



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

Case Reference : **CAM/OOMB/PHC/2020/0008**

HMCTS : **CVP**

Site : **Park Lodge, Garston Park, Tilehurst,
Reading, Berkshire RG31 4TS**

Property : **10 Seventh Avenue**

Applicant : **Mrs Pauline Morcombe**

Respondent : **JJ Cooper & Sons,**
Representative : **Mr James Cooper**

Date of Application : **24th August 2020**

Type of Application : **To determine questions arising under the
Mobile Homes Act 1983 or an agreement to
which it applies – section 4 Mobile Homes
Act 1983**

Tribunal : **Judge J R Morris**

Date of Hearing : **8th December 2020**

Date of Decision : **16th December 2020**

DECISION

Covid-19 Pandemic: Remote Video Hearing

This determination included a remote video hearing together with the papers submitted by the parties which has been consented to by the parties. The form of remote hearing was Video. A face-to-face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing/on paper. The documents referred to are in a bundle, the contents of which are noted.

Pursuant to Rule 33(2A) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and to enable this case to be heard remotely during the Covid-19 pandemic in accordance with the Practice Direction: Contingency Arrangements in the

First-tier Tribunal and the Upper Tribunal the Tribunal has directed that the hearing be held in private. The Tribunal has directed that the proceedings are to be conducted wholly as video proceedings; it is not reasonably practicable for such a hearing, or such part, to be accessed in a court or tribunal venue by persons who are not parties entitled to participate in the hearing; a media representative is not able to access the proceedings remotely while they are taking place; and such a direction is necessary to secure the proper administration of justice.

Decision

1. The Tribunal determines that:
 - a) The Applicant is responsible for maintaining the Walls in good condition.
 - b) The Respondent is responsible for removing the soil and reinstating the bank or otherwise retaining the pitch of 13 Sixth Avenue using a safe, suitable and aesthetically appropriate method if the Low or High Dividing Walls are removed.
 - c) The repair of the Walls should be subject to and compliant with a structural surveyor's report.
 - d) The replacement of the Walls must be in accordance with the Written Agreement and the Site Rules.
2. The Tribunal determines that the Respondent is responsible for the Tree.
3. The Tribunal makes no Order for Reimbursement of Fees.

Reasons

Application

4. The Applicant made an Application to the Tribunal, on 24th August 2020 under Section 4 of the Mobile Homes Act 1983 (as amended) which enables an application by an Occupier of a Park Mobile Home or a Park Mobile Home Site Owner to be made to a Residential Property Tribunal for a determination of any question arising under the Mobile Homes Act 1983 or agreement to which it applies.
5. The Application was made in respect of a dividing wall between the pitch occupied by the Applicant and the pitch behind it. The Applicant applies for a determination regarding allegations of tree root damage and repairing and maintenance responsibilities for the wall and the tree, saying that no remedial works have been carried out despite requests over several years.
6. Directions were issued on 11th September 2020.

The Agreement

7. A copy of the Written Statement of Agreement ("the Written Agreement") between the Applicant and the Respondent was provided. The original Agreement dated 1st

October 1988 was between Hadwyn Mobile Home Parks Ltd and Mr M Grady (“the Previous Occupier”) who assigned it to the Applicant, Mrs Pauline Morcombe, on 23rd March 2005. Copies of the Sale Memoranda and the Third Schedule were provided.

8. In September 1999 the site ownership was transferred from Hadwyn Mobile Home (“the Previous Site Owner”) Parks Ltd to JJ Cooper and Sons, the Respondent.

Description of the Site and Walls in Issue

9. The Tribunal did not inspect the Site but has done so on a previous occasion and so was able to interpret the plans and photographs provided. The Site has ten avenues, off which are the mobile home pitches. There are mature trees across the Site which has an undulating topography in parts so that to create some of the pitches the land has required levelling so that a stable base can be laid for a Park Mobile Home.
10. The Tribunal identified the walls in issue from the photographs provided by both parties and the annotated plan provided by the Applicant. The walls in issue divide the pitch of 10 Seventh Avenue from its adjacent pitch of 13 Sixth Avenue to the rear. Some dimensions of the walls were given and some have been calculated from the photographs. Where they have been calculated they are approximate and are based on the number of bricks or blocks seen in the photograph. The calculations are made on the basis of a standard brick being 215 mm long x 102.5 mm wide and 65 mm high and a standard block being 440 mm long x 100mm wide x 215 mm high with a nominal 10 mm mortar joint. Both metric and imperial measurements were referred to in the submissions therefore the Tribunal has used metric but with imperial in brackets. The exact dimensions of the walls are not critical to the decision.
11. The Tribunal found that the wall dividing 10 Seventh Avenue with 13 Sixth Avenue is in two parts. There is a low wall (“the Low Dividing Wall”) from the roadway which abuts a higher wall (“the High Dividing Wall”).
12. The Low Dividing Wall appears to be constructed of facing bricks which have been painted, with two pillars, one at the end by the road and the other part way along. These pillars are topped with ball finials rising above the wall. It is calculated as being about 675 mm (27 inches high) and was stated by the Applicant as being about 2500 mm (8 feet) long from the front of the pitch to where it abuts the High Dividing Wall. It is apparent from the Respondent’s photographs that the ground level of 13 Sixth Avenue is almost to the top of the Low Dividing Wall.
13. The High Dividing Wall is constructed of solid concrete blocks, with some buttressing, and is topped with coping stones. The side facing 10 Seventh Avenue is rendered. The Applicant has stated this wall is about 6 feet high which is 1800 mm from the ground level of 10 Seventh Avenue. It is apparent from the Respondent’s photographs that the height of the wall above the ground level of 13 Sixth Avenue can be calculated as being approximately 1125 mm (3 feet 8 inches) at the end nearest the roadway and for most of its length. This shows the ground level of 13 Sixth Avenue to be above the ground level of 10 Seventh Avenue by approximately 675 mm (27 inches).

14. The Parties believed the Low and High Dividing Walls to be approximately 22 metres (70 feet) long.
15. Notwithstanding the lack of precise measurements, it is apparent from the photographs that both the Low and High Dividing Walls are retaining the pitch of 13 Sixth Avenue.
16. In addition to the Low and High Dividing Walls, abutting at right angles to the High Dividing Wall, are two transverse walls (“the Front Transverse and the Rear Transverse Walls”) which are rendered on both sides but presumed to be of concrete block construction and are the same height as the High Dividing Wall. These are positioned at each end of the High Dividing Wall. At the end farthest from the roadway, the Rear Transverse Wall marks the end of the pitch of 10 Seventh Avenue. Therefore, the garden area of the pitch is rectangle with walls on three sides and the Park Home on the fourth open side. The garden area is laid as a patio. Where Low and High Dividing Walls and Front and Transverse Walls are mentioned collectively in these reasons they are referred to as “the Walls”.
17. The Low Dividing Wall has a crack through it from the ground to the coping stone. This appears to be caused by heave from the root of what is understood to be an Oak tree (“the Tree”) growing next to it at the entrance to the pitch of 13 Sixth Avenue. The High Dividing Wall has two cracks from the coping stone to the ground. The photographs provided by both parties show that the wall between the two cracks has been displaced and is leaning towards the pitch of 10 Seventh Avenue. The Front Transverse Wall is also cracked.

Written Representations

18. In the Application Form the Applicant asked the Tribunal to determine whether she, as the Park Home Occupier, or the Site Owner is responsible for:
 - a) Rectifying the damage caused by the roots of the Tree near her Park Home. The Tree is 8 feet from her Park Home and is at the entrance to the adjacent pitch, 13 Sixth Avenue. The damage is the cracking and displacing by heave of the Low Dividing Wall. The Applicant stated that the Respondent had agreed two to three years ago that the tree roots had caused the damage.
 - b) Removing the dead branches from the Tree which is on the pitch of 13 Sixth Avenue but overhangs the Applicant’s pitch, 10 Seventh Avenue.
 - c) Repairing or renewing the High Dividing Wall and the Transverse Wall which are cracked as stated in the Description. The Applicant stated that in her view the wall had lost its integrity and she felt nervous about sitting in the garden as the wall might give way. She added that the works on the pitch of 13 Sixth Avenue have made the cracks bigger by the vibration from the lorries and diggers and by levelling which had resulted in a large quantity of soil being placed against the wall.
19. The parties referred to correspondence which is précised and paraphrased below and copies of which were provided by the Applicant and/or the Respondent:

20. **30th June 2018** Letter from the Applicant to the Respondent which referred to previous letters in June, August and September 2016 in which the Applicant had expressed concern over “the retaining wall to the rear of [10 Seventh Avenue] which at the time was severely cracked and posing a threat”. The Applicant stated that urgent action is required.
21. **23rd July 2020** Letter from the Applicant to Respondent which referred to the Respondent verbally having agreed that the roots of the [Oak] Tree and the soil on the adjacent pitch of 13 Sixth Avenue had caused the Low and High Dividing Wall to crack. The Applicant expressed concern that a large amount of soil had been deposited on the pitch of 13 Sixth Avenue causing the weight to crack the wall further. The Applicant also requested that the dead branches of the [Oak] Tree overhanging 10 Seventh Avenue be removed.
22. **29th September 2020** Letter from the Respondent to the Applicant which confirmed that the Respondent had agreed to remove the dividing wall between 10 Seventh Avenue and 13 Sixth Avenue to a length of approximately 16 m long and replace it with sleepers 2 feet high and a fence 4 feet high on top of the sleepers. The works will involve removing part of the soil on the plot behind the wall [13 Sixth Avenue] to provide access for a digger to remove the wall. The works will commence on week beginning 26th October 2020 and will take approximately 2 – 3 weeks to complete. The letter requested the Applicant to sign and return if she was in agreement. The work described in the letter was not agreed to by the Applicant.
23. **8th October 2020** Letter from the Respondent to the Applicant which asked her to sign the attached Agreement (“the Proposed Agreement”) which states:

“This is an Agreement between JJ Cooper & Sons ... and Mrs Morcombe of 10 Seventh Avenue...

The boundary wall that has been erected separating Plot No 10 Seventh Avenue ... and Plot No 13 Sixth Avenue... will be dismantled and removed down to ground level by JJ Cooper & Sons.

JJ Cooper & Sons will also assume responsibility to remove the rubble from site.

It has been discussed that JJ Cooper & Sons have no knowledge of when this was erected and it was not done by JJ Cooper & Sons or any of their representatives. The wall was built without permission. Therefore, we will take as much care as possible to remove the wall but are at a disadvantage as we do not know its construction.

In place of the concrete wall a dwarf wall of railway sleepers (or similar) will be erected in place of the aforementioned.

The new wall height will be approximately 1 metre high and will be 70 feet in length from road edge to newer concrete wall as discussed.

Once works have been completed a fence will be erected on top of the sleeper wall adding an additional 3 – 6 feet in height depending on panels used.

We look to commence work on 20th October 2020 we envisage these works will take approximately 4 weeks as work will be intermittent as we do have other projects running.

This Agreement has been reached amicably and both parties are happy to cancel the requirement of the Tribunal dated 11th November 2020 Case reference CAM/00MC/PHC/2020/0008.”

24. **10th October 2020** Letter from the Applicant to the Respondent in answer to the letter of 8th October 2020 which stated in summary:
 - 1) It is not stated whether any property of the Applicant that may be damaged during the work will be repaired or replaced.
 - 2) What would be “similar” to sleepers and will this be sufficiently strong to retain the soil from the Adjacent Pitch?
 - 3) Will the sleepers and fence be 6 feet high as the wall is at present?
 - 4) What support is to be put in place of the wall in front of the Oak Tree, which has dead branches which need to be cut off, and the dividing wall which is at right angles to the boundary wall?
 - 5) Two starting dates have been given of week beginning 20th and 26th October, which is correct? The Applicant said she was told that the work would not be interrupted by other projects and has been told variously that the work would take 2 – 3 weeks and 4 weeks.
 - 6) The Applicant said that she would like a written assurance that the work will start and be finished as she has been requesting the work for 4 years.
25. **21st October 2020** Letter from the Respondent to the Applicant which stated that following a recent meeting it was confirmed the works would start on 27th October 2020 and take up to 4 weeks to complete and will be intermittent due to other projects. The Respondent confirmed that their insurance would cover any damage caused by the work. Photographs as taken before the works commence to keep a record of the condition of the pitch to avoid any subsequent arguments. The Applicant was asked to sign the letter before the works commence to show she agreed with them and to cancel the tribunal application. A copy of the above Agreement was enclosed.
26. **22nd October 2020** Letter from the Applicant to the Respondent which asked for the works to be confirmed and that the “split dividing wall” and the [Oak] Tree be added to the Agreement.
27. **26th October 2020** Letter from the Applicant to the Respondent in which the Applicant said that she did not consent to the Agreement and asked that the work not start on 27th October 2020.
28. **4th November 2020** Letter from the Respondent to the Applicant which sets out some additional terms to the Proposed Agreement of the 8th October 2020 and saying that the retaining structure will be sleepers 3 feet or 1 metre high with a 4-foot fence on top and will be 70 feet in length from the road to concrete pillar. The Respondent reiterated that the respondent’s insurance would cover any damage caused by the workmen but would not cover any existing damage or general wear and tear. Photographs would be taken before and during the works to keep a note for the pitch conditions for the record. Regarding the tree on the pitch of 13 Sixth

Avenue the Respondent said that an application had been made to the Council for its removal. In order for the work to be carried out the Applicant was requested to sign to the Agreement to give permission for it to go ahead.

29. **10th November 2020** The following email was sent by the Respondent to West Berkshire Council regarding the Tree for which permission has to be obtained before any tree surgery can be carried out on it as it is the subject of a Tree Preservation Order:

“Please accept this as a request for the removal of a dead oak tree inspected by Wessex Tree Services on Plot 13 Sixth Avenue, Garstons Park Home Village, Tilehurst, Reading, Berkshire RG31 4TJ it has been deemed a danger to the mobile home on Plot No 10 Seventh Avenue, Garstons Park Home Village, Tilehurst, Reading, Berkshire RG31 4TJ”

30. The Applicant made the following written representations and submissions in a letter to the Tribunal dated 30th September 2020 which are précised and paraphrased as follows:
- 1) The Applicant said that she was concerned that the letters had not been signed by Mr James Cooper himself and that a signature was required of her before Mr Cooper signed.
 - 2) If the work does not commence on 26th October 2020 (or whenever subsequently stated) the Applicant did not know what she could do.
 - 3) The Applicant said that she wanted in writing that the soil and any other spoil would be removed from her pitch.
 - 4) If the wall falls and damages the Applicant’s property the Applicant wanted to know who was liable.
 - 5) If during the work the Applicant’s property was damaged the Applicant wanted to know who was liable.
 - 6) The Applicant said that the masonry wall was in place when she bought the Mobile Home and was assigned the Pitch Agreement. She said that she did not want the wall replaced by sleepers and a fence. She would like it to be of the same construction.
 - 7) The Applicant said that she had recently been told that she was not to have a wall built but could not find a document which said this.
 - 8) The Applicant said that the wall which is at right angles to the boundary wall (the Transverse Wall) has been badly damaged and gives security at the entrance to the pitch.
31. The Respondent made the following written representations and submissions which are précised and paraphrased as follows:
32. The Respondent referred to Clause 3(f) of the Express Terms of the Written Agreement which requires the Mobile Home Occupier to maintain the pitch and to Clause 3(g) which states that the Mobile Home Occupier must not without the written consent of the Site Owner carry out any building works or erect any porches, sheds, garages, outbuildings, fences or other structures on the pitch.
33. The Respondent said that the Applicant purchased the Mobile Home at 10 Seventh Avenue on 23rd March 2005 and took on all responsibility for walls, fences, sheds etc as per the 1983 Legislation. On that basis the wall is not the Respondent’s, JJ

Cooper & Sons, responsibility. The Respondent said it did not have any knowledge of when the wall was built as the Site was under the Previous Site Owners at the time and there is no record of any permission having been given by the Previous Site Owners.

34. The Applicant had a conversation with the Site Manager, Stephen Bennett, about the wall and he said that he did not feel that the Site Owner was responsible for the wall as it is not a perimeter boundary wall.
35. After many discussions between Mr J W Cooper of the Respondent and the Applicant, a letter with Agreement was hand delivered to the Applicant on 8th October 2020. It detailed the work and said that it would start on 20th October 2020 and would span 4 weeks. The Applicant refused to sign the letter and wrote to the Respondent on 10th October 2020 asking for amendments to be made to the Agreement.
36. Mr J W Cooper met with the Applicant to discuss her amendments and she agreed to sign the Agreement sent to her on 21st October 2020 and to withdraw her application to the Tribunal. However, the Applicant did not sign the Agreement and sent a letter on 22nd October 2020 requesting further amendments.
37. On 4th November 2020 the Respondent sent a letter with all amendments as a final attempt to settle the matter. However, this has not been accepted and was also rejected. As a result, the Respondent has withdrawn the Proposed Agreement of 8th October 2020 together with the amendments of 4th November 2020 and submits that the work is not the Respondent's liability.

The Hearing

38. A hearing was held on 8th December 2020 by CVP, which was attended by Mrs Morcombe, the Applicant and Mr James Cooper, a partner of the Respondent.
39. The Applicant confirmed her written statement. In addition, the Applicant made the following points.
40. The letter of 29th September 2020 only outlined the work and required the Applicant to sign a copy where it was marked with her name, but there was no signature from Mr Cooper. The Applicant felt she was being asked to sign a blank document without any clarity as to what she was agreeing. The same applied to the letter of 21st October 2020, which again only outlined the work and required her to sign a copy where it was marked with her name, but there was still no signature from Mr Cooper.
41. The letter of 8th October 2020 had been signed by an employee and not by Mr Cooper. The letter of 21st October 2020 had not been signed at all.
42. The Applicant said she had not been given a proper full agreement in that all the issues she raised in her letter of 30th September 2020 had not been answered.
43. She had wanted it confirmed that the spoil would be removed and who would be liable for any damage done in the course of the work.

44. The Applicant said it had not been clear when the work was to start, having been given commencement dates 20th October 2020 and then 26th October 2020. Mr Cooper had said verbally to her that the work would be done all at once, but later in writing said it would take up to two to three weeks (letter 29th September 2020) and then said four weeks (Proposed Agreement 8th October 2020) and would be intermittent, being fitted in between other jobs.
45. With regard to the letter with the enclosed Proposed Agreement the Applicant said that she had been disturbed to find that a picture of her front door had been taken of the letter being posted.
46. The Applicant said that the Walls were built before she took over the pitch and could not find any document which said that she could not have the walls.
47. The Applicant said that she would settle for the sleepers but would have liked a wall of the same construction.
48. The Applicant added that she had felt harassed and intimidated to accept the Proposed Agreement.
49. The Applicant said that she believed the damage to the Low and High Dividing Walls and the Front Transverse Wall had been caused by the roots of the Tree and Mr Cooper had agreed verbally that this was the case.
50. The Respondent's Representative confirmed the written statement. In addition, the Respondent's Representative made the following points.
51. He said he had discussed the Walls with the Site Manager, Mr Stephen Bennett, who had worked for the Previous Site Owners and had known the Site for 40 years. He had said that the Walls were constructed by the Previous Occupier of 10 Seventh Avenue, however, Mr Bennett was employed as a labourer at the time and so not in a position to take any action.
52. The Respondent's Representative said that the Walls were not constructed to current standards for their height and therefore he doubted that adequate foundations had been laid.
53. The Respondent's Representative said the Site around 13 Sixth Avenue and 10 Seventh Avenue sloped. Originally the pitch of 13 Sixth Avenue would have sloped down from the concrete base on which the home was situated to the concrete base on which the home of 10 Seventh Avenue was placed. Between the two pitches there probably would have been a fence marking the boundary of the two pitches. The Respondent's Representative referred to other similar pitches where the gradient precluded anything more than a path being laid around the home with some having a small paved patio sitting area at the end of the pitch.
54. On his inspection of the pitch of 10 Seventh Avenue the Respondent's Representative said it was apparent that the Previous Occupier had cut into the bank to the rear or long side of the home forming a terrace. He had then constructed the Walls where the fence would have been. The excavated earth had been flattened

and a patio laid. This had caused the ground level to the rear or long side of the home to be above the level of the wheels of the home and about 18 inches above the base.

55. Due to his doubts about how the Walls were constructed the Respondent's Representative said that if the High Dividing Wall is demolished it may destabilise the patio depending on how the footings were laid. Because of the uncertainties about the construction of the Walls and patio the Respondent's Representative said he could not be sure about what the work would entail.
56. The Respondent's Representative said that he had offered to carry out the work as a show of goodwill because, apart from any work to retain the pitch of 13 Sixth Avenue, he submitted that the Respondent was not responsible for the Walls. He said that he had signed the Proposed Agreement dated 8th October 2020 on behalf of the Respondent and referred to a document in the Respondent's Bundle. He said the Applicant and he had not had any previous disagreement but on behalf of the Respondent he was no longer prepared to undertake the work set out in the Proposed Agreement dated 8th October 202 as amended by the document of 4th November 2020.
57. He said that the earth behind the Low and High Dividing Walls could be removed and returned to the bank of 13 Sixth Avenue as the soil was loose because it had come down when the site was being cleared of vegetation. The wall would then be left freestanding and could be removed without the need to do any retention work such as laying sleepers. He submitted that the Walls would then be entirely the responsibility of the Applicant.
58. The Respondent's Representative agreed that the Tree had caused the cracking to the Low Dividing Wall but this was only to be expected as it had been built so close to the base. A fence would have been better. He disputed that he had agreed that the cracking and displacement of the High Dividing and Front Transverse Walls was due to the roots of the Tree undermining them.

Tribunal's Decision

59. The Tribunal took account all the evidence adduced.
60. With regard to the points raised by the Applicant the Tribunal found that it is not unusual for letters to be signed by employees or to have a stamped signature of the typed name of the business organisation, in this case JJ Cooper and Sons. The letter of 29th September 2020 and 21st October 2020 did lack detail and the Tribunal understood the Applicants reluctance to sign.
61. However, the Proposed Agreement of 8th October 2020 as amended by the letter of 4th November 2020 addressed the concerns that she had raised in her letters and the documents were in the knowledge and experience of the Tribunal more detailed than most building contractors' quotations.
62. It is now not unusual for a photograph to be taken to prove delivery and it has become common for delivery drivers to take a photograph of the parcel at the front door of the recipient.

63. In respect of the Walls having been built prior to the Applicant's occupation and her lack of knowledge as to them having been constructed without consent the onus is on the purchaser to check these matters. It is for the purchasers of Mobile Homes through their legal representatives to check in advance of the sale such matters as the pitch fees having been paid up to date, ensuring that there are no breaches of the Written Agreement or Site Rules which may affect them when they take up occupation and to ensure through their specialist surveyor that the Mobile Home is sound.
64. Other points are addressed later in the decision.
65. The Tribunal identified four issues to be determined:
 1. Who was responsible for maintaining the Walls;
 2. Who was responsible for the Tree;
 3. Taking into account the responsibility for maintenance, what steps were needed to remediate the condition of the Walls by the respective parties.
 4. The reimbursement of the Applicant's Fees.

Issue 1 – Responsibility for the Walls

66. First, the Tribunal considered who was responsible for the Walls.
67. The Tribunal referred to the Written Agreement. The Written Agreement, a copy of which was provided, is divided into 4 parts. Part 1 gives a description of the Site, Home (together with the First Schedule to the Agreement) and Pitch, Part 2 sets out explanatory information, Part 3 contains the Implied Terms which are incorporated by legislation into every Agreement. The current Agreement commenced in 1988 and sets out the terms implied at that time. There have since then been a number of legislative changes which are automatically included in the Agreement with which the Occupier should become acquainted. Part 4 contains the Express Terms which are specific to the Occupier and the Owner although they tend to be common to most sites. In addition, there are the Site Rules which are now incorporated into the Agreement.
68. The Terms of the Written Agreement relevant to this Application are contained in Part 4 Express Terms. In determining who is responsible for the maintenance of the Walls the Tribunal firstly considered the position of the Occupier under the Written Agreement are:
 3. *The occupier undertakes with the owner as follows: -*
 - (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 requiring the occupier to comply with such terms and if the occupier has not taken all reasonable steps to comply with the 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 costs of such work shall be payable by the occupier forthwith*

- (g) *Not without the written consent of the Site Owner carry out any building works or erect any porches, sheds, garages, outbuildings, fences or other structures on the pitch*
69. Site Rules 30 and 32 are also relevant and state:
30. *With the exception of the short fencing adjoining the road the Occupier shall be entitled to erect fencing on the pitch. The placing and nature of the fences must be agreed with the Park Operator prior to erection. These fences must be maintained by the occupier in a good condition.*
32. *The Occupier shall not without the prior consent in writing of the Park Owner to assemble or affix on the pitch any structure permanent or temporary greenhouse garden frame shed porch carport lodger annex or the like.*
70. The Tribunal finds that the effect of 3(f) is that the Occupier is to keep the pitch neat and tidy and the effect of 3(g) is that consent must be obtained by the Occupier from the Site Owner for the construction of any structures on the pitch. The Site Rules reinforce 3(g) by stating the Occupier must only erect fencing on a pitch and reinforces 3(f) by stating that the fences must be kept in good condition by the Occupier.
71. Firstly, the Tribunal considered the application of 3(g) to the present circumstances. No evidence was adduced as to when and by whom the Walls were constructed other than a statement by the Respondent's Representative recalling a conversation he had with the Site Manager. The Site Manager said that the Walls had been built by the Previous Occupier between 1988 and 1999 and there was no reason to doubt this. The Respondent said that permission post 1999 had not been given and that the Previous Site Owner had not provided any documentation on transfer to the Respondent showing it had given permission. The Applicant said that the Walls had been in situ when the pitch was transferred to her in 2005 but that no documentation showing that they had been constructed with consent had been provided.
72. On the balance of probabilities, the Walls had been constructed by the Previous Occupier between 1988 and 1999.
73. With regard to the requirement of consent, the Tribunal was of the opinion that there was an obligation upon a Site Owner to ensure compliance with the Written Agreement. If the Walls had been constructed without consent then it would have been for the Previous Site Owner to take prompt enforcement action. As this had not been taken then it was now unreasonable to require the Walls to be removed unless there was a good reason for doing so.
74. Secondly, the Tribunal considered the application of 3(f) and Rules 30, 31, 32 and 35 of the Site Rules. The Tribunal finds that 3(f) and the Rules require the pitch including the fences to be maintained in a good condition by the Occupier but do not specifically refer to maintenance and repair of structures such as a wall, because from the wording it was not envisaged that a wall would be built.

75. Given that a wall has been constructed instead of a fence, the Tribunal finds that it is reasonable, to give business efficacy to the Written Agreement, to apply the same principles to a wall, as expressed in 3(f) and the Rules, to a fence. Therefore, in these circumstances Rule 30 effectively requires the Walls to be maintained by the Occupier in a good condition.
76. Therefore, the Tribunal determines that the Applicant as Occupier is primarily responsible for maintaining the Walls in good condition.
77. However, on the particular facts of this case the Tribunal found that there was a potential secondary obligation upon the Respondent Site Owner as to the extent of the Applicant Occupier's responsibility under the Written Agreement. The relevant provision is:
- 4. The owner undertakes with the occupier as follows: -*
- (a) To keep and maintain those parts of the park which are not the responsibility of the occupier hereunder or of the other occupiers of other pitches on the park in a good state of repair and condition*
78. The Tribunal found from the photographs and the written statements by the parties that 13 Sixth Avenue had returned to the possession of the Respondent and in the course of clearing and preparing that pitch for another Park Home, soil had been deposited against the Low and High Dividing Walls. This effectively meant they retained the pitch of 13 Sixth Avenue. The Respondent stated that the soil had been moved from the embankment on the pitch of 13 Sixth Avenue which could be reinstated leaving the Low and High Dividing Walls freestanding and non-retaining.
79. As at the time of the hearing, the lower portion of the Low and High Dividing Walls retained 13 Sixth Avenue by a little under 1000 mm (3 feet) and prevented that pitch falling into 10 Seventh Avenue. Therefore, the Tribunal determines that if the Low or High Dividing Walls are removed it is the Respondent's responsibility to retain the soil or remove it and reinstate the bank.

Issue 2 – Responsibility for the Tree

80. Second, the Tribunal considered who was responsible for the Tree. The Respondent stated that it was subject to a Tree Preservation Order and was situated on the pitch of 13 Sixth Avenue. The Respondent also provided an email to the local authority seeking permission to remove the Tree which a tree surgeon had confirmed should be taken down. The parties appeared to agree and the Tribunal determines that the Respondent is responsible for the Tree including the removal of any dead branches.

Issue 3 - Remediation

81. Thirdly, having determined the responsibility regarding the Walls the Tribunal addressed the issue of condition and remediation.
82. It was common ground between the parties that the Low Dividing Wall was cracked and displaced by heave, the High Dividing Wall was cracked and that the middle

section was displaced and the Front Transverse Wall was cracked. It was agreed that all required repair or removal and replacement.

83. The Applicant stated that the damage to the Low Dividing Wall was due to the Tree roots and the Respondent did not dispute this. The Tribunal found from the photographs and the statements by the parties that the cause of the cracking and displacement of the Low Dividing Wall was due to the growth of the roots of the Tree. The Tribunal also found from its knowledge and experience the wall was built so close to the base of the Tree that it was likely to be affected by its growth. In erecting any structure on a pitch, account needs to be taken, not only of its aesthetic appearance, but also of the ground, surrounding environment and vegetation. In the absence of any evidence of consent by the past or present Site Owner, the decision to erect a wall rather than a fence in accordance with Rule 30 was made by the Applicant's predecessor, the Previous Occupier. The Tribunal determines that the responsibility for any resultant damage due to the lack of suitability of the structure being placed next to the Tree now rests with the Applicant.
84. The Applicant contended that the damage to the High Dividing Wall was also caused by the roots of the Tree, although the Respondent did not accept this. There was no evidence adduced from a tree surgeon or a surveyor or similar specialist to show that the damage was caused by the Tree roots. The damaged section of the High Dividing Wall was some distance from the Tree and neither party said nor did the photographs show that there is any obvious root growth protruding from the ground to indicate, without the aid of expert opinion, that the damage was caused by the Tree. In the absence of evidence, the Tribunal was not able to find that the damage to the High Dividing Wall was as a result of the Tree on the pitch of 13 Sixth Avenue.
85. In addition, whereas the Applicant said that the cracking to the High Dividing Wall had started to appear in 2016 she said the more recent work of clearing and levelling the pitch of 13 Sixth Avenue had been carried out by heavy plant which had exacerbated the damage to the wall. In response, the Respondent had questioned the suitability of the foundations upon which the wall had been built.
86. From the photographs provided it was apparent to the Tribunal that the High Dividing Wall was 100mm (4 inches) thick with buttresses every 1100 mm (3 feet 6 inches) giving a thickness of 150 mm (6 inches). Although Building Regulations do not apply, the Planning Portal advises a thickness of 300 mm (12 inches/1 foot) thickness for a wall of 2000 mm (about 6 feet). In the absence of expert evidence regarding the stability and soundness of the High Dividing Wall the Tribunal was not able to find the extent to which, if at all, the use of heavy machinery on the pitch of 13 Sixth Avenue contributed to the cracking.
87. The Tribunal determined that the Applicant was responsible for maintaining the Low and High Dividing Walls in good condition and any decision by the Applicant to repair the Low and High Dividing Walls should be based upon and in compliance with a surveyor's report.
88. If the Low and High Dividing Walls are to be demolished, and the earth on the pitch of 13 Sixth Avenue, which is being retained, is removed, then its replacement is the

responsibility of the Applicant and must be in accordance with the Written Agreement and the Site Rules.

89. If the Low and High Dividing Walls are demolished and the earth on the pitch of 13 Sixth Avenue, which is being retained, is not removed then the Respondent must ensure it is properly supported.
90. In respect of the Respondent's responsibility in this regard the Tribunal found that the terms of the Respondent's Proposed Agreement were reasonable. The Tribunal was aware that there were a number of different structures that might be erected and it was for the Respondent to select the safest and most suitable method taking into account the height required to retain the pitch of 13 Sixth Avenue. As it is the Respondent's responsibility it was not for the Applicant to require that the retaining structure should be of a particular kind, although it should be aesthetically appropriate to the Site. The Tribunal found that once the lower part of the Low and High Dividing Walls was supported then the upper part should be replaced by the Applicant in accordance with the Written Agreement and Rules. The Tribunal was of the opinion that a fence of such height as was appropriate, taking into account the height of the retaining structure, so that the total height will be about 1800 mm (6 feet) from the ground level of 10 Seventh Avenue.
91. The Tribunal found that the Front Transverse Wall was freestanding and therefore The Tribunal determines the Front Transverse Wall is the responsibility of the Applicant. If it were to be removed due to the cracking then the Applicant should in accordance with the Written Agreement obtain the Respondent's permission, such permission not being unreasonably refused to erect a fence in its place.

Issue 4 – Reimbursement of Fees

92. The Tribunal found that the Respondent had acted reasonably and the Applicant had exercised her right to have an issue determined. There was no reason for the Tribunal Fees paid by the Applicant to be reimbursed by the Respondent.
93. The Tribunal makes no Order for Reimbursement of Fees.

Summary

94. The Tribunal determines that:
 - a) The Applicant is responsible for maintaining the Walls in good condition.
 - b) The Respondent is responsible for removing the soil and reinstating the bank or otherwise retaining the pitch of 13 Sixth Avenue using a safe, suitable and aesthetically appropriate method if the Low or High Dividing Walls are removed.
 - c) The repair of the Walls should be subject to and compliant with a structural surveyor's report.
 - d) The replacement of the Walls must be in accordance with the Written Agreement and the Site Rules.

95. The Tribunal determines that the Respondent is responsible for the Tree.
96. The Tribunal makes no Order for Reimbursement of Fees.

APPENDIX 1 - RIGHTS OF APPEAL

1. If a party wishes to appeal the 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.
2. 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.
3. 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.
4. 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.

APPENDIX 2 – THE LAW

The Law

Section 4 of the Mobile Homes Act 1983 (as amended)

- (1) In relation to a protected site in England, a tribunal has jurisdiction –
 - (a) to determine any question arising under this Act or any agreement to which it applies, and
 - (b) to entertain any proceedings brought under this Act or any such agreement subject to subsection (2) to (6).
- (2) Subsection (1) applies in relation to a question irrespective of anything contained in an arbitration agreement, which has been entered into before that question arose.
- (3) In relation to a protected site in England, the court has jurisdiction—
 - (a) to determine any question arising by virtue of paragraph 4, 5 or 5A(2)(b) of Chapter 2, or paragraph 4, 5 or 6(1)(b) of Chapter 4, of Part 1 of Schedule 1 (termination by owner) under this Act or any agreement to which it applies; and
 - (b) to entertain any proceedings so arising brought under this Act or any such agreement, subject to subsections (4) to (6).

- (4) Subsection (5) applies if the owner and occupier have entered into an arbitration agreement before the question mentioned in subsection (3)(a) arises and the agreement applies to that question.
- (5) A tribunal has jurisdiction to determine the question and entertain any proceedings arising instead of the court.
- (6) Subsection (5) applies irrespective of anything contained in the arbitration agreement mentioned in subsection (4).