



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

**Case reference** : CHI/43UG/PHC/2022/0006

**Property** : 33 Western Avenue, Penton Park,  
Chertsey, Surrey, KT16 8QA

**Applicant** : The Berkeley Leisure Group

**Representative** : Mr D Blake

**Respondent** : Mr NP & Mrs K Atkinson

**Representative** : None

**Type of application** : Application for a determination of any question  
arising under the Mobile Homes Act 1983

**Tribunal member(s)** : Mrs J Coupe FRICS  
Judge Tildesley OBE

**Date Hearing  
and venue** : 18 August 2022  
Havant Justice Centre, Elmleigh Road,  
Havant, PO9 2AL

**Date of decision** : 22 August 2022

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**DECISION**

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## **Summary of the Decision**

The Tribunal determines that, under paragraph 5A(2)(a) of Chapter 2, Part 1, of the Mobile Homes Act 1983, having regard to its condition, the mobile home is having a detrimental effect on the amenity of the site.

## **REASONS**

### **Background**

1. The Applicant sought a determination from the Tribunal for a determination of questions arising under the Mobile Homes Act 1983 ('the Act'), the grounds of which were set out in section 5 of the application form.
2. References in this determination to page numbers in the bundle are indicated as [ ].

### **Directions**

3. On 30 March 2022, received 31 March 2022, the Applicant applied to the Tribunal for a determination under the Mobile Homes Act 1983.
4. Directions were made on 27 June 2022 setting out a timetable for the exchange of documentation between the parties and the preparation of a hearing bundle. The hearing was set down for 18 August 2022.
5. By 19 July 2022, the Respondents were required to send to the Applicant a signed and dated statement with a statement of truth; a copy of the Mobile Homes Agreement for the pitch (if one existed); copies of any other relevant documents to be relied upon; and any witness statements.
6. On 28 July 2022, the Applicant advised the Tribunal that the Respondents had not complied with the Directions.
7. On 2 August 2022, the Tribunal issued a Minded to Debar Order proposing to debar the Respondents from taking further part in the proceedings in accordance with Rule 8(2)(e) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 on the ground that they had failed to comply with the Tribunal's Directions.
8. The Respondents were invited to make representations by 10 August 2022. No representations were filed.
9. On 11 August 2022, the Tribunal issued a Notice debaring the Respondents from taking further part in the proceedings pursuant to Rule 8 of the Tribunal's aforementioned rules and providing notice to attend the hearing.

10. The Tribunal received no communication from the Respondents throughout this application.

11. A hearing bundle extending to 109 pages and a supplementary bundle of photographs taken during the period 17 November 2021 - 29 June 2022, and extending to 18 pages, were submitted by the Applicant.

### **The Agreement**

12. An Agreement relating to the siting of a mobile home on pitch 33 Western Avenue, Penton Park, Chertsey, Surrey, KT16 8QA ('the property') was assigned to the Respondents on 8 February 1996. A copy of the Agreement was not provided within the bundle.
13. An assignment note for 33 Western Avenue, Penton Park, signed and dated by the Respondents on 8 February 1996, was, at the request of the Tribunal, provided by the Applicant.
14. A letter dated 14 February 1996, from the Applicant to the Respondents referring to the enclosure of two copies of the Agreement for 33 Western Avenue, Penton Park, for signing and returning by the Respondents was provided. The Applicant stated that the signed Agreement was never returned.

### **The Law**

15. The relevant law is set out in the Mobile Homes Act 1983, parts of which follow:

#### **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."

## **Chapter 2 of Part 1 of Schedule 1 of the Mobile Homes Act 1983:**

4. “The owner shall be entitled to terminate the agreement forthwith if, on the application of the owner, the appropriate judicial body –
- (a) is satisfied that the occupier has breached a term of the agreement and, after service of a notice to remedy the breach, has not complied with the notice within a reasonable time; and
  - (b) considers it reasonable for the agreement to be terminated.”

**5A (2)** “The owner is entitled to terminate the agreement forthwith if –

- (a) on the application of the owner a tribunal has determined that, having regard to its condition, the mobile home is having a detrimental effect on the amenity of the site; (...)”

**21.** “The occupier shall –

- (a)
- (b)
- (c) keep the mobile home in a sound state of repair;
- (d) maintain –
  - (i) the outside of the mobile home, and
  - (ii) the pitch, including all fences and outbuildings belonging to, or enjoyed with, it and the mobile home,In a clean and tidy condition;”

### **The Hearing**

16. The Applicant was represented by Mr David Blake, Operations Manager for The Berkeley Leisure Group. Also in attendance was Mr Eaves, Area Manager for the Applicant.
17. Neither Respondent were in attendance.
18. In accordance with current Tribunal policy the Tribunal did not inspect the property, instead relying on the Applicant’s submissions, which included 15 photographs of the mobile home, pitch and site, and viewing the property and site via online portals.

### **The Evidence**

19. Photographs at pages [92] to [109] of the bundle show the property to be a detached mobile home constructed with textured rendered elevations beneath the remains of a flat roof, situated on a brick base. The windows are upvc double glazed units.
20. Photographs taken on 29 June 2022 show the road facing plot as unkempt, with unmown grass, and trees and bushes of a height in excess of that of

the home [101-103] and [107-109].

21. At [93], a photograph taken on 17 November 2021, a vertical crack running from the timber fascia board to just above the base is visible between a double and single window unit on the side elevation. At [104], a photograph taken on 29 June 2022, the same image shows the crack to have widened considerably and that, towards the top of the crack, the underlying timber boards are exposed.
22. At [93-94] part of the roof can be seen to have peeled back, whilst a tarpaulin is covering what, the Tribunal are advised, is an exposed area of the home where the roof is missing. Photographs taken on 18 February 2022 at [96] show dislodged roofing materials on the ground, and at [97-98] images taken from above, indicate the extent of damage to the roof structure and provide a view directly into the home where the roof is missing.
23. Mr Blake advised the Tribunal that the condition of the mobile home first came to the attention of the Applicant in April 2020, when the Park Office noted that the home was starting to show signs of disrepair.
24. In May 2020, the Applicant visited site and observed the home to be “*in a very poor state*”. On 28 May 2020, the Applicant wrote to the Respondents expressing their concern at the poor condition of the home and requesting a response within 7 days. No response was forthcoming.
25. On 8 July 2020, the Applicant revisited the site to assess the status of the home. Having noted further deterioration, the Applicant wrote to the Respondents on the 10 July 2020 highlighting their concern, in particular, at the poor condition of the roof and requesting a response as to how the breach would be remedied.
26. On 31 July 2020, the Applicant received a letter from the Respondents thanking them for their concern and advising that “*the garden has been sorted, as for the roof this matter is being dealt with*”.
27. On 6 August 2020, the Applicant wrote to the Respondents stating that they would review the situation on their next site visit.
28. On 25 May 2021, the Applicant wrote to the Respondents expressing further concern over the poor condition of the home. The Applicant advised the Respondent to seek professional assistance and requested a response within 14 days. No response was forthcoming.
29. On 3 August 2021, the Applicant served a Notice of Breach Order listing the main points of concern, as listed below, and providing 28 days within which the alleged breaches were to be remedied. No response was forthcoming.
  - Water leak;
  - Roof disrepair;
  - Repair or replacement of rotten exterior panels
  - Cleaning and repainting the exterior of the home;
  - Unkempt pitch with vegetation at excessive height;

- Failure to maintain the garden, trees and shrubs.



30. On 13 September 2021, the Applicant wrote to the Respondents in regard to the neglected appearance of the garden and hedging, and advised the Respondents that they were in breach of their site license.
31. On 4 November 2021, the Applicant inspected the exterior of the home and pitch, and observed that no remedial works had been undertaken.
32. On 9 November 2021, the Applicant wrote to the Respondents providing 7 days within which the Respondents were to provide details of how and when the required works would commence, and providing 28 days within which the alleged breaches should be remedied. No response was forthcoming.
33. On 18 February 2022, during storms and high winds, the roof of the mobile home was dislodged, exposing the interior of the home to the elements.
34. On 23 February 2022 the Applicant visited the Respondents and engaged in a short conversation of around 5 minutes with Mr Atkinson, during which Mr Atkinson confirmed that he was still living at the property, despite the partial lack of roof and exposed electrical wiring. The Applicant offered to contact the relevant authorities on the Respondent's behalf and request assistance. Mr Atkinson respectfully declined the offer and continued to live in the property.
35. On 23 February 2022, and following the site meeting earlier in the day, the Applicant issued a 'without prejudice' letter to the Respondents requiring them to engage an electrician to ensure the safety of the home and reiterating their opinion that the home was, as it currently stood, not deemed habitable. An enquiry was made as to whether the Respondents were interested in selling their interest in the home. A response within 7 days was requested. No response was forthcoming.
36. On 16 March 2022, the Applicant wrote to the Respondents on a 'without prejudice' basis expressing concern for the Respondent's welfare and advising them to contact Citizens Advice Bureau or Social Services and Welfare. A response within 7 days indicating their intentions and a schedule of works was requested. No response was forthcoming.
37. On 22 March 2022, the Applicant issued a final 'without prejudice' letter to the Respondents, expressing concern that one of the Respondents continued to live in the home and provided contact details for the Local Authority. No response was forthcoming.
38. On 31 March 2022, the Applicant submitted an application to the Tribunal.
39. Copies of all correspondence were included within the bundle.
40. In oral submissions Mr Blake stated that the application to the Tribunal was as a last resort, having exhausted every other avenue to engage the Respondents in dialogue, attempts which, with the exception of the letter received 31 July 2021 and the brief conversation in person on 23 February

2022, were ignored.

41. Mr Blake stated that the condition of the home had deteriorated over a near 2 year period, culminating in the loss of roof covering in February 2022, thereby exposing the interior of the home and the electrical installations to the elements.
42. Mr Blake explained how the Applicants were concerned for the welfare of the Respondents, living in what they deemed uninhabitable and unsafe accommodation but that they also held a duty to other occupiers on the site to maintain the overall aesthetics and amenity of the site for everyone, and that the deteriorating condition of the property, coupled with the Respondent's lack of remedial works, was having a detrimental effect on the amenity of the site.
43. Mr Blake described Penton Park as a well maintained and desirable site. He stated that the deterioration of the Respondents home and garden had resulted in complaints from other occupiers of the site, particularly where the overgrown vegetation was encroaching on neighbouring land and was attracting pests such as wasps' nests.
44. The Applicant averred that the Respondents were in breach of their repairing, maintenance and decoration obligations implied in paragraph 21 (c) and (d)(i)(ii) of the Act and, also, in breach of Rule 30 of the 2014 Park Rules for Penton Park which states:

"Homeowners must maintain the outside of their park home in a clean and tidy condition. Where the exterior is repainted or recovered homeowners must use reasonable endeavours not to depart from the original exterior colour-scheme."
45. The Applicant considered that they had afforded the Respondents ample opportunity to affect the required repairs, engage with the Applicant or to seek professional assistance. However, the Respondent had either ignored or rejected each approach.
46. The Applicant opined that, in all likelihood, the home was beyond economic repair and that, ultimately, will require replacing.
47. The Applicant considered the Respondent to be in breach of their Agreement and that, having served a Notice to remedy the breach, a reasonable period of time had now elapsed without the required works either being completed or underway.
48. Accordingly, the Applicant seeks a determination under paragraph 5A (2) (a) of Chapter 2, Part 1, Schedule 1 of the Act, whereby the owner is entitled to terminate the agreement if a Tribunal determines that, having regard to its condition, the mobile home is having a detrimental effect on the amenity of the site.
49. The Applicant confirmed his understanding that, if the Tribunal were minded to determine the application as sought, the Applicant would still need to seek a judgement of the County Court to ultimately terminate the agreement.

## **Discussion**

50. In the absence of a signed written statement the Tribunal rely on the statutory implied terms under the Act, which apply to all Agreements irrespective of whether written statements are either provided or signed.
51. The chronology of communication from 28 May 2020 to 22 March 2022 [37-51] demonstrates a willingness, on the part of the Applicant, to resolve matters without resort to legal redress. However, such attempts have not proven successful and a lack of engagement on the part of the Respondent has resulted in a situation whereby the Applicant, faced with complaints from other site occupiers, felt compelled to apply to the Tribunal to terminate the Respondent's Site Agreement.
52. The Applicant considers the Respondent to be in breach of paragraph 21 Chapter 2, Schedule 1 of the Implied terms of the Act and of Rule 30 'External Decoration' of the 'Park Rules for Penton Park 2014', through their failure to keep the home in a sound state of repair and decoration, and to maintain the outside of the home and the pitch. Accordingly, they seek the Tribunal's determination that, having regard to its condition, the mobile home is having a detrimental effect on the amenity of the site.

## **Decision**

53. The Respondents have not engaged with this application, the result being that with effect of 11 August 2022 they were debarred from taking further part in the proceedings pursuant to Rule 8 of the Tribunal Procedure (First-Tier Tribunal) (Property Chamber) Rules 2013. The Tribunal therefore makes its determination based on the evidence and oral submissions of the Applicant.
54. The Tribunal finds that the Applicant has made successive attempts over an extended period of nearly twenty two months to engage the Respondents in dialogue concerning the condition of the mobile home and the Respondent's own welfare. With the exception of a letter received in July 2020 [39], advising that works were in hand and a brief conversation with the Applicant onsite in February 2022, there have been no meaningful attempts by the Respondent to engage in discussion with the Applicant or to seek a resolution.
55. The Tribunal is therefore required to determine whether, having regard to its condition, the mobile home is having a detrimental effect on the amenity of the site.
56. In consideration of condition, the Tribunal refers to the Respondent's implied obligations, under paragraph 21, to keep the mobile home in a sound state of repair and to maintain the outside of the mobile home and pitch in a clean and tidy condition.
57. The Tribunal considers the photographs, taken between 17 November 2021 and 29 June 2022 [92-109] to show the property to be in a serious and

deteriorating condition.

58. The Tribunal finds that by 17 November 2021 the mobile home had fallen into disrepair and, when subjected to inclement weather in February 2022, the roof partially dislodged [93-94]. Detritus from the damaged roof can be observed on the ground [96]. Photographs taken, from height, after the storm show the interior of the home exposed to the elements and unsecured electrical wiring [97-98].
59. Furthermore, and based on the evidence submitted, the Tribunal finds that:
- The vertical cracking to the side elevation deteriorated between the dates of the first and last photographs, with the timber boarding beneath the textured finish visible in the latter [104].
  - The discoloration and staining of the exterior finish [94] evidence a lack of redecoration over a prolonged period.
  - The site is unkempt, with long grass and overgrown bushes and trees [101-109]; and some windows are blocked by vegetation [102-103].
60. Mr Eaves provided his professional, but not expert opinion, on the condition of the home, suggesting that, potentially, it could prove financially unviable to restore the home to a habitable condition. From the evidence submitted to the Tribunal it is clear that extensive, and costly, reparatory works are required however the Tribunal make no comment on whether such works would be financially viable.
61. The Tribunal accepts the submission that such conditions provide ideal habitats for pests and vermin.
62. The Tribunal therefore finds that the Respondent is in breach of paragraph 21, Chapter 2, Part 1 of the Act, by way of failure to keep the mobile home in a sound state of repair and to maintain the outside of the mobile home and pitch in a clean and tidy condition.
63. The Tribunal finds that, by virtue of paragraph 4, Chapter 2, Part 1 of the Act, the Respondent, having been served with a Notice of Breach on 3 August 2021 [43], has not complied with the notice within a reasonable time.
64. The Tribunal finds that the condition of the mobile home and pitch has caused annoyance to other occupiers of the park, to the extent that the site owners have received formal complaints.
65. From the images, in particular [107] which show a well maintained plot directly opposite the property and a tarmacadam and painted road junction, in addition to publicly available online images of the site, the Tribunal accept that Penton Park is generally a well maintained development.
66. The Tribunal is satisfied and therefore determines that, under paragraph 5A(2)(a) of Chapter 2, Part 1 of the Act that, having regard to its condition, the mobile home and pitch at 33 Western Avenue, Penton Park, Chertsey, Surrey, KT16 8QS is having a detrimental effect on the amenity of the site.

## **Costs**

67. The Applicant declined to make an application to the Tribunal in respect of costs.

## **RIGHTS OF APPEAL**

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to [rpsouthern@justice.gov.uk](mailto:rpsouthern@justice.gov.uk) to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.