a new site licence comes into effect with terms such as are in the 2017 licence, and the occupier does nothing, then he or she has not done or caused to be done anything which would be a breach. In other words, there has been no positive action which could constitute a breach.

27. I am not satisfied that the park rules at pages 64 and 83 have been brought into effect by the Respondent. If they were brought into effect properly by the previous owner, I am satisfied from the evidence that such previous owner consented to the heights of the fences, hedges and trees which are relevant i.e. the terms of the occupation agreements including the park rules would have been complied with by all parties.

28. The real question, therefore, is whether the site owner can simply require an occupier to undertake work to a pitch to comply with new licence requirements and, if such work is not undertaken, to charge the occupier the cost of such work.

29. I cannot see anything in the express or implied terms of the occupation agreements which enables this to happen unless it involves the only thing under the direct ownership and control of the occupier i.e. the design and/or the construction of the park home itself. The fences, hedges and trees were there with the consent of the previous site owner and, for some time at least, the present owner, the Respondent, acquiesced in their presence and heights, or, at the very least, would be bound by the agreement reached with the previous site owner until the licence changed.

30. The licence conditions were brought into effect and the occupiers did not 'do or cause to be done' anything which was a breach of such conditions. The suggestion by Mr. Pearson in paragraph 21 of his statement that the failure to comply on the part of the occupiers was somehow in breach of the requirement to keep the pitch etc. in a neat and tidy condition does not stand up to examination and I do not accept it.

31. Having said that, there will come a time when the pitch fees may have to be determined on review and the Respondent may well put forward an argument that the occupiers should contribute towards the cost of compliance as an improvement to the fire safety on the site may be seen as an improvement of the amenity of the site. On the other hand, the occupiers could possibly argue that the site has lost some of its aesthetic appeal which has reduced amenity. However, that is not a matter for me in determining the questions raised.

32. There may also be merit in the points raised by the National Association for Park Home Residents such as the enforceability of some of the licence conditions and whether some of the work proposed actually involves the boundaries between the park homes. Despite what is set out in their final submissions dated 22nd June 2020, I do not have the evidence or arguments to determine those issues. The Respondent does not appear to have challenged the licence conditions and if the work has involved unnecessary cost or imposed on the amenity of the site, these will no doubt be reflected in the review of any pitch fee.

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Judge Edgington
23rd June 2020

ANNEX - RIGHTS OF APPEAL

i. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

ii. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

iii. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

iv. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.