FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/33UF/PHK/2021/0002**
HMCTS code (audio, video, paper)	**:**	**V: CVPREMOTE**
Site	**:**	**Alder Country Park, Bacton Road North Walsham NR28 0RA**
Applicant	**:**	**Rosemary Smith (as secretary of the Alder Country Park Residents' Association)**
Respondent	**:**	**Alder Country Park Ltd**
Representative	**:**	**Apps Legal**
Type of application	**:**	**Application for recognition as a qualifying residents' association**
Tribunal members	**:**	**Judge David Wyatt** **Mary Hardman FRICS IRRV (Hons)**
Date of decision	**:**	**3 May 2022**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents we were referred to are those described in paragraphs two to four below. We have noted the contents.

Decision of the Tribunal

The Tribunal strikes out these proceedings under Rule 9(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (the "**Rules**").

Reasons

Procedural history

1. On 20 September 2021 the Applicant applied to the tribunal by reference to paragraph 28(1)(h) of Chapter 2 of Part I of Schedule 1 to the Mobile Homes Act 1983 (the "**1983 Act**") for an order that the "*North Walsham Park Owners Associatio*n" was a qualifying residents' association in relation to the Site.

2. On 15 November 2021, the Regional Surveyor gave case management directions. These required the Applicant to produce bundles of the documents they relied upon, including their membership list and evidence of membership, a sample park home agreement/written statement, any witness statements of fact and any other documents relied upon, and the Respondent to reciprocate. The Applicant produced their hard copy bundle of 68 pages.

3. On 20 December 2021, the Respondent produced their electronic bundle of 36 pages, including a copy of the decision in Murphy v Wyatt [2011] EWCA Civ 408, with a letter applying to strike out the application under Rule 9(2). The Regional Surveyor directed that the application be considered at the substantive hearing, which was fixed for 6 April 2022. The Applicant was given permission to produce a written reply. Their reply letter dated 27 January 2022 with enclosures referred to a First-tier Tribunal decision which was subsequently considered and confirmed by the Upper Tribunal in John Romans Park Homes Limited v Hancock & Ors [2018] UKUT 249 (LC).

4. On 31 March 2022, the Respondent produced a skeleton argument from Mr Matthew Tonnard of counsel, with two copy letters and a copy of the decision in Dean & Ors v Mitchell [2020] UKUT 0306 (LC). On 4 April 2022, the Applicant requested an adjournment, saying they needed to take advice on the skeleton argument and a new witness statement recently obtained from James Windsor, an officer of the local authority. Later that day, the Respondent sent their reasons for objecting to the request. On 5 April 2022, I refused to adjourn the hearing, for the reasons explained to the parties in writing that day. The Respondent sent copies of the first instance and Upper Tribunal decisions in John Romans Park Homes. The Applicant sent a copy of Mr Windsor's witness statement with exhibits and a skeleton argument.

5. At the hearing on 6 April 2022, Mike Hankins represented the Applicant association, with Alan Pearce and Stanley Cousins in attendance. The Respondent was represented by Mr Tonnard, with Kirstie Apps, solicitor, and James Noce in attendance. We are grateful to Mr Hankins and Mr Tonnard for their assistance. The parties confirmed they had no objection in principle to us taking into account (for the purpose of these proceedings) the documents attached to Mr Tonnard's skeleton argument and the witness statement from Mr Windsor with exhibits. They confirmed the name of the association had been changed in

January 2022 to "*Alder Country Park Residents' Association*". With their consent, we changed the name of the original Applicant in these proceedings accordingly.

Issues

6. The Respondent contended that we did not have jurisdiction to determine the application because the 1983 Act does not apply to the agreements with the relevant park home owners. Alternatively, they said, the Applicant had not demonstrated that the association met the requirements set out in paragraph 28 of Chapter 2 of Part I of Schedule 1 to the 1983 Act for a qualifying residents' association.

Agreement(s) with the park home owners

7. Those representing the Applicant association indicated the latest licence agreement held by residents was the example signed and dated 15 April 2019 between: (1) Excusive Luxury Lodges Ltd trading as the Dream Lodge Group ("**ELL**"), as park owner; and (2) Tim and Rosemary Smith, as lodge owners. This was the only copy licence agreement produced by the parties. It is expressed to run from 21 February 2019 to 26 March 2064, with provisions indicating it would end when a lodge is transferred but the park owner would grant a new licence agreement to a buyer or family member approved by the park owner. The document states that it does not permit the lodge owner to use the lodge as a permanent residence and provides for the address of their main residence to be entered, indicating that all correspondence would be sent to that address. Amongst similar provisions, it states: "*The Lodge is for holiday and recreational use only. It would breach this Licence Agreement if the Lodge were used as a permanent residence…*".

Background

8. In relation to part of the Site, described by the Respondent as "*Meadow Falls*", conditions of earlier planning permissions were varied by a planning notice dated 24 September 2004 to allow year-round occupancy of caravans for holiday purposes but the following condition (2) was imposed: "*Each caravan and chalet on the site shall be used for holiday accommodation purposes only and shall not be used as the sole or main residence of its occupiers.*" In relation to another part of the Site, described by the Respondent as "*The Gables*", planning permission was given by notice dated 25 January 2010 for stationing 17 woodland lodges and construction of an access track and parking area, imposing a condition (10) in the same terms: ("*Each woodland lodge on the site shall be used for holiday accommodation purposes only and shall not be used as the sole or main residence of its occupiers.*")

9. Mr Windsor said in his witness statement that the local authority (North Norfolk District Council) had been aware of people living on the Site for years. He said council tax records showed some had been paying council tax since 2014. Owners of park homes on the Site had been advised by their MP and others to form a residents' association to provide one voice

to endeavour to protect the rights of residents and seek to improve communications with the owner of the Site. They did so in 2018, with a written constitution and an elected management committee, a chairman (Mr Hankins), a vice-chairman (now Mr Pearce), a secretary (Rosemary Smith) and a treasurer. In 2018 and 2019, they met with their MP, local councillors and officers of the local authority, pressing for planning approval for residential use of the site. It was said at least a previous owner of the Site, Dream Lodge Group Ltd ("**DLG**"), knew/agreed many of the park home owners would be living permanently on the Site because they had facilitated the sales of their previous homes.

10. Mr Windsor indicated that, in January 2019, DLG entered administration. The Site was purchased by ELL from the administrators. The Applicant association said ELL sought to substantially increase pitch fees and in mid-2019 threatened park home owners with eviction for non-payment of those increased fees. The park home owners said they were and remained fearful and very concerned. They said there had been extortionate pitch fee increases, intimidation, unacceptable management behaviour and many other problems. Officers and councillors from the local authority had been endeavouring to assist. They had met with park home owners and ELL, inviting ELL to apply for removal of the planning conditions restricting the Site to holiday use. It seems that, at first, ELL indicated it would prefer not to have a mixed-use site. Mr Windsor indicated that ELL's planning application for mixed use was ultimately made in 2020. He noted that ELL acknowledged in their application that a number of people were using caravans as their sole or main residence and said this "problem" had been inherited by ELL when they purchased the site out of administration. The park home owners petitioned the local authority to grant planning permission for residential use.

11. By decision notices dated 7 April 2020 and 10 August 2020 respectively, planning permission was granted for mixed holiday and permanent use. These notices removed conditions (2) and (10) from the earlier planning permissions for the areas described by the Respondent as the Gables and Meadow Falls, allowing caravans to be used as 12-month holiday accommodation or for residential use, including as a sole or main residence. Conditions restricted part of the site (marked on a surface water flood zone plan) to use for holiday purposes only. It was common ground that, following the 2020 planning decision notices, the Site is now a protected site for the purposes of the 1983 Act.

12. The Applicant said that, in March 2021, ELL sold all save two of their park home sites. One of those was the Site, which was transferred to the Respondent (whose director, Anthony Barney, was a director of ELL until March 2021). The local authority subsequently issued a site licence, dated 19 May 2021, in the name of the Respondent under the Caravan Sites and Control of Development Act 1960. On 13 August 2021, the Applicant association wrote to the Respondent, asking them to recognise the association and raising other questions. After the Respondent did not answer, the association made this application to the tribunal.

13. Unfortunately, the Applicant had not provided good evidence of their membership in their bundle as directed. Mr Hankins explained at the hearing that (while the planning permissions allow more) there are currently 142 park homes on the Site. 25 of these are owned by people who are members of the Applicant association, named in the list provided by the Applicant in their bundle. Mr Hankins explained that the 26th resident named in that list (the owners of 4 The Willows) had now left the Applicant association. Mr Hankins said 72 other "lodges" were owned by the site owner and used for holiday lettings. He said the remaining 44 "lodges" were owned by investors, some used as second homes and some for holiday purposes.

The law

14. By section 4(1) of the 1983 Act, in relation to a protected site, the tribunal has jurisdiction: "*to determine any question arising under*" that Act "*or any agreement to which it applies*", and: "*to entertain any proceedings brought under*" that Act "*or any such agreement*".

15. By section 1(1), the 1983 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.*"

16. By section 5 of the 1983 Act, "*protected site*" has the same meaning as in Part 1 of the Caravan Sites Act 1968 (the "**1968 Act**"). By section 1(2) of the 1968 Act, for the purposes of that Part: "*…a protected site is any land in England in respect of which a site licence is required … not being land in respect of which the relevant planning permission or site licence- (a) is expressed to be granted for holiday use only; or (b) is otherwise so expressed or subject to such conditions that there are times of the year when no caravan may be stationed on the land for human habitation…*"

17. In Mitchell at paras. [24] & [25], the Chamber President summarised the key relevant authorities as follows:

> "*In Balthasar v Mullane (1985) 17 HLR 561, the Court of Appeal held that where a site licence for a caravan site is required under s.1(1) of the Caravan Sites and Control of Development Act 1960 ("the 1960 Act"), a "protected site" within the meaning of s.1 of the Caravan Sites Act 1968 ("the 1968 Act") and s.1 of the 1983 Act means a site in respect of which planning permission has been granted. If a site licence is required but planning permission has not been granted, the site in question is not a protected site for the purposes of the 1983 Act and so that Act cannot apply to the agreement in question.*
>
> *In Murphy v Wyatt … the Court of Appeal decided that the 1983 Act could not apply to an agreement unless the land on which the mobile home was stationed was a protected site from the start of the agreement. This conclusion was reached as a matter of construction of the 1983 Act, by reference to the relevant provisions of the 1968 Act and the 1960 Act.*"

18. In Mitchell, the Chamber President considered the decision in Murphy to be correct and decided he would follow it even if (on the grounds argued by the appellant in Mitchell) he was not bound to do so.

19. By section 2 of the 1983 Act, if that Act applies to the licence agreements, the terms set out in Chapter 2 of Part I of Schedule 1 to the 1983 Act (the "**Terms**") are implied into those agreements, notwithstanding their express terms. Paragraph 28(1) of the Terms provides that a residents' association is a qualifying residents association in relation to a protected site if:

    a. it meets the requirements set out in sub-paragraphs 28(1)(a) to (g); and

    b. under 28(1)(h), the site owner has acknowledged in writing to the secretary that the association is a qualifying residents' association, or, in default of this, the tribunal has so ordered.

Applicant's submissions

20. Mr Hankins thought no new licence agreements had been granted since 2019. The park home owners and (it appears) the local authority considered the usual procedure was for new individual pitch agreements to be issued following grant of the planning permissions and the site licence, but the Respondent had not done this.

21. When asked, Mr Hankins said there had been a variation, but confirmed he was referring to previous variations, changing earlier licence agreements from seasonal to year-round holiday use (following the earlier variation of the planning conditions). He argued the change to allow people to live on the Site all year round was not consistent with holiday use. He was not aware of any changes having been made to the licence agreements since 2019.

22. The Applicant association relied on the change of circumstances, following regularisation of the planning position and grant of the site licence. Mr Hankins pointed out that the park home owners had helped support the application for planning permission for mixed use and had not foreseen the current situation. At least since December 2021, the association understood the legal position the Respondent was taking and that there were "*restrictions*" on application of the 1983 Act.

23. Mr Hankins asked us to take a common-sense approach, recognising their predicament. As noted above, the Applicant also considered that the John Romans Park Homes decisions helped their case. Advisers they had consulted so far could not understand why individual pitch fee agreements had not been granted, since the Site was now a protected site. It is not clear whether such advisers had been given clear relevant information about the circumstances, or been referred to and engaged with the Court of Appeal and Upper Tribunal authorities relied upon by the Respondent and summarised above.

Review

24. On the case and evidence produced in these proceedings, we are not satisfied that the 1983 Act applies to the relevant licence agreement(s). It appears the Site was not a protected site when the licence agreement(s) were made in or before 2019, because it appears the only planning permissions up to and including 2019 were expressed to be granted for seasonal and then holiday use only. As such, they would keep the Site outside the definition in section 1(2) of the 1968 Act, set out above, of a protected site. It was not suggested that at any time up to and including 2019 any part of the Site required a site licence but was not covered by the planning permissions. Even if that were the case, it would not have made the Site or any part of it a protected site because (following Balthasar, summarised above) it could not be a protected site unless planning permission had been granted.

25. Murphy confirms and explains, by reference to the wording of section 1(1) of the 1983 Act and other factors, why that Act does not apply to an agreement unless the land on which the park home was stationed was a protected site from the *inception* of the agreement entitling the occupier to station their park home on that site. As Mr Tonnard observed, it follows from Murphy that grant of planning permission or a site licence does not have the effect of making the 1983 Act apply to pre-existing agreements. The critical question is whether the site was a protected site when the agreement to station the mobile home on that site was made.

26. Mr Tonnard rightly drew our attention to the discussion at [45-46] in Murphy of whether a variation agreed between the parties to an agreement after its inception might be treated as the making of a fresh agreement - which would be within the scope of the 1983 Act if the site had become a protected site in the interim. However, as noted above, Mr Hankins was not aware of any change to the licence agreement(s) since 2019. Mr Tonnard said the Respondent was not obliged to issue new licenses permitting sole/main residence. We note that ELL and the Respondent appear to have made a deliberate decision not to do so without renegotiation. Although this was disputed and we make no finding about it, the Respondent produced a letter which ELL was said to have sent to park home owners in June 2020, following grant of the first planning permission for mixed use, saying that their licence agreements would not be brought within the 1983 Act unless this was expressly agreed and inviting people to contact the site owner if they wished to explore changing their agreements.

27. The decision in John Romans Park Homes does not change the position because it was about a different issue. In that case, planning permissions in place at the inception of the relevant licence agreements allowed mixed seasonal and permanent use, but (in essence) did not limit residential use to a specific part of the site. Accordingly, by reference to the definition in s.1(2) of the 1968 Act, the Upper Tribunal decided the whole of that site was a protected site at the inception of the relevant licence agreement(s).

28. We do not propose to attempt to make findings about the further argument relied on by the Respondent. That argument was to the effect that another reason the 1983 Act does not apply is that the licence agreements do not satisfy the second condition in s.1(1)(b) of the 1983 Act (that the agreement entitles the occupier to occupy the park home as their only or main residence, as set out above). In view of the apparent position that the Site was not a protected site when the licence agreement(s) were made, it is not necessary for us to do so. Further, we did not have sufficient written evidence from either party about the alleged understandings/agreements with the previous site owners about sole/main residential use notwithstanding the apparent terms of the licence agreement(s). At the hearing, the Respondent denied there had been any variation of the express terms of the licence agreements, saying it could not say whether a former owner had varied previous agreement(s) to facilitate sales. The Respondent said it had acquired the Site with the licence agreements in place.

29. Similarly, we do not propose to attempt to make findings about the other allegations in these proceedings. The Applicant association produced no proper witness statements or substantial direct evidence. We entirely understand why the association are very concerned, but these proceedings are purely their application for recognition of a qualifying residents' association. We put it to the parties at the hearing that however good or bad a position or a site owner is said to be, the only issues which are relevant to the application which has been made to us are: (a) whether the 1983 Act appears to apply to the licence agreement(s); and (b) if so, whether the association meets the requirements set out in paragraph 28(1) of the Terms which would be implied into the licence agreement(s) if the 1983 Act applied. The parties could not point us to any other relevant matters which we should take into account for the purposes of the application which has been made.

Conclusion

30. Since we are not satisfied that the 1983 Act applies to the relevant licence agreement(s), we do not have jurisdiction to consider whether to make an order under paragraph 28(1)(h) of the Terms. Accordingly, Rule 9(2) requires us to strike out this application, as the Respondent seeks.

31. Even if we could still be said to have jurisdiction under section 4 ("*to entertain any proceedings brought under*" the 1983 Act, for example, as noted above), the practical result would be the same. Since we are not satisfied that the Act applied to the relevant licence agreement(s), we are not satisfied that the Terms were implied into them. Accordingly, we would not have made an order under paragraph 28(1)(h) of the Terms that Alder Country Park Residents' Association is a qualifying residents' association in relation to the Site, as sought by the Applicant.

Observations

32. Our decision relates only to the specific application made by the association for recognition as a qualifying residents' association. It is made on the limited case and evidence produced for that application and should not be taken to have wider effect on individual park home owners or otherwise. As Mr Tonnard observed, this application was not seeking a determination on behalf of any individual park home owner or owners as to whether the 1983 Act applies to their licence agreement (i.e. an application under section 4 of the 1983 Act for such a determination, as in Mitchell). The only copy licence agreement produced was for Mr and Mrs Smith, who did not attend the hearing. While we were grateful for Mr Hankins' assistance, we are not sure whether he had detailed factual instructions from Mr and Mrs Smith or anyone else about their specific circumstances. The documents produced in these proceedings do not clearly demonstrate even whether each named park home owner is a member of the association, let alone what they may or may not have authorised others to seek on their behalf or what their detailed factual evidence might be in relation to their own park home, occupation status and licence agreement(s). We recognise this may have been a speculative application prepared with little or no expert help by concerned people hoping to make progress without really knowing what to do.

33. It seems the local authority officers and MP/councillors (and, by engaging planning consultants and making the planning applications for mixed use, perhaps the former site owner) have provided assistance to get matters this far, removing any planning risk any residents faced and the practical "problem" the Respondent says it inherited. As to the remaining concerns, the park home owners may wish to prepare a careful explanation of the situation (this decision might help them with that) and use it to seek informed specialist independent legal advice, perhaps collecting factual evidence about exactly what is said to have been done/agreed/relied upon with previous site owners, and when, in relation to the terms of the relevant licence agreements. In any event, it might be appropriate to explore mediation or the like with the site owner and the Applicant association may be well placed to help with that. The parties have a continuing relationship and it may be that all concerned could take steps to improve it.

Name: Judge David Wyatt **Date:** 3 May 2022

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).