



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

Case Reference : **CHI/00HX/PHC/2021/0018**

Property : **19 Kingsdown Park,
Kingsdown Road, Swindon
SN25 6PG**

Applicant : **Oaklands Property
Developments Limited**

Representative : **IBB Law LLP**

Respondent : **Mr John Hemming**

Type of Application : **s.4 Mobile Homes Act 1983**

Tribunal Members : **Judge D Dovar**

Date of Decision : **2nd March 2022**

DECISION

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1. The Applicant is the owner of the site on which the Respondent has his park home.
2. This is an application for a determination under s.4 of the Mobile Homes Act 1983 (as amended) for the proper construction of a term of the agreement between the parties relating to access by the Applicant to the pitch on which the Respondent has his park home. The application also seeks a determination that if the Respondent refuses access, he will be in breach of his pitch agreement.
3. The Tribunal gave directions on 17th November 2021, which included notice under rule 31 of the Tribunal Procedure Rules 2013, that unless either party stated in writing within 28 days of receipt of the directions, that they objected to the matter being dealt with without a hearing, it would be so dealt with. Neither has objected and this determination has been made without a hearing.
4. This matter relates to an agreement dated 6th October 1999 ('the Agreement') between Mr and Mrs Large as site owners and the Respondent, Mr Hemming. The Applicant is the assignee of the site. Access under the agreement has already been the subject of a determination of Judge Whitney of the Tribunal on 25th June 2021, when he determined that the Applicant did have the right of access to the pitch on notice, with reasons; however, they did not have a right of access into the park home. It was also said by Judge Whitney that:

'If they object and are not prepared to allow such access they should notify the Respondents. If they do refuse such access it

may be, dependent on the circumstances, that the Respondent will be entitled to make applications on the basis that the Applicants are breaching their agreements by not providing access to the pitch upon notice being given. Such determinations are always made on their own merits and dependent upon the facts of the individual case.'

5. Following that determination, the issue now between the parties is whether or not it is a sufficient or proper reason to enter the pitch in order to carry out a visual external inspection of the park home for the purposes of determining its condition; presumably, if it is considered not to be in good condition.
6. On 3rd August 2021, the Applicant's solicitors, IBB Law, wrote to the Respondent requesting access for the purpose of an external inspection of his park home. They requested access on 19th August 2021 at 5pm. It was expressly stated that they would not need access to the interior of the park home.
7. On 7th August, the Respondent refused the inspection; his reasons for so doing were: a.) only an inspection of the pitch was permitted (i.e. not the park home); and b.) 14 days' notice had not been given.
8. On 12th August, the Respondent emailed reiterating that access for the purpose of an external inspection was not a legitimate reason for seeking access. Mr Clement, of IBB Law, responded that day notifying the Respondent that they had cancelled the proposed visit day in light of the objection. He also contended that his client was entitled to inspect the

park home. He did not address the 14 days' notice point. He did seek a general confirmation from the Respondent that access would be given to allow an inspection at a date and time to be specified. The Respondent replied that the rights did not extend to the inspection of the park home.

9. At that point, the Applicant made this application. The Applicant relies on the following factors to support their case for access to inspect:

a. The Terms of the Agreement, in particular:

i. The obligation to '*permit the owner ... to enter the pitch for the purpose of ... ascertaining whether there is or has been any breach of agreement*' (3(m));

ii. the obligation to '*keep the mobile home in a sound state of repair*' (3(e));

b. The Statutorily Implied Terms under the 1983 Act, being:

i. Under paragraph 11, the right to quiet enjoyment was subject to paragraphs 10,12,13 and 14;

ii. Under paragraph 14, that the Site Owner can enter the pitch for a reason other than the ones specified in paragraph 12 (deliver post, read meters etc.) or 13 (essential repairs and emergency works), only if he has given the occupier at least 14 clear days' written notice of the date, time and reason for his visit.

iii. Under paragraph 15, that 'the rights conferred by paragraphs 12 to 14 above do not extend to the mobile home.'

10. The Respondent submits the following in opposition to the application:

- a. Paragraph 15 differentiates between the 'pitch' and 'mobile home' along the lines of ownership, the latter is owned by the occupier and just with any other item owned, there is no right to inspect. It must therefore follow that if there is no right to inspect, seeking access to inspect is not a legitimate reason for access and can therefore be refused;
- b. When paragraph 14 refers to the right to enter for any other reason, that cannot mean 'absolutely' any reason; i.e. just because he wants to, it must be for a valid reason;
- c. Whilst the Respondent's construction would make it difficult for a site owner to determine whether a park home was in good condition or not, they could make an application to the Tribunal for a determination if they 'suspect' it needed inspection;
- d. To allow a site owner more liberal terms of access would be too far reaching and could well be used to the detriment of the occupiers; i.e. to increase repair bills and ultimately force pitch abandonment.

Determination

Access to carry out external inspection of the park home

11. In my view the Applicant's construction is correct. The combination of express and implied terms permits access for a visual inspection of the park home. It is not as restricted as the Respondent contends.
12. Firstly, given the obligation for the occupier to keep the park home in good condition, the site owner must have some means of ascertaining whether that condition is being abided by. It is not a sufficient answer to suggest that if there were suspicions that it was in poor condition then an application should be made to the Tribunal. That would cause unnecessary, speculative and wasteful applications to the Tribunal.
13. Secondly, the right under paragraph 15 is not as narrow as the Respondent contends, a reason has to be given. In doing so, it must be a legitimate reason, otherwise the occupier will be entitled to refuse. Therefore, simply to say that access was required because the site owner wanted access, would not do and would be rightly met with a refusal of access. Likewise, if a legitimate reason for access, such as for inspection, is abused, in that access is too frequently requested, then again that could warrant a proper refusal of access.
14. Finally, the fact that the park home is the occupier's property, does not detract from the fact that under the Agreement the occupier has agreed to keep it in good condition. Their rights are not unrestricted. Further, it is in furtherance of those rights that the additional right to inspect arises.

15. Therefore, I determine that a request for access to the pitch to carry out a visual inspection of the park home is a valid reason and is not a basis for refusing access.

16. I am also asked to determine that refusal in the future would amount to a breach of the Agreement. I am not prepared to do that. I have not been asked to determine whether the refusal made in August was a breach, nor does it seem that I could, particularly given the question mark as to the timing of service. Further, I endorse the quote above from Judge Whitney. If a specific request is refused, that may amount to a breach of agreement, but there may be other circumstances which warrant the refusal. The time to make such an application is when an actual request has been refused.

Appeals

A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk .

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.

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.

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.