



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

Case Reference : **CHI/24UL/PHC/2020/0004**

Property : **8 Brookside Park
Hawley Lane
Farnborough
GU14 9AZ**

Applicant : **Farnborough Caravan Sites Ltd**

Representative : **Mr R C Mourton**

Respondents : **Mrs Jayne Brown**

Representative : **Ms Suzanne Lauri (Daughter)**

Type of Application : **Determination of any question arising
under the Mobile Homes Act 1983 or
agreement to which it applies.**

Tribunal Member : **Mr B H R Simms FRICS**

Date of Hearing : **06 November 2020 (Documents Only)**

Date of decision : **20 November 2020**

DECISION

THE APPLICATION & BACKGROUND

1. The application seeks an order requiring certain actions to be taken by the Respondent and seeks to recover costs of making the application from the Respondent.
2. The Applicant Farnborough Caravan Sites Ltd (“FCC”) is the Site Owner and the occupier of the premises is the Respondent Mrs Jayne Brown (“Mrs Brown”).
3. Directions were issued dated 21 July 2020 under regulations relevant to the Covid 19 pandemic. The Practice Direction provides amongst other things that decisions should be made without an oral hearing. Both parties were content with this procedure.
4. Further Directions dated 28 September 2020 were issued to allow the parties to improve the contents of the hearing bundle previously submitted and to address an illegible document. There was a request for photographs relevant to the issues under consideration.
5. Representations and documentation were requested from, and supplied by, both parties and copied to the other.

SUMMARY OF DECISION

6. The Applicant gave permission for the work outlined in the plan submitted by the Respondent.
7. There is no indication on the plan which material is to be used in the parking area.
8. The Applicant cannot remove the occupier’s right to park on the pitch.
9. The Breach Notice has no effect.

WRITTEN STATEMENT

10. The Tribunal had before it a copy of the Written Statement and Agreement under Mobile Homes Act 1983 (“the Agreement”) dated 13 May 2014 which commenced on 24 May 2014. The Tribunal also had a copy of the Assignment between Mr Sandon the original Occupier and Mrs Brown the current Occupier dated 30 June 2017. The relevant provisions will be identified in connection with each issue as required.

INSPECTION

11. The Tribunal initially intended proceeding without an inspection but it was felt that, having perused the papers, an external inspection would be beneficial to its deliberations. Accordingly, as arranged with the parties, the Chairman made an external inspection on 06 November 2020. As agreed, neither party was in attendance. Any findings will be identified in connection with each issue as required.

THE LAW AND JURISDICTION

12. The tribunal has power under section 4 of the **Mobile Homes Act 1983** (the Act) to determine any question arising under the Act or any agreement to which it applies, and to entertain any proceedings brought under the Act or any such agreement.

REPRESENTATIONS AND EVIDENCE

13. In accordance with Directions the Applicant made written representations and prepared a bundle of documents for the Tribunal. The Respondent, by her appointed representative Ms Laurie, provided a document headed *Withdrawal Reasoning – Continued* dated 26 July 2020 which the Tribunal is taking as her Statement of Case. On 12 October 2020 the Respondent updated the earlier statement including some photographs and the Applicant made a further statement in response.
14. The Tribunal had the Application and Directions and a copy of the Agreement.
15. The Tribunal initially determined that the four express issues to be determined were:
 - Whether permission was granted for the alterations proposed in the plans.
 - Whether the replacement of the slabs to the parking area with block paving was a material change to any permission granted.
 - Whether the occupier has permission to park a car on the pitch.
 - Whether the terms of the Breach Notice are valid.
16. The Applicant received a sketch plan from the Respondent setting out various changes proposed for the garden and parking areas surrounding the home. The Respondent in its letter dated 04 October 2018 made reference to requirements for the relationship between the positioning of fencing and the neighbours LPG tank. There is reference to removing a car. A further, more detailed, plan was requested. Reference is made to local authority requirements regarding the recording of “structures”. The letter concludes that the park owner is happy for the Respondent to do the work subject to providing the detailed plan mentioned and issuing written permission before the work commences.
17. A more detailed plan is provided which produces a written response from the Applicant dated 28 January 2019. The Applicant said that the work proposed is acceptable and made some comments. They made it clear that any low fence at the rear would need a gate to allow access for meter reading. It also gave information regarding other works that the Site Owner was undertaking regarding gas safety and fencing.

18. The Applicant stated that it expected the wall to the boundary to No 9 would be completed before any new work starts on the plot. It also pointed out an alleged trip-hazard caused by the paving accessing the porch.
19. In September 2019 there was further correspondence when the Applicant complained to Mrs Brown that work to the boundary wall had not been completed and it imposed a one-month time limit to complete this work. A letter dated 04 December 2019 identified the replacement of paving slabs at the front with block paving which had not been approved. That letter gave further details of the specification for the provision of this type of paving. There were further letters to the Applicant regarding the same matter in January and February (2) to which no response was received resulting in a Breach Notice dated 25 February 2020.
20. The Breach Notice indicated that unauthorised work had been carried out contrary to Part 3(e) of the Agreement and Park Rules 6, 10 & 24. The Notice identified the remedy for the breach which required a written application for permission to be made within 14 days of the date of the Notice and to install a brick paved parking area to an express specification. There was also a time limit for completing the work.
21. A further condition is that if there was no application for permission the 'sub-standard' paving must be removed by 27 March 2020 and the plot laid to grass. The Applicant then imposed a further rule that all vehicles must park in the main car park and not on the plot or in the park road.
22. In the Statement made on her behalf dated 26 July 2020 Mrs Brown explains the background to the case. After the home was purchased the Applicant identified that a boundary wall was unsafe and needed rectification. To briefly summarise her case the following are relevant issues:
 - She complains of harassment and indications from the Applicant that there will be court costs to pay.
 - Her defence is that she has not signed any agreement and has not received a copy of the Written Statement or Park Rules.
 - She believes that she has followed the terms of the agreement as the plan she submitted shows an approved parking space.
 - The previous work on the site carried out before her purchase was not completed to the standard now required.
23. In response by letter dated 10 September 2020 the Applicant refers to matters *[unidentified]* that have been resolved to their satisfaction. Their responses to other issues are summarised as follows:
 - Mrs Brown signed the required form formally assigning the Mobile Homes Act agreement and its obligations.
 - The home is understood to be 33 years old.

- The plan submitted clearly shows that slabs were to be laid on the left side of the home and not block paving to the front. Block paving requires an entirely different laying method to standard slabs.
 - There is provision in both the express terms of the Agreement and the Park Rules requiring permission to be obtained before undertaking hard landscaping.
 - Any earlier work on site was not subject to the current specifications.
24. In response to the further Directions dated 28 September 2020 the Applicant made a further statement dated 09 October 2020. Additional documents were provided together with photographs and descriptions of these.
25. In addition the Applicant provided photographs of other block paving areas nearby installed to the standard required.
26. Although indicating on 09 October 2020, in response to the September Directions, that the Respondent had nothing to add she amended her original statement on 20 October 2020. She failed to clarify the illegible document previously submitted but added some photographs with comments. The first photograph is intended to show a ‘ramped’ edge to the alleged trip-hazard to the paving. Two further photographs show a trip-hazard elsewhere on the estate and an unrepaired compound fence.
27. The Respondent provided another photograph of the block paved area indicating that the work is not complete. It expressed the view that alleged omissions by FCC were irrelevant to the Application.

CONSIDERATION

28. Firstly, the Tribunal consulted the Agreement with the Occupier. In Part 3, Express terms of the agreement paragraph 3(e) states that:

The Occupier must not, without the prior written consent of the site owner ... carry out any of the following:

- (i) *Building works to ... the pitch ...*
- (ii) *...*
- (iii) *Paving or hard landscaping, ...*
- (iv) *...*
- (v) *...*

In considering any request for consent to carry out any such works, the site owner shall have regard to all the circumstances, including the weight of any proposed works and their likely effect (if any) on the mobile home, the pitch, the base on which the mobile home is stationed, and the amenity of the site.

29. The Park Rules at paragraphs 3 & 6 have similar restrictions. Rule 10 allows the resident to bring one vehicle onto the park. *Where a parking bay is installed adjacent to a home this must be used for one vehicle only and any second vehicle must be parked in the main car park. (written approval for on plot parking bays will not be unreasonably withheld).*

30. The Respondent prepared a plan showing the proposed landscaping of the pitch and submitted it in accordance with the general instructions of the Site Owner. In response to the first sketch plan FCC wrote on 04 October 2018 giving some guidance regarding fencing relating to the gas tank next door which seems to be connected to some work FCC is doing at the park. [details were not supplied]. FCC also confirmed that the Respondent would be removing a car and asked her to say when the wall on the boundary to No 9 would be altered. FCC also asked for a more detailed plan so that it “could refer to it in case any future owner attempt to change things without permission” and for the local authority record.
31. Mr Mourton’s 04 October letter concluded “*If you can get this [the detailed plan] to me as quickly as possible I can confirm that the site owner is happy for you [Mrs Brown] to do this work and give you the necessary written permission before you make a start*”.
32. There was no mention of any required specification for any of the work or any time limits for its conclusion. It is assumed that the car mentioned was something stored on the pitch but there is no suggestion that the Applicant wishes to restrict the established arrangement for a car to be parked on the pitch.
33. As required a second plan was produced which prompted a response from FCC dated 28 January 2019. The second plan shows a parking space at the front of the pitch [material not identified] with shingle adjoining and a paving slab path leading back from it to a patio and grassed area. There was also other areas of shingle and some fencing. This letter states “*We have reviewed your proposals for the plot layout and we confirm that the work you propose is acceptable.*” Mr Mourton went on to comment on other points relating to boundary fencing and work in connection with gas safety and the electricity meters.
34. It was also an expectation that the boundary wall between this pitch and No 9 would be completed before any new work is completed. There were no time limits imposed.
35. As a separate issue mention is made in the letter to paving slabs laid “*in front of the steps to the porch*” which need to be removed as they are a trip-hazard. From the external inspection the slabs to the porch at the side of the home appeared to be in good order. The photograph provided by FCC relates to some paving slabs leading to the right-hand side of the home. Some asphalt or tarmac has been added to these slabs to level the edge.
36. Mr Mourton offers to discuss any points.
37. We consider that the Applicant has clearly provided consent to the proposed work as shown on the later plan without any expression of required standard of work or specification. It must be inferred that the work would be to a reasonable standard.
38. Susequent letters from FCC to Mrs Brown concentrate on the work to the boundary wall and then raises the new issue of the specification for block paving. Then a time limit is imposed.

39. In its letter dated 12 February 2020 FCC states that failure to comply with its new requirements will result in an application for a court order which *will* incur you in legal costs. The Tribunal considers that the tone of this letter is unnecessarily aggressive and is incorrect as it will be for a court to decide the question of costs.
40. On 25 February FCC issued what it describes as a Breach Notice. There is no indication in the document under which statute the notice is issued although it does quote sections of the Written Agreement and the Park Rules. The letter does not identify the nature of the alleged 'breach'. In the Tribunal's opinion this letter is designed to resemble some form of legal notice. It doesn't state what Mrs Brown has done wrong and simply sets out how she might 'remedy the breach'. One of the new matters included in the proposed remedy is a detailed specification for laying block paving. There is also mention for the first time that all vehicles must, on completion of the work, park in the main car park and not on the plot. This is an attempt to remove Mrs Brown's established right to park a car on the pitch. All these terms reflect a legal procedure which is outside the Act.
41. The method of resolving disputes is set out paragraph 11 of the Written Statement namely a referral to this Tribunal which is the purpose of these proceedings.
42. It would seem that FCC believes that it did not give permission for the parking area to be re-paved with brick paviors. The plan shows a patio identified as a parking space, there is no indication of the materials to be used. No evidence has been produced to show the material existing in this area or the proposed material for the patio. As it now seems that FCC are very concerned about the laying of brick paviors and the specification for doing so it would have been reasonable for them to point this out to Mrs Brown at the time and not later when she had completed the work. The Applicant gives no reason for objecting to the brick paving. It is laid to a reasonable standard, it is level and suitable for its purpose.
43. Under the written agreement the site owner, when considering whether to grant permission for works, shall have regard to *all the circumstances, including the weight of any proposed works and their likely effect (if any) on the mobile home, the pitch, the base on which the mobile home is stationed, and the amenity of the site*. FCC have not suggested any reason why the proposed work might have any detrimental effect on the mobile home or its base, or the amenity of the site. The Tribunal considers that the work as completed is satisfactory and has no detrimental effect on the amenity of the site.
44. The Tribunal determines that by its letter dated 28 January 2019 the Applicant gave permission for the work outlined in the plan. If at that time FCC had intended to impose a detailed specification for the proposed work it should have done so within this written permission. The letter itself is sufficient permission.
45. There is no indication on the plan which material is used in the parking area. The block paving has been laid in a satisfactory manner and no reasons have been given by the Applicant as to why it is inappropriate.
46. The Applicant cannot remove the occupiers right to park a car on the pitch.

47. Accordingly the Breach Notice has no effect.

COSTS

48. In its Application the Applicant seeks to recover from the Respondent the full cost of making the application and asks the Tribunal to so order.
49. There is no general power to award costs against a party in these proceedings but the Tribunal has, in exceptional cases, the opportunity to reimburse fees incurred in making an application to it. In this case the Applicant has not succeeded so no order in this respect will be made.
50. The Tribunal also has power under Rule 13¹ to order reimbursement to any party of the whole or any part of costs of the proceedings. Before making such an order the paying party must have an opportunity to make representations. There has been no formal application under Rule 13 by either party.

Dated: 20 November 2020

Mr BH R Simms (Chairman)

APPEALS

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at 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.

¹ Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 – SI 2013/1169