FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	BIR/17UJ/PHC/2020/0001
HMCTS	:	P:PAPERREMOTE
Property	:	Clwyd, Millfield Park, Old Tupton, Chesterfield S42 6AD
Applicant	:	Ms Phoebe Willett
Representative	:	Apps Legal Limited (Miss K Apps)
Respondents	:	Mr David Blogg and Mrs Sharon Blogg
Representative	:	Henriques Griffiths LLP (Mr S Mayer)
Type of Application	:	An Application under section 4 of the Mobile Homes Act 1983 (as amended) seeking a determination of any question arising under this Act or any agreement to which it relates
Tribunal Members	:	Judge David R. Salter (Chairman) Ian Humphries BSc (Hons) FRICS
Date of Decision	**:**	21 December 2020

DECISION

© CROWN COPYRIGHT 2020

Introduction

1 By an application dated 8 June 2020 to the First-tier Tribunal (Property Chamber) (Residential Property), which was received by the Tribunal on that date, the Applicant applied for a determination by the Tribunal under section 4 of the Mobile Homes Act 1983 (as amended) of the matters set out in that application.

2 The Applicant is the current owner of Millfield Park, Old Tupton, Chesterfield, Derbyshire S42 6AD ("the Site"). This is a residential mobile home park which is part of Ponderosa Park. It is a protected site within the meaning of the Act.

3 The Respondents are the owners of a mobile home which occupies the pitch on the Site known as Clwyd, Millfield Park, Old Tupton, Chesterfield S42 6AD ("*Clwyd*") under the terms of a written agreement made between the Applicant (then known as Mrs Phoebe Beale) and the Respondents dated 15 June 2014 and signed by each of the Respondents on 16 June 2014 which came into effect on 4 July 2014 ("the Agreement").

4 In the application, the Applicant identified the matters upon which she sought a determination from the Tribunal and outlined the corresponding remedies as follows:

(i) 'a declaration she or her representative on the park [the Site], Jim Windsor, be entitled to access the pitch every quarter for the purposes of reading the electricity meters for Clwyd and the neighbouring mobile home. The Applicant is also seeking a direction that the Respondents allow access to their pitch for this purpose each quarter' ("*Issue 1 – access to electricity meters*").

(ii) 'a declaration that the Respondents are in breach of the express terms [of the Agreement] and a declaration that the fence at the front and back of the mobile home [*Clwyd*] be removed and replaced…' ("*Issue 2 – fence*").

5 Directions were issued by the Regional Judge on 12 June 2020. In those Directions, the Regional Judge specified, initially, that the application form and accompanying bundle of documents comprising 81 pages should be deemed to be the Applicant's Statement of Case. Thereafter, the Directions directed that, no later than 16 July 2020, the Respondents should serve on the Applicant and the Tribunal (3 copies) a joint Statement of Case setting out all matters of fact and law upon which reliance was placed and exhibiting all relevant documents and, further, that, no later than 30 July 2020, the Respondents should serve a Reply on the Applicant and the Tribunal (3 copies).

6 In addition, the Directions recorded that the Applicant had signified that she was content with a paper determination. In this respect, if either or both of the Respondents required an oral hearing they were invited to so advise the Tribunal on the filing of their Statement of Case. No such request for an oral hearing was received by the Tribunal.

7 The parties were also informed in the Directions that the Tribunal would not carry out an inspection. As a consequence, the Directions specified that the parties could submit photographs of the condition or other relevant aspects of the Site and the pitch within the Respondent's Statement of Case or the Applicant's Reply as appropriate.

8 Finally, the Directions indicated that the Tribunal may in its discretion conduct a "drive by" inspection of the Site and pitch. No such inspection was undertaken by the Tribunal.

9 In furtherance of the Directions, Mr Mayer submitted, on behalf of the Respondents, a joint Statement of Case dated 16 July 2020 that was accompanied by a number of exhibits which were referred to in that Statement of Case. Following the grant of an extension of time, Miss Apps submitted a Reply, on behalf of the Applicant, dated 6 August 2020 and received by the Tribunal on 7 August 2020. This comprised a witness statement by the Applicant ("the initial witness statement") and various exhibits.

10 Subsequently, in an application to the Tribunal dated 1 September 2020 under the Tribunal Procedure First-tier Tribunal (Property Chamber) Rules 2013 ("the Tribunal Rules"), Mr Mayer sought, on behalf of the Respondents, permission to introduce two witness statements in evidence one of which was executed by Mr Blogg and dated 3 September 2019 and the other by Mr John Gerrard, the owner of Millcroft a mobile home situate on the Site, dated 2 September 2019. In a letter dated 3 September 2020, Miss Apps objected to this application, but indicated that should the Tribunal be minded to grant permission the Applicant should be afforded the opportunity to respond. Following due deliberation, the Tribunal permitted the Respondents to adduce these documents in evidence and granted the Applicant the opportunity to file a written response thereto to the Tribunal (three copies) on or before 18 September 2020. Such written response was made in a letter from Miss Apps dated 17 September 2020 and this was accompanied, *inter alia*, by two witness statements one of which was a second witness statement by the Applicant and the other by Mr Windsor. Further correspondence in September 2020 was received by the Tribunal from Miss Apps and Mr Mayer that covered a matter which is alluded to following the recording of the parties' submissions on the substantive issues and in the Tribunal's determination that follow.

11 In light of the above, the Tribunal determines the application under section 4 of the Act on the basis of the written evidence submitted by the parties, without an inspection of *Clwyd* and the surrounding environs of Millfield Park, through the medium of telephonic communication.

Relevant Law

12 Section 1(1) of the Act provides:

Particulars of agreements

'This Act applies to any agreement under which a person ("the occupier") is entitled:

(a) to station a mobile home on land forming part of a protected site; and
(b) to occupy the mobile home as his only or main residence…'

13 Section 3(1) of the Act provides:

Successors in title

'An agreement to which this Act applies shall be binding on and enure for the benefit of any successor in title of the owner and any person claiming through or under the owner or any such successor.'

"Owner", in relation to a protected site, means the person, who, by virtue of an estate or interest held by him, is entitled to possession of the site or would be so entitled but for the rights of any persons to station mobile homes on land forming part of the site (see, section 5(1) of the Act).

14 Section 4(1) of the Act provides:

Jurisdiction of a tribunal…

'In relation to a protected site… a [residential property] 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.'

Submissions of the Parties

Issue 1 – access to electricity meters

Applicant

15 The essence of the Applicant's submission in relation to this matter is to be found, principally, in the application under section 4 of the Act and the documents that accompanied this application, and, thereafter, consolidated in the evidence filed, subsequently, with the Tribunal. Such submission may be represented as follows.

16 The Applicant makes provision for the supply of electricity to all mobile homes situate on Millfield Park, including *Clwyd*. The electricity meters for *Clwyd* and another mobile home situate alongside *Clwyd* are located within *Clwyd* and towards its rear.

17 It is the responsibility of Mr Windsor to read the electricity meters for all mobile homes on the Site every quarter and from these readings electricity bills are prepared for and delivered to each of the mobile home owners.

18 The Applicant's right to enter *Clwyd* for the purpose of reading the above-mentioned electricity meters falls within those implied terms that automatically apply to the written agreement between the parties by virtue of the Act and are set out in the Written Statement required by the Act (see, in particular, the Annex to Part 2 of the Written Statement, Implied Terms, paragraph 12(b)). This provision states:

'The owner may enter the pitch [*Clwyd*] without prior notice between the hours of 9 a.m. and 6 p.m. –

(a)…

(b) to read any meter for gas, electricity, water, sewerage, or other services supplied by the owner.'

19 The Applicant stated that for some time beginning in January 2019 neither she nor Mr Windsor had been able to gain access to *Clwyd* to read the electricity meters because the gate in the fence constructed by the Respondents around *Clwyd*, which allowed access to *Clwyd*, had been locked by the Respondents. Miss Apps wrote to the Respondents on 7 February 2019 and 3 May 2019 and on 4 July 2019 to solicitors who were acting for the Respondents at that time. These letters were adduced in evidence by the Applicant. Broadly, to the extent that they relate to gaining access to *Clwyd* to read the electricity meters, each of the letters asserts the Applicant's right under paragraph 12(b) to do so and stresses that the exercise of that right by the Applicant or Mr Windsor should not be impeded by the Respondents. The Applicant avers that, notwithstanding these letters, access to *Clwyd* continued to be denied by the Respondents even though, on occasions, either of the Respondents or both of them were present when access was sought.

20 In this respect, the Applicant drew the Tribunal's attention in her initial witness statement to an instance of a failed attempt on her part to gain access to the electricity

meters on 29 April 2019 when in her words 'the Respondents were there at the time but did not let me in'. Further, the Applicant informed the Tribunal in that statement that, latterly, she instructed her representative to write to the Respondents asking them to make arrangements for the gate to be unlocked on 22 November 2019 in order that access to *Clwyd* could be gained to read the electricity meters. A letter to this effect dated 14 November 2109 was adduced in evidence by the Applicant. In the event, the gate was locked on that day. This is corroborated in Mr Windsor's witness statement in the following words:

'I had tried to read the meters on 22 November 2019 as per Phoebe's solicitor's letter but the gate was locked. I am attaching a copy of my email to Phoebe's solicitor from 22 November which confirms that I was unable to gain entry.'

Mr Windsor also added that he had attempted to enter *Clwyd* to read the electricity meters on relevant quarter days in 2019 but without success; he had not tried to gain access since November 2019.

The Applicant stated that the lack of access on 22 November 2019 was raised with the Respondents' representative on 28 November 2019 and a request made for dates and approximate times when the gate might be left unlocked to enable the reading of the electricity meters. The Applicant informed the Tribunal that no response to this request was received.

21 In the above-mentioned witness statement, the Applicant concluded:

'I have tried to arrange for access to read the meters, but these have been denied by the Respondents. My solicitor's letters have been ignored. I have had to commence legal proceedings for them to accept that myself or my agent have the right to gain access to read the meters. I do not believe that without a direction from the Tribunal that the Respondents will keep the gate unlocked and allow us entry to read the meters once a quarter…'

<u>Respondents</u>

22 In their joint Statement of Case, the Respondents accepted that the above-cited paragraph 12(b) of the Written Statement (see above, paragraph 18) gave the Applicant the right to enter *Clwyd* for the purpose of reading the electricity meters. In this respect, the Respondents denied that they had prevented the Applicant from exercising this right and pointed out that the gate giving access to *Clwyd* was locked, generally, for security reasons and to ensure that their dogs did not escape from the pitch.

23 However, the Respondents continued that 'the only objection raised was that Mr Jim Windsor should enter on the pitch', because of an altercation between Mr Blogg and Mr Windsor on 24 May 2018 which had led to injuries to Mr Blogg's back. The Respondents adduced in evidence photographs which they said showed those injuries. Further, the Respondents intimated that this incident was reported to the Police and a full statement was provided by Mr Blogg. The Respondents added that this incident had 'a dramatic impact on him [Mr Blogg] and created a great deal of anxiety'; Mr Blogg had a lengthy history of depression following a similar incident when he was serving in the RAF.

24 The Respondents also informed the Tribunal that they had provided photographs of the electricity meter readings to the Applicant in order to avoid any further confrontations with Mr Windsor.

25 In concluding their joint Statement of Case on this matter, the Respondents stated that they accepted that the Applicant may access *Clwyd* once every quarter to read the electricity meters and that they did not raise any objection to this.

26 Subsequently, Mr Blogg, on revisiting the question of access to *Clwyd* to read the electricity meters in his witness statement, commented (paragraph 10):

'With regard to entry to pitch, neither I nor my wife have ever stated that we would never let Mr Windsor on the pitch. I failed to open the gate to him on one occasion when my wife was ill. This was following the incident when he assaulted me and I don't trust him or wish to see him at that point, particularly at that particular moment given my wife's health. Other than this, Mr Windsor has never made any further attempt to come to our pitch.'

Issue 2 – fence

Applicant

27 The Applicant submitted that the Respondents had erected a wooden fence around their pitch (*Clwyd*) without obtaining her prior written consent as required by paragraph 3(e), Part 3 (express terms of the agreement) of the Written Statement ("paragraph 3(e)").

The Applicant stated that the fencing which had been erected to the rear of *Clwyd* had replaced trees and a hedgerow. In support of this statement, the Applicant adduced in evidence a series of aerial photographs of the pitches aligning a road on the Site, including *Clwyd*, dated 16 July 2013, 14 September 2016 and 26 May 2017 which the Applicant intimated showed the trees and hedgerow that had been removed. The Applicant also presented in evidence an undated photograph showing the fence to the rear of *Clwyd* and the retained hedgerow to the rear of the pitch adjoining *Clwyd*.

28 Paragraph 3(e) provides as follows:

'**Your obligations**

3. You agree with the site owner as follows:

(e) You must not, without the prior written of the site owner (which must not be unreasonably withheld) carry out any of the following:

(ii) the erection of any porches, sheds, garages, outbuildings, fences, or other structures…

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 Applicant also contended that the erection of the fence was in breach of the site (Park) rules with which the Respondents were obliged to comply. In this respect, the Applicant referred the Tribunal, specifically, to paragraph 2 of those rules. This provides:

'You must not erect fences or other means of enclosure unless you have obtained our approval. You must position fences and other means of enclosure so as to comply with the park's site licence conditions and fire safety requirements.'

30 In her evidence, the Applicant re-iterated on several occasions that she did not give the required consent for the erection of the fence around *Clwyd* by the Respondents. In her initial witness statement she stated, explicitly, in paragraph 45 as follows:

‘I did not give my agreement for the erection of the fence prior to agreeing the sale of the mobile home nor did I give my permission for the fence to be erected after the agreement under the Mobile Homes Act commenced. The Respondents erected the fence without my permission in breach of [paragraph 3(e)(ii) of the express terms of the written statement].’

Similarly, in her second witness statement, the Applicant pronounced in paragraph 7:

‘I would not have allowed and did not give Mr Blogg permission to erect any fence prior to becoming the owner of the home on the pitch for the reasons given in my first witness statement or at all.’

31 In furtherance of this position, the Applicant presented in her initial witness statement a chronology and commentary in tabular form, together with related exhibits, for the period 14 May 2014 to 11 July 2014. This was drawn from her records of her dealings and those of her representative with the Respondents leading up to their purchase of the mobile home and shortly thereafter. The Applicant averred that there was no reference in this evidence to any agreement on her part to allow the Respondents to erect a fence around their pitch. In this regard, the Applicant indicated that if she had agreed to the erection of the fence for whatever reason, such as the safety and well-being of their dogs as claimed by the Respondents (see further, paragraphs 42 and 48 below), she would have told her solicitor to note this in correspondence with the Respondents and she would have expected the Respondents to have insisted that such an agreement relating to the fence be included ‘in the sales agreement or to have been recorded somewhere in the paperwork’.

32 Furthermore, the Applicant added in that statement that if she had known prior to the sale of the mobile home to the Respondents that they would want to erect a fence around *Clwyd*, principally, because of their dogs she would not have sold the mobile home to them. In this respect, the Applicant alluded to a meeting with Mr Blogg and related the following information to the Tribunal:

’16. I remember meeting Mr Blogg by himself on the Park. I think this would have been on 27 May 2014, which is the date I gave him the written statement and when I believe I took the deposit of £500 from him…

17. Mr Blogg did not discuss with me the requirement for a 6ft fence around the pitch. He did not say that he and his partner have two dogs and work for dog rescue charities. Nothing was said to me at all about any of these things. If he had told me that he had two dogs, that he and his partner worked for a dog rescue charity and because of these things he needed a 6ft fence around this pitch I would not have agreed the sale of the mobile home…I would not want the pitch to become overrun with rescue dogs and a 6ft high fence enclosure around the property would have been unacceptable and out of keeping with the rest of the Park…

19. The majority of the Park has an open plan feel, especially at the front of the homes. This is how I like the Park. Also, not everyone looks after fences. They are a fire risk and can be a breach of the site licence rules…

21. If Mr Blogg had told me about bringing two dogs on the Park, his dog rescue work and the need for a 6ft fence to keep the dogs enclosed and that his purchase was dependent on my agreement to these things, I would not have agreed the sale…’

33 The Applicant also opined that if the Respondents had asked for her consent in accordance with the Agreement to erect the fence around *Clwyd* in a manner that required the removal of the trees and hedgerow at the rear of that pitch and the creation of a 'complete enclosure' she would have withheld consent. However, the Applicant said that this did not mean that she withheld consent as a matter of course whenever it was properly sought by residents of mobile homes situated on the Site and adduced in evidence several instances where she had deemed it reasonable to grant her consent. These instances included permission to renew/replace decking and the replacement of fence panels.

34 Further, the Applicant denied in her initial witness statement that she made any oral representation to the Respondents either before or after the completion of the sale of the mobile home on 4 July 2014 that they could erect the fence around *Clwyd* and upon which the Respondents acted. In this respect, the Applicant conceded that she was present on the Site on the day that the fence was erected. The Applicant could not recall the exact date, but it was after the day on which the Agreement came into effect, namely 4 July 2014. However, the Applicant denied that she had acquiesced in the erection of the fence on that day. In this regard, the Applicant stated in that witness statement (paragraph 36):

'I saw that the fence was being erected by contractors and I approached them. A lot of the fence had already been erected by this time. I told the contractors that they should stop work because I had not given permission. I did not tell them "where to place the fence", or "to move the fence because it was too close to the park home". I told them to stop and remove the fence altogether, but they did not.'

As to the date on which the fence was erected, the Applicant noted in her second witness statement that the Respondents had been unable to present in evidence an invoice describing the work done, the total cost of that work, the date on which the work was undertaken and by whom that work was carried out. In her opinion, it was insufficient for the Respondents, in these respects, to adduce in evidence a bank statement showing a payment of £1,000.00 on 1 July 2014 to 'LC Chesterfield, Clay Cross' drawn on account in the name of Mr Blogg (see further, paragraph 47 below) and to refer to that payment as a final payment for the erection of the fence.

35 The Applicant also refuted in her initial witness statement any suggestion that Mr Gerrard was authorised by her to make any decisions about the operation and management of the Site, including requests from residents to erect fences. More particularly, whilst the Applicant acknowledged that Mr Gerrard had undertaken some maintenance work for her, she stated that he had never been employed by her as the site manager. Accordingly, the Applicant challenged the open letter signed by Mr Gerrard dated 30 June 2018, which the Respondents adduced in evidence, to the extent that he claimed to be the site manager and where it addressed the questions of when the fence was erected and consent for its erection (see, further, below paragraph 50).

The Applicant pointed out that this letter is not verified with a statement of truth and that she was not familiar with Mr Gerrard's signature. In light of this, the Applicant stated, subsequently, in her second witness statement that she had expected a copy of this letter to be appended to Mr Gerrard's witness statement with a confirmation that its contents were true, but there was no reference to this letter in that witness statement.

Apropos the day on which the fence was erected by the Respondents and the absence of any permission for its erection, the Applicant made the following observations in her initial witness statement about Mr Gerrard:

‘36…I believe that Mr Gerrard was present but he did not say anything to me about Mr and Mrs Blogg’s belief that I had agreed for the fence to be erected or that he had checked with me to confirm this and I had given the go-ahead.

37. John Gerrard did not contact me about the erection of the fence before it happened. I had no idea that Mr and Mrs Blogg wanted to erect a 6ft fence.’

36 Following the erection of the fence, the Applicant informed the Tribunal in her initial witness statement that she contacted Mr Blogg and told him that the fence had not been put up with her permission and that it needed to come down and when this did not happen she pointed out to the Respondents on numerous subsequent occasions that she was not happy, but was assured by the Respondents that ‘they would put things right but they never have’.

37 In view of these and other circumstances germane to the Respondents, the Applicant stated in the witness statement that, ultimately, she instructed Blacks (solicitors), who were acting for her at that time, to write to the Respondents about various matters, including the erection of the fence. In accordance with that instruction, Blacks sent a letter dated 21 June 2018 to the Respondents by recorded delivery. In that letter, Blacks pointed out the need for the Respondents to have obtained the Applicant’s prior written consent for the erection of the fence around *Clwyd* and indicated that the fact this had not been obtained meant that the Respondents were in breach of the express terms of their agreement with the Applicant and in breach of the park (Site) rules. This letter was adduced in evidence by the Applicant. The salient paragraphs in the letter are as follows:

‘On a date shortly after you moved onto the Park in July 2014, you erected fencing around the Pitch…You did not seek our client’s consent for the erection of the fence and no such consent was granted.

The erection of the fence in the absence of prior written consent of our client is a breach of express term 3(e)(ii) of the Written Statement. In addition, it is also a breach of section 2 of the Park Rules which, as per express term 3(h) of the Written Statement, you are required to comply with.’

38 In that letter, Blacks also informed the Respondents, within the context of paragraph (section) 2 of the site (Park) rules, that the Applicant reserved the right should the need arise, first, to measure the height of the fence to ensure that it complied with the Applicant’s site licence which requires in paragraph 2(iv)(f) that ‘fences and hedges, where allowed and forming the boundary between adjacent caravans, should be a maximum of 1.8 metres high’, and, secondly, the right to measure the perimeter of the fence to ensure that it remains within *Clwyd’s* area and, consequently, does not infringe on another resident’s pitch or on the common parts of the park (Site).

39 As to the other matter referred to in paragraph 2 of the site rules, namely compliance with fire safety requirements (see above, paragraph 29) and the prospect that the fence erected by the Respondents was non-compliant with such requirements, the Applicant adduced in evidence a report, which she had commissioned, written by Mr Ralph Weaver, a specialist in health, safety and the environment, of Arrelle Limited and dated 13 February 2020. The summary and recommendations in that report are as follows:

‘The total enclosure of the site [*Clwyd*] presents a potential danger from fire spread to the residents and neighbours along the fence line.

The elevations are a potential for fire spread especially during extended dry spells and hot weather and the fence panels tend to be more combustible than tree hedging.

Escape and emergency access are restricted and obstructive with the locked gate at the front increasing risk to residents escape and emergency service access.

The front fence should be replaced with an open aspect or a similar hedging arrangement as the other neighbouring residences for easier site exit and emergency service access.

The rear fence should be removed and the hedge/treeline reinstated.'

40 In the Application, the Applicant drew on Mr Weaver's report and declared that the report showed that the fence is affecting fire safety, and, consequently, it is in breach of the site rules. Subsequently, in her initial written statement and following receipt of an addendum to Mr Weaver's report dated 5 August 2020, the Applicant highlighted an observation in that addendum in which Mr Weaver remarked that although the risks of a fence fire are low, the risks could be exacerbated and made serious by the impact of what he described as 'human factors'. The Applicant surmised that any untidiness on *Clwyd* could fall within the human factors alluded by Mr Weaver and repeated her earlier expressed view that 'the fence does pose a fire risk'.

41 The Applicant concluded the evidence in her initial witness statement on matters relating to the fence with the following words in paragraph 50 of that statement:

'I am asking for a declaration that the Respondents are in breach of paragraph 3(e)(ii) of the written statement and for the Tribunal to direct that the fence be taken down and the front fence replaced with an open aspect or a similar hedging arrangement as the other neighbouring residences for easier site exit and emergency service access. The rear fence should be removed, and the hedge/treeline reinstated.'

<u>Respondents</u>

42 In opening their joint Statement of Case, the Respondents informed the Tribunal that they were attracted, initially, to the Site because it was stated on the Site's website that it was pet friendly. In pursuance of this interest, they arranged a viewing of the Site and their proposed pitch (*Clwyd*) with the Applicant in 2014. At that viewing, the Respondents indicated that they told the Applicant that they would require a fence (approximately 6 feet high) to be erected around the pitch, because they had two dogs and were involved in dog rescue work, and that the Applicant agreed to this. The Respondents stated that, accordingly, they paid a deposit to the Applicant and, subsequently, moved on to the Site on 4 July 2014.

43 In the ensuing paragraphs of their joint Statement of Case, the Respondents contested each of the Applicant's contentions namely, that, first, the Respondents did not have the required permission to erect the fence around *Clwyd* and, consequently, were in breach of paragraph 3(e)(ii) of the Written Statement, secondly, the absence of that permission was a breach of paragraph 2 of the site rules, thirdly, the height and positioning of the fence may not comply with the requirements of paragraph 2(iv)(f) of the site licence and, thereby, constituted a further breach of paragraph 2 of the site rules, and, finally, the fence did not comply with fire safety requirements.

44 The submissions made by the Respondents on each of these matters may be summarised as follows:

Consent for erection of the fence

45 The Respondents stated in their joint Statement of Case that the fence around *Clwyd* was erected before they moved into their mobile home on 4 July 2014 and before the Written Statement was signed on 11 July 2014. Consequently, the Respondents submitted that the

fence was erected before the Written Statement, particularly paragraph 3(e)(ii), was binding upon them.

46 Thereafter, the Respondents explained that arrangements for the erection of the fence prior to their arrival on *Clwyd* were made with Mr Gerrard, the site manager, with the 'safety, security and wellbeing' of their two dogs in mind. Further, the Respondents indicated that it was their understanding that Mr Gerrard contacted the Applicant, directly, about the erection of the fence.

47 In his witness statement, Mr Blogg averred that two exhibits attached to that witness statement were further indicators that erection of the fence had taken place prior to the Respondents moving into their mobile home on *Clwyd*. The first of those exhibits is a bank statement issued for the period 9 June to 8 July 2014 by HSBC Advance in respect of an account in Mr Blogg's name. In that respect, Mr Blogg drew the Tribunal's attention to a payment in that statement for £1,000.00 made in favour of 'LC Chesterfield, Clay Cross' by way of bank transfer on 1 July 2014 which he explained was the final payment to the contractor who erected the fence. As to the latter exhibit, namely, an open letter dated 10 August 2020 written by Miss C Bonnett, Mr B Taylor and Mr D Nugus (friends of the Respondents), Mr Blogg drew the Tribunal's attention to the assistance given to the Respondents by these individuals when the Respondents moved into their mobile home with their dogs on 4 July 2014 and, more pertinently, to the joint recollection of those individuals in that letter that the fence around *Clwyd* was already in place on that day and that an individual was present on that day who they believed to be the site owner.

48 With regard to the Respondents' dogs alluded to in the above paragraphs, Mr Blogg denied in his witness statement any suggestion by the Applicant that the Respondents did not, in fact, have their dogs with them when they moved into their mobile home on *Clwyd*. In this respect, Mr Blogg adduced in evidence the veterinary records of each of the dogs which showed, *inter alia*, that the dogs were registered at the local Charlesworth Veterinary Surgery on 14 July 2014. Mr Blogg indicated that it would not have been possible to register the dogs locally before they moved into their mobile home on *Clwyd* and such registration is 'clearly supportive of the fact that we had both dogs at the time we moved in'. For the avoidance of any doubt, Mr Blogg added that the Respondents work with rescue dogs did not involve any dogs being brought to *Clwyd* or accommodated there.

49 As to the Applicant giving her consent for the erection of the fence, the Respondents averred in paragraph of their joint Statement of Case (paragraph 8):

'Not only was she fully aware the fence was being erected, but she clearly gave consent to it, as not only did she give consent to us when we initially spoke to her about it, but John Gerrard also contacted her about it and would not have proceeded with it had the Applicant not agreed to it.'

The Respondents added that the Applicant was present when the fence was erected and instructed the contractors, who had been asked by Mr Gerrard to carry out the work, where to place the fence. In his witness statement, Mr Blogg opined that it was neither credible that, if, as suggested by the Applicant, she told the contractors to stop work on the fence, the contractors would have not complied with such a direction from the site owner nor conceivable that if the contractors had failed to stop work the Applicant would have tolerated this.

Incidentally, Mr Blogg denied that, in the course of the erection of the fence, a hedgerow to the rear of *Clwyd* had been removed. In this respect, Mr Blogg relied upon two open letters, introduced as exhibits to his witness statement, dated 7 August 2020 and written by Mr A and Mrs J Sparkes, respectively. In these letters, Mr and Mrs Sparkes identified

themselves as the residents, since 2012, of the mobile home known as No 3 Millfield Park. Further, Mr and Mrs Sparkes stated in each of their letters that prior to the erection of the fence there had been no hedge to the rear of *Clwyd* 'just trees and a couple of shrubs and a low stone wall'. They added that at one time they had been offered *Clwyd*, but they rejected it because the pitch backed onto the road and the low stone wall was not sufficient to prevent their dogs gaining access to that road.

50 In support of their position with regard to the grant of consent for the erection of the fence by the Applicant and her knowledge of its existence before they moved into their mobile home, the Respondents adduced in evidence, first, a letter written by Mr Gerrard dated 30 June 2018 in which, *inter alia*, he wrote:

'The 6ft fence that is currently on the pitch at Clwyd, Millfield Park was erected before Mr Blogg moved on the site at his request with the site owners agreement. I was site manager at the time and Mr Blogg asked me if I could organise it as he had 2 large dogs and the pitch needed to be made safe for them prior to his arrival in July 2014. I also contacted the site owner to confirm that this was the case and she agreed that it could be erected. During the installation of the fence she even asked the contractors to move the fence as it was situated too close to the park home.'

Secondly, they presented a subsequent witness statement by Mr Gerrard dated 2 September 2020 that was admitted in evidence by the Tribunal and in which Mr Gerrard re-iterated that he had acted as site manager for the Applicant at the relevant time and described his duties in the following way:

'My duties involved reading the meters, calculating the amounts due from the residents and drawing up the bills for utilities. The residents would then attend my home in order to make payment and I would keep a record. I would also show new prospective residents around the Site and explain the site rules to them. It was also part of my duties to carry out maintenance, cut the grass and deal with any problems which might arise. I carried out this role for around a year and I was site manager in June/July 2014 when the Respondents viewed the Site and moved into their home.'

Thereafter, Mr Gerrard continued by way of affirmation of his earlier explanation of the circumstances leading to the erection of the fence around *Clwyd* as follows:

'Before the Respondents moved onto the Site, they spoke to me about a fence around their pitch. One of their stipulations about moving onto the Site was that there was a fence around the pitch for their dogs. I telephoned the Applicant to discuss this and she agreed saying it was no problem. They wanted the fence erected before they moved in and this is what was arranged.'

In concluding his witness statement, Mr Gerrard said that he could 'clearly state' that the Applicant gave permission for the erection of the fence around *Clwyd*.

In their respective letters, Mr and Mrs Sparkes stated that Mr Gerrard was site manager when they took up residence on the Site in 2012 and that he remained in that position until at least late 2013. They indicated that Mr Gerrard took electricity readings and that they went to Mr Gerrard's property to pick up their bills. Additionally, Mr Gerrard undertook work for the site owner.

51 More generally, the Respondents also submitted that it was unconscionable for the Applicant to seek the declaration relating to the fence specified in the application on the basis that she had not granted permission in writing for the erection of the fence. The Respondents asserted that the Applicant gave verbal permission upon which it was reasonable for them to rely. Moreover, it was unreasonable, in this circumstance, for the

Applicant six years after the fence was erected to insist that the fence be removed and she should be estopped from doing so.

Height of the fence

52 The Respondents stated that the fence is 1.78 metres high which is within the maximum height for fences on the Site specified in paragraph 2(iv)(f) of the site rules. Consequently, there is no breach of that rule.

Fence - compliance with fire safety requirements

53 The Respondents estimated that at least five other mobile homes on the Site have fences around their pitches and opined that the presence of a fence does not, in itself, constitute a fire risk. They queried why the fence around *Clwyd* should be considered to be so different from those other fences.

54 The Respondents also questioned in their joint Statement of Case the usefulness of Mr Weaver's report which they said had been compiled without Mr Weaver visiting *Clwyd*. In their opinion, the report raised a number of concerns that were not relevant to *Clwyd,* and it was inaccurate, in that, for example, it referred to the fence only having one means of access to and egress from *Clwyd* on the front side when, in fact, it has two which are situated on each side at the front of *Clwyd* and were shown in photographs which they had adduced in evidence. As to the concerns to which the report gave rise, the Respondents referred, specifically, to a statement in the report that the fence was very close to the neighbouring boundary. In this respect, the Respondents stated in their joint Statement of Case at paragraph 11:

'In fact, the plan of the pitch [in the Written Statement] shows distance between the left hand (as you look at the Property from the road) boundary and the home as 6.9 metres. The fence only extends 3.4 metres from the home – well within our pitch. At the rear the plan shows the boundary to be 3 metres, when the fence only extends 2.65 metres.'

The Respondents added that they had sought advice about whether the fence around *Clwyd* constituted a fire risk from the local Fire Services and they had been advised that it was not a fire risk. In this regard, the Respondents reserved the right to introduce further evidence from such Fire Services should the need arise.

In light of the above, the Respondents opined that the question of any fire risk was irrelevant or, at least, secondary to the issue of consent.

Withdrawal of evidence – Mr Gerrard

<u>Background</u>

55 On 10 September 2020, Miss Apps sent an e-mail to the Tribunal with an attachment comprising a handwritten statement by Mr Gerrard of the same date. In that statement, Mr Gerrard said 'I John Gerrard retract all statements given to Mr Blogg and his solicitor as regards the fencing on Mr Blogg's property'. This statement is signed by Mr Gerrard. His name is printed in capital letters above the statement together with the date. It is not verified by a statement of truth.

56 In a subsequent letter to the Tribunal dated 18 September 2020, Miss Apps sought to explain the circumstances leading up to the retraction by Mr Gerrard. Such explanation may be set out as follows. Initially, Miss Apps referred to a letter dated 10 September 2020 which she had written to Mr Gerrard in which she referred to information that had been relayed to her by the Applicant, namely that Mr Gerrard had told another resident

of the Site that he had withdrawn his witness statement. In that letter, Miss Apps asked Mr Gerrard to confirm this in writing to her. This letter was posted before Miss Apps received a copy of Mr Gerrard's handwritten statement from the Applicant. Miss Apps informed the Tribunal that Mr Gerrard responded by telephone to the letter of 10 September 2020 and that the outcome of several telephone conversations with Mr Gerrard relating to his handwritten statement was that:

'We explained that we had posted our letter of 10 September before we had received a copy of his statement retracting all statements made to Mr Blogg and his solicitor about the fencing. We said that we were not asking him to do anything. We asked if he had spoken with Mr Mayer about his retraction and he told us that he had. He said that Mr Mayer had asked him whether the applicant had been in touch with him and he told him that she had not. He told us that he no longer stood by the statements which he had made (prior to 10 September) and was not supporting Mr and Mrs Blogg.'

<u>Submissions</u>

57 The submissions made on behalf of the parties on the ramifications of Mr Gerrard's retraction of his evidence, which are to be found in letters sent to the Tribunal in the latter part of September 2020 by Miss Apps and Mr Mayer, may be summarised as follows.

58 Miss Apps submitted that Mr Gerrard's handwritten statement should serve as a retraction by Mr Gerrard of all the statements he made relating to the fence on *Clwyd* prior to 10 September 2020 and that, consequently, such statements should be treated as if they had never been given. Miss Apps pointed out that neither the Tribunal Rules nor the Directions issued by the Regional Judge require witness evidence to be verified by a statement of truth, and opined that, as a consequence, Mr Gerrard's handwritten statement holds no less weight simply because it is not verified by a statement of truth.

On the other hand, Miss Apps asserted that if the effect of Mr Gerard's handwritten statement is not to retract all his previous statements as if they had never been made such handwritten statement casts serious doubt on the truthfulness of Mr Gerrard's witness statement dated 2 September 2020, and, accordingly, little or no weight should be given to his evidence.

Miss Apps also questioned the evidential value of the letter dated 30 June 2018 that was stated by the Respondents to have been written by Mr Gerrard, but was not referred to by Mr Gerrard in his witness statement. Miss Apps contended that this absence cast doubt on whether that letter was 'produced by him in the first place'. Miss Apps concluded that, even if it was so written, the consequence, in view of Mr Gerrard's handwritten statement of 10 September 2020, is that it should be treated as never having been written.

Miss Apps regarded these submissions to be reasonable and made to the Tribunal appropriately and in a timely fashion.

59 For the Respondents, Mr Mayer stated that Mr Gerrard gave a witness statement by telephone to him, freely, on 1 September 2020. Mr Gerrard approved and signed the written version of this statement on 2 September 2020. Further, Mr Mayer informed the Tribunal that he had been instructed by the Respondents that on 7 September 2020 a gentleman, who had accompanied the Applicant onto the Site that day, visited Mr Gerrard and the following day Mr Gerrard told the Respondents that he no longer wished to be involved in matters relating to the Respondents' fence. In light of this, Mr Mayer surmised that 'it is clearly questionable that a witness who was quite willing and signed a statement of truth only days earlier would suddenly have a change of heart following a visit from an associate of the applicant'. Mr Mayer added that, in his opinion, these

circumstances were suspicious, although he conceded that the Respondents could not summon any evidence to show that Mr Gerrard had been intimidated or persuaded to withdraw his evidence by the Applicant. Miss Apps denied that the Applicant had intimated Mr Gerrard or tried to persuade him to withdraw his evidence and reiterated that the Applicant had only instituted legal proceedings after all other attempts to resolve the disputes with the Respondents had failed.

60 As to the standing of Mr Gerrard's evidence, Mr Mayer stated that there was nothing in Mr Gerrard's handwritten retraction that called into question the truth of his letter of 30 June 2018 or his witness statement of 2 September 2020. Moreover, Mr Mayer submitted that as Mr Gerrard's witness statement confirms and repeats the matters set out in the letter of 30 June 2018 it, thereby, corroborates the contents of that letter.

61 Mr Mayer rejected the notion that Mr Gerrard's witness statement should be treated as if it had never been written, as contended by Miss Apps, and pointed out that there was no provision in the Tribunal Rules for the withdrawal of a witness statement. He opined that a statement once given is a matter of fact and cannot be undone, save where a witness seeks to correct a mistake (or an untruth) in written evidence by providing oral evidence to the Tribunal (an avenue not open to the parties in this case). In any event, Mr Mayer said that there was no suggestion that Mr Gerrard's witness statement was either incorrect or untrue.

62 Mr Mayer concluded that the Applicant had not demonstrated that Mr Gerrard's witness statement should be treated as if it had never been written and, accordingly, he invited the Tribunal to place the same weight on that statement as any other witness statement presented in this case.

The Tribunal's Determination

63 The Tribunal reaches its decision on the application taking into account the evidence adduced by the Applicant and the Respondents, written representations made to the Tribunal by Miss Apps and Mr Mayer on behalf of the Applicant and Respondents respectively, the relevant law and using its knowledge and experience as an expert Tribunal.

64 The jurisdiction of the Tribunal under section 4 of the Act lies in considering and determining those questions raised by the Applicant in relation to ***Issue 1*** and ***Issue 2*** and that arise under the Act or the agreement between the parties to which it relates.

65 ***Issue 1*** is concerned with only one question, namely the right (or otherwise) of the Applicant or her nominated agent to secure access to *Clwyd* every quarter for the purpose of reading the electricity meters situate within that pitch.

66 The principal question for resolution in relation to ***Issue 2*** is whether or not the Applicant, directly or indirectly, consented to the Respondents erecting the fence around *Clwyd*, but this is coupled with two ancillary questions, that is to say whether the fence, regardless of any finding as to consent, or otherwise, by the Applicant for the erection of the fence, was erected in a manner that did not comply with the site rules and/or with fire safety requirements.

67 This is a limited jurisdiction in that the Act does not invest the Tribunal with the power to make orders that are concerned with the furtherance and enforcement of its findings in relation to the questions raised, for example, should the Tribunal find that a party is in 'breach' of obligations to which that party is subject it is not empowered to make orders that purport to provide a remedy for that breach.

68 The Tribunal's findings in relation to these questions raised in respect of ***Issue 1*** and ***Issue 2*** follow.

Issue 1 – access to electricity meters

69 The salient facts to emerge from the evidence are that neither the Applicant nor Mr Windsor, her representative, were able to gain access to *Clwyd* to read the electricity meters at appropriate times during 2019 and that, as a consequence, Miss Apps wrote to the Respondents on several occasions reminding the Respondents of their duty under paragraph 12(b) of the Written Statement to observe the right of the Applicant and by inference her representative to enter *Clwyd* for the purpose of reading the electricity meters.

70 The Respondents accepted that the Applicant had the right under paragraph 12(b) to enter *Clwyd* to read the electricity meters and denied that they had prevented the Applicant from exercising this right which the Applicant contested. And yet, the electricity meters were not read during the above-mentioned period by either the Applicant or Mr Windsor but only by the Respondents who stated that they sent photographs of the meter readings which they took to the Applicant. The Respondents explained, initially, that this situation arose because of their objection to Mr Windsor entering *Clwyd* to read the electricity meters following the altercation between Mr Windsor and Mr Blogg in 2018, but, thereafter, Mr Blogg said in his witness statement that neither he nor his wife had ever stated that they would never let Mr Windsor onto *Clwyd* and that he had only refused Mr Windsor access to *Clwyd* on one occasion when his wife was ill which Mr Windsor refuted. It is not easy to reconcile these statements. Be that as it may, it is clear that, for whatever reason, the Applicant was unable to exercise her right under paragraph 12(b), herself or through Mr Windsor, to enter *Clwyd* during the specified period with a view to reading the electricity meters.

71 Pertinently, for the purpose of the application, the Applicant's right to enter *Clwyd* under paragraph 12(b) and in accordance with its terms for the purpose of reading the electricity meters is uncontested.

72 Accordingly, the Tribunal declares that the Applicant has the right under paragraph 12(b) of the Written Statement to enter *Clwyd* without prior notice between the hours of 9.00 am and 6.00 pm to read the electricity meters for *Clwyd* and the neighbouring mobile home to which reference has been made in the evidence.

Further, as a matter of practice, the Tribunal finds that it is reasonable for such readings to be taken quarterly, and that, as a matter of prudence, this right may be exercised by the Applicant or by an individual to whom she delegates its exercise.

Issue 2 - fence

73 As to the question of whether the Applicant gave consent for the erection of the fence around *Clwyd*, it has been seen that paragraph 3(e)(ii) of the Written Statement provides that the Respondents must not, without the Applicant's prior written consent, erect any fences on *Clwyd*, subject only to the proviso that any such consent must not be unreasonably withheld. It is common ground that this requirement has not been satisfied. Consequently, in the absence of such written consent, the onus is on Respondents to show that, nevertheless, there are circumstances that sustain their submission that the Applicant gave her consent, orally, for the erection of the fence.

74 In this respect, much turns on whether the Respondents have proven, on the evidence, that the fence was erected with the Applicant's oral consent before they moved into their

mobile home on *Clwyd* on 4 July 2014 and, hence, before the obligation to obtain prior written consent found in the Written Statement came into effect and was binding on them. The Respondents did not specify the precise date on which the fence was erected.

75 The Respondents placed particular reliance on two specific and distinct instances when in their submission the Applicant's consent for the erection of the fence was evident - first, during the Applicant's initial meeting with the Respondents, and, secondly, in the days leading up to the erection of the fence and on the day of its erection.

76 The Tribunal is not persuaded that the evidence presented by the Respondents in relation to each of these instances serves to establish that, on the balance of probabilities, the Applicant consented, orally, to the erection of the fence for the following reasons.

First, whatever may have been said at the initial meeting of the parties and clearly the parties are at odds on this, any statement by the Applicant would have been made in the knowledge that the subsequent relationship between the parties would be governed by terms and conditions in the Agreement. Should the Applicant have agreed to any variation of those standard terms and conditions at the meeting it is reasonable to expect that it would have been incorporated into the Agreement. There is no such variation in the Agreement. It also surprising, perhaps, that if the erection of the fence was regarded by the Respondents as a fundamental pre-condition of their entry into the Agreement they did not insist on an appropriate provision being included in the Agreement.

Secondly, any suggestion that the Applicant's consent may be inferred from the circumstances pertaining in the days leading up to the erection of the fence founders, in the Tribunal's view, on a misplaced perception of the extent of Mr Gerrard's authority to act on the Applicant's behalf. Whilst the Tribunal accepts that Mr Gerrard undertook some work for the Applicant, as, indeed, is apparent from the evidence of Mr and Mrs Sparkes, there is nothing in the tasks which he performed that are necessarily commensurate with an appointment as site manager and, further, no contract of employment between the Applicant and Mr Gerrard relating to such an appointment was adduced in evidence. Consequently, the Tribunal finds that such authority as was vested in Mr Gerrard by the Applicant was limited and did not extend to authorising and arranging for the erection on behalf of the Applicant. In light of this finding, it is not incumbent on the Tribunal to rule definitively on the respective positions taken by the parties' representatives on the credibility of Mr Gerrard's evidence following his purported retraction of that evidence. Suffice it to say, Mr Gerrard's evidence is undoubtedly compromised and cannot be regarded as determinative of the matters to which it refers.

Thirdly, the evidence of the parties conflicts as to what was said and done by the Applicant on the day that the fence was in the course of erection. In this respect, it was open to the Respondents to bolster their contention that the Applicant involved herself in the erection of the fence and, thereby, condoned its erection by inviting the contractor who was responsible for erecting to give evidence. This opportunity was not taken when it might reasonably be expected that it would have been. Moreover, any suggestion that the Applicant acted in this way is manifestly contradictory to the Applicant's declared subsequent conduct in seeking the removal of the fence culminating in the letter written by Blacks to the Respondents and the application to the Tribunal.

77 Further, the Tribunal is not convinced by the Respondents' evidence relating to the timing of the erection of the fence. In this regard, there is no evidence other than that the erection of the fence took place prior to the Respondents taking up residence in their mobile home. Admittedly, there is the letter written by the Respondents' friends in support of this proposition, but this is not independent evidence nor is it confirmatory of the particular date on which the fence was erected. There is also Mr Gerrard's evidence

relating to this matter, but, again, for the reasons set out in the above paragraph this evidence cannot be relied upon as an arbiter of when the fence was erected. In the Tribunal's opinion, the uncertainty surrounding the date on which the fence was erected could have been resolved if the Respondents had adduced in evidence either or both of the following, namely the invoice from the contractor, who erected the fence, showing the date on which it was erected and the full cost of its erection and/or a supporting witness statement from the contractor.

78 In the light of these observations, the Tribunal finds that in addition to the absence of any written consent for the erection of the fence there is insufficient evidence to support a finding that the Applicant consented, orally, to the erection of the fence around *Clwyd*. A corollary of this finding is that the absence of consent necessarily leads to an infringement of the first limb of paragraph 2 of the site rules.

79 Incidentally and accordingly, the Tribunal finds no merit in the Respondents' more general contention premised on the ground that the Applicant granted permission, orally, for the erection of the fence which was acted on by the Respondents in which circumstance it was unreasonable for the Applicant to insist that the fence be removed and that she should be estopped from doing so.

80 As to the first of the ancillary questions, the Tribunal finds, so far as it is able to glean to from the pertinent pictorial evidence and in the absence of a physical inspection of the Site, that the height of the fence, which appears to comprise standard size panels, and its positioning is compliant with the requirements of paragraph 2(iv)(f) of the site licence.

81 With regard to the latter question, that is to say whether the fence satisfies fire safety requirements, the Tribunal finds the report prepared by Mr Weaver of Arrelle Limited instructive but, nevertheless, is not convinced on the basis of that report that the fence constitutes an immediate fire risk, and is, therefore, not in breach of fire safety requirements. Moreover, the Addendum to that report specifically states the risk of a fence fire is low unless exacerbated by human factors – the evidence does not suggest that any such factors are present.

82 Finally, in furtherance of the determination of this aspect of the application, the Tribunal declares that the fence was erected around *Clwyd* by the Respondents without the Applicant's written or oral consent. Notwithstanding this finding, the Tribunal has no power, for example, to order the removal of the fence or any part of it or to order the planting of a hedgerow on the rear boundary of *Clwyd* following removal of the fence.

Judge David R. Salter

Date: 21 December 2020

Appeal to the Upper Tribunal

83 If any party is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such appeal must be received within 28 days after these written reasons have been sent to the parties (Rule 52 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

84 If the party wishing to appeal does not comply with the 28-day time limit, the party 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.

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