



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

**Case Reference** : **CHI/43UG/PHC/2021/0013**

**Property** : 7 Wey Avenue, Penton Park, Mixnams Road, Off Staines Road, Chertsey, Surrey KT16 8QS

**Applicant** : The Berkeley Leisure Group Limited

**Representative** : Julie Lloyd

**Respondent** : Mrs Susan Procter

**Representative** : Mr Sam Procter

**Type of Application** : Application under Section 4 of the Mobile Homes Act 1983 – Determination of any question arising

**Tribunal Member** : D Banfield FRICS Regional Surveyor

**Date of Decision** : 22 November 2021

---

**DECISION**

---

**The Tribunal determines that the Respondent is in breach of Paragraphs 5 and 21 Chapter 2 of Part 1 of Schedule 1 to Mobile Homes Act 1983.**

**The Tribunal finds that Rule 25 of the Park Rules has not been breached.**

### **The Tribunal Directs that the Respondent will;**

- Within 4 weeks of this decision remove all rubbish from the pitch and leave in a tidy condition with the grass trimmed
- Within 8 weeks of this decision to clean the exterior of the mobile home, replace any broken windows, decorate the dilapidated front fascia board and repair the roof over the bay window.
- Within 12 weeks of this decision to repair the mobile home sufficiently to enable the removal of the stacks of wood currently providing support and their replacement with a more permanent structure.

### **REASONS**

#### **Background**

1. The Applicant seeks a determination on a question arising as to whether the Respondent is in breach of her Agreement by not;
  - maintaining her pitch or the exterior of her home,
  - keeping a trailer on the pitch and
  - not occupying the home as her main residence.
2. Judge Barber made directions on 1 September 2021 setting out a timetable for the exchange of cases leading to a determination on the papers in accordance with Rule 31 of the Tribunal Procedure Rules 2013 unless an objection was received.
3. On 2 November Judge Whitney made further directions requiring the Respondent to produce the hearing bundle.
4. A hearing bundle has been received extending to 107 pages which includes both parties' evidence and it is upon this and an unaccompanied external inspection that this determination is made.
5. The bundle has been examined and the Tribunal is satisfied that it contains all of the information required to make a determination without an oral hearing.
6. The only issues to be determined by the Tribunal are whether the site rules have been breached as referred to in paragraph 1 above. Whilst the bundle has been read in its entirety both parties have referred to other issues which are not relevant to the determination and as such will not be referred to in this decision.
7. Reference in this determination to page numbers in the bundle are indicated as [\*]

## The Law

8. The relevant law is set out below:

### **Mobile Homes Act 1983**, as amended

Section 2(1): In any agreement to which this Act applies there shall be implied the terms set out in Part 1 Schedule 1 to this Act; and this subsection shall have effect notwithstanding any express term of the agreement.

### **Section 4:**

(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 subsections (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.

### **Housing Act 2004**

**Section 231A** Additional powers of First-tier Tribunal and Upper Tribunal

(1) The First-tier Tribunal and Upper Tribunal exercising any jurisdiction conferred by or under the Caravan Sites and Control of Development Act 1960, the Mobile Homes Act 1983, the Housing Act 1985 or this Act has, in addition to any specific powers exercisable by them in exercising that jurisdiction, the general power mentioned in subsection (2). <sup>[1]</sup><sub>[SEP]</sub>

(2) A tribunal's general power is a power to give such directions as the tribunal considers necessary or desirable for securing the just, expeditious and economical disposal of the proceedings or any issue in or in connection with them. <sup>[1]</sup><sub>[SEP]</sub>

(3) [Directions under the Housing Act 2004] <sup>[1]</sup><sub>[SEP]</sub>

(4) When exercising jurisdiction under the Mobile Homes Act 1983, the directions which may be given by the tribunal under its general power include (where appropriate –

(a) directions requiring the payment of money by one party to the proceedings to another by way of compensation, damages or otherwise;

(b) directions requiring the arrears of pitch fees or the recovery of overpayments of pitch fees to be paid in such manner and by such date as may be specified in the directions; <sup>[1]</sup><sub>[SEP]</sub>

(c) directions requiring cleaning, repairs, restoration, re-positioning or other works to be carried out in connection with a mobile home, pitch or protected site in such manner as may be specified in the directions;

(d) directions requiring the establishment, provision or maintenance of any service or amenity in connection with a mobile home, pitch or protected site in such manner as may be specified in the directions.”

### **Implied terms – Chapter 2 of Part 1 of Schedule 1 to Mobile Homes Act 1983**

Section 2 of the Act says: *In any agreement to which this Act applies there shall be implied the [applicable] terms set out in Part I of Schedule 1 to this Act.*

In accordance with Chapter 2 of Part I of Schedule 1 of the Act implied within the Agreement the Respondent has agreed as follows:

#### Paragraph 4

The owner shall be entitled to terminate the agreement forthwith if, on the application of the owner, the appropriate Judicial body

(a) is satisfied that the occupier has breached a term of the agreement and, after service of a notice to remedy the breach, has not complied with the notice within a reasonable time; and

(b) considers it reasonable for the agreement to be terminated.

Paragraph 5. The owner shall be entitled to terminate the agreement forthwith if, on the application of the owner, the appropriate Judicial body;

- (a) is satisfied that the occupier is not occupying the mobile home as his only or main residence; and
- (b) considers it reasonable for the agreement to be terminated.

Paragraph 21. The Occupier shall -

(d) maintain-

- (i) the outside of the mobile home, and
- (ii) the pitch, including all fences and outbuildings belonging to, or enjoyed with it and the mobile home in a clean and tidy condition

9. In **Elleray v Bourne** [2018] UKUT 0003(LC), the Upper Tribunal advised:

*“Despite the apparent breadth of section 4, a power to determine questions or entertain proceedings is not the same as a power to grant specific remedies. The FTT has no inherent jurisdiction and may only make such orders or grant such remedies as Parliament has given it specific powers to make or grant. Although it is rather strangely described as part of a “general power” to “give directions”, in section 231A(4)(a) of the Housing Act 2004 Parliament has given the FTT a specific power to require the payment of money by one party to the proceedings to another. Such “directions” may be given where the FTT considers it necessary or desirable for securing “the just, expeditious and economical disposal of the proceeding.” The use of the word “directions” in this context might give the impression that section 231A (2) is concerned only with procedural matters. It is clear from section 231A (4), however, that the power to give directions is a power to make substantive orders, including for the payment of money, the carrying out of works, and the provision of services.”*

10. In **Wyldecrest Parks (Management) Ltd v Santer** (2018) UKUT 0030 (LC), the Upper Tribunal suggested that the policy of the legislation was that most mobile homes disputes should be dealt with in tribunals rather than courts because of their greater expertise and accessibility and lower cost. The

enhanced powers conferred by section 231A Housing Act 2004 were consistent with that policy since they reduced the risk that proceedings to resolve disputes may be required to be commenced in more than one forum.

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

## **Evidence**

11. In a statement accompanying their application dated 29 July 2021 [007] the Applicant seeks a determination that the Respondent has breached her Agreement and requires an Order to remedy the breaches. The breaches referred to are:
  - The Respondent is not maintaining the pitch or exterior of their home and is keeping a trailer on the pitch.
  - Since being assigned the Agreement, the Respondent has not taken up occupation of the home as their main or only residence.
12. The Applicant indicated that it is ultimately seeking the Respondent to remedy the breaches of the Agreement.
13. Attached are copies of a series of letters from the Applicant to the Respondent starting on 8 January 2020 and referring initially to the need to cut the grass and maintain the bushes but from 28 May 2020 widening the issues to the matters now complained of. A notice of breach dated 10 March 2021 is attached requiring the breaches to be remedied by 7 April 2021 [021]. Also attached is an undated photograph [020] which may possibly have been enclosed with the letter of 11 February 2021 showing a parked trailer, 2 rubble bags with contents and a pile of wood stacked under the front bay window.
14. There is also a letter from Mrs Procter dated 19/2/20 [012] appointing her son Sam Procter to act for her and an email from Sam Procter dated 5 May 2021 [027] in response to a “Letter Before Action”. A further email from Sam Procter on 15 July 2021 [32] explaining that the trailer belonged to a previous contractor

but that he would ensure its removal by “the end of the weekend” [032].

15. An email from the Applicant to Sam Procter on 29 July 2021 refers to the lack of any progress and that the trailer remains parked. Attached to the email were three photographs showing rubbish to three sides of the unit and a trailer.[35-37]
16. In a response to the application dated 29 September 2021 [099] the Respondent disagrees with the Applicant’s case on the following grounds;
  - The property was bought to live in but due to it being “derelict” a company had to be employed to clear the home and eradicate rodents.
  - This was made clear to Ms Lloyd by email on more than one occasion and a marked improvement has been made compared to when it was bought.
  - There have been personal issues and difficulties with contractors the site owner being kept up to date on the position.
  - The trailer was the property of the contractor who started work on the site and it is assumed then stopped trading.
  - On receipt of the Tribunal documents “I felt I had no choice to stop the works yet again”
  - “The reason the park home isn’t yet my home is because it simply isn’t habitable”
17. In a response dated 12 October 2021 Ms Lloyd on behalf of the Applicant stated;
  - Neither the Respondent or Mr Sam Procter has contacted the Park Office to either update them on the situation or to request a Park Home Refurbishment Form.
  - The Park Manager, Mrs Linda Peck, has on several occasions spoken to the contractors and explained to them that they will need to stop work as written consent is required before commencing any works to the exterior of the home or pitch.
  - Mrs Linda Peck has provided the attached statement of truth attached as Exhibit "BLG1".
  - The Applicant acknowledges that some clearance has now taken place on the pitch and the trailer has now been removed, the pitch and exterior of the home still remains in need of maintenance and clearing.
  - The Respondent has not had consent for the artificial grass which has just been laid over what appear to be piles of debris which looks unsightly, made worse by weeds grass now growing through. A photograph is attached showing a stack of wood, a rubbish sack and artificial grass clearly laid

over something uneven beneath to the left and front of the park home.[107]

18. A witness statement from Mrs Peck [105] confirms the above statement and refers to complaints received from the adjoining owners, that workmen have used the property as a dumping ground and that she has never met either Mrs Susan Procter or Mr Sam Procter.

### **Discussion**

19. It has been accepted by the Respondent that she does not live at the property but intends to do so once it becomes habitable.
20. The park home was assigned to the Respondent on 31 October 2019 who says she stopped work due to the uncertainty following receipt of the Tribunal's documents (assumed to be Judge Barber's Directions of 1 September 2021)
21. It is clear from the photographs supplied and correspondence between the parties that a trailer has been kept on the plot although the Applicant has acknowledged that this has now been removed.
22. The photographs at pages 35,36 and 37 show a plot with significant amounts of rubbish on the three sides of the mobile home that are visible. The home itself also appears to be in poor decorative condition with extensive green staining to the walls. The photograph at page 107 showing the left hand side of the plot indicates that some of the rubbish has been removed but gives a clearer view of the poor decorative state of the mobile home with green stained walls and decayed timber at the base with peeling paint.
23. An external inspection of the property carried out from the road on 19 November 2021 confirmed that the property is as shown in the photograph at page 107. In addition it was noted that the paintwork to the front fascia board was peeling and the roof over the bay window had signs of damage. It also appeared that the stack of wood referred to in paragraph 18 above is partly to support the base of the unit with similar stacks to the rear right hand side and under the front bay. On the right hand side was a rubble bag, some piles of garden waste and an open partly filled black plastic bin bag.
24. Also noted were the UPVC framed windows some of which were ill fitting and with timber sheet covering what presumably is a broken pane.

### **Determination**



25. A covenant or equivalent obligation is usually regarded as being a promise that something shall or shall not be done or that a certain state of facts exists. The Tribunal must assess whether there has been a breach on the balance of probabilities. A determination does not require the Tribunal to consider any issue other than the question of whether a breach has occurred. The issue of whether there is a breach of a covenant does not require personal fault unless the agreement between the parties says so.
26. It is admitted by the Respondent that for whatever reason the mobile home is not occupied as her main or only home contrary to the implied term contained in Paragraph 5 Chapter 2 of Part 1 of Schedule 1 to Mobile Homes Act 1983 and **the Tribunal therefore determines that the Respondent is in breach of that term.**
27. Rule 25 of the Park Rules [077] states “You must not park Boats, Camper Vans, Motorhomes, Touring Caravans or Trailers of any sort on the park.” There is no dispute that a trailer has been parked on the pitch although it has now been removed. The Respondent has stated that the trailer is not hers and the trailer’s ownership has not been challenged by the Applicant. The preface to the Park Rules defines the term “you” as the “homeowner and any other occupier of a park home” The question therefore for the Tribunal is whether the parking of a trailer with the consent of, but not by, the homeowner is contrary to Rule 25. In determining that it is not the Tribunal considers that if the rule was meant to apply to parties other than the homeowner it would be clearly stated . e.g. You must not park or permit your visitors to park ..... **The Tribunal therefore finds that Rule 25 of the Park Rules has not been breached.**
28. Paragraph 21 Chapter 2 of Part 1 of Schedule 1 to Mobile Homes Act 1983 requires the homeowner to maintain the outside of the mobile home, and the pitch, including all fences and outbuildings belonging to, or enjoyed with it and the mobile home in a clean and tidy condition.
29. Whilst it is accepted that improvements have been made in the condition of the pitch as evidenced by the photographs taken in February and July 2021 and that seen by the Tribunal on 19 November 2021 and captured in the photograph at page 107 the pitch is far from the tidy standard required. Likewise the state of the mobile home is poor as described in paragraphs 22 and 23 above. As such **the Tribunal determines that the Respondent is in breach of Paragraph 21 Chapter 2 of Part 1 of Schedule 1 to Mobile Homes Act 1983.**
30. The Tribunal has the power, pursuant to s231A (4) (c) of the Housing Act 2004 to give directions requiring cleaning, repairs and other works to be carried out. Given that the Applicant’s aim is to

remedy the breaches it is the Tribunal's intention to make such Directions.

31. **The Tribunal therefore Directs that the Respondent will;**

- Within 4 weeks of this decision remove all rubbish from the pitch and leave in a tidy condition with the grass trimmed
- Within 8 weeks of this decision to clean the exterior of the mobile home, replace any broken windows, decorate the dilapidated front fascia board and repair the roof over the bay window.
- Within 12 weeks of this decision to repair the mobile home sufficiently to enable the removal of the stacks of wood currently providing support and their replacement with a more permanent structure.

D Banfield FRICS  
Regional Surveyor  
22 November 2021

### **Appeals**

1. A person wishing to appeal this decision to the Upper Chamber must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
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. Where possible you should send your further application for permission to appeal by email to **rpsouthern@justice.gov.uk** as this will enable the First-tier Tribunal to deal with it more efficiently.
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.