



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

Case Reference : **MAN/00BU/PHC/2021/0012**

Property : **20 LONGSHOOT, MOUNT PLEASANT
RESIDENTIAL PARK, GOOSTREY, CHESHIRE**

Applicant : **GAIL RAINFORD on behalf of JOYCE
MERRYMAN**

Respondent : **TINGDENE PARKS LIMITED**

Type of Application : **under SECTION 4, MOBILE HOMES ACT 1983**

Tribunal Judge : **A M Davies, LLB
I James, MRICS**

Date of Decision : **8 September 2022**

DECISION

- 1) The Respondent shall remove from the Applicant's pitch at 20 Longshoot the fence erected in or about June 2021 and shall plant a hedge or erect another boundary structure acceptable to Ms Rainford (acting reasonably) as the Applicant's attorney along the line of the former post and rail fence, making good any damage caused.
- 2) The Respondent shall reimburse the application fee paid by Ms Rainford, in the sum of £100.

REASONS

UNDISPUTED FACTS

1. In 1988 Mr and Mrs Roy Merryman purchased a mobile home sited on a pitch at 20 Longshoot, Mount Pleasant Residential Park ("the Park"). They entered into a lease

with the then owner of the Park under which they paid a pitch fee and service charge for the right to occupy the pitch. The Park is a protected site, and in due course the Merrymans' occupation of their pitch became subject to the provisions of the written statement set out at Chapter 2, Schedule 1 to the Mobile Homes Act 1983 (the Act) as amended (the Implied Terms).

2. No copy of the original lease is now available.
3. In September 2017 the Respondent purchased the Park and in March 2018 wrote to Mr and Mrs Merryman enclosing a draft Written Statement in accordance with the Implied Terms and asking them whether they wished to sign it. The new Written Statement included a plan, supplied by the Respondent, approximately indicating the position and extent of the pitch to which the letter related. This plan was intended to comply with section 1 (2)(b) of the Act, which states that a Written Statement shall "[include] particulars of the land on which the proposed occupier is to be entitled to station the mobile home that are sufficient to identify that land".
4. Mr and Mrs Merryman did not respond to that letter by signing a new Written Statement. At or about that time both Mr and Mrs Merryman began to show signs of dementia. In January 2020 their daughter Ms Rainford registered a power of attorney for each of them, enabling her to conduct their affairs for them. Sadly Mr Merryman died shortly before the hearing of this application. He was then aged 93 and Mrs Merryman is aged 92.
5. On 8 June 2021 Mr Pearson of the Respondent inspected the empty pitch adjacent to the Merryman's at 19 Longshoot. He was accompanied by Mr Higton, representing the principal contractors who carry out work at the Park. They were deciding how the pitch at 19 Longshoot could be prepared for the installation of a new park home, along with a driveway, garden and garage. They noted that between pitches 19 and 20 there was a wide hedge, camellia bushes and other smaller plants. Mr Pearson knocked at the door of 20 Longshoot and found that a nurse was at the property with Mr and Mrs Merryman. He explained that he wished to discuss the boundary with the owners of the property, and the nurse said that the best person to speak to was Mr Merryman.
6. Accordingly, Mr Merryman went outside and spent some time with Mr Pearson and Mr Higton looking at the boundary. Mr Pearson explained to Mr Merryman that he wished to erect a fence along the face of the hedge nearest Mr and Mrs Merryman's park home, and to remove the hedge. He said that this would help Mr Merryman by ensuring that he no longer needed to maintain the hedge.
7. Following this conversation, the Respondent removed the hedge and all other plants from the boundary area. Ms Rainford telephoned the Respondent on 23 June 2021, and emailed them on the same day. She said that the plants that had been removed were on her parents' pitch, and sent photographs on which she relied in making this

statement. She explained that the boundary of 20 Longshoot was marked by the side of a fence which originally enclosed the oil tank on the Merrymans' pitch, and that the hedge, camellias and plants had all been planted by her parents within the line taken from the side of that fence to the road. She told the Respondent that her parents did not agree to their pitch being reduced in size, and that they wanted the Respondent to restore the boundary with planting similar to that which had been removed. She also reported that the workmen had ignored her father when he had protested while the work was being carried out.

8. Miss Boyle for the Respondent replied by email on 28 June. She said that Mr Pearson and Mr Higton had "spoken at length to your parents and their carer" and that "all parties agreed that there had been historical encroachment on the border.... and that this would need to be resolved due to the development of the adjacent plot. Tingdene has agreed to install a fence line between the plots..... depicting the boundary clearly to prevent further misunderstanding..... It was agreed as an acceptable course of action..... Your parents were fully consulted and respectfully treated during the discussions and indicated their agreement to the proposals."
9. These statements conflict with Mr Pearson's evidence to the Tribunal. He did not say that Mrs Merryman had been consulted, that the nurse had been involved in the discussion, or that Mr Merryman agreed that there had been "historical encroachment" on to 19 Longshoot.
10. Ms Rainford replied by email on 5 July. She denied that her parents had changed the boundary while they had lived at 20 Longshoot. She claimed "Tingdene are trying to make the adjacent plot larger by taking part of my parents' plot."
11. This is also confirmed by Mr Pearson, who says in his witness statement that on 8 June he told Mr Merryman that if he agreed "the fence would be placed nearer to the side of his home than the existing post and wire fence, to allow space for a drive for no. 19." – in other words, that the pitch at 20 Longshoot would be smaller.
12. When Ms Rainford received no reply from the Respondent, she made this application to the Tribunal on behalf of Mr and Mrs Merryman, for restoration of the original boundary between the two pitches.

PRELIMINARY ISSUE

13. At the hearing, Mrs Merryman was represented by Ms Rainford, and the Respondent was represented by Mr Ryan of Ryan & Frost Solicitors. Mr Ryan made an application for the Applicant's case to be struck out or for her evidence not to be heard, and this was dealt with as a preliminary issue.
14. The basis of the application was that in breach of the directions order Ms Rainford had not supplied any signed witness statement from her parents, that she was unable to give direct evidence as to the discussions on 8 June or her father's alleged

intervention while the work was being carried out, and that she had not produced witnesses despite references to them in her statement of case and her response to the Respondent's case. Mr Ryan said that his client would be prejudiced if the matter went ahead, in that he was unable to put questions to any witnesses, and further pointed out that he had warned Ms Rainford of her need to provide witness statements when he had written to her in March 2022.

THE LAW

15. Section 4 of the Act provides that this Tribunal has jurisdiction to determine “any question arising under this Act or any agreement to which it applies”.
16. The Tribunal's case management powers are governed by Part 2 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. These enable the Tribunal, in circumstances that are fair and appropriate -

To permit.... a party or another person to provide or produce documents, information or submissions.... to the Tribunal (Rule 6 (3)(d))

To give directions as to the nature of the evidence or submissions it requires, and the manner in which any evidence or submissions are to be provided, and the time at which any evidence or submissions are to be provided. (Rule 18(1)(d)(g) and (h))

To admit evidence whether or not it would be admissible in a civil trial (Rule 18(6)(a)(i))

To proceed with a hearing in the absence of a party if the Tribunal... considers that it is in the interests of justice to proceed with the hearing. (Rule 34).

DETERMINATION OF PRELIMINARY ISSUE

17. The Tribunal determined to allow the Applicant's case to continue, and to let Ms Rainford's statement of case and response to the Respondent's case to stand as the Applicants' evidence. While acknowledging that some of this evidence would be hearsay, and that Mr Ryan would not be able to question witnesses who had direct knowledge of the facts claimed, the Tribunal considered that it was unjust to refuse Mrs Merryman access to a determination under section 4 of the Act. The Tribunal noted that Mr Ryan had had the benefit of seeing Ms Rainford's written statements a considerable time prior to the hearing. The Tribunal warned Ms Rainford that her submissions to the Tribunal should not contain any new material of which the Respondent had not had notice.
18. It was further noted that the Respondent had not applied for an order warning Ms Rainford that her case might be struck out if she did not comply with directions. He had not sought additional directions orders. Ms Rainford had produced a

comprehensive electronic bundle of documents as directed, and the Tribunal was confident that her application could be heard without prejudice to the Respondent.

DETERMINATION ON DISPUTED FACTS

19. In addition to the agreed facts cited above, after hearing Mr Pearson and Mr Higon for the Respondent and Ms Rainford for the Applicant, considering the documents supplied and listening to the parties' representations, the Tribunal has taken the following facts into account in making its determination:
20. The original line of the boundary between pitches 19 and 20 was along the post and rail fence leading in a straight line from the outer edge of the fence formerly surrounding the oil tank (or coal bunker, as it is referred to by the Respondent) to the road. This is agreed by Mr Pearson at paragraph 19 of his statement. It is also supported by the plan the Respondent supplied to the Merrymans with the draft Written Statement in 2018. The Tribunal rejects Mr Pearson's claim that this plan cannot be relied upon in relation to the position and approximate size of the Merrymans' pitch, since the Respondent chose to use it in order to comply with section 1 (2)(b) of the Act.
21. The hedge was planted on or within the boundary of 20 Longshoot. If this was not the case, the Respondent would not have asked for the Merrymans' consent to its removal.
22. Mr Pearson and Mr Higon told the Tribunal that it was not apparent to either of them on 8 June 2021 that Mr Merryman was incapable of making a decision, or that he was partially deaf as claimed by Ms Rainford. The Tribunal finds that on 8 June 2021 Mr Merryman was capable of holding a conversation and understanding that the Respondent wished to replace his hedge with a fence that was nearer the side of his park home. It does not follow that he was able to understand why the Respondent wished to do so, or that he was giving away part of his property, or that he was entitled to ask for time to consider and take advice, or that before agreeing anything he should either obtain his wife's approval or consciously make the decision for her, or that he could ask for compensation for the change to the size of his pitch.
23. The new fence did not provide the Merrymans with improved fire safety, security or privacy, as claimed by the Respondents at the hearing. The new fence is one metre high and is topped by a one metre trellis. It is therefore at a similar height to the former hedge. It is more likely to catch fire than a hedge, and is in the region of one metre closer to the Merrymans' park home. It affords less privacy and security than a mature hedge.

CONCLUSION

24. The change to the boundary of the Merrymans' pitch effected by the Respondent in June/July 2021 was to the Respondent's benefit and the Merrymans' detriment.

The Merrymans are very unlikely to have understood the ramifications of the Respondent's plan. The Respondent failed to ensure that Mr Merryman had any opportunity to take advice, or to discuss their request with his daughter or any other trusted person with whom he could have a quiet conversation.

25. The new boundary is therefore in the opinion of the Tribunal a trespass on the Applicant's property. The Respondent is to remove it and to provide a boundary structure acceptable to Ms Rainford as her mother's attorney.