



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

Case Reference : **CAM/12UB/PHC/2020/0011**

Site : **Hartford Marina, Wyton, Huntingdon PE28 2AA**

Property : **Number 8, West Pontoon**

Respondent/Applicant : **Tingdene Marinas Ltd**
Representative : **Ryan & Frost Solicitors & Mr Judd of Counsel**

Applicant/Respondent : **Janet Maureen Jaffe**
Representative : **Deighton Pierce Glynn & Mr Cottle of Counsel**

Date of Application : **21st December 2021/4th February 2022**

Type of Application : **Application for Review or Permission to Appeal**

Tribunal : **Judge J R Morris**
Regional Judge R Wayte

Date of:
Original Decision : **25th November 2021**
Corrected Decision : **13th January 2022**
Date of Decision : **21st February 2022**

DECISION

Decision of the Tribunal

1. The Tribunal has decided not to review its Decision but grants permission to appeal to the Upper Tribunal.
2. The Tribunal further suspends the effect of its Decision of 25th November 2021 until a decision on appeal is determined.
3. The Upper Tribunal (Lands Chamber) may be contacted at: 5th Floor, Rolls Building, 7 Rolls Buildings, Fetter Lane, London EC4A 1NL (tel: 020 7612 9710) or by email to Lands@justice.gov.uk, as this will enable the Upper Tribunal (Lands Chamber) to deal with it more efficiently.

Reason for the Decision

1. The Tribunal's Decision was based on the evidence and submissions before it and the Applicant has raised no new legal arguments or additional evidence in support of the application for permission to appeal. The Applicant's overall ground is that the Tribunal's Decision is wrong.
2. However, the Tribunal accepts that there is an alternative argument which would produce a significantly different outcome.
3. The issues which the Tribunal grants permission to appeal are as follows:
 - A) whether the caravan by being put on a float on water becomes a houseboat and thereby loses its protection under the Mobile Homes Act 1968;

and
 - B) whether, in this case, the 1998 Planning Permission by allowing "...retention of use of land for 15 houseboats" excluded the stationing of caravans notwithstanding that the Hartford Houseboat was a caravan, as defined by section 29 of the Caravan Sites and Control of Development Act 1960, on a float.
4. For the benefit of the parties and of the Upper Tribunal (Lands Chamber), the Tribunal has set out its comments on the specific points raised by the applicant in the application for permission to appeal, in the appendix attached.

Judge J R Morris

CORRECTION CERTIFICATE

The Tribunal exercises its powers under Rule 50 to correct a clerical mistake or other accidental slip or omission in its Decision and Reasons dated 21st February 2022.

The heading to the Appendix should read "**GRANTING** PERMISSION TO APPEAL" not "REFUSING"

Paragraph 4 should read "pursuant to section 4 of the **Mobile Homes Act 1983**" not "Caravan Sites Act 1968"

The corrections shown in bold in this Decision and Reasons are made on **22nd February 2022**.

Judge JR Morris

APPENDIX TO THE DECISION
GRANTING PERMISSION TO APPEAL

For the benefit of the parties and of the Upper Tribunal (Lands Chamber), the Tribunal records below its comments on the grounds of appeal. References in square brackets are to those paragraphs in the main body of the original Tribunal decision. The Respondent in the original proceedings is the Applicant in these proceedings. As the comment below relates to the original proceedings the Tribunal has retained the parties' original titles i.e., Tingdene Marinas Ltd is referred to as the Respondent and Maureen Janet Jaffe as the Applicant.

Original Application and Decision

Application

1. The Applicant made an Application to the Tribunal on 17th December 2020 under Section 4 of the Mobile Homes Act 1983 (as amended) “(the 1983 Act)” which enables an application by an Occupier of a Park Mobile Home or a Park Mobile Home Site Owner to be made to a Residential Property Tribunal for a determination of any question arising under the Mobile Homes Act 1983 or agreement to which it applies.
2. The Respondent indicated that it intended to commence possession proceedings if the Applicant did not give up possession by 10th January 2021 or sooner should the West Pontoon deteriorate further.
3. The Applicant applied to the Tribunal under section 4 of the 1983 Act for a declaration that the Property she occupies on the Site is a *caravan* as defined in the Caravan Sites and Control of Development Act 1960 and that the Site is a *protected site* as defined in Part I of the Caravan Sites Act 1968 and the *agreement* under which she keeps her unit on the site is within the provisions of the 1983 Act.
4. Whereas the Tribunal cannot make a declaration it can, pursuant to section 4 of the **Mobile Homes Act 1983** determine any question under the Act or any agreement to which it applies.
5. Directions were issued on 18th December 2020. The Directions were amended to allow extra time for compliance on 3rd March 2021, to allow both parties to submit expert evidence and an agreed statement of facts and on 19th March 2021, to allow exhibits to a witness statement and consequentially a reply in response to those exhibits.

Issues

6. The overall issue is whether the Mobile Homes Act 1983 applies to that part of the Site owned by the Respondent upon which the Applicant has stationed her Property and therefore whether the Tribunal has jurisdiction to determine any question arising from that agreement. The Tribunal identified the main individual issues as being:

- a) Whether the Property occupied by the Applicant is a *caravan* as defined by the Caravan Sites and Control of Development Act 1960.
 - b) Whether the part of the Site owned by the Respondent upon which the Property is situated is a *protected site* as defined in Part I of the Caravan Sites Act 1968.
7. The Tribunal identified three matters to be addressed to answer the two questions which are the subject of the Application. These are:
1. Whether the Applicant's Property is a caravan
 2. Whether there is a planning permission for the siting and use of the Property
 3. Whether there is an agreement for the siting and use of the Property

Decision

8. By its Decision dated 25th November 2021 the Tribunal initially determined that:
- a. The Applicant's Property is a caravan on a float.
 - b. The 1998 Planning Permission and 2014 Certificate allow for the stationing of a houseboat, which in the circumstances of this case is a caravan on a float, on that part of the Site on which the Property is situated.
 - c. As the Property is a caravan which may be occupied as a sole residence, then the area edged red on the plan annexed to 2014 Certificate is a "caravan site" to which the Mobile Homes Act 1983 applies and therefore is a "protected site".
 - d. The parties must enter into a Written Agreement that is compliant with the Mobile Homes Act 1983.
9. The Respondent appealed the Decision, one of the grounds being that the Tribunal declined to make a determination that the Houseboat was a caravan as statutorily defined. The Tribunal did make such a determination at paragraph 142, as it was required to do in accordance with the issue identified in paragraph 7(a). However, this was not expressed correctly giving the impression that a finding had not been made in the wording of paragraphs 1 a. and 148 a. and 131.
10. The Tribunal considered this was a clerical mistake or other accidental slip or omission under Rule 50 and so issued a corrected determination on as follows:
- a. The Applicant's Property is a caravan **as defined in section 29 of the Caravan Sites and Control of Development Act 1960.**
 - b. The 1998 Planning Permission and 2014 Certificate allow for the stationing of a houseboat, which in the circumstances of this case is a caravan **as defined in section 29 of the Caravan Sites and Control of Development Act 1960**, on that part of the Site on which the Property is situated.
 - c. As the Property is a caravan which may be occupied as a sole residence, then the area edged red on the plan annexed to 2014 Certificate is a "caravan site" to which the Mobile Homes Act 1983 applies and therefore is a "protected site".
 - d. The parties must enter into a Written Agreement that is compliant with the Mobile Homes Act 1983.

11. The Tribunal gave the parties a further 28 days in which to make, amend, modify or confirm the Application for Review or Permission to Appeal already submitted.
12. It also suspended the effect of the Tribunal's Decision until a decision regarding an appeal is determined.
13. The Respondent confirmed its application for review or permission to appeal and also challenged the Tribunal's corrected Decision submitting that it had made a material change.

Grounds of Appeal

14. The First-tier Tribunal is in error for the following reason:
 - a) The 1998 Permission lawfully interpreted in the context of the 2014 CLEUD does not allow for a caravan to be stationed on Land;
 - b) The findings at [142] and [143] are fundamentally in error as the 1998 Permission, as amended by the 2014 CLEUD does not allow for the stationing of a caravan or mobile home on the Land;
 - c) It provides for the Houseboat, which comprises a caravan, float and other combined elements which, when constructed to make one single indivisible unit, can be stationed on the Land. The caravan is incapable of being stationed on the Land without the float and incapable of being used for any purpose without the float and attachments;
 - d) There is no planning permission which allows for a caravan to be stationed on the Land, or indeed any land at the West Pontoon, and stationing a caravan on the Land in the absence of the float would be a breach of planning control;
 - e) In the absence of a planning permission which provides for a caravan to be stationed on the Land, rather than a float which in turn is stationed on the Land, there can be no lawful finding of there being a protected site, regardless of the circumstances of the occupation of the caravan;
 - f) The finding that the Land upon which the houseboat is stationed is a protected site is an error of law, the FTT have failed to lawfully interpret the 1998 Permission, and have fallen into material error in finding that the Land is a protected site.
 - g) By its correction of substituting the Applicant's Property is a "caravan on a float" for it being a "caravan" alone the FTT failed to apply the correct legal test deriving from the statutory definition to the Houseboat, applying it rather to the Willerby caravan alone, explicitly declining to determine whether the Houseboat meets the statutory test. In declining to apply the statutory test to the Houseboat the FTT cannot determine that the Houseboat meets the definition of a caravan, regardless as to whether the relevant planning permissions allow a caravan to be located on the Land.

Decision

The Property

15. The Tribunal found that the Property is a caravan on a float, which is a type referred to on the Site as the 'Hartford Houseboat' [129].

16. The Tribunal found that the Property includes a caravan which meets the definition of section 29 of the Caravan Sites and Control of Development Act 1960 [131].
17. In response to the point made by the Respondent in its Application that the Tribunal declined to make a determination that the Houseboat was a caravan as statutorily defined and its subsequent correction the Tribunal should have reiterated [131] in its Decision that that the Property “includes” a caravan which meets the definition of section 29 of the 1960 Act. The Tribunal found that both the caravan and the float were the Property in that they were both owned by the Applicant. However, it found that they are two separate entities, 1) a caravan which meets the statutory definition and 2) a float, which together form the Hartford Houseboat. The Respondent submits that they are one entity namely the Hartford Houseboat and that the caravan cannot be taken separately as it could not be on the water without the float.
18. The Tribunal views the float as the equivalent of the concrete base in respect of other Park Homes.
19. The Parties agreed that the Property is on the Respondent’s land notwithstanding that there is a body of water between the Willerby caravan on its float and the land itself. The Tribunal also found that the Applicant’s ownership of the float makes no difference as to whether the Property is on the Respondent’s land [132].

The Planning Permission

20. Firstly, the Tribunal found that the 1998 Planning Permission applies and is only modified by the 2014 Certificate by the removal of the condition under section 191(1)(c) of the Town and Country Planning Act 1990 [134].
21. Secondly, the Tribunal took account of the cases as to the interpretation of planning permissions [135].
22. Thirdly, it applied the cases to the 1998 Planning Permission which allowed the “...retention of use of land for 15 houseboats for holiday use, moorings, parking and ancillary development...” [137]
23. The Respondent submits that the 1998 Planning Permission and the 2014 Certificate expressly provided for houseboats and therefore does not allow for the stationing of a caravan or mobile home on the Land
24. The Tribunal found that there is no definition of “houseboat” and in the present case, the houseboat referred to is a caravan on a float and when the 1998 Planning Permission was granted retrospectively, the Local Planning Authority must have known that it was in respect of the “houseboats” which were already in place, which were caravans on floats [140].
25. The Tribunal stated it “is of the opinion that the essential point in this case is whether the reference in the 1998 Planning Permission to “houseboat” is actually a reference to a “caravan”. The Tribunal finds that in these particular circumstances the permission is for what is actually there, and what is actually there is a caravan as defined in section 29 of the Caravan Sites and Control of Development Act 1960

which is incorporated into the Mobile Homes Act 1983 under section 5. There is no statutory definition of “houseboat” and the houseboat referred to in the 1998 Planning Permission is the “Hartford Houseboat” which is a caravan on a float. The Tribunal did not consider that the caravan had metamorphosed into something else because it had been placed on a float.” [142]

26. Therefore, the Tribunal finds the 1998 Planning Permission gave permission when the Applicant purchased the Property in 2017 for a caravan to be stationed on the Respondent’s land and for it to be occupied by the Applicant as her sole residence by virtue of the 2014 Certificate [143].
27. Respondent’s Counsel stated that permitting the use of land for a houseboat was not the same kind of use as permitting the use of land for a caravan. He referred to *Winchester City Council v Secretary of State for Housing Communities and Local Government* [2015] EWCA Civ 563 stating uses of like find *sui generis* have a functional use. He referred to the Oxford English Dictionary which defines houseboats as “a boat which is fitted for use as a dwelling” [144].
28. The common factor was that both the caravan and the houseboat are fitted for use as a dwelling. However, in the present case the Tribunal found that the functionality use was not so singular in that the caravan on a float could be used on water but was also capable of being taken off the float and used on land [145].
29. The Tribunal having made the finding that the 1998 Planning Permission and the 2014 Certificate allowed the Property to be stationed as a caravan for human habitation it followed that the part of the Site on which the Property was stationed was a “caravan site” under section 1(4) of the Caravan Sites and therefore was “protected site” in respect of which the Mobile Homes Act 1983 applied [146].
30. The Respondent disagrees and considers the caravan and the float must be treated as one making it a houseboat and that the 1998 Planning Permission and the 2014 Certificate is for a houseboat and not a caravan and so the Mobile Homes Act 1983 does not apply.
31. The Applicants in response to the Respondent’s Application for Review or Permission to Appeal state that:
 - 1) The Grounds of Appeal do not address a point of law;
 - 2) They repeat the arguments that have already been rejected by the Tribunal and there is no basis of an appeal
 - 3) There is nothing irrational or unreasonable doubt about the Tribunal’s Decision.

Conclusion

32. The Tribunal’s Decision was based on the evidence and submissions before it and the Respondent has raised no new legal arguments or additional evidence in support of the application for permission to appeal. The Respondent’s overall ground is that the Tribunal’s Decision is wrong.
33. The Tribunal accepts that there is an alternative argument which would produce a different outcome.

34. The issues for which the Tribunal grants permission to appeal are as follows:
- A) whether the caravan by being put on a float on water becomes a houseboat and thereby loses its protection under the Mobile Homes Act 1968;

and

 - B) whether, in this case, the 1998 Planning Permission by allowing “...retention of use of land for 15 houseboats” excluded the stationing of caravans notwithstanding that the Hartford Houseboat was a caravan, as defined by section 29 of the Caravan Sites and Control of Development Act 1960, on a float.

Judge J R Morris