



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

**Case reference** : **CAM/22UN/PHC/2021/0009**

**Property** : **12A The Spinney, Sacketts Grove  
Residential Park, Jaywick Lane,  
Clacton-on-Sea, Essex CO16 7JB**

**Applicants** : **Mr D. and Mrs M. Wood**

**Respondent** : **Tingdene Parks Limited**

**Representative** : **Ryan & Frost, Solicitors**

**Type of application** : **Mobile Homes Act 1983, Section 4–  
Determination of a Question arising  
under the Act or Agreement to which it  
applies**

**Tribunal members** : **Judge K. Saward  
Mr G.F. Smith MRICS FAAV**

**Date of decision** : **8 August 2022**

---

**DECISION AND REASONS**

---

**Description of hearing**

This has been a determination on the papers. A face-to-face hearing was not held because all issues could be determined on paper and no hearing was requested. The Applicant's bundle runs to a total of 191 pages. It contains a chronology of events and a statement of case dated 8 July 2022 with appendices. The Respondent's bundle comprises 60 pages including correspondence and reports relied upon. The Tribunal notes the content of all these documents. The Decisions made are described below.

## **Decisions of the Tribunal**

The Tribunal determines that:

- (1) There is insufficient evidence to conclude that the Respondent is in breach of the implied term within paragraph 22(c) of the Mobile Homes Act 1983 ('the Act') by failing to maintain to a proper standard and in a timely manner the concrete base of the Applicants' park home.
- (2) In light of the finding in (1) above, questions (2) and (3) do not fall to be considered.
- (3) The Respondent should now commence the monitoring of the concrete base of the Applicants' park home at 12A The Spinney by a suitably qualified and experienced person/s with appropriate expertise as directed and detailed below.

## **The application**

1. The Applicants own and occupy a park home located at Sacketts Grove Residential Park, a protected site within the meaning of the Act.
2. The Applicants right to station their park home on the pitch at 12A The Spinney is governed by the terms of a written agreement and the provisions of the Act. The relevant pitch agreement ('the Written Agreement') dated 30 November 1999 is made between T.S.T (Parks) Limited and a former occupier. It was assigned to the Applicants on 22 January 2010. The Respondent acquired the Park in 2014.
3. The Applicants apply under section 4 of the Act for the determination of a question arising under an agreement to which the Act applies.
4. The Applicants claim that their property is being damaged through the failed concrete base of their park home for which the Respondents are responsible. Where asked in the application form to set out the questions that they would like the Tribunal to determine, the Applicants say:-

(1) A failure by the Respondent to maintain to a proper standard and in timely manner the concrete base of the applicants' park home in breach of Paragraph 22(c) of Chapter 2, Part 1, Schedule 1 to the Act .

(2) Under clause 4(a) of their Written Agreement, the Respondent is not only responsible for the base of their park home but the ground beneath which should be stabilized to prevent movement.

- (3) The failure to maintain the concrete base has resulted in damage to the Applicants' property.
5. From the above, the Tribunal understands the questions arising to be:-
- (1) Is the Respondent in breach of the implied term within paragraph 22(c) of the Act by failing to maintain the concrete base to a proper standard and in a timely manner?
  - (2) Is the Respondent responsible for stabilizing the ground beneath the concrete base under the terms of the Written Agreement between the parties?
  - (3) Has damage occurred to the Applicants' park home as a result of a breach of the implied and/or express terms by the Respondents?
6. The Tribunal notes that the second and third questions depend upon its findings on the first question.
7. A later application made under case reference CAM/22UN/PHI/2022/0016 regarding the pitch fee payable for the park home at 12A The Spinney, is the subject of a separate Decision by the Tribunal. The applications involve the same parties and have been considered together in accordance with Directions issued by the Tribunal on 21 March 2022.

### **Directions**

8. The Tribunal issued Directions in this case on 9 March 2022. One of those Directions required the Applicants to submit a bundle of relevant documents to the Tribunal and Respondent by 14 April 2022. The bundle was directed to include any surveyors or other reports on the state of repair of the base of the park home. The Respondent was given until 28 April 2022 to reply.
9. By email sent on 31 March 2022, the procedural chair of the Tribunal issued further directions. These allowed the Respondent to submit additional expert evidence by 3 May 2022. The Applicants were encouraged to submit expert evidence and the date of receipt of their bundles was extended to 10 May to allow for this. The date of reply by the Respondents was extended to 17 May 2022. An additional extension was granted for the Applicants to submit their bundles by 10 July 2022.
10. A single bundle of documents has been produced for use in both cases before the Tribunal.

11. This determination is made in the light of the documentation submitted in response to the Directions.

### **The Law**

12. Primarily, the law is contained within the Mobile Homes Act 1983. Under section 4, a Tribunal has jurisdiction to determine any question arising under the Act or any agreement to which it applies.
13. The relevant law is set out below:

#### **The Mobile Homes Act 1983, as amended:**

Section 2(1): In any agreement to which this Act applies there shall be implied the terms set out in Part 1 Schedule 1 to this Act; and this subsection shall have effect notwithstanding any express term of the agreement.

Section 4:

(1) In relation to a protected site in England, 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).

(2) Subsection (1) applies in relation to a question irrespective of anything contained in an arbitration agreement which has been entered into before that question arose.

#### **Housing Act 2004**

Section 231A: Additional powers of the 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.

(3) [Directions under the Housing Act 2004]

(4) When exercising jurisdiction under the Mobile Homes Act 1983, the directions which may be given by the tribunal under its general power include (where appropriate –

(a) directions requiring the payment of money by one party to the proceedings to another by way of compensation, damages or otherwise;

(b) directions requiring the arrears of pitch fees or the recovery of overpayments of pitch fees to be paid in such manner and by such date as may be specified in the directions;

(c) directions requiring cleaning, repairs, restoration, re-positioning or other works to be carried out in connection with a mobile home, pitch or protected site in such manner as may be specified in the directions;

(d) directions requiring the establishment, provision or maintenance of any service or amenity in connection with a mobile home, pitch or protected site in such manner as may be specified in the directions.”

### **Implied terms – Chapter 2 of Part 1 of Schedule 1 to Mobile Homes Act 1983**

#### **Owner’s obligations**

**22.** The owner shall—

(c) be responsible for repairing the base on which the mobile home is stationed and for maintaining any gas, electricity, water, sewerage or other services supplied by the owner to the pitch or to the mobile home;

In *Elleray v Bourne* [2018]UKUT0003(LC), the Upper Tribunal advised:

*“Despite the apparent breadth of section 4, a power to determine questions or entertain proceedings is not the same as a power to grant specific remedies. The FTT has no inherent jurisdiction and may only make such orders or grant such remedies as Parliament has given it specific powers to make or grant. Although it is rather strangely described as part of a “general power” to “give directions”, in section 231A(4)(a) of the Housing Act 2004 Parliament has given the FTT a specific power to require the payment of money by one party to the proceedings to another. Such “directions” may be given where the FTT considers it necessary or desirable for securing “the just, expeditious and economical disposal of the proceeding.” The use of the word “directions” in this context might give the impression that section*

*231A(2) is concerned only with procedural matters. It is clear from section 231A(4), however, that the power to give directions is a power to make substantive orders, including for the payment of money, the carrying out of works, and the provision of services.”*

14. In ***Away Resorts Limited v Morgan*** (2018) UKUT 0123 (LC), the Upper Tribunal said this: “The power to grant additional remedies is exactly what section 231A, Housing Act 2004 provides.”

### **Paper determination**

15. In their statement of case, the Applicants list eight orders which they seek against the Respondent. In summary:-

(1) Replace the base to meet all long-term requirements and meet their Surveyor’s recommendations regarding any pre-construction groundwork.

(2) Instruct an independent arboriculturist to investigate and report on the specific pre-construction requirements considering the effect on two lime trees have or will have on the mobile home and base.

(3) Ensure that any work undertaken meets the relevant standards specified with current best practice guidance.

(4) Complete work to the base, internal aspects of the mobile home and external damage including to the brick skirt within 6 months of the date of order.

(5) Upon completion, the works shall be inspected and verified by an independent surveyor approved by the Applicants and the costs borne by the Respondent.

(6) Connection to all utility services, telephone, internet, and satellite communication cables shall be reinstated at the Respondent’s cost.

(7) The Respondents shall bear the cost of suitable alternative accommodation for the Applicants for the entire duration of the works.

(8) The Respondents shall bear the cost of storing the Applicants’ belongings for the full duration of the works.

16. By way of conclusion, the Applicants state that they seek (i) replacement of the base, as outlined (ii) a refund of their pitch fee of £7,821.33 from 2016 to July 2022 (iii) compensation of £2,000.00 for anxiety, distress, suffering and inconvenience as a consequence of the base matters, and (iv) a refund of their surveyors’ fees in the sum of

£900.00. A total sum of £10,721.33 is sought with reference to the Tribunal's additional powers within section 231A(4) of the Housing Act 2004.

17. Two decisions are highlighted in ***Moorjani v Durban Estates Limited*** [2015] EWCA Civ 1252 and ***Wallace v Manchester City Council*** [1998] 30 H.L.R 1111 CA to support their claim for compensation for discomfort, inconvenience, and distress.
18. The Tribunal notes that the orders sought above differ from those outlined in the continuation sheet to their application form which requested orders for:-
  - (i) the mobile home to be returned to its original pitch should the mobile home be temporarily re-sited.
  - (ii) the brick skirt be replaced as per the present installation if it is removed fully, in part or damaged.
  - (iii) confirmation that the Respondent is solely responsible for all repairs of any damage to the mobile due to it being moved and/or the failure to correct the base.
  - (iv) the Respondent to be responsible for the costs of disconnecting and reconnecting all utilities.
  - (v) the Respondent to provide proof of adequate insurance regarding the groundwork and property work to be carried out.
19. All the orders mentioned flow from the answer to the primary question of whether the Respondent is in breach of the implied term to repair the base on which the mobile home is located. That being so, the Tribunal began its consideration by examining the material provided in relation to that question.

### **Background**

20. It is undisputed that the Respondent has a repairing obligation in respect of the concrete base both under Implied Term 22 and by way of express term 4(a) of the Written Agreement "to keep and maintain those parts of the park which are not the responsibility of the occupier.... in a good state of repair and condition."
21. The Respondents have acknowledged responsibility for repairing the base, as confirmed by their Solicitors in a letter to the Applicants on 10 February 2021. The parties disagree on the action required following a series of reports on the condition of the plinth. The Respondent has

offered to monitor the situation whereas the Applicants believe that the base must be replaced.

22. A witness statement has been provided by Mr Pearson who is Operations Director for the Respondents. The Applicants have also submitted witness statements with their account.
23. The Applicant, Mr Wood, had first alerted the Respondents to “subsidence of the concrete base supporting my property...” on 2 September 2016. His letter advised that subsidence was first noted in late 2014 and slowly increased since then.

### **Analysis**

24. Photographs are supplied showing a brick having cracked in two within the skirting along with a crack following the cement joint. This was first mentioned by Mr Wood to the Respondents in November 2016 in a letter to Mr Pearson when he was the General Manager of the site. At that time, the Respondents inspected and replied that the only cracks are to the brick skirt and the “cracks are superficial”.
25. The Tribunal is not supplied with the measurements and any evidence regarding the initial inspection upon which to place any reliance.
26. The Tribunal has considered the expert reports provided in the order of presentation within the bundle.

### *The Steren Report*

27. The most recent is a report commissioned by the Applicants from Steren Surveyors dated 26 June 2022 (‘the Steren report’). This post-dates submission of the Respondent’s bundle.
28. The inspection was conducted on 8 April 2022 for the purposes of submission to this Tribunal albeit the scope of the instruction is unclear. “Large cracks to the skirt, significant hairline cracking to the base/raft and its unevenness” were noted during the inspection.
29. The Steren report relies on a site level plan provided by ‘Survey Solutions’ dated 15 October 2020. This shows that the site slopes with a deviation east to west between 27mm to 33mm. The author concludes that the “slope of the base exceeds acceptable allowances for drainage” without specifying what would be acceptable. Photographs of a spirit level are included but the images are not of good quality and the surface condition cannot be gauged or details to accompany the images.



30. It provides good information on the measurements which demonstrates the close proximity of two “significantly sized” lime trees. A query is raised over whether due consideration was given to the root system and clay subsoil when the base was installed. The conclusion reached is that the base and/to ground beneath has deteriorated over time and appears not to be fit for purpose. Lopping of the trees has taken place which it says would have compounded the issues with the raft/base. Quite when the trees were lopped is not mentioned.
31. The report is useful in identifying that there may be subsidence. However, it is light in detail. The report fails to identify the depth of the base and it is acknowledged that the composition and construction has not been determined but “appears to be below the requirements needed...”. This is somewhat vague and uncertain.
32. A series of recommendations are made starting with the replacement of the base to ensure there is no further damage to the park home. Consultation with an arborist on possible removal of the trees is recommended followed by involvement of a structural engineer to inspect installation of the new base at all stages.
33. Photographs are supplied of cracks in the wallpapered internal walls of the bedroom, dining room and hallway. However, no details are given on how fine cracking in the base translates to a vertical crack in the brick skirt or cracking in the outer finish of the mobile home and the corners of particular rooms.

#### *Topographical Survey*

34. A topographical survey undertaken by ‘Survey Solutions’ reveals that the site slopes. The information appears to have been relied upon by others conducting inspections and reports. The information is useful but limited in context as to how the survey was undertaken and whether or not survey nails were used.

#### *The Quadra report*

35. A report from Quadra Claims Services Ltd of 26 October 2021 (‘the Quadra report’) was obtained by the Applicants buildings insurers. It confirms that the park home is believed to have been located on the same pitch since its construction in 1998. Reference is made to surveys obtained by the parties but no details are given of which ones.
36. The report states that “*There appears to be movement in the slab which initially appears to be suffering from subsidence but more recently the survey results indicate upwards movement, heave.*” It goes on to say that “*The damage to the property appears minor in nature*” and within the excess of the insurance policy.

37. This is not an expert report, but a report from a company of chartered loss adjusters for insurance purposes. It carries limited weight.

*The JFG report*

38. A site report from JFG Park Services Ltd of 15 March 2021 (‘the JFG report’) finds that the mobile home “*is out of level*” which is reflected in the uneven gaps around the brick skirt. It states that the “*base has moved as designed due to ground movement in different weather conditions.*” It goes on to say that the jacks under the home are old and showing signs of rust “*but seem to be doing the job*” although there are some loose jacks under the home that need attention to level the home.
39. It says that the brick skirt has a few minor cracks but this does not correspond to the crack on the base. The base itself is said to look in good condition for its age, there is one very minor crack but this is not a cause for concern.
40. The report is very lacking in detail. Not only does it fail to say who the company are, what they do, but there is nothing about the qualifications and expertise of the author. Although there are a small number of photographs it fails to record what investigations have been conducted.
41. The JFG report recommends that the jacks need checking, the home needs levelling up and the home needs to be monitored periodically for movement with 6 monthly being the suggestion. The base at this point is said not to require works as “*it is doing its job*” and “*the fact it has a fracture does not affect its performance of supporting the home*”.
42. The Respondent offered to instruct JFG to undertake the measures recommended but despite correspondence between the parties, the terms for doing those works were not agreed.

*The SEA reports*

43. There followed a report from SEA Structural Engineers Limited (‘the first SEA report’) of 4 September 2021 who conducted a site visit on 17 August 2021. The report details who the company and that the report was completed by a Chartered Structural Engineer, whose CV is provided. It provides information on how the survey was conducted with limited access gained to the void beneath the home to inspect the concrete base slab. The report confirms the soil type as sandy silty clays becoming firmer clays at depth.
44. The report finds that there has been very little movement from October 2020 to July 2021. It is noted that the base slab has a

tamped finish so there are shallow ridge and furrows within the finish which could account for the slight differences noticed in the levels.

45. Details of the kind of spirit level are used with a worse case reading of 12mm over 1m. Externally, vertical stepped cracking 4-5mm wide is noted towards the top of the brick plinth. There is slight cracking in the render finish to the home 'local' to this area. It does not say what 'local' means in this context. In the north-east corner the brick plinth is described as 30- 40mm lower than the edge of the home.
46. The conclusion drawn is that the concrete base slab has locally dropped in the north-east corner, as reflected in the survey levels. The Structural Engineer opines that the inspections and adjustments to the axle jacks circa 2016 maintained the home to a level.
47. The first SEA report states that the exact cause of the movement is unknown. Two possible causes are identified. Firstly, the adjacent trees and their root systems reducing the moisture content of the clay soils. Secondly, the adjacent subsurface drainage is compromised causing localised subsidence.
48. In the Structural Engineer's opinion, the concrete slab is still functioning as a base foundation to the home. The crack within the slab is minor and it appears to be historic as it is filled with dust and debris.
49. The report supports the JFG report in terms of the axle stands being inspected for corrosion and replaced as required. The first SEA report further recommends that the home is inspected 6 monthly to start with and axle stands adjusted as required and the home floor checked and recorded for level. Inspection periods can then be extended if the slab and home are proven to be unstable.
50. The Respondents obtained a second opinion from SEA on 27 April 2022 ('the second SEA report') after the Applicants reported that "*another significant crack has been found in the concrete base*". The same Structural Engineer as before undertook a further visit on 26 April 2022. He conducted a visual examination of the exterior only from ground level with limited access to the void beneath.
51. On this occasion the Structural Engineer recorded very little movement from July 2021 to April 2022. It is reported that checks on internal floor levels against the previous readings the year before indicates that the home has experienced no movement to the southern half and minimal movement to the northern half, as confirmed by external level checks.

52. The same conclusions and recommendations are drawn as in the first SEA report. It is not altogether clear from the reports if survey nails were used or not on both occasions.

### **Determination**

53. This is a situation where there are experts who suggest that there is movement in this base and the Tribunal considers that may well be the case. The brick skirt around the park home is a non-structural part but the cracking in the brickwork could be indicative of movement on the platform that it stands upon. What the Tribunal does not have is factual evidence to the movement.

54. The Applicant has not provided enough evidence. His expert's report (Stereon) is lacking in detail and joining of the dots as to why one issue leads to another and/or the correlation as to why what has happened within the park home is a consequence of the plinth moving. In the Tribunal's view, it would expect there to be some long-term professional monitoring. A suitably qualified engineer may within a fairly short period of time be able to say whether there is manifestly a problem that requires replacement of the plinth, but we do not have that evidence.

55. None of the evidence provides any detail of construction type of the park home or what the current construction of the plinth is. For instance, is it 150mm of hardcore with 100mm of concrete on top and is that 100mm reinforced or not? Was it a fibrous concrete or not? We are not told. The Tribunal observes that the tamped finish of the base could make a difference to the levels as recorded in the Stereon report.

56. Therefore, the Applicants' claim that the Respondent has failed to make good the base in a timely manner is a difficult one. Firstly, because the evidence the Applicants have provided/relied upon is that of a Surveyor's report in which they do not disclose their CV or a statement of fact as to their qualifications and expertise within the report.

57. Secondly, the Applicants rely on a loss adjusters report who is acting on behalf of an insurer. The quantum is below that of the excess, but it is not really a report for the purposes of court proceedings.

58. Mr Wood has helpfully provided some of the better-quality photographs and indications of cracks that he has tracked and made hand annotated plans. Again, it is unclear as to his expertise, if any.

59. The reports carrying the most weight are those of SEA, who are structural engineers. The author is a Chartered Structural Engineer. He provides a copy of his CV and outlines his expertise.

Whilst the reports are not in the form prescribed by Rule 19 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 or an ideal form for court proceedings, neither are the others. The Steren report comes closest, but it is still lacking in certain detail (e.g., details of relevant experience) and the actual main body dealing with the matter in hand is rather light.

60. In the Tribunal's opinion the SEA reports carry the most weight. The first report does make it clear that there is some movement and suggests two possible causes. It recommends inspection of the axle stands and replacement as required and that monitoring also be undertaken. The Tribunal considers that is the correct conclusion.
61. Mobile homes do move and there are jacks underneath for this very reason to take up and release some slack.
62. The evidence before the Tribunal does not lead us to conclude that it has been demonstrated sufficiently that there is a structural failure to this base and that it is not being maintained properly. A Structural Engineer states that some of these are historic cracks because of the dust that is in them. The Tribunal has no reason to contest this. Therefore, without a monitoring programme the Tribunal finds itself unable to find in favour of the Applicants and believes that it would be unjust to do so on the information available.
63. The Applicants say the Respondent has failed to make good the base in a timely manner. This raises the question of what is a reasonable timescale for monitoring? The Respondents refer to the decision of the Supreme Court in *Edwards v Kumarasamy* [2016] UKSC 40. It occurs to the Tribunal that the passage relied upon in paragraph 56 of the judgment has been taken out of context. In paragraph 56 the Court explains that the issue before the Court of Appeal in *British Telecommunications v Sun Life Assurance Society Plc* [1996] was very different, namely whether a landlord would be in breach [of a repairing covenant] the moment disrepair occurs, or whether he would be in breach only after the expiry of a reasonable time to remedy the disrepair.
64. Nevertheless, the point being made by the Applicants is that repairs should be undertaken within a reasonable timeframe which does not appear to be disputed as a point of principle. A reasonable timescale in this instance will depend on whatever timescale the expert undertaking the monitoring deems to be correct. If monitoring is required to make good, then there is not a failure until the monitoring has taken place and the Respondent fails to undertake any remedial works in accordance with the findings.
65. As none of the experts identify a causal link between a failure to maintain the base and cracking to the structure of the park home, the

Tribunal is unable to make a finding in favour of the Applicants on this point.

66. The Tribunal notes that this matter has been ongoing for a considerable time during which monitoring could have occurred. Attempts have been made by the Respondent to find a solution but the terms have not been agreeable to the Applicants. By the same token, the Respondent could have suggested monitoring earlier and had that commenced when this was first brought to the fore then it may have been anticipated that there would be a lot more information on which to base a decision. The Tribunal expects co-operation by both sides if a satisfactory resolution is to be achieved.
67. The Tribunal appreciates that this is not the answer that the Applicants had hoped for but the Tribunal concludes that monitoring is necessary.

### **The Tribunal's decision**

68. The Tribunal has the power, pursuant to s231A(4)(c) of the Housing Act 2004 to give directions requiring repairs and other works to be carried out. Given that the Respondent's aim is to follow advice within the SEA reports, it is the Tribunal's intention to make such a Direction.
69. **The Tribunal therefore Directs that the Respondent** must now undertake the measures recommended in the penultimate paragraph of the first SEA report of 4 September 2021 by appointment of a suitably qualified and experienced person/s with appropriate expertise.

**Name: Judge K Saward                      Date: 8 August 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).