FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/00HC/PHC/2020/0002
Property	**:**	11 Hillview Park, Potters Hill, Fenton, Lullsgate, Bristol BS40 9XE
Applicant	**:**	R S Hill & Sons
Representative	**:**	IBB Solicitors
Respondent	**:**	Mr Ciaran O'Mahony
Representative	**:**	-
Type of Application	**:**	Determination of a question arising under Mobile Homes Act 1983 or agreement
Tribunal Member	**:**	Judge Tildesley OBE
Date and venue of hearing	**:**	2 July 2020 by means of a telephone conference which was held in public at Havant Justice Centre Further representations received 15 July 2020
Date of Directions	**:**	7 August 2020

DECISION

Summary of the Decision

i. The Tribunal finds on the facts found that the Applicant has failed to establish on the balance of probabilities that the "red area" formed part of the Respondent's pitch.

ii. In the alternative the Tribunal is satisfied that the Applicant has failed to establish on the balance of probabilities that the Respondent is in breach of his obligation to keep the pitch tidy and clean with specific reference to the "red area".

iii. There is no evidence to substantiate a finding that the Respondent conducted the proceedings unreasonably to justify an order for legal costs against him under rule 13(1)(b) of the 2013 Tribunal Procedure Regulations.

iv. The Respondent to reimburse the Applicant with the £100 application fee within 28 days.

Background

1. On 21 February 2020 the Applicant site owner sought a determination under section 4 of the Mobile Homes Act 1983 that the Respondent occupier had failed to keep his pitch and garden in a tidy condition and if so an order requiring the Respondent to clear the rubbish from the pitch and tidy his pitch and garden area to an acceptable standards within 28 days of the determination.

2. On 23 March 2020 the Tribunal issued directions to determine the application on the papers.

3. On 21 April 2020 the Respondent contacted the Tribunal to say that he had been ill and was in self isolation. The Respondent stated that he was now in the process of landscaping his garden and that all the works should be completed by the end of May 2020.

4. On the same day the Tribunal replied to the Respondent stating that it would appear that the Respondent was agreeing to an Order being made and if that was the case, the matter could be dealt with by means of a consent order if the Applicant was in agreement.

5. On 28 April 2020 the parties agreed to a consent order on the following terms:

    i. The Respondent shall clear any rubbish from his pitch and tidy his pitch and garden area to an acceptable standard by no later than 16 June 2020.
    ii. The Tribunal's determination of this matter be adjourned until the first open date after 16 June 2020.

iii. Upon the Applicant notifying the Tribunal and the Respondent in writing that the Respondent had complied with paragraph i of this Order, the Application shall be treated as having been withdrawn; and

iv. Liberty to the Applicant to apply for reimbursement of its costs of the application pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, provided any such application is made within 28 days of the Applicant giving notification.

6. On 1 May 2020 the Tribunal endorsed the Consent Order, and directed that if the Respondent failed to comply with the Order, the Application would be listed for hearing by means of a conference call on 30 June 2020 at 10.00am. The Respondent was warned that failure to comply with the consent order may constitute unreasonable conduct which may give rise to an order for legal costs against the Respondent.

7. On 17 June 2020 the Applicant informed the Tribunal that the work had not been adequately carried out. The Applicant stated that although one area of the garden had been tidied up the rest of the pitch remained in an unacceptable condition.

8. A hearing was fixed for the 2 July 2020 by means of a conference call at which Mr Clement of IBB solicitors attended for the Applicant, and the Respondent appeared in person..

9. At the hearing the Respondent disputed that the pitch included the area of the land adjoining the telegraph pole which remained untidy and unkempt. The Tribunal was not in a position at the hearing to decide the extent of the pitch and directed that the parties supply further evidence on this matter. It was agreed that the Tribunal would determine the matter on the papers once it had received the further representations.

10. The Tribunal directed the Respondent to supply the Tribunal and Applicant's solicitors by email the following documents which were to be received by no later than 4pm on 9 July 2020. If the Respondent failed to comply, the Tribunal indicated that it would determine the matter against him. The documents were:

- A statement setting out the Respondent's position in respect of the pitch and his proposals in respect of the disputed area of land signed with a statement of truth.

- A sketch setting out the various parts of the pitch where works have been completed and the disputed area of land.

- A copy of the plan of the pitch which was provided when he purchased the mobile home.

11. The Applicant was directed to supply the Tribunal and the Respondent by email its response by no later than 4pm on 16 July 2020 and to include any relevant documents including if possible a screen print of the satellite view of the pitch and neighbouring pitches, highlighting the boundaries and the disputed area of land.

12. The Tribunal received from the Respondent a statement together with photographs, and two sketches. The Respondent did not provide a copy of the plan. The Applicant supplied a statement, aerial photograph of the site, the Respondent's sketch with annotations, four photographs of other pitches, a copy of the site licence granted in 2007 and a copy of the current site rules.

13. The Tribunal viewed the current site licence held on line by North Somerset District Council which was dated 26 April 2016 under licence number 3L8/048837.

14. The Tribunal was unable to open the photographs of the four pitches provided by the Applicant. The Tribunal, however, accepted the Applicant's statement that the gardens of the park homes stationed on pitches 10, 13, 16 and 18 on the Park extended right up to the boundary fence erected in 2018.

15. In his submission of 15 July 2020 Mr Clement put forward the Applicant's revised position: (i) determine that the Respondent's pitch and garden includes the area edged in red on the annotated plan, (ii) order the Respondent to tidy his pitch and garden to an acceptable standard by a date to be determined (the Applicant believes that one month would be reasonable), and (iii) order the Respondent to pay the Applicant's costs of this application.

16. The Tribunal considered it whether it should inspect the site in person following the parties' further representations. The Respondent had made such a request. The Tribunal decided that it now had sufficient information and understanding of the lay out of the site to proceed to a determination.

17. The Tribunal also considered whether it should give the parties an opportunity to comment on the site licence dated 26 April 2016. The Tribunal decided that the licence was a matter of public record and that its contents spoke for itself, and that it was not necessary for the parties to incur further costs.

The Facts

18. Hillview Park is a protected site to which the Mobile Homes Act 1983 (1983 Act) applies.

19. The Applicant holds a licence under the Caravan Sites and Control of Development Act 1960 for the site which was granted on 26 April 2016 by North Somerset District Council. The licence permits the Applicant to use the site for not more than 25 mobile homes at any one time. The licence

imposes obligations on the Applicant to maintain common areas, including grass vegetation and trees, and sets the standards for spacing between mobile homes and the position of the mobile homes in relation to site boundaries. The Tribunal notes that at Special Condition 1(ii) The Boundaries and Plan of the Site:

> "(ii) No caravan or combustible structure shall be positioned within 3 metres of the boundary of the site. It is noted that units to the North and South boundaries do not satisfy this condition, there is no noted increase safety risk and when the units are replaced, the replacement units should be positioned so as to comply".

20. The Respondent is entitled to station a mobile home on Hillview Park by virtue of an agreement dated 19 December 2012 between the Applicant and him. The agreement relates to pitch 11. There is no plan attached to the agreement setting out the size and location of the pitch.

21. It is an express term of the agreement that the Respondent must "keep the pitch and all fences sheds outbuildings and gardens thereon in a neat and tidy condition" (clause 3(d) of Part IV), and it is also a statutory implied term of the Agreement under paragraph 21 (d) of Schedule 1, Part 1 to the 1983 Act (as amended) that the Respondent must "maintain the pitch ... in a clean and tidy condition" at all times.

22. Under clause 3(g) of the express terms the occupier requires the written consent of the owner to erect any fences on the pitch. The site rules attached to the agreement stated that the occupier was not entitled to add to the pitch without the prior approval of the owner and that no more fences were to be erected. These site rules were superseded by new rules in 2014 which stated that occupiers were not permitted to erect fences, that responsibility for the maintenance and cost of maintaining boundaries between pitches was equally shared and that pitches must be kept neat and tidy and plants or trees must not be allowed to become overgrown.

23. Clause 13 of the express terms entitled "Pitch Size" stated that "the pitch fee paid by the home owner is for the concrete base only, all other areas of the plot are for their enjoyment only and must be maintained as per the Express Term (F) of their agreement".

24. Likewise it is an express term of the agreement that the Applicant keeps and maintain those parts of the park which are not the responsibility of the occupier or of other occupiers of other pitches in the park in a good state of repair and condition (clause 4(a). The express condition goes further than the implied condition under paragraph 22(d) of Schedule 1, Part 1 to the 1983 Act (as amended) which requires the site owner to maintain in a clean and tidy condition those parts of the protected site including access ways, site boundary and fences and trees, which are not the responsibility of any occupier of a mobile home stationed on the protected site.

25. The Tribunal observes that under the implied terms, paragraph 22(a) of Schedule 1 Part 1 of the 1983 Act the owner shall if requested by the

occupier on payment by the occupier of a charge not more than £30 provide accurate written details of the size of the pitch and base on which the mobile home is stationed, and the location of the pitch and base within the protected site. The details must include measurements between identifiable fixed points on the protected site and the pitch and the base.

26. On 28 November 2019 Mr Houston an employee of the Applicant sent a letter to the Respondent stating, amongst other matters, that the Applicant's garden was full of building materials and was very untidy and that the Applicant expected the Respondent to tidy his garden by 16 December 2019.

27. On 10 December 2019 Mr Clement on behalf of the Applicant served a Notice of Breach on the Respondent which required him by no later than 10 January 2020 to pay the pitch fee, water and electricity arrears, remove the discarded bed from the Park, and tidy his pitch and garden to an acceptable standard. Mr Clement warned the Respondent that if he failed to comply with the Notice by the specified date the Applicant may then take further action without further notice to enforce the terms of the agreement which may include an application to the First Tier Tribunal to seek an Order requiring him to comply and/or issuing proceedings in the County Court to terminate the agreement and for possession of the Respondent's pitch.

28. On 3 January 2020 the Respondent replied to the Notice of Breach stating that he would comply with all the requirements except for the demand to tidy the rear garden. The Respondent pointed out that the Applicant had erected a new fence at the rear of his home which he said was due to the boundary being in the wrong place. According to the Respondent, this meant that the rear garden had increased by about one metre leaving a high void which required the building of a retaining wall. The Respondent also said that the Applicant's contractors were responsible for the untidy state of the rear garden. The Respondent ended by stating that it was the Applicant's responsibility to make good the damage caused to the garden and that once the Applicant had made good, the Respondent would be prepared to maintain the garden in a satisfactory condition.

29. On 7 February 2020 Mr Clement responded by stating that the Applicant denied that its staff or workers had caused any damage to his pitch or garden area. The Applicant also pointed out that the condition of the Respondent's pitch has been of concern for some time, and that the Applicant had written to him about this in October 2013.

30. On 21 February 2020 the Applicant issued proceedings in the Tribunal which resulted in the making of a consent order dated 28 April 2020. At the request of the Applicant the proceedings were reinstated on 17 June 2020.

The Parties' Cases

31. The Respondent's case was that he had carried out extensive work to part of the rear garden within his pitch which required the removal of several tonnes of rubble, glass, and eight tree stumps, the erection of two new fence panels and the laying of artificial grass. This area of the rear garden was now enclosed on all four sides with fencing panels. The Respondent also said that he had tidied up the front area and the side garden.

32. This left an area delineated in red on the annotated sketch which the Respondent said was not his responsibility. The "red area" contained a telegraph pole with a tension wire running behind a fence which the Respondent said represented the boundary of his pitch when he purchased the mobile home in 2012.

33. The Respondent pointed out that the fence was a substantial construction with six concrete posts and 3 feet by 6 feet wooden panels inserts. The Respondent referred to the photographs where the panels had been removed and which showed the presence of corrugated sheets operating as a retaining wall for the ground included in the red area. The Respondent stated that this ground comprised about ten tonnes of historic cuttings and rubble. The Respondent also said that the red area had had trees growing in it for the last twenty years which had acted as a boundary and screening from the neighbouring property. Finally the Respondent asserted that the Applicant had accepted ownership of this fence and had in the past replaced some of the fencing panels.

34. The Applicant considered the Respondent's evidence contradictory and inconsistent. The Applicant said that the Respondent in his email of 3 January 2020 complained about the Applicant's contractors not removing debris and building materials from the rear garden and not about whether the "red area" was part of his pitch. Similarly in April 2020 the Respondent's explanation for not carrying out the works was on the grounds of ill-health and not because he disputed the "red area" was within his pitch. Finally the Applicant pointed out that the Respondent had stated that all works would be completed by the end of May/June 2020.

35. The Applicant placed weight on the Respondent's consent to the Order on 28 April 2020 in which he agreed to clear all rubbish from his pitch and tidy his garden area to an acceptable standard by 16 June 2020. According to the Applicant, the Respondent was well aware at the time of signing the Order that he was required to clear the "red area" where the tree debris was located.

36. The Applicant concluded that the Respondent asserted for the first time at the hearing on 2 July 2020 that the "red area" was not in fact part of his pitch, and actually only made this suggestion after being specifically asked by the Tribunal whether he regarded the area as part of his pitch. The Applicant believed that the Respondent's submission was untenable in

light of the photographic and plan evidence and his earlier email comments inferring that the "red area" was always part of his garden.

Reasons

37. The Applicant is asking the Tribunal to determine that the Respondent is in breach of his agreement and for an order to remedy the default. If the Respondent fails to comply with the Order, the Applicant would be entitled to apply to the Court to terminate the agreement under paragraph 4 of Schedule 1 to Part 1 of the 1983 Act.

38. The Applicant is required to satisfy the Tribunal on the balance of probabilities that (1) the area of the land delineated by a red line on the annotated sketch forms part of the pitch for 11 Hillview Park (the red area), and (2) the Respondent is in breach of his obligation to keep the pitch in a clean and tidy condition.

39. The Tribunal considers each issue in turn.

Is the Red Area part of the Respondent's Pitch?

40. The Applicant produced no documentary evidence substantiating the identity and boundaries of the pitch. The Tribunal notes that there appeared to be documentary evidence in the form of site lay out plan attached to the site licence granted in April 2016 with the boundaries of the site marked in blue.

41. The Applicant asserts that the red area is part of the pitch for 11 Hillview Park and relies for its assertion on the alleged inconsistencies in the Respondent's statements and his agreement to the consent order.

42. The Applicant's reliance on the Respondent's consent to the order dated 28 April 2020 is predicated on the Applicant's belief that the Respondent knew that he was responsible for keeping the "red area" tidy and clean. The Applicant's belief is derived in part from the photographs of the state of the pitch that were attached to the Notice of Breach exhibited at [53 to 64] in the Applicant's bundle dated 25 June 2020. Having examined the photographs, the Tribunal is not convinced that the photographs sufficiently identified the "red area" as falling within the Respondent's obligations under the agreement.

43. The Tribunal also finds that the Notice of Breach did not identify the extent of the Respondent's pitch and define the nature of the work required to remedy the breach in respect of keeping the garden and pitch clean and tidy.

44. Equally the Tribunal is not persuaded by the Applicant's contention that the Respondent only challenged the scope of his obligations at the hearing on 2 July 2020. The Respondent denied his liability to keep the rear garden tidy and neat when he received the Notice of Breach. The Respondent alleged that this was the Applicant's responsibility because it

had extended the site by erecting a new boundary fence and had not cleared up the debris after the works. In his representations dated 19 June 2020 the Respondent expanded upon the boundary issue by referring to a fence constructed of concrete posts and fencing panels in front of the "red area" which he said constituted the boundary of his pitch.

45. The Applicant in its response offered no explanation for the construction of a new boundary fence in 2018. The Applicant did not challenge the Respondent's assertion that the site boundary had been relocated at the rear of plot 11. The Applicant submitted that the Respondent had accepted the new boundary because he had treated or painted the fence to darken its colour. However, it is also clear from the photographs that the Respondent's actions related only to a part of the boundary fence which was immediately behind the mobile home and the adjacent parking space, and that a fence had been erected between the rear garden and the "red area".

46. The Applicant denied that it had constructed and or repaired the fence in front of the "red area". The Applicant pointed out that the fence ran right up to the mobile home on pitch 10 which the Applicant said contravened the conditions of the 2007 site licence for Hillview Park. Finally the Applicant referred to the Site Rules which prohibited the erection of fences or other means of enclosures by the occupiers.

47. The Tribunal observes from the photographs that the fence in front of the "red area" was a permanent structure which appeared to have been in place for sometime. In the Tribunal's view, the Applicant's denials lacked conviction. The Tribunal did not understand why the Applicant had not taken action to remove the fence if it contravened the site rules and the conditions of the site licence as asserted by the Applicant.

48. The Tribunal was surprised by the Applicant's reference to the 2007 site licence rather than to the more recent one of 2016. The Tribunal noted that the 2016 site licence recorded that the mobile homes to the North and South boundaries did not satisfy the condition of being more than three metres from the site boundary, which may be the explanation why a new boundary fence was erected. The Respondent's mobile home is located on the North boundary of the site. Further it appeared to the Tribunal that the layout plan attached to the licence indicated that the site boundary between Plot 11 and Plot 10 followed the line of the fence in front of the "red" area.

49. The Tribunal finds the following facts:

a) The Applicant produced no documents to identify the pitch occupied by the Respondent.

b) The pitch occupied by the Respondent comprises four areas the concrete base, the drive at the side of the home for parking a vehicle, the side garden and the rear garden excluding the "red area".

c) The Applicant erected new fencing to the site on the North boundary in 2018 for which no explanation has been given by the Applicant. The most likely explanation for the new fencing on the evidence is that it was erected in response to the concerns expressed by the licensing authority in the site licence.

d) The fence between the side garden and the "red area" and running to the mobile home on pitch 10 is a substantial structure which has been there for some time. In the absence of an alternative explanation from the Applicant, the Tribunal is satisfied that it represented the boundary of the pitch covered by the side garden.

e) The Tribunal on balance finds that the changes to the boundary enlarged the area of land at the rear of the Respondent's mobile home. The Respondent has accepted by his actions that part of the enlarged area has merged into the pitch for 11 Hillview Park. That part is restricted to the enclosed part of the rear garden immediately behind the Respondent's mobile home and does not include any part of the "red area".

50. The Tribunal finds on the facts found that the Applicant has failed to establish on the balance of probabilities that the "red area" formed part of the Respondent's pitch.

Is the Respondent in breach of his Obligation to the keep the pitch tidy and clean?

51. In the alternative, if the "red area" is part of the pitch of 11 Hillview Park, the Applicant is required to establish that the Respondent is in breach of his obligation to keep the pitch tidy and clean.

52. The dispute at the hearing on 2 July 2020 related solely to the state of the "red area". The Applicant did not raise issues about the other parts of the pitch (the enclosed rear garden area, the parking space and the side garden). The Tribunal inferred from the Applicant's absence of submissions in respect of those areas that the Respondent had met his obligation to keep those parts of the pitch clean and tidy.

53. The particulars of the breach relied upon by the Applicant as set out in the Notice dated 10 December 2019 were:

> "In breach of express term 3(d) and/or implied term 21(d) you have failed to maintain your pitch and garden area in a clean and tidy condition. The pitch is overgrown and unkempt and full of building materials, as shown by the attached photographs".

54. The remedy sought was: "Tidying your pitch and garden area to an acceptable standard".

55. The Tribunal considers the particulars and especially the remedy open to interpretation and they did not specifically address to condition of the "red area".

56. The Respondent described the "red area" as containing approximately 10 tonnes of historic cuttings and rubble which would have to be removed in order to make this area a useable space. The Respondent estimated that the costs of this work would be in the region of £1,600 as it would require the use of several slips and digger to complete. The Tribunal is satisfied that the photographs produced of the "red area" supported the Respondent's description, particularly the photographs which showed the retention of "the rubble" by the corrugated sheets of metal.

57. The Applicant adduced no evidence that the Respondent was responsible for the state and condition of the "red area". The Applicant referred to a letter of 14 October 2013 sent to the Respondent by Mr Houston asking him to bring the garden up to the required standard by 28 October 2013. The Respondent said this related the removal of kitchen units from the garden.

58. The Tribunal finds that to bring the "red area" to an acceptable standard goes beyond the Respondent's obligation to keep the pitch tidy and clean. The Respondent has no rights of ownership in respect of the pitch. Clause 13 of the agreement makes it clear that all areas of the plot other than the concrete base are for the Respondent's enjoyment. In circumstances where works are required to the pitch which go beyond the occupier's responsibility to keep it tidy and clean the obligation to carry out those works fall on the owner. Under the express terms of the agreement the Applicant is required to keep and maintain those parts of the Park which are not the responsibility of the occupier in a good state of repair and condition.

59. The Tribunal is therefore satisfied that the Applicant has failed to establish on the balance of probabilities that the Respondent is in breach of his obligation to keep the pitch tidy and clean with specific reference to the "red area".

The Consent Order

60. Although not specifically argued by the Applicant, the Tribunal considers it necessary to address the issue of the consent order. An argument could be advanced that the Respondent is estopped from challenging his liability to put matters right in respect of the "red area". The Tribunal is not attracted to the argument of estoppel for two reasons. First the Tribunal is not satisfied on the evidence that the Respondent had accepted ownership of the "red area" and agreed to do the necessary works to it (see [42-44]). Second the Tribunal is not convinced that Respondent gave his "consent"

in full knowledge of the legal position in respect of the respective rights and obligations of the site owner and occupier.

Costs

61. On 1 May 2020 the Tribunal endorsed the consent order, and directed that if the Respondent failed to comply with the Order, the Application would be listed for hearing by means of a conference call. The Respondent was warned that failure to comply with the consent order may constitute unreasonable conduct which may give rise to an order for legal costs against the Respondent.

62. The Applicant on the strength of the Tribunal's indication of 1 May 2020 submitted an application for costs which at the time of the hearing stood at £2,802.

63. The Tribunal can only order one party to pay the other party's legal costs if the party had acted unreasonably in bringing, defending or conducting proceedings within the meaning of rule 13 (1)(b) of the Tribunal Procedure Rules 2013.

64. The Upper Tribunal in *Willow Court Management Co (1985) Ltd v Alexander* [2016] UKUT 290 (LC) gave guidance on the Tribunal's discretion to award costs due to a party's unreasonable behaviour.

> "With these points in mind we suggest that a systematic or sequential approach to applications made under the rule should be adopted. At the first stage the question is whether a person has acted unreasonably. A decision that the conduct of a party has been unreasonable does not involve an exercise of discretion but rather the application of an objective standard of conduct to the facts of the case. If there is no reasonable explanation for the conduct complained of, the behaviour will properly be adjudged to be unreasonable, and the threshold for the making of an order will have been crossed. A discretionary power is then engaged and the decision maker moves to a second stage of the inquiry. At that second stage it is essential for the tribunal to consider whether, in the light of the unreasonable conduct it has found to have been demonstrated, it ought to make an order for costs or not; it is only if it decides that it should make an order that a third stage is reached when the question is what the terms of that order should be".

65. The conduct complained of is whether the Respondent had failed to comply with the consent order. The Tribunal has found that the Respondent when agreeing to the consent order did not accept responsibility for the "red area" which constituted the principal dispute between the parties. In those circumstance there is no evidence to substantiate a finding that the Respondent conducted the proceedings unreasonably to justify an order for costs under rule 13(1)(b) of the 2013 Tribunal Procedure Regulations.

66. The Tribunal, however, considers that the Respondent should reimburse the Applicant with the £100 application fee within 28 days. This Order is made under rule 13(2) of the 2013 Tribunal Procedure Regulations which gives the Tribunal a wide discretion to make such order as it sees fit. At the time the Application was taken out the Respondent had not complied with his obligations to keep those parts of the pitch tidy and clean for which he accepted responsibility.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.