



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : CHI/29UC/PHC/2020/0003

Property : 36 Applegarth Park,

Applicant : Keat Farm (Caravans) Limited

Representative : Tozers LLP

Respondents : Mr R Smith & Mr M Smith

Representative :

Type of Application : Section 4 of the Mobile Homes Act 1983-
any question

Tribunal Member(s) : Judge Dobson

Date of Directions : 8th September 2020

DECISION

Summary of the Decisions of the Tribunal

- 1. The Tribunal determines that the Respondents have breached the covenants in Agreement between the parties the failing to keep their park home in a sound state of repair, by failing to maintain the outside of the park home and by failing to maintain the pitch in a clean and tidy condition for a period from 2016 until after the date of the application to the Tribunal in April 2020.**
- 2. However, the Tribunal determines that no breach remains and that the Respondent has remedied the previous breaches.**
- 3. The Tribunal determines that the Respondents must pay the Applicant fees in respect of submitting this application in the sum of £100 by 5th October 2020.**

Application

4. The Applicant made an application to the Tribunal pursuant to Section 4 of the Mobile Homes Act 1983 (“the 1983 Act”) for a determination of a question arising under the Act or an agreement to which it applies. The application was accompanied by documents, including a statement identifying more specifically the questions which the Tribunal was asked to determine, being firstly that the Respondents are in breach of the Agreement on 5 bases, namely:
 - i) The outside of the home needs to be cleaned and painted in a good and workmanlike manner and using a weatherproof paint.
 - ii) the two rear windows and frames need to be put into a sound state of repair, or replaced
 - iii) The other window and frames, and the porch, need to be cleaned
 - iv) The weeds and wild grass growing between the shingle on the pitch must be removed and disposed of in a tidy manner
 - v) the ivy growing on the back of the shed must be put into a tidy state, or removed and disposed of in a tidy manner.
5. The Applicant further asked the Tribunal to exercise its power under section 231A of the Housing Act 2004 (“the 2004 Act”) to give further directions, the section applying to, amongst others, cases where the Tribunal exercises its jurisdiction under the Act.

Directions made/ history of the case

6. On 19th June 2020, a Directions Order was made. The Directions Order listed the steps to be taken by the parties in preparation for the determination of the dispute, including the Respondent responding to the application including by indicating whether or not the alleged

breaches are agreed and, if relevant, the Applicant briefly replying, together with the provision by the Applicant of a bundle.

7. The Directions additionally advised the Tribunal would proceed by way of paper determination without a hearing, unless either party objected. Neither party has subsequently objected and requested an oral hearing.
8. The Applicant originally asserted in the statement of case that an inspection was necessary but did not renew that request for an inspection in response to the Directions and the Tribunal did not consider that one was necessary, or that it would have been proportionate to the issues in dispute in this instance
9. The Tribunal has accordingly proceeded by way of a paper determination. This is the decision made following that paper determination.

The Background

10. The park home the subject of this application is situated on pitch 36 of Applegarth Park, Seasalter Lane, Whitstable, Kent CT6 4BZ. Applegarth Park is a protected site within the meaning of the 1983 Act. The Respondents' right to station their park home on the pitch at Applegarth Park is governed by the terms of the Written Agreement ("the Agreement") with the Applicant and the provisions of the 1983 Act.
11. The Agreement commenced on 7th July 2006 and included various parts and schedules. The Agreement was executed by the Respondents on 4th July 2006.

The Agreement and the Site Rules

12. The relevant part of the Agreement, PART IV, contains covenants, described as undertakings, by the Respondents as follows:

(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

(f) To keep the pitch and all fences sheds outbuildings and gardens thereon in a neat and tidy condition 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 requesting the occupier to comply

with such steps to comply with this clause within such period the upon the expiry thereof the owner may enter upon the pitch and carry out such work as may be necessary and the costs of such work shall be payable by the occupier forthwith,

The Law

13. The scope of the Tribunal's jurisdiction under section 4 of the 1983 Act is potentially wide. It enables the Tribunal to make declarations on the respective rights of the parties under the Act and in effect constitutes an authoritative statement on the parties' legal positions under that Act. Section 4 as such does not give the Tribunal power to implement the declaration. This power is found elsewhere in section 231A of the Housing Act 2004.

14. The Upper Tribunal in *Wyldecrest Parks (Management) Ltd v Santer* [2018] UKUT 0030 (LC) stated at [38]:

“The language of section 4 of the 1983 Act is very broad, and the powers conferred by section 231A of the 2004 Act are extensive and expressed in general terms. It should therefore be taken that (with the exception of disputes over termination) the proper forum for the resolution of contractual disputes between park home owners and the owners of protected sites in England is the FTT”.

15. Although the general discretion given to the Tribunal under section 4 of the Act is wide, the question to be determined must relate to either a provision under the 1983 Act or a term of the agreement between the site owner and the occupier of the mobile home. Section 4, in the Tribunal's view, does not give it carte blanche in respect of every aspect of the relationship between the site owner and the occupier of the mobile home.

16. Paragraph 1 of Part 1 of Schedule 1 of the 1983 Act provides as follows:

“(1) The implied terms set out in Chapter 2 apply to all agreements which relate to a pitch..... except an agreement which relates to a pitch.... On a local authority gypsy and traveller site or a county council gypsy and traveller site.”

17. Paragraph 21, within Chapter 2, implies the following terms:

“The occupier shall-

(c) keep the mobile home in a sound state of repair

(d) maintain-

(i) the outside of the mobile home, and

(ii) the pitch, including all fences and outbuildings belonging to or enjoyed with, it and the mobile home,
in a neat and tidy condition”

18. A covenant or equivalent obligation is usually regarded as being a promise that something shall or shall not be done or that a certain state of facts exists. The Tribunal must assess whether there has been a breach on the balance of probabilities. A determination does not require the Tribunal to consider any issue other than the question of whether a breach has occurred. The issue of whether there is a breach of a covenant does not require personal fault unless the agreement between the parties says so. The above statements of the law derive from case authorities.
19. There is also ample authority as to the construction of contracts. However, no dispute arises as to construction of the Agreement in this case.
20. S231A of the 2004 Act provides that the Tribunal has the following powers:
 - “(1) in addition to any specific power exercisable... 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.
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 - (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)
 - (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;”

Consideration of the alleged breaches

21. The Tribunal in the main considers the alleged breaches together, it appears unnecessary to take each separately. The parties’ cases are of a similar nature in relation to all of the alleged breaches.
22. The statement of Mr Kent, the Applicant’s Managing Director, contends that complaints have been received from other occupiers. He refers to photographs, which he indicates to show the condition of the park home at the time of the application to this Tribunal being made.
23. The Applicant relies very much on the series of photographs and on items of correspondence commencing in June 2016. The Applicant

asserts that it tried to engage with the Respondents to resolve the situation prior to the application to this Tribunal but without success.

24. The photographs are marked as showing the condition of the park home in April 2019, in November 2019 and then, following this application, in August 2020, the last set of which are referred to separately. The pitch appears to be overgrown, the shed is covered in a significant part by ivy and the park home may have been dirty and in part have had a greenish tinge. There appear to be lighter streaks below the window shown.
25. The correspondence, principally by Tozers LLP, sent to the Respondents does need not be quoted in this Decision. Suffice to say that it asserts breaches of the Agreement and requires remedy of the breaches, also setting out action proposed to be taken in the absence of that remedy.
26. The Bundle includes correspondence, dated early 2017 and 2019, from other occupiers making certain complaints. It also includes letters from the Respondents, referred to further below.
27. It is worth mentioning in passing that although breach of the express obligations of the Respondents would, subject to the requisite notice being given, have entitled the Applicant to undertake the necessary work and charge the cost of it to the Respondents, the Applicants did not avail themselves of the provisions. The provisions gave the Applicants the ability to undertake the works and recover the costs: they did not compel the Applicant to adopt that course.
28. The Respondents do not in the main deny the condition of the park home and the pitch and in particular, have not asserted that the photographs present an inaccurate picture of the condition of the park home and the pitch as at the dates on which the photographs are said to have been taken.
29. A letter dated September 2018 from the younger of the Respondents to the Applicant says that weed killer has been used on weeds. The weeds are described as “stubborn”, the writer refers to having arthritis and it is also said that efforts to employ a gardener have been unsuccessful. No reference is made to the other elements of asserted breach of the Agreement. It is implicit that there were weeds requiring attention and having become established on the pitch.
30. The next letter from the Respondents to the Applicant, dated 29th April 2019, states that the writer did sort out the garden and the exterior of the park home, save that the letter states that painting will be carried out- and so implicitly had not been attended to at that time. It is unclear exactly what action the Respondents had taken in respect of the park home itself by April 2019. However, it is abundantly clear from the photographs dated around that time that the Respondents had not successfully remedied the breaches of the Agreement

31. The Respondent's final letter, dated 20th September 2019 again refers to weeding, of which it is said the writer had "done a lot". In respect of the park home itself, the letter says that a "few quotes" have been received for the exterior and "when financially able will get the job done". It is less than clear whether the weeding had removed all the weeds. It is also apparent that work to the exterior of the park home had not been undertaken.
32. Whilst the letters refer to medical conditions suffered by the Respondents and include reference to efforts made by the writer of the letters in spite of that and whilst the letters suggest a willingness on the part of the Respondents to have work undertaken but hindered by limited funds, the question for the Tribunal is not the reason for breach but the fact of breach, or otherwise.
33. The Tribunal finds that the photographs relatively accurately display the condition of the park home at the dates asserted by the Applicant. The equivocal element of the preceding sentence reflects the quality of the photographs being only adequate and to show the general condition of the park home and pitch. The issue is a lesser one in respect of the pitch where the presence of weeds and ivy is sufficiently apparent despite the limitations of the photographs.
34. However, whilst, the condition of the park home itself presents as considerably poorer in the earlier photographs than the August 2020 ones, it is not completely clear whether an element of that is a consequence of shading produced by the, poor, copying of the photographs taken. That applies both to the greenish tinge and the cleanliness or otherwise of the exterior of the park home generally. The photograph at page 71, for example, suggests much of the exterior of the park home not have a pinkish tinge, which the Tribunal finds unlikely to be correct and which does not obviously fit with the colour suggested by the other photographs, save that on page 72. The photograph on page 73 presents as black and white, mainly black.
35. If the other evidence had been more clearly in dispute and if the Respondents had stridently denied any breach, it is doubtful that copies of the quality provided would have been adequate to assist in determining such issues. In the particular circumstances of this case
36. The Tribunal finds that the Respondent was in breach of the express terms of the Agreement to keep the park home in a sound state of repair and condition and to keep the exterior clean and tidy and also to keep the pitch and shed in a neat and tidy condition.
37. The Tribunal would further find that the Respondent was in breach of the terms implied into the Agreement by the 1983 Act. However, in this instance the Tribunal finds that the implied terms would not add to the express obligations.

38. However, significantly, the Applicant in its further statement in reply to the Respondents' case, exhibits the series of further photographs dated August 2020. It would be no understatement to describe the condition of the park home and pitch as shown in those photographs to be a marked contrast to the condition apparently shown in the previous photographs. The exterior of the park home appears clean and recently painted. The pitch itself appears neat.
39. The Tribunal finds on the basis of the further photographs and the further comments on the Applicant's witness, that the Respondents are no longer in breach of the terms of the Agreement, whether the express ones or those implied by the Act. It is important to emphasise that the lack of an ongoing breach at the time of this Decision does not detract from the finding that there were extant breaches by the Respondents at the time of the Applicant's application.
40. That is very relevant to the request referred to in the letter by the Applicant's representative to the Respondents that the Tribunal orders the Respondents to repay the fees paid by the Applicant in respect of this application. The Respondent has not commented to the Tribunal in response to that letter, although would have had time to do so ahead of this Decision if so desired.
41. It is not immediately obvious to the Tribunal that the Applicant did make a specific application for the Respondents to pay the fee for this application. However, the Applicant did apply for other matters to be directed by the Tribunal exercising the Tribunal's wide powers under section 231A of the 2004 Act.
42. The Tribunal finds it appropriate to order payment of those fees by the Respondent pursuant to those powers and that a period of 28 days is an ample period in which to make that payment.
43. It is doubtful at best that it is the place of the Tribunal to advise the Respondents of the importance of complying with their obligations, as requested by the Applicant. The Respondents are likely to appreciate their obligations and that in the event of breach, a similar application, or other action may well be taken by the Applicant. Such matters are ones between the parties.
44. The Tribunal does, on the other hand, have the power, pursuant to s231A (4) (c) of the 2004 Act to give directions requiring cleaning, repairs and other works to be carried out. In the event that the Respondents remained in breach, the Tribunal would have considered whether to make any such directions and may very well have done so. However, where there has been found not to continue to be an ongoing breach and the Applicant has not requested any such directions in its director's recent witness statement, the Tribunal does not consider it appropriate to exercise that power in this instance.

Rights of appeal

1. By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.
2. 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.
3. 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.
4. 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.