



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

Case Reference : CHI/24UJ/PHC/2022/0014

Property : 27 Lime Kiln Lane Estate, Lime Kiln Lane,
Holbury, Hampshire SO45 2HF

Applicant : General Estates Company Limited

Representative :

Respondent : Mr John Philip

Representative :

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

Tribunal member : D Banfield FRICS (Chairman)
Regional Surveyor
K Ridgeway MRICS (Valuer Member)

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 27 July 2022.
2. On 18 October 2022 the Tribunal made directions 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 66 pages.
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).

(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

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;
- When General Estates Company Limited (Applicant) took ownership of Lime Kiln Lane Estate on 30th June 2021 Mr John Philip (Respondent) was in arrears.
 - Mr John Philp acquired his home in April 2013 and a new Written Statement was issued at this time.
 - All residents on the Park were notified of the change of ownership in writing and all residents were invited to a meeting on 14th July 2021 but we believe the Respondent did not attend.
 - Since that time, we have made countless attempts to contact Mr Philip, both by letter and visiting his home, without success. We have spoken to numerous neighbours, as well as the Park Manager, who confirm the only time he is likely to leave his home is during darkness.

- Between 22nd July 2021 and 25th April 2022, we made several attempts to contact Mr Philip, including visits to the home and correspondence, without success. We repeatedly requested he contact our offices in an attempt to resolve the issue and, if necessary, put a payment plan in place in order to clear the substantial arrears.
 - During the visit on 25.4.22, we spoke to a neighbour who advised he hadn't seen or heard anything from the home for a couple of weeks. We also noticed a rather unpleasant smell coming from the home and although the home is in a relatively poor condition, it made us rather concerned for his well-being.
 - We decided to call the Police and following a discussion with them, we attended the Park together with two Police Officers and they were able to make contact with the resident. They advised him of our concerns and advised he appeared to understand what they were advising him. Following that meeting, we followed it up immediately with a letter but he has not made any contact with us.
 - We did not hear from Mr Philip, so chose to issue him with a formal 'Breach Letter' and because he has still not contacted us, we now have no option but to look to the Tribunal for their ruling. The Applicant indicated that it is ultimately seeking the Respondent to remedy the breaches of the Agreement.
11. Attached is a statement of account for the period 30/6/2021 to 4/11/2022 [52-53] totalling £4,667.39 and made up of;
- Pitch fees £2,606.87
 - Water supply £55.30
 - Electricity supply £2,339.04
 - Less;
 - Various credits (£333.82)
12. Undated pictures of the pitch [54-56] show the front and side of the mobile home with a hard standing area formed of block paving on which is a parked car and a rotary dryer. The paving has substantial weed growth in the joints and the remainder of the pitch visible from the road is also weed covered.
13. Correspondence sent to the Respondent is also exhibited comprising;
- 18 August 2021; regarding the garden becoming "very untidy and overgrown"
 - 24 August 2021; re arrears
 - 27 October 2021; re arrears standing at "almost £1,400.00"[59]
 - 16 February 2022; reminder that Applicant is now the site owner
 - 7 March 2022; requesting contact
 - 26 April 2022; requesting contact
 - 9 June 2022; formal notice prior to Tribunal application, arrears "in the sum of £2,964.64" [65]

- 26 July 2022; confirming application to Tribunal made

The agreement

14. The Particulars of the agreement [22] state the parties to be “Marie Woodhouse on behalf of Mrs Eileen Shanley as mobile home owner and C.A,M.S.H.P & N.H. Hewes as site owner with a start date of 15 April 2013 at pitch fee of £119.17 per month inclusive of sewerage. The agreement was assigned to the Respondent on 15 April 2013 the site owners now being stated as trading as Lime Kiln Lane Estate.[43]
15. The Respondent’s obligations relevant to this application are contained in section 21 of the Written Statement [33]
The occupier shall-
 - (a) pay the pitch fee to the owner;
 - (b) pay to the owner all sums due under the agreement in respect of gas, electricity, water, sewerage or other services supplied by the owner;
 - (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 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 explained his concern for the welfare of the Respondent and the impossibility of obtaining any response from him. He also confirmed that the photographs in the bundle [54-56] had been taken by him at the end of October 2022.

The Decision

17. The Respondent’s obligations under Chapter 2 of Part 1 of Schedule 1 to Mobile Homes Act 1983 are set out in paragraph 15 above.
18. 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 [52]
19. The Applicant has provided evidence of the amounts outstanding totaling £4,667.39 and the photographs at pages 54-56 show significant weed growth visible from the estate road and what appears to be a large hole in the timber access deck.

20. The Tribunal finds as a fact that the Respondent has failed to pay his pitch fees, pay for utilities and maintain the pitch in accordance with his obligations .
21. As such **the Tribunal determines that the Respondent is in breach of Paragraph 21 Chapter 2 of Part 1 of Schedule 1 to Mobile Homes Act 1983.**
22. 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 and the cleaning, repairs and other works to be carried out. Given that the Applicant's aim is to remedy the breaches it is the Tribunal's intention to make such Directions.
23. **The Tribunal therefore Directs that the Respondent will;**
 - Within 6 months of this decision;
 - remove all excessive weed growth from the pitch and leave in a tidy condition
 - pay the outstanding arrears of £4,667.39 to the Applicant

D Banfield FRICS
Regional Surveyor (Chairman)

9 January 2023

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 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.