



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

**Case Reference** : CHI/45UG/PHC/2022/0005

**Property** : 3 Lark Rise, Turners Hill Park, Turners Hill, Crawley, West Sussex, RH10 4QR

**Applicant** : The Berkeley Leisure Group

**Representative** : Graeme Wood of Counsel

**Respondent** : Sylvia Pullen

**Representative** :

**Type of Application** : Any question section 4 of the Mobile Homes Act 1983 (1983 Act)

**Tribunal Member(s)** : Judge Tildesley OBE  
M J F Donaldson FRICS

**Date and Venue of Hearing** : Havant Justice Centre  
22 September 2022

**Date of Decision** : 14 October 2022

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DECISION

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## Summary

1. The Tribunal determines that
  - a) The Respondent is in breach of sub paragraph 3(J) of the Express Terms of the Agreement and rule 21 of the New Rules by parking two cars on the site on various periods from January 2021.
  - b) The Tribunal declines at this stage to issue an Order requiring the Respondent to remedy the breach of parking more than one vehicle on the site until the Applicant has considered whether to exercise its discretion under paragraph 3 of schedule 5 of the 2014 Regulations to accommodate the Respondent's request to park two vehicles on the drive of 3 Lark Rise on the grounds of disability (see paragraph 25 re directions for making and considering the Application).

## The Application

2. The Applicant is the site owner of Turners Hill Park which is a protected site within the meaning of the 1983 Act. The Respondent occupies a mobile home stationed on 3 Lark Rise, Turners Hill Park, pursuant to an agreement under the 1983 Act made on 24 November 1976 and assigned to the Respondent on 12 June 2014 ("the Agreement"). The Respondent moved into her new home in July 2014. From September 2018 the Respondent's occupied her home with her partner, Mr Jeff Robinson, who was added as an "Occupant" to the Agreement on 15 February 2021. The Applicant has deposited the current Park Rules for Turners Hill Park ("the New Rules") with the Local Authority and these Rules came into effect on 8 November 2014.
3. The Applicant has applied for a determination under section 4 of the 1983 Act for the Respondent to remedy a breach of Express Term 3J of the Agreement within 28 days of the Tribunal's determination by her failure to comply with Rule 21 of the Park Rules by parking more than one vehicle on the site.
4. The Respondent accepted that she and her husband owned separate cars which they parked on the drive of 3 Lark Rise. The Respondent, however, stated that when she purchased 3 Lark Rise the Rules were not in force and could not be applied retrospectively. The Respondent pointed out that the Park Rules in force when she purchased 3 Lark Rise allowed occupiers to park more than one vehicle. The Respondent argued that she and her husband were entitled to rely on the benefit given by the former Park Rules to park two vehicles on 3 Lark Rise.

5. The Applicant stated that when the Respondent purchased 3 Lark Rise the agreement was assigned in her sole name. Further the Respondent completed on 23 May 2014 a “Schedule 2 Notice of Proposed Sale Form” in which she declared that she proposed to park one vehicle on the site. The Applicant said that in view of the Respondent’s declaration the Applicant waived the 21 day period to consider an application to the Tribunal for a refusal order against the proposed sale order because she complied with criteria of the Park in respect of the vehicle policy. The Applicant added that the Respondent was not entitled to rely on the benefit given by the former Rules because at the time of her occupation of 3 Lark Rise in the period prior to the coming in force of the New Rules on 8 November 2014 the Respondent only parked one car on the site. The Applicant asserted that under the legal regime for site rules introduced in 2014 the Applicant had no discretion to depart from a rule once it had come into force. The Applicant contended that the Respondent and her partner by parking their two vehicles on the site were in breach of the express terms of the Agreement and that the Applicant was entitled to a determination ordering the Respondent to remedy the breach within 28 days of the Tribunal’s decision.
6. The Tribunal heard the Application on the 22 September 2022. Mr Graeme Wood of Counsel appeared for the Applicant. Mr David Blake, Operations Manager for the Applicant, attended and gave evidence in respect of his witness statement. The Respondent and Mr Jeff Robinson appeared in person. The Applicant supplied the bundle of documents.

### **Consideration**

7. The scope of the Tribunal’s jurisdiction under section 4 is potentially wide. It enables the Tribunal to make declarations on the respective rights of the parties under the 1983 Act and in effect constitutes an authoritative statement on the parties’ legal positions under that Act. Section 4 as such does not give the Tribunal power to implement the declaration. This power is found elsewhere in section 231A of the Housing Act 2004 which permits the Tribunal by order to give directions for securing the just, expeditious and economical disposal of the proceedings. Section 231 (5A) allows the Tribunal to make specific directions in respect of Applications involving the 1983 Act.
8. The Upper Tribunal in *Wyldecrest Parks (Management) Ltd v Santer [2018] UKUT 0030 (LC)* stated at [38]:

“The language of section 4 of the 1983 Act is very broad, and the powers conferred by section 231A of the 2004 Act are extensive and expressed in general terms. It should therefore be taken that (with the exception of disputes over termination)

the proper forum for the resolution of contractual disputes between park home owners and the owners of protected sites in England is the FTT”.

9. Although the general discretion given to the Tribunal under section 4 of the 1983 Act is wide, this Tribunal considers that the question to be determined must relate to either a provision under the 1983 Act or a term of the agreement between the site owner and the occupier of the mobile home. Section 4, in the Tribunal’s view, does not give it carte blanche in respect of every aspect of the relationship between the site owner and the occupier of the mobile home.
10. This Application engages the Tribunal’s powers under section 4 of the 1983 Act because it is concerned with a term of the Agreement between the Applicant and the Respondent. The determination sought is one step removed from potential termination of the Agreement and so falls within the jurisdiction of the Tribunal.
11. Under sub paragraph 3(J) of the Express Terms of the Agreement the occupier undertakes with the owner to comply with the Park Rules from time to time in force. Rule 21 of the New Rules provides that “*Parking is only permitted for one vehicle per Park Home*”.
12. The New Rules were introduced following the amendments to the 1983 Act by section 9(1) of the Mobile Homes Act 2013. The amendments set out a procedure for the replacement of existing Rules by new ones which included consultation with occupiers, and a right of occupiers to challenge the new rules before the Tribunal. They also required Park Rules to be an express term of the agreement and introduced limitations on the type of matters that could be covered by Rules. The aims of the changes were to establish certainty in the relationship between owner and occupier and to prevent abuse of vulnerable occupiers by unscrupulous owners.
13. At the time the Respondent purchased 3 Lark Rise, the Applicant was undertaking the statutory consultation regarding the replacement of the existing site rules with the current ones. The existing site rules stated in respect of parking of vehicles the following:

“Vehicles must keep to authorised spaces and the Company is only obliged to provide one car parking space per household. Occupiers with more than one vehicle and visitors may be obliged to park their vehicle off the park.

In certain circumstances, at the discretion of the Company and the Council, vehicles may be parked within the confines of the Occupiers plot in designated positions”.
14. The facts in this case are agreed by the parties. They are:

- i. The Respondent declared at the time of the purchase of 3 Lark Rise in the schedule 2 Notice signed 23 May 2014 that she would park one vehicle on the site, and that is what happened in the period between the Respondent's occupation of 3 Lark Rise and the coming into effect of the New Rules on 8 November 2014.
- ii. In the period between the Respondent's occupation of 3 Lark Rise and the coming into effect of the New Rules on 8 November 2014, the Applicant did not exercise its discretion under the Old Rules to give the Respondent permission to park more than one car on the site.
- iii. From September 2018, the Respondent occupied 3 Lark Rise with her partner, Mr Jeff Robinson, who was added as an occupant on the Agreement on 15 February 2021.
- iv. The Respondent and her partner were Blue Badge holders and owned separate cars. They have been parking their separate cars on the drive of 3 Lark Rise.
- v. The Applicant first became aware of the Respondent continually parking an additional vehicle on the Park around January 2021 when this was reported by the Park Manager. Although there had been some verbal requests by the Park Manager for the Respondent to remove a camper van that had started to appear on the Park. This was subsequently then replaced by an additional car.
- vi. The Park Manager first wrote to the Respondent on 11 January 2021 advising of the New Rules. The Park Manager again wrote to the Respondent on 4 February 2021 informing her of the breach in respect of the additional vehicle and gave the Respondent seven days to make contact. The Respondent responded to the letter via email on 5 February 2021. The Respondent also informed the Applicant that she intended to get married and reminded the Applicant to amend the records to add Mr Robinson as an occupier. The Applicant responded to the Respondent's representations on parking on 15 February 2021.
- vii. There then followed an exchange of correspondence culminating in the Applicant sending a Notice of Breach on 14 October 2021 outlining the breaches and full explanation of how failure to remedy the breaches the Applicant would have no alternative than to make an application to the Tribunal. The Applicant requested written confirmation within seven days of the Respondent's intention to remedy the breaches and 28

days to find alternative parking off the Park for one of the additional vehicles. The Respondent did not respond to the Notice of Breach. The Applicant made a final appeal for the breach to be rectified in a letter dated 10 February 2022 offering a further fourteen days to make contact. The Respondent did not respond.

viii. On 25 March 2022 the Applicant applied to the Tribunal for a determination to remedy the alleged breach.

15. The Respondent raised two potential defences to the alleged breach of the New Rules, namely that, (1) the New Rules could not be applied retrospectively, and that she was entitled under the Old Rules to park two cars on the Site, and (2) the Applicant had not exercised its discretion to permit the parking of two cars on the drive of 3 Lark Rise and as a result the Applicant was treating the Respondent and her partner differently from other occupiers on the site and discriminating against them.
16. In order to deal with the two potential defences the Tribunal refers to the provisions of section 2C of the 1983 Act and the Mobile Homes (Site Rules) (England) Regulations 2014/5 as amended (“the 2014 Regulations”).
17. Sub-section 2C(3) and regulation 15 provide in effect that the old Rules ceased to have effect on the implementation of the New Rules on the 8 November 2014.
18. Sub-Section 2C(8) states that Regulations may provide that site rules are of no effect in so far as they make provision in relation to prescribed matters. Sub paragraph 2(b) of schedule 5 of the 2014 Regulations states that a rule is of no effect which is expressed to apply retrospectively. Paragraph 4 of schedule 5 states in summary that an occupier would not be in breach of the New Rules if the occupier enjoyed a benefit prior to the coming in effect of those Rules.
19. Paragraphs 2(b) and 4 of the Fifth Schedule of the 2014 Regulations are dealing with two different situations. Sub-paragraph 2(b) is about whether the Applicant is seeking to enforce the New Rules when the Old Rules applied. The facts showed that the Applicant was relying on the Respondent’s parking arrangements from January 2021 which fell clearly within the time frame of the New Rules. Thus the Applicant was not seeking to apply the New Rules retrospectively.
20. Paragraph 4 is about whether the Applicant enjoyed the benefit of parking more than one car on the site prior to coming into force of New Rules. The facts found showed that (1) the Applicant had not given permission to the Respondent under the Old Rules to park

more than one car on the site, and (2) the Respondent in fact did not own more than one car and did not park more than one car on the site in the period prior to the coming into force of the New Rules on the 8 November 2014.

21. The Tribunal is, therefore, satisfied that the Respondent did not enjoy the benefit of parking more than one car on the site prior to the coming into effect of the New Rules on 8 November 2014.
22. The Tribunal finds that the Respondent is in breach of sub paragraph 3(J) of the Express Terms of the Agreement and rule 21 of the New Rules by parking two cars on the site on various periods from January 2021.
23. The next question is whether the Tribunal should Order the Respondent to remedy the breach within 28 days by arranging the second vehicle to be parked off the site. This question brings into play the second defence. The Applicant argued that it had no discretion under the 2014 Regulations to depart from the Rule regarding the parking of more than one vehicle. The Applicant is partly correct in that sub paragraph 2(a) of schedule 5 of the 2014 Regulations provides that a rule is of no effect which is expressed to grant an occupier a right subject to the discretion by the owner. However, the prohibition on the exercise of discretion is subject to two exceptions: (1) improvements to an occupier's plot and (2) to grant an occupier a right in order to accommodate that occupier's disability (paragraph 3 of schedule 5 of the 2014 Regulations).
24. The Respondent in her statement of case contended that she and her partner who was now a named occupier on the Agreement required two cars on the grounds of disability. The Respondent set out the grounds for her contention but it was not supported by documentary evidence and the Respondent had made no formal application to the Applicant to exercise its discretion on the grounds of disability. Mr Blake in evidence accepted that the Applicant was duty bound to consider such an application if one was made.
25. The Tribunal, therefore, declines at this stage to issue an Order requiring the Respondent to remedy the breach of parking more than one vehicle on the site until the Applicant has considered whether to exercise its discretion under paragraph 3 of schedule 5 of the 2014 Regulations to accommodate the Respondent's request to park two vehicles on the drive of 3 Lark Rise on the grounds of disability. In this regard the Tribunal directs that the Respondent applies in writing to Mr Blake requesting that the Applicant exercises its discretion on the grounds of disability to park two cars in the drive of 3 Lark Rise. The Application must set out the grounds with supporting evidence and made by **no later than 18 November 2022**. The Applicant shall provide its response in writing by no later than the **16 December 2022**. Leave is given to

the Applicant to renew its application to the Tribunal by no later than **11 January 2023** to Order the Respondent to remedy the breach if it is minded to refuse to exercise its discretion. The directions are issued under section 231A(2) of the Housing Act 2004.

## **Decision**

26. The Tribunal determines that

- a) The Respondent is in breach of sub paragraph 3(J) of the Express Terms of the Agreement and rule 21 of the New Rules by parking two cars on the site on various periods from January 2021.
- b) The Tribunal declines at this stage to issue an Order requiring the Respondent to remedy the breach of parking more than one vehicle on the site until the Applicant has considered whether to exercise its discretion under paragraph 3 of schedule 5 of the 2014 Regulations to accommodate the Respondent's request to park two vehicles on the drive of 3 Lark Rise on the grounds of disability (see paragraph 25 re directions for making and considering the Application).



## **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 to the First-tier Tribunal at the Regional office which has been dealing with the case. The application must be made as an attachment to an email addressed to [rpsouthern@justice.gov.uk](mailto:rpsouthern@justice.gov.uk) .
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.