



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

Case Reference : CHI/24UP/PHC/2022/0016

Property : 1 Lawn Road, North Drive, Littleton,
Hampshire SO22 6QF

Applicant : General Estates Company Limited

Representative :

Respondent : Mr M Nugent

Representative :

Type of Application : Application for a determination of any
question arising under the Mobile Homes
act 1983

Tribunal member : D Banfield FRICS
K Ridgeway MRICS

Date of Hearing : 22 December 2022

Date of Decision : 9 January 2023

DECISION

Background

1. The Applicant seeks the Tribunal's determination of questions arising under the Mobile Homes Act 1983 in relation to the arrears of pitch fees and utility charges and the lack of maintenance of the Respondent's park home. The application was made on 18 August 2022.
2. On 18 October 2022 the Tribunal made directions which it sent to both parties [11] setting out a timetable for the disposal of the case at an oral hearing on 22 December 2022. The parties were required to send their respective cases to each other, for the Applicant to respond and collate the hearing bundle.
3. The Respondent has not engaged in the proceedings.
4. A hearing bundle has been received extending to 73 pages. The bundle has been examined and the Tribunal is satisfied that it contains all of the information required to make a determination without an oral hearing.
5. The only issues to be determined by the Tribunal are whether the site rules have been breached as referred to in paragraph 1 above.
6. Reference in this determination to page numbers in the bundle are indicated as [*]

The Law

7. The relevant law is set out below:

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 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). ^[1]_[SEP]

(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. ^[1]_[SEP]

(3) [Directions under the Housing Act 2004] ^[1]_[SEP]

(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; ^[1]_[SEP]

(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

Section 2 of the Act says: *In any agreement to which this Act applies there shall be implied the [applicable] terms set out in Part I of Schedule 1 to this Act.*

In accordance with Chapter 2 of Part I of Schedule 1 of the Act implied within the Agreement the Respondent has agreed as follows:

Paragraph 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.

Paragraph 5. 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 is not occupying the mobile home as his only or main residence; and

(b) considers it reasonable for the agreement to be terminated.

Paragraph 21. The Occupier shall -

(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

8. In **Elleray v Bourne** [2018] UKUT 0003(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.”

9. **In Wyldecrest Parks (Management) Ltd v Santer (2018) UKUT 0030 (LC)**, the Upper Tribunal suggested that the policy of the legislation was that most mobile homes disputes should be dealt with in tribunals rather than courts because of their greater expertise and accessibility and lower cost. The enhanced powers conferred by section 231A Housing Act 2004 were consistent with that policy since they reduced the risk that proceedings to resolve disputes may be required to be commenced in more than one forum.

“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.”

Evidence

10. The Applicant’s statement [16] states that;
- General Estates Co Limited (Applicant) have had the need to communicate with Mr M Nugent (Respondent) since 2012 in relation to his arrears.
 - Since early 2020, we have had the need to regularly correspond with the Respondent due to him frequently being in arrears in excess of £2000.00. In addition to this, we had numerous residents complaining about the condition of his pitch.
 - In late 2019, we received a payment of £500.00, the next payment received was for £1200.00 on 16th September 2020. A further

payment of £2000.00 was not then received until 15th March 2022, some 18 months later.

- As at today's date, 3rd November, we have not received any further payments and the current debt stands at £ 3323.97.
 - We visited the home of the Respondent on numerous occasions in Autumn 2021 in a bid to meet with him and discuss a way forward. On one occasion, we spoke with a neighbour who advised he did not usually return home until early evening. We then chose to return one final time at 6.15pm but found no-one home. We waited for half an hour but to no avail. We left a letter on each occasion for Mr Nugent impressing upon him the importance of contacting us.
 - On 26th April 2022 we again wrote to Mr Nugent to acknowledge receipt of the recent funds and also to enquire as to when we could expect to receive further monies. We also requested he once again tidy his pitch as we had received further complaints – in particular from a lady who had moved in to the neighbouring property.
 - We did not receive a response to this letter and so on 19th July 2022 felt we had no other option than to issue him with a Breach letter and advise of our intention to approach the Tribunal to seek a resolution to the matter.
11. Attached is a statement of account for the period 1/5/2021 to 3/11/2022 [39-41] totalling £3,3,23.97 and made up of;
- Arrears £201.12
 - Pitch fees £2,750.41
 - Water supply £106.04
 - Electricity supply £266.40
12. Correspondence sent to the Respondent is also exhibited [42-73] comprising a number of letters commencing on 1 February 2012 regarding arrears and letters on 18 July 2017, 18 February 2020, 26 April 2022 and 12 July 2022 regarding the unacceptable condition of the pitch.

The agreement

13. The Written Statement under the Mobile Homes Act 1983 [17] is dated 14 July 2003 and confirms receipt of an agreement relating to 1 Lawn Road, Flowerdown Park, North Drive, Littleton. The agreement is between The General Estates Co Ltd as "The Owner" and Mrs Pauline Carter. The agreement was assigned to the Respondent on 7 August 2007.[33]
14. The Respondent's obligations relevant to this application are contained in Part IV of the written statement [23]
3. The occupier undertakes with the owner as follows-

- (a) To pay the owner an annual pitch fee of £1,080.00 Subject to review.....
- (b) To pay and discharge all general and or water rates.....and charges in respect of electricity gas water telephone and other services
- (c)
- (d)
- (e) To keep the mobile home in a sound state of repair.....
- (f) To keep the pitch and all fences, sheds, outbuildings and gardens thereon in a neat and tidy condition.....

The Hearing

- 15. The hearing was attended by Mr James Percy on behalf of the Applicant. The Tribunal confirmed that it had read the bundle and asked for any particular points that the Applicant wished to refer to. Mr Percy confirmed that he had not provided any photographic evidence of the site condition in the bundle and had none to add.

The Decision

- 16. The Respondent’s obligations under Chapter 2 of Part 1 of Schedule 1 to Mobile Homes Act 1983 are set out in paragraph 14 above.
- 17. No evidence has been provided in support of the amount of the current pitch fee but in the absence of any challenge from the Respondent the Tribunal accepts that it is as stated on the Statement of Account [39]
- 18. The Applicant has provided evidence of the amounts outstanding totaling £3,323.97 [41]and such the Tribunal finds as a fact that the Respondent has failed to pay his pitch fees and pay for utilities. In the absence of evidence from the Applicant the Tribunal makes no finding in respect of the condition of the pitch.
- 19. **The Tribunal therefore determines that the Respondent is in breach of Paragraph 21 Chapter 2 of Part 1 of Schedule 1 to Mobile Homes Act 1983.**
- 20. The Tribunal has the power, pursuant to s231A (4) (c) of the Housing Act 2004 to give directions requiring the payment of money by one party to another. Given that the Applicant’s aim is to remedy the breach it is the Tribunal’s intention to make such Directions.
- 21. **The Tribunal therefore Directs that the Respondent will;**
 - Within 6 months of this decision;
 - pay the outstanding arrears of £3,323.97 to the Applicant

D Banfield FRICS (Chairman)
Regional Surveyor
9 January 2023

Appeals

1. A person wishing to appeal this decision to the Upper 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.
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. Where possible you should send your further application for permission to appeal by email to **rpsouthern@justice.gov.uk** as this will enable the First-tier Tribunal to deal with it more efficiently.
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.