



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

Case Reference : **BIR/44UE/PHC/2022/0002**

Property : **57 Oak Tree Farm, Juggins Lane,
Earlswood, Solihull, B94 5LL**

Applicant : **Mr A Hartley**

Respondent : **Mr J and Mrs L Flavin**

Type of Application : **Application under section 4 of the
Mobile Homes Act 1983 for a
determination of any question arising
under the Act or agreement to which it
applies**

Tribunal Members : **Judge M K Gandham
Mr R P Cammidge FRICS**

**Date and venue of
Hearing** : **11 May 2022
Centre City Tower, 5 – 7 Hill Street,
Birmingham B5 4UU**

Date of Decision : **1 August 2022**

DECISION

Decision

1. The Tribunal determines that the Respondents are not in breach of express term 3 (h) of Part V of their Agreement with the Applicant, in that they did not breach Rule 31 of the Park Rules.

Reasons for Decision

Introduction

2. By an Application received by the Tribunal on 11 January 2022, Mr Asa Hartley ('the Applicant'), applied to the First-tier Tribunal, Property Chamber under section 4 of the Mobile Homes Act 1983 ('the Act') for a determination as to whether Mr John Flavin and Mrs Linda Flavin ('the Respondents') were in breach of the express terms of their mobile home agreement and Rule 31 of the park rules for Oak Tree Farm Caravan Site ('the Site').
3. The Applicant is the owner of the Site and the Respondents are the current occupiers of 57 Oak Tree Farm, Juggins Lane, Earlswood, Solihull, B94 5LL ('the Property').
4. The Applicant provided, with the Application, a copy of the Written Statement for 25 Oak Tree Farm ('the Agreement') and a copy of the Park Rules for Oak Tree Farm ('the Park Rules').
5. Rule 31 of the Park Rules states as follows:

"You must not park more than one vehicle on the park unless you have suitable space to accommodate an additional vehicle on your pitch".
6. As the Tribunal had received an application from the Applicant on the same day in respect of 25 Oak Tree Farm, the Tribunal confirmed that it intended to deal with the inspection and hearing of both applications at the same time.
7. The Tribunal received a bundle of documents from the Applicant on 9 February 2022, a Witness Statement from the Respondents on 7 March 2022 and the Applicant's Statement in Response on 24 March 2022. The Tribunal were informed that Mr Crumpton (of 44 Oak Tree Farm) and Reverend Andrews (of 25 Oak Tree Farm) would be representing the Respondents, as Mr Flavin was too ill to attend.
8. An inspection of the Site by the Tribunal took place on the morning of 11 May 2022, with a hearing in the afternoon at the Tribunal's hearing rooms.
9. Following the hearing, the Tribunal received from the parties a copy of the Licence for the Site dated 9 July 2007 ('the Site Licence'), together with representations regarding the number of parking spaces at the Site. The Tribunal reconvened, following receipt of the additional documentation, to make its determination.

The Law

10. The Mobile Homes Act 1983 provides at section 4:

*(1) In relation to a protected site, 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).

11. The powers of the First-tier Tribunal under section 4 of the 1983 Act are enhanced by provisions introduced into the Housing Act 2004 by the Transfer of Tribunal Functions (Mobile Homes Act 2013 and Miscellaneous Amendments) Order 2014.

12. Section 231A of the Housing Act 2004 provides as follows:

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).

(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.

Inspection

13. The Tribunal inspected Oak Tree Farm on 11 May 2022. The Tribunal was joined by the Applicant, who was accompanied by Ms Whittingham, and Mr Crumpton and Reverend Andrews (who attended on behalf of the Respondents).

14. The Site, which is a mobile home site, is situated approximately seven miles to the South West of Solihull centre and occupies a semi-rural location. It is accessed from a made up but (the Tribunal are advised) unadopted road known as Juggins Lane. The Applicant has confirmed to the Tribunal that the access road does not form part of the Site nor is it under his ownership.

15. The Site is licenced to accommodate 65 mobile homes, although at the time of the Tribunal's inspection there were 61 homes on the Site. The Site is a reasonably regular rectangular shape with a corresponding shaped spine road. Pitches are organised around the perimeter with an additional central block of

pitches. The mobile homes are of a mixed age and nature and the size of the pitches vary.

16. Some parking is available on certain pitches but there is a relatively large additional parking area near the entrance. As some pitches do not have any room to park a vehicle on the pitch, parking is accommodated on this main car park for them (several of the parking spaces had marked numbers aside them corresponding with various pitch numbers).
17. The Tribunal undertook a general inspection of the Site walking around the site road and noting the common areas, parking facilities, plus the access from Juggins Lane. Particular attention was paid to the Property - the location of the mobile home within the pitch, both pedestrian and vehicular access to the pitch and the parking layout immediately in front of the pitch. Although the pitch had two dropped kerbs, on either side of the mobile home, there was only one parking area, which was to the right of the Property when viewing it from the site road.
18. The access to the Property was adjacent to this main car parking area and two parking spaces were marked out laterally and running parallel to the front boundary of the pitch, such that vehicular access to the Property could only be obtained by crossing over the spaces.

Hearing

19. Following the inspection, a public hearing was held in one of the Tribunal's hearing rooms at Centre City Tower in Birmingham. All of the persons who had attended the Inspection also attended the hearing.

The Applicant's submissions

20. The Applicant confirmed that he was the owner of the Site and traded as Hartley Park Homes. He confirmed that the Respondents were the current occupiers of Pitch 57 by virtue of an assignment of the Agreement on 6 November 2020.
21. The Applicant stated that the Agreement required, in the Express Terms, that the occupiers must comply with the Park Rules. Furthermore, the Applicant stated that paragraph 2C of the Act provided that park rules would become express terms of an agreement if they had been through a statutory consultation procedure and that, in this case, that consultation procedure had been complied with.
22. The Applicant submitted that that the Respondents had breached Rule 31 of the Park Rules by parking a second vehicle on the Site, when there was only room to park one vehicle on their pitch.
23. The Applicant stated that he had received a Notice of Proposed Sale Form on 14 September 2020 and observed that, in the form, it detailed that the Respondents proposed to park two vehicles on the Site – a Suzuki and a Hyundai.

24. The Applicant stated that he wrote to the previous occupiers on the same date and confirmed that the pitch only had space for one car to be parked upon it and that this should be taken into account by the Respondents when deciding whether to proceed with the purchase. He confirmed that, if the Respondents decided only to bring one vehicle with them, then a new form should be submitted. The Applicant stated that he, subsequently, received an amended Notice of Proposed Sale Form ('the Proposed Sale Notice') dated 8 September 2020, which confirmed that the Respondents would only be bringing one car – the Hyundai.
25. The Applicant stated that, for a period of time, the Respondents did comply with Rule 31, however, he stated that they began to park both vehicles on the Site in around the beginning of 2021.
26. The Applicant stated that he wrote to the Respondents in May 2021, informing them that he had viewed two vehicles parked in front of the Property and enquiring whether they had started parking both of their vehicles on the Site. He stated that he received a letter from them, dated 15 May 2021, in which they apologised and admitted that they had "*breached the park rules*" based on the advice that they had received from other occupiers at the Site.
27. The Applicant stated that he wrote to the Respondents, on 20 May 2021, asking them to remedy the breach by removing one of vehicles within 28 days and that, on 15 June 2021, he received confirmation from them that they were only parking one vehicle on the Site.
28. In November 2021, the Respondent stated that he noted that the Respondents had recommenced parking both vehicles on the Site again, so wrote to them again on 15 November 2021, asking them to remedy the breach. He stated that he failed to receive a reply to that letter so, as it appeared the Respondents had no intention of remedying the breach, he made an application to the Tribunal.
29. The Applicant stated that although there were two parking spaces marked adjacent to the boundary of the Property, there was no legal right for the occupiers of the Property to park in them. He stated that spaces had been marked in error by a contractor at the request of the previous occupiers. He further stated that he had not removed the markings as he did not wish to damage the metalled surface of the road.
30. The Applicant stated that he had, informally, allowed the previous occupiers to park on the location of the spaces as they had certain disabilities which affected their ability to alight from their vehicle, so he had made "*reasonable adjustments*" for them.
31. At the hearing, the Applicant submitted that, despite having been marked out as parking spaces, the road adjacent to the boundary of the Property formed part of the site road and that under Rule 33 the Park Rules, occupiers were also prohibited from parking on the road other than for loading or unloading.

32. The Applicant stated that the conditions on the Site Licence required parking spaces to be provided to meet the requirements of the occupants and their visitors and that, as there were 61 occupiers on the Site, there was insufficient space to allow all of the occupiers to park additional vehicles there.
33. In addition, he stated that the Council considered a ratio of 1:8 spaces for visitor's parking to be adequate, meaning that a minimum of 8 spaces would be required for visitor spaces at the Site. The Applicant stated that although most of the mobile homes had single parking spaces upon their pitches, and some had two parking spaces, other pitches had none so required parking spaces on the common areas of the Site.
34. In the Applicant's Statement in Response, the Applicant stated that he had complied with condition 14 of the Site Licence by providing a minimum of one parking space per pitch, plus additional visitor's parking spaces. He stated that the Site was regularly inspected by the licensing officer who had raised no concerns in connection with his compliance with this condition. The Applicant stated that pitch 55 had been sold with the benefit of a second parking space in 2013, prior to the introduction of the current Park Rules which came into force on 3 January 2015, and that there were no homes with three parking spaces allocated to them, although he would investigate this if the Respondents could provide them evidence in support of their assertions. The Applicant also stated that any photographs taken by him were only in so far as was necessary to record the Respondents' breach of the Park Rules.
35. In the additional evidence received after the hearing, the Applicant submitted that, in addition to any spaces on individual pitches, there were thirty car parking spaces at the Site. He stated that twenty-one of the spaces were in the main car parking area at the front of the entrance to the Site, including the two spaces in front of the Property, and an additional nine spaces were located around the remainder of the Site. The Applicant stated that eleven of the spaces in the main parking area were allocated to pitches that did not have on-pitch parking.
36. The Applicant's bundle included a written statement of case in which the Applicant had asked for the Tribunal to: make an order determining that the Respondents were in breach of the express terms of the Agreement and Park Rule 31, for the Respondents to remedy the breach by removing one of their two vehicles from the Site and for the Respondents to only park one vehicle on the Site at any given time.
37. The bundle also contained a copy of the Proposed Sale Notice, the Notice of Assignment, copy correspondence between the parties and a number of photographs of the Respondents' vehicles parked outside of the Property.

The Respondents' submissions

38. Mr Crumpton, on behalf of the Respondents, submitted that Rule 31 stipulated that you could not park more than one vehicle on the Site unless you had suitable space to accommodate an additional vehicle on your pitch. He stated

that the Respondents did have suitable space to accommodate a vehicle on their pitch, accordingly, he stated that they could park two vehicles upon the Site. Mr Crumpton also disputed that the area in front of the Property formed part of the site road as it was clearly marked out as parking spaces.

39. Consequently, he stated that the Respondents were neither breaching Rule 31 nor Rule 33 of the Park Rules and that the Applicant had unreasonably harassed them into parking on Juggins Lane, completely disregarding their poor health.
40. Mr Crumpton also disputed the Applicant's assertion that it would have been difficult for him to have removed the delineation of the parking spaces or that it would have caused damage to the road if he had done so.
41. Following the hearing, Mr Crumpton and Rev Andrews submitted that there were thirty-four parking spaces at the Site, which included twenty-three in the main car parking area and a further eleven around the Site.
42. In their Written Statement, the Respondents, contrary to their previous correspondence with the Applicant, stated that they did not believe that they had breached Rule 31. They stated that Rule 31 confirmed that they could park one vehicle on the Site and a further vehicle on their pitch if they had adequate space on their pitch for an additional vehicle.
43. In addition, they disputed that the spaces outside their Property were part of the road, instead stating that they were located within an offset to the side of the site road which did not interfere with any traffic along the site road.
44. The Respondents stated that many of the occupiers of the Site parked a second vehicle, or both of their vehicles, on the car park and that the Applicant was selective in applying the Park Rules against occupiers. They stated that pitch 55 had a parking space on their pitch but also had an allocated space in the main car park and that there were at least two properties with three parking spaces.
45. The Respondents further stated that, although they did start to park in Juggins Lane for a short period, the lane had no lighting and the road surface was uneven, so they found the walk to be hazardous. The Respondents also referred to condition 14 of the Site Licence and stated that they considered that the Applicant was in breach of the same as it required him to provide suitably surfaced parking spaces to meet the requirements of the occupants and their visitors.
46. Finally, the Respondents considered the actions of the Applicant, including his taking photographs outside the Property, to be intimidating and felt that they constituted harassment, which they stated was putting them under undue stress and strain.
47. The Respondents provided, with their Written Statement, photographs of the marked spaces outside their Property, a photograph of the site road and a photograph of a car parked on a parking space marked with a number 55.

The Tribunal's Deliberations

48. The Tribunal considered all of the written and oral evidence submitted, which is briefly summarised above.
49. Although the Applicant's application referred to Rule 31 of the Park Rules, in his witness statement and at the hearing, a question was also raised as to whether the marked spaces at the front of the Property constituted part of the site road, and consequently, the Tribunal has also considered whether there has been a breach of Rule 33.
50. Rule 33 states as follows:

"You must not park on the roads unless for the purposes of loading and unloading."
51. There appeared to be no dispute between the parties that both Rule 31 and Rule 33 are express terms of the Agreement. In addition, the Tribunal accepts that both rules relate to the management and conduct of the Site, as required by section 2C (2) of the Act.
52. The rules dealt with restrictions relating to the parking on the Site, which the Upper Tribunal in *Michael Mark Anthony White and Michael Thomas White v Mandy Simpson* [2019] UKUT 0210 (LC), specifically gave as an example of a matter pertaining to the physical environment of a site.
53. With regard to whether there had been a breach of Rule 33, the Tribunal was required to consider whether the area adjacent to the Property formed part of the site road. The Tribunal noted that the plan to the Agreement detailed the relevant area as part of the car park. The Site Licence did little to assist – it did not contain a plan detailing the location or extent of the site road, nor did it define how many car parking spaces (visitor's spaces or otherwise) were available at the Site or where they were located.
54. The Tribunal, during its inspection, noted that the body of the main car parking area had been tarmacked and marked out with parking spaces (in addition to the two marked spaces at the front of the Property), although the additional parking around the Site had not been similarly surfaced or delineated.
55. The Applicant had explained that the spaces in front of the Property had been made available by him for the benefit of the previous occupiers in an effort to assist them with certain difficulties that they had encountered in accessing the Property. The Tribunal considered this to be a reasonable explanation as the spaces blocked each of the dropped kerbs on the boundary to the Property, effectively meaning that one of the spaces could only be used by the occupiers.
56. Although the Applicant stated that the spaces had been marked out at the bequest of the previous occupiers without his knowledge, the Tribunal did not accept that it would have been as difficult as the Applicant suggested to remove the markings to the spaces if he had wanted to make it clear that vehicles should

no longer park there. Consequently, to a casual observer, it clearly appeared that the two marked areas did not form part of the site road.

57. In addition, although in his submissions prior to and at the hearing, the Applicant submitted that the area comprised part of the site road, in the additional correspondence sent following the hearing, he stated that the main parking area contained “*21 spaces including the 2 in front of pitch 57*”, effectively confirming that the marked areas were parking spaces.
58. Having considered all of the evidence, the Tribunal finds that the marked areas adjoining the boundary of the Property are parking areas and not part of the site road and, accordingly, determines that the Respondents did not breach Rule 33 by parking on them.
59. In relation to whether the Respondent, by parking two vehicles on the Site, were in breach of Park Rule 31, the evidence was less certain.
60. The plan to the Agreement made it clear that the two marked spaces did not fall within the curtilage of the Property and there was no specific right within the Agreement for the Respondents to park their cars in those two spaces. However, the Tribunal found that the Park Rules were poorly drafted.

61. Rule 31 states as follows:

“You must not park more than one vehicle on the park unless you have suitable space to accommodate an additional vehicle on your pitch”.

Neither the word “*park*” nor the word “*pitch*” were defined in the Park Rules.

62. Having considered the wording of the Park Rules, although it was clear that “*pitch*” related to an individual pitch, the word “*park*” appeared in some rules to define the Site as a whole, for example Rule 22 states:

“No children are permitted to permanently reside on the park”,

whereas in other rules the word “*park*” appeared to define the common areas separate to the “*pitch*”, such as Rule 25 which states:

“You must not keep any pet or animal on the park or on the pitch except for those housed in a cage, aquarium or similar...”.

63. As well as the Park Rules failing to define the terms, Rule 31 also failed to define where vehicles should be parked.
64. The Applicant clearly believed, and presumably intended, that occupiers should park their vehicle on their pitch (if they had a parking area on the pitch) and that they could only bring a second vehicle on to the Site if there was sufficient space to park both vehicles on the pitch.

65. This presumption was evident from the contents of the Applicant's letter of 14 September 2020, sent to the previous occupiers of the Property after he received the initial Notice of Proposed Sale Form dated 8 September 2020. It was also clearly his belief that the Respondents understood this to be correct, as he then received the Proposed Sale Notice in which the form had been amended to detail that the Respondents were only intending to park one vehicle on the Site – the Hyundai.
66. It is also clear that, until at least June 2021, the Respondents accepted that by parking both vehicles on the Site they were breaching what they also understood Rule 33 stated – they apologised in their letter of 15 May 2021 for breaching the rules and confirmed in their letter of 8 June 2021 that only one vehicle was parked on the Site.
67. That being said, although it may have been the Applicant's intention that only occupiers with two parking spaces on their pitch would be able to bring a second vehicle onto the Site (with both vehicles being parked on their pitch, unless a space had been allocated to them elsewhere), this not what Rule 31 actually states.
68. Rule 31 does not confirm where any vehicles must be parked. What Rule 31 states is that two vehicles can only be parked on the Site if there is suitable space to accommodate "*an additional vehicle*" on the occupier's pitch. Even if we define the word "*park*" to include the pitches, Rule 31 does not state that the first vehicle must be parked on the occupier's pitch or within an allocated space in the common parking area. Accordingly, the rule allows the first vehicle to be parked on the Site and permits the parking of a second vehicle, subject to an occupier having suitable space to accommodate the second vehicle on their pitch.
69. The Tribunal accepts that this was not the Applicant's intention, however, it is what the wording actually appears to state. In addition, the Rule does not even specifically state that the second vehicle must be parked on the pitch, although this could be reasonably implied by the wording.
70. Accordingly, although the Tribunal accepts that the Applicant was trying to enforce the rule based on his intended meaning (and although the Respondents were aware of that interpretation prior to their assignment of the Property), the Tribunal determines that the Respondents are not in breach of the actual wording of Rule 31.
71. As such, the Tribunal determines that the Respondents are not in breach of the express terms of the Agreement, as they have neither breached Park Rule 31 or Park Rule 33. Consequently, there is no need for them to remedy any breach, nor are they only permitted to park one vehicle on the Site at any given time, as they have space for an additional vehicle on their pitch.
72. With regard to the Respondents' other submissions, for the avoidance of doubt, the Tribunal did not consider that the Applicant was in breach of condition 14 of the Site Licence. The relevant part of condition 14 simply states as follows:

“One car only may be parked between adjoining caravans provided that the door to the caravan is not obstructed. Suitably surfaced parking spaces shall be provided where necessary to meet the additional requirements of the occupants and their visitors...”

- 73. The Tribunal finds that the Applicant has supplied suitably surfaced parking spaces in the main car parking area and in some of the additional parking areas around the Site. That being said, the Tribunal’s determination with regard to Rule 31, may mean that the Park Rules will need amending to ensure that parking on the Site is properly managed, especially with regards to ensuring there are sufficient visitor’s spaces, in the future.
- 74. The Tribunal also found that there was insufficient evidence to suggest that the Applicant had been selective with regard to the enforcement of any of the Park Rules. He had adequately explained, in his Statement in Response, why certain occupiers had been allocated parking spaces in the main car parking area.
- 75. Finally, the Tribunal did not consider the Applicant’s actions constituted either harassment or intimidation. The Applicant’s letters to the Respondents simply set out the position as the Applicant, mistakenly, thought it to be, and were consistent with the advice he had given to the Respondents prior to their purchase. The Tribunal also did not consider that the Applicant taking external photographs showing the parking of the vehicles to try and support his claim of a breach of the rules, constituted either harassment or intimidation.

Appeal

- 76. If either party is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties (rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

M K GANDHAM
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Judge M K Gandham