



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

Case Reference : **CHI/00LC/PHC/2022/0007**

Property : **122 Larch Crescent,
Hoo Marina Park, Vicarage Lane,
Rochester, Kent
ME3 9TF**

Applicant : **Berkeley Leisure Group**

Representative : **Majeks Walker (Counsel)**

Respondent : **Deborah Denison**

Type of Application : **s.4 MHA 1983**

Tribunal Members : **Judge Dovar
Mr N Robinson
Mrs P Gravell**

**Date and venue of
Hearing** : **31st October 2022, Chatham**

Date of Decision : **21st November 2022**

DECISION

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Introduction

1. This is an application under s.4 of the Mobile Homes Act 1983 for the determination of various matters in relation to the Property. By s.4, the Tribunal has jurisdiction to determine any question arising under the Act or any agreement to which it applies.
2. The application dated 16th June 2022 seeks a determination as to whether the Respondent is in breach of the terms of her Mobile Homes Act Written Statement as a result of additions that have been made to her home.
3. In the event that any breach is made out, the Applicant requests that the Tribunal gives directions for their remedy.

Mobile Homes Act 1983

4. The Mobile Homes Act 1983 governs the terms of the agreement whereby the mobile home owner, the occupier, is allowed to station their home on land owned by another, the owner.
5. The term “mobile home” means:

“any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted but does not include (a) any railway rolling stock which is for the time being on rails forming part of a railway

system, or (b) any tent” (s.5(1) of the 1983 Act and s.29(1) of the Caravan Sites and Control of Development Act 1960).

6. The Mobile Homes Act 1983 applies to those entitled by agreement to station mobile homes which they intend to be their only or main residence on land forming part of a “protected site” (s.1 of the 1983 Act). Land forms part of a protected site when it is licensed for the purpose (or it is land which would be licensed if it were not owned by a local authority) under Pt I of the Caravan Sites and Control of Development Act 1960 (see s.5(1) of the 1983 Act, s.1 of the Caravan Sites Act 1968).

7. The Act also affords the occupier some security by implying into the agreement a number of important terms, for example terms relating to termination, requiring the owner to provide the occupier with a written statement of the agreement, alienation, pitch fees, obligations of either party (including maintenance obligations), a right of access and a right of the occupier to quiet enjoyment. The implied terms have effect notwithstanding any express term of the agreement and whether or not a written statement has been given as required (s.2(1) and Pt I of the Schedule to the 1983 Act). In addition, any site rules that apply to a protected site, will also become terms of the agreement (s.2C). The site rules can only be imposed on a site if the requirements of Mobile Homes (Site Rules) (England) Regulations 2014 (SI 2014/5) have been met.

8. The owner is required to give the occupier the written statement 28 days before the making of the agreement to occupy the site (s.1(3) of the 1983 Act). The statement must set out various items, including the implied terms, and must be in prescribed form (s.1(2); Mobile Homes (Written Statement) (England) Regulations 2011 (SI 2011/1006). If the owner fails to comply with this requirement the occupier may apply to the appropriate judicial body for an order requiring the owner to provide the statement (s.1(6) and s.4 for determining which judicial body is appropriate). While a shorter period can be agreed in writing for service of the written terms, failure to serve them in time or at all means that the site owner cannot enforce any of the express terms of the agreement unless he applies to the appropriate judicial body. The occupier can rely on and enforce any of the express terms in their favour.
9. Of the implied terms, term 5 permits the owner to terminate the agreement if a Tribunal is satisfied that there has been a breach and after service of a notice to remedy the breach, the occupier has not remedied it within a reasonable time and the Tribunal considers it reasonable for the agreement to be terminated.

The Rules

10. In this case, the Tribunal was provided with:
 - a. A copy of the written statement under the Mobile Homes Act 1983 between the Applicant and Mrs Berry ('the Agreement'), with a note that the agreement was assigned to the Respondent,

Mrs Denison on 17th December 2010. That contained the terms implied by the Act as well as express terms;

- b. An assignment Schedule from Mrs Berry to Mrs Denison also dated 17th December 2010, signed by Mrs Denison recording that part of the assignment included the transfer of the Agreement;
- c. A copy of the Park Rules dated 2014 (Amended 2020): the Tribunal were told, and accepted, that the parts relied on for the alleged breaches had not been amended in 2020;
- d. The Site Licence for the Park dated 6th June 2022;
- e. The registration of the Park Rules with the local authority, Medway Council; being those dated 27th November 2014 as amended on 15th January 2020.

Breach

- 11. In support of the application, the Applicant filed a statement from David Blake, their Operations Manager setting out the matters complained of. They were reiterated at the hearing by Mr Walker, counsel for the Applicants and are as follows:
 - a. Various additional works to the home had been made without written consent, as required under paragraph 3 (g) of the express terms of the Agreement; in particular,

- i. An extension to the right hand side built in June 2021;
and
 - ii. The erection of a closed veranda on the left hand side;
and
 - iii. The building of second storage shed.
 - b. A fence had been erected out of coloured palettes, in breach of paragraph 3 (j) of the Agreement which provided for compliance with the park rules in force from time to time, which in turn prohibited the erection of fences without prior approval (park rule 2);
 - c. The additional shed referred to above was also in breach of park rule 7 which prohibited more than one storage shed and where a new shed was built, the design, standard and size must have prior approval and must not exceed 48ft².
 - d. The position of the shed, veranda and extension were all in breach of park rule 9, which prohibited any structure being erected that was not in compliance with the park's site licence. That provided at clause 2 (iv) (a) that *'a porch attached to the caravan may protrude one metre into the separation distance and must not exceed 2 metres in length and 1 metre in depth ...'*
12. The Applicant served notice on Ms Denison on 15th November 2021, notifying her of the breaches and requiring a remedy by 3rd December 2021. In response Ms Denison denied that there were any breaches

for the reasons she, through Mr Jenkins, asserted at the hearing, namely that there were no rules applicable to her as:

- a. She was not subject to the Agreement;
- b. The Site Licence had not been properly constituted; and
- c. She held a freehold title.

Defence

13. Mrs Denison did not dispute the factual allegations, but as set out above she defended the application on the basis that the Agreement and Park Rules did not apply to her. She contested the fact that there was any agreement or that the Park Rules had been properly lodged with the local authority and were therefore not binding. Whilst she accepted the assignment to her, she considered that it was just that, an assignment of the home, not an assignment of the terms of the Agreement. She also relied on the freehold title of the site as evidence that there were no rules imposed on her.

Determination

14. The Tribunal rejects Mrs Denison's various contentions that the Agreement and rules do not apply to her. She has signed the assignment and therefore is party to the Agreement. Further the Tribunal is satisfied that the Park Rules were lodged with the local authority and that they, and the Site Licence are relevant to her use and occupation of her home. Finally, the reference to the freehold

title of the site is a misunderstanding on her part, in that that is not her title, but that of the Applicant.

15. Given her admissions as to the facts, in particular that she has erected the four items complained of, the Tribunal considers that each of the breaches alleged above are made out. The Applicant had contended for other breaches arising out of the same structures, but the Tribunal did not consider they were made out on the evidence.
16. In relation to the veranda, the mischief with that construction is that Mrs Denison enclosed it. Had she not done so the Applicant candidly accepted that it would not have been a breach as it had been erected under the old rules, which permitted it. Therefore Mrs Denison is at liberty to restore it to its old, open construction.
17. The Tribunal therefore makes the following directions:
 - a. The large storage shed is to be removed within 28 days of this decision;
 - b. The fencing within 56 days; and
 - c. The extension and the enclosure of the veranda are to be removed within 5 months of the date of this decision.
18. The reason for the longer periods of time given for the extension and veranda are that they are part of the structure of the home and it would not be practical to remove those parts during the winter months. Further, it is uncertain whether or not Mrs Denison would be able to find contractors to carry out that work within a short space

of time. The other items are less invasive and can be more easily removed.

Judge D Dovar

Appeals

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 arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

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.

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.