



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

Case reference	:	CAM/12UC/PHC/2022/0011
Property	:	Bedwell Park, Bedwell Hey Lane, Witchford, Cambridgeshire
Park Home address	:	8 Evensford Walk, Bedwell Park CB6 2JU
Applicant	:	Tingdene Parks Limited
Respondent	:	Elizabeth Smith
Type of application	:	Mobile Homes Act 1983, Section 4– Determination of a question arising under the Act or agreement to which it applies
Tribunal members	:	Judge K. Seward Mr R. Thomas MRICS
Date of decision	:	6 April 2023

DECISION AND REASONS

DECISION

For the following reasons, the Tribunal determines that:

- (1) The Respondent is in breach of the implied term within paragraph 21.(d)(ii) of Chapter 1 of Part 1 of Schedule 1 of the Mobile Homes Act 1983, to maintain the pitch in a tidy condition.
- (2) The Respondent is directed to carry out works within 28 days of the date of this Decision to put the garden of the pitch at No 8 Evensford Walk in a tidy condition.
- (3) By way of reimbursement of fees which had been paid to the Tribunal by the Applicant the Respondent is ordered to pay to the Applicant the sum of £100 within 28 days of this Decision.

(4) No order for costs shall be made.

REASONS

The application and background

1. The Applicant is the owner and operator of the park home site known as Bedwell Park, a protected site within the meaning of the Mobile Homes Act 1983, as amended ('the Act').
2. The respondent's right to station her park home on pitch number 8 Evensford Walk is governed by the terms of a written agreement (called a 'written statement') and the provisions of the Act. The agreement is made with Tingdene Development Limited. It is dated 8 September 2011. The agreement was assigned to the Respondent by Tingdene Parks Ltd on 29 January 2021.
3. The applicant applies under section 4 of the Act for the determination of a question arising under the Act or the agreement to which it applies.
4. The application seeks a declaration that the Respondent is in breach of her obligations: (i) to keep her pitch and garden in a clean and tidy condition, and (ii) to comply with the park rules. Orders are also sought requiring the Respondent to tidy her front garden within 28 days and to pay the costs of the application.

Directions and documents before the Tribunal

5. The Tribunal issued written Directions to the parties on 13 January 2023. Both parties were directed to prepare a bundle of the documents relied upon, including any witness statements of fact. If opposing the application, the Respondent was directed to provide a full statement of reasons with a response to the points made by the Applicant.
6. The Directions cautioned the Respondent that the Applicant may apply to the County Court for an order terminating her pitch agreement (entitling the Respondent to station her park home on the site) should the Tribunal find her to be in breach of the terms.
7. In accordance with the Directions, the Applicant produced a bundle of some 58 pages containing the application form, Tribunal directions, and a witness statement attaching a copy of the pitch agreement, the Park rules, correspondence sent to the Respondent with notices to remedy breach along with photographs of the pitch. The Applicant confirmed by notice that, if successful, it will seek to terminate the Respondent's written statement and recover possession of the pitch.

8. When the Respondent did not produce a bundle of documents within the timescale directed, the Tribunal wrote to the parties on 1 March 2023 with further directions. These required the Applicant to endeavour to contact the respondent by telephone or through the site manager. An extension of time was given to the Respondent to comply with the directions by 17 March 2023. The Tribunal letter warned that if the Respondent failed to respond the Tribunal may proceed to make a determination on the documents produced by the Applicant.
9. No response has been received from the Respondent who has not played any part in these Tribunal proceedings. The Tribunal is satisfied that the Respondent has been notified of the proceedings and the Directions, by service at the property address.
10. This determination has been made on the papers without a hearing. No site inspection was requested, and the Tribunal did not consider that one was necessary particularly given the provision of photographs. Moreover, a site inspection would not have been proportionate given that the application is uncontested.

The Law

11. Primarily, the law is contained within the Mobile Homes Act 1983. Under section 4, a Tribunal has jurisdiction to determine any question arising under the Act or any agreement to which it applies.
12. The relevant law is set out below:

The 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 the 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...];

(b) [directions regarding pitch fees];

(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 regarding works;

(d) [directions regarding services or amenities].

Implied terms – Chapter 2 of Part 1 of Schedule 1 to the Mobile Homes Act 1983

Occupier's obligations

Paragraph 21.(d)(ii) provides that the occupier shall maintain the pitch, including all fences and outbuildings belonging to, or enjoyed with, it and the mobile home, in a clean and tidy condition.

Express terms under Part 3 of the written statement

Paragraph 3.(h) states that occupier “must comply with the park rules”, a copy of which is attached to the written statement. Rule 2 concerns the condition of the pitch. At Rule 2(a) “private gardens must be kept neat and tidy...”.

13. In ***Elleray v Bourne*** [2018] UKUT0003(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.”

14. In ***Away Resorts Limited v Morgan*** (2018) UKUT 0123 (LC), the Upper Tribunal said: *“The power to grant additional remedies is exactly what section 231A, Housing Act 2004 provides.”*

Consideration and determination

15. The Applicant complains that the Respondent’s front garden is untidy and overgrown. It is explained in the signed witness statement of Mr Jeremy Pearson that the Applicant’s Solicitors issued a ‘Notice to Remedy Breach’ on the Respondent under cover of a letter dated 29 June 2022. Having received no reply, the Solicitors wrote again on 3 August 2022 extending the compliance period by 14 days to 17 August 2022. It is acknowledged that these letters gave the wrong postcode.
16. A ‘Notice to Remedy Breach’ was re-issued by the Solicitors on 17 August 2022 and sent by covering letter on the same date, utilising the correct postcode. The Notice advises the Respondent that she is in breach of the written statement of 8 September 2011 by failing to keep her pitch in a clean and tidy condition to such an extent that it has become an eyesore. Four ‘recent’ photographs are attached in

illustration. The Respondent was given until 23 September 2022 to bring her pitch into a clean and tidy condition.

17. The Solicitors letter of 17 August 2022 and follow-up letter of 12 September 2022 were both returned by Royal Mail marked 'RTS'.
18. Mr Pearson states that in order to ensure that the Solicitors correspondence and notices were received, arrangements were made for the Park Manager to hands deliver copies. This was undertaken at 11.47am on 20 September 2022 by posting copies through the Respondent's letterbox at 8 Evensford Walk. The Park Manager has endorsed a copy of the Solicitors letter of 12 September 2022 in confirmation.
19. The Applicant states that the letters and notices have been ignored. The copy photographs supplied are only a snapshot in time, but they show unkempt shrubs, some seemingly growing above window height towards the eaves, and vegetation starting to overhang the footway. Whether a pitch is 'clean and tidy' is somewhat subjective. Nevertheless, the photographs show a garden that appears overgrown and neglected. From that viewpoint it is untidy. There is no indication that the garden is not 'clean' but it does not need to be both unclean and untidy for a breach to occur. It would have been helpful to have had dated photographs to help the Tribunal gauge the period of time and whether there was any sign of the garden being tended. However, the Tribunal acknowledges that the Applicant's complaints cannot have been addressed satisfactorily for the Notices to have been issued and for an Order to be sought requiring remedial action.
20. The Tribunal has no information on the circumstances of the Respondent and whether there is any explanation for the condition of the pitch in the absence of any reply.
21. The Notice to Remedy Breach quotes breach of the requirement to keep the pitch in a clean and tidy condition under clause 21(d)(i) and (ii) of Part 2 within the Annex of the written statement. The Annex sets out the implied terms within the Act. Clause 21(d)(i) requires the occupier to maintain the outside of the mobile home. However, no issue is taken with the outside of the mobile home itself but the condition of the pitch. It is paragraph 21(d)(ii) which is applicable and requires the occupier to maintain the pitch in a clean and tidy condition.
22. Despite the erroneous reference within the Notice to clause 21(d)(i), it is sufficiently apparent from the description and accompanying photographs that the Applicant required the pitch to be brought into a clean and tidy condition rather than any maintenance of the outside of the mobile home. Failure to maintain the pitch in a tidy condition is a breach of the implied term in paragraph 21(d)(ii) and as annexed to the written statement. The Tribunal shall make a declaration to that effect.

23. The Notice also cites breach of the express term within Part 3, clause 3.(i)(i) of the written statement to not do, or allow to be done, anything which may or become a nuisance to or cause annoyance, inconvenience or disturbance to, the site owner or anyone else who lives on or uses the site. It has not been explained how the untidy front garden offends this clause and the Tribunal notes that the application does not rely upon it. In the circumstances, the Tribunal finds no breach by the Respondent in this regard.
24. The Applicant further seeks a declaration of breach of the park rules contrary to the express term in Part 3, paragraph 3.(h). Whilst Rule 2(a) requires that private gardens must be kept neat and tidy, it was never fairly and squarely put in the Notices to the Respondent that this point was being taken. It has only been raised in these proceedings. That being so, it would not be just and equitable to make a declaration to that effect.
25. Having found there to be a failure to keep the pitch in a tidy condition in breach of paragraph 21(d)(ii), the Tribunal considers it appropriate to exercise its discretion to order that the garden be placed in a tidy condition. It is not a large garden, and it should not take long to tidy. The Tribunal recognises that the Respondent may wish to employ help with the works. The period of 28 days should strike the right balance of affording sufficient opportunity to arrange for the works to be undertaken and remedying the breach in a timely manner.

Refund of fees and costs

26. Under Tribunal Rules 13(2) and (3)¹ the Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid on an application or on its own initiative.
27. The Respondent was alerted to the possibility of the Applicant recovering its Tribunal fees in the Directions of 13 January 2023. Opportunity to respond was given and the Tribunal even extended the time limit in its letter of 1 March 2023 for a response to the application. Recovery of fees would ordinarily follow the event where a party has failed to make any response. There is no reason for the Tribunal not to award the Applicant its Tribunal fees incurred when a breach of the pitch agreement has been found. In the circumstances it is reasonable for the fees to be reimbursed and for the Tribunal to exercise its discretion accordingly.
28. Taking into account the determinations above, the Tribunal orders the Respondent to refund the fees paid by the Applicant within 28 days of the date of this decision.

¹ The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169

29. Whilst an application for recovery of costs is also made, no details are provided for consideration. Furthermore, the Tribunal may not make an order for costs against a person without first giving that person an opportunity to make representations (Rule 13(6)). Without any particulars, this requirement has not been met. Accordingly, no order for costs is made.

Name: Judge K. Saward

Date: 6 April 2023

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).