



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

Case Reference : **MAN/00CZ/PHC/2021/0014**

Property : **3 Victoria Place Hill Tree Park Blackmoorfoot
Road Crosland Hill Huddersfield HD4 7EQ**

Applicant : **The Berkeley Leisure Group Limited**

Respondent : **Miss Jacqueline Hoggett**

Type of Application : **S4 Mobile Homes Act 1983
Sch1 Chapter 2 para 16 or Chapter 4 para 14**

Tribunal Members : **Mr John Murray LLB
Mr John Faulkner FRICS**

Date of Decision : **11 July 2022**

DECISION

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REASONS FOR DECISION

DETERMINATION

The Tribunal determines that the effect of the clause it is asked to interpret is that permission is granted for one vehicle for every park home; this entitles every park home owner to park one vehicle. The rule does not prevent a park home owner allowing their neighbour to use the permitted space.

INTRODUCTION

1. The Applicant made an application for a determination as to whether the Respondent was in breach of the agreement, and if so, an order to remedy the breach, in relation to her agreement for 3 Victoria Place Hill Tree Park Blackmoorfoot Road Crosland Hill Huddersfield HD4 7EF (the Mobile Home) under s4 Mobile Homes Act 1983 on 26 August 2021.

THE PROCEEDINGS

2. Directions were made by a procedural judge on 28 January 2022 that the Applicant should file and serve a bundle with documentation, photographs and statements of case within 21 days of directions; the Respondent had 21 days to reply in kind, and the Applicant had 14 days to provide further comments.

THE LEGISLATION

3. The relevant legislation is contained in s4 of the Mobile Homes Act 1983 ("the Act") which gives the court jurisdiction to determine any question arising under the Act or any agreement to which it applies, and to entertain any proceedings brought under the Act or any such agreement.
4. The Act applies to any agreement under which a person is entitled to station a mobile home on land forming part of a protect site, and which is occupied as the occupant's only or main residence.
5. The jurisdiction of the court was transferred/granted to the Tribunal by Mobile Homes Act 1983 (Jurisdiction of Residential Property Tribunals) (England) Order 2011 (SI 2011/1005)
6. By s2(1) of the Act, the implied terms set out in the schedule to the Act take effect notwithstanding any express terms of the agreement.

SUBMISSIONS FOR THE APPLICANT

7. The Applicant submitted written submissions dated 26 August 2021 in support of the application. In the submissions, they confirmed that they are the owners of a residential mobile home park known as Hill Tree Park Blackmoorfoot Road Crosland Hill Huddersfield HD4 7EF
8. The Respondent was assigned a Mobile Homes Act written statement ("Agreement") which had commenced on 2nd February 1987 and assigned to her on 13th March 2019.
9. The Tribunal was asked to determine that the parking of two vehicles on the Park put the Respondents in breach of the agreement; Park Rule 21 allowed for only one vehicle per park home to be parked.
10. In Part IV Express Terms of the Agreement, clause 3 obliged the Occupier to comply with the Park Rules from time to time in force.
11. Prior to the sale of the Park Home to the Respondent, the Applicant had advised the Respondent on 18 February 2019 she could only park one vehicle on the Park. The Respondent had sent a letter to the Applicant dated 28 February 2019 that she would only park one vehicle on the Park.
12. It was brought to the Applicant's attention on 24 April 2019 that the Respondent was parking two vehicles on the Park. The Respondent was written to in April and June; on 1 July 2019 she telephoned the Applicant to confirm that she did have two vehicles. On 2 July 2019 she wrote to the Applicant to say that one of the vehicles would be parked off the Park.
13. The Respondent subsequently wrote on 21 July 2019 to say she did not feel the road leading to the Park was safe to walk on, and asked if she might be permitted to use the parking space of another home owner. The Applicant took the view she would still be in breach, and was concerned that if the homeowner sold their home in future, the Respondent would have nowhere to park her second vehicle.
14. The Applicant wrote back on 2nd October 2019 to state that Government requirements following amendments to the Mobile Homes Act in 2013 meant that any ambiguity or discretion when enforcing park rules had to be removed, so that the Applicant had no discretion to allow a second vehicle; were they to allow it, they might "fall foul" of their Site Licence.
15. The Applicant recognised that the neighbour's offer seemed a workable solution, but it still meant they would be parking two vehicles on the park, and that the Applicant would be using their discretion to allow that. Problems would arise if their neighbour moved away, or had visitors using her driveway.

16. During the Covid 19 Pandemic the Applicant agreed a temporary concession for three home owners. This agreement was to end on 17 May 2021 when Government restrictions were lifted. The Respondents continued to park two vehicles on the Park and so the Applicant issued notice of breach on 20 May 2021. The Respondents were asked to seek alternative parking arrangements for one of the vehicles by 17th June 2021.
17. The Respondent was served with notice of breach on 20 May 2021.
18. The Applicant then agreed to a further extension of the concession until 21 June 2021 due to a continuation of Government restrictions.
19. The Applicant arranged for a meeting with the Area Manager and other homeowners in a similar situation on 8 July 2021. The Applicant stated it was not possible to change the rules to allow homeowners with a requirement for two vehicles to be able to park both vehicles on the park as there was not sufficient parking.
20. The Applicant submitted a response to the Respondent's case dated 15 February 2022.
21. In response to the offer from the neighbour to use her driveway, the Applicant was concerned that if the neighbour acquired a vehicle or moved away, and incoming homeowner had a vehicle, the Applicant might not be able to seek the removal of the second vehicle if the Respondents had had the benefit of parking on the Park for a protracted period of time.
22. The Applicant stated that there are 102 occupied Park Homes on the Park. 55 have a parking bay on their pitch, and there are 32 communal parking spaces on the site. The Site Licence requires the Applicant to provide a space for at least one car for every home. The Applicant conceded that they are in breach of licence, and that rectification may take a considerable amount of time. There was not enough space on the site to amend the rules to allow two vehicles.

SUBMISSIONS FOR THE RESPONDENT

23. The Respondent provided written submissions to the Tribunal dated 19 February 2022. She confirmed that she had married on 31 August 2021 and was now known as Mrs Foskett.
24. She told the Tribunal that she worked in the community, mainly with the elderly. She took them to appointments did their shopping, delivered it and helped them in their homes. She would see more than one client on most days, and needed her car. Her husband, Mr. J Foskett was a lorry driver, and left home at 5.30am and needed his car. Between them they needed two cars.

25. The Respondent had found an alternative parking space at a local pub, but this facility was removed when the management changed.
26. One of her neighbours said she could use her space as she did not have a car. The Applicant had told her this was against the rules.
27. The Respondent said she had taken photos at all times of day and on different days of the week which showed that there were always plenty of safe empty car parking spaces on site. Parking in an empty space was in her view a common sense approach, and she had spoken to many residents who had no objection to this. She referred to a petition signed by many residents supporting the idea of being able to have a second car.
28. She had offered to have a drive built to keep the two cars by letter, but this was rejected.
29. She had found the situation very stressful. If she could not park her car and access her home safely, she would likely have to stop working

THE DETERMINATION

30. The Tribunal was asked to determine whether the Respondent had breached her Agreement by parking two vehicles on the Park, and if so, to make an Order to remedy such Breach.
31. The Respondent had signed an agreement which obliged her to comply with the Park Rules from time to time in force.
32. Park Rule 21 states: Parking is only permitted for one vehicle per park home.
33. The Applicant had explained that there are 102 occupied Park Homes on the Park; 55 of the homes have a parking bay on their pitch, and there are 32 communal parking spaces on the site, a total of 87, leaving the Applicant some 25 pitches short of the requirement of the Local Authority Licence to provide a space for at least one car for every home. This leaves the Applicant in breach of their licence. The Applicant asserted that rectification of this might take a considerable amount of time; there was not enough space on the site to amend the rules to allow two vehicles given that there was not enough space for each home owner to have one car, had they all wanted to.
34. The Applicant had not provided details of how they intended to rectify their breach of licence; that matter was not a matter for consideration by the Tribunal. The situation will no doubt cause concern for the Applicant, as does managing the parking situation for the benefit of all.
35. Evidence from the Respondent was that there were always plenty of safe empty car parking spaces on site.
36. The wording of the rule may have been reflective of the site licence, that each home should have one parking bay available to it. It might reflect that only

55 of the park homes have a parking bay within their pitch; those without a parking bay, but with a car, will have to use a communal bay, on a first come first served basis. If there were more than 87 cars on the site, not everyone one would be able to access a space.

37. This is not presently the case, but it is possible to foresee a time, as people work later in life, and the permitted age on Park having been lowered, that more households will have a need to have two cars. This is not something that can be accommodated on the present configuration of the site.
38. The rule as drafted states "parking is only permitted for one vehicle per park home". That is what park home owners who purchased after 2014 have agreed to, since the new rules came into force that year. The rule was clearly intended to stop park home owners parking two vehicles on their pitch, even if they had space.
39. However, the rule would not in the view of the Tribunal prohibit a park home owner who did not have a car permitting their neighbour to use their bay. Each pitch fee includes permission to park a vehicle (whether in their own bay or even in a communal bay); the rule as drafted does not say it needs to be their *own* car.
40. The Tribunal interprets this clause as granting permission for each park home owner to park a car, whether that car belongs to the park owner, a family member, a carer, a visitor, a friend – or even a neighbour.
41. The Applicant expressed concern that if the neighbour loaning the space was to move out, the permission would end and that it may be difficult stop the arrangements after a long period of time.
42. The Tribunal determines that there is nothing in the rules to prevent this arrangement; if the Applicant wished to prevent it, the rules would have to be changed. If the neighbour moved out, or withdrew permission, the arrangement would end along with the permission; however long the arrangement had lasted, it would not alter the fact that the permission had ended and no longer term "right" would arise. The Applicant is not using their discretion to allow the arrangement; it is enabled in the wording of the rule.
43. The Tribunal recognises that this could cause a difficulty for the Applicant if all 102 occupants were to seek to exercise this right; the Applicant is already aware that the situation leaves them in breach of their Local Authority licence. In the circumstances the Applicant might need to expedite their resolution of this matter, or move to alter the rules. The evidence before the Tribunal from the Respondent (which was not challenged) is that there were often many spare spaces available on the communal car park.
44. If the Applicant were concerned about abuse of this arrangement, or policing it, it ought not to be difficult to produce a parking permit scheme, so that cars on the site are limited. With the site configuration as it is at present of course, not every park home owner could have one

45. The Tribunal determines therefore that the effect of the clause it is asked to interpret is that permission is granted for one vehicle for every park home; this entitles every park home owner to park one vehicle.
46. The rule does not prevent a Park Home Owner allowing their neighbour to use the permitted space. The permission runs with the park home.

Tribunal Judge John Murray
11 July 2022