FIRST TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CAM/00JA/PHC/2022/0009**
HMCTS	**:**	**Face to Face**
Site	**:**	**Keys Park, Parnwell Way, Peterborough, Cambridgeshire PE1 4SL**
Park Home Address	**:**	**40, Keys Park, Parnwell Way, Peterborough, Cambridgeshire PE1 4SL**
Applicants	**:**	**The Berkley Leisure Group Limited**
Representative	**:**	**Mr John Hardcastle of Counsel**
Respondents	**:**	**Mrs RA Elliott & Mr P Burgess**
Type of Application	**:**	**To determine questions arising under the Mobile Homes Act 1983 or an agreement to which it applies – section 4 Mobile Homes Act 198**
Tribunal	**:**	**Judge JR Morris** **Miss M Krisko BSc (Estate Management) BA, FRICS**
Date of Application	**:**	**22nd November 2022**
Date of Directions	**:**	**20th December 2022**
Date of Hearing	**:**	**24th March 2023**
Date of Decision	**:**	**24th April 2023**

DECISION

Decision

1. The Tribunal determines that the replacement of the hedge by a fence did not amount to a cessation of the benefit under Paragraph 4(2) of Schedule 5, of The Mobile Homes (Site Rules) (England) Regulations 2014 and that the benefit prior to the deposit of the Site Rules continues to subsist. Therefore, pursuant to Paragraph 4(1) of Schedule 5, the Respondent Occupiers are not in breach of Site Rule 2 requiring fences and any other means of enclosure to

be a maximum of 1 m in height nor of Part IV points 3(g) and 3(j) of the Express Terms of the Agreement.

Reasons

Introduction

2. An Application dated 22nd November 2022 was made by the Applicant for a determination of a question arising under the Mobile Homes Act 1983 or an agreement to which it relates under section 4 of the Mobile Homes Act 1983 as amended, as followings:
   (1) Whether the Respondent is in breach of Park Rule 2 which states "You must not erect fences or other means of enclosure unless you have obtained our approval (which will not be unreasonably withheld)";
   (2) Whether the Respondent is in beach of the terms of their Mobile Homes Act Written Statement (the Agreement) specifically:
   Express Terms
   3 (g) Not without the written consent of the owner to carry out any building works or erect any porches. sheds, garages, outbuildings, fences. or other structures on the pitch.
   3 (j) To comply with the park rules from time to time in force a copy of the current park rules being annexed hereto;

3. The Applicant sought a Direction requiring the Respondent to remedy the alleged breaches within a reasonable time namely 28 days of the tribunal's decision.

4. Directions were issued on 20th December 2022 in compliance with which the parties provided statements of case and supporting documents.

Description

5. The Tribunal inspected the Site and the pitch of Number 40 in the presence of Mr David Blake, Operations Manager, and Mr David Curson, Operations Director, of the Applicant and the Respondents Mrs Elliott and Mr Burgess and Mrs Jean McNeill the Residents' Association chair. The Tribunal found that the boundaries between pitches were marked by hedges and fences many of which were 2 metres high.

6. The Tribunal noted that the pitch to Number 40 had no fence or hedge to the front but along three quarters of each side was a laurel hedge of about 1 metre in height. For the remaining quarter of the boundary, there was a green metal profiled fence which sloped from 1 metre in height from the laurel hedge to 1.5 metres at the rear corner of the pitch on each side. Across the rear boundary of the pitch was the same green metal profiled fence. The Tribunal further noted that the pitch on the left-hand side had a Leylandii hedge of 2 meters in height across the rear boundary which would have original extended across the rear of the boundary to Number 40. On the right-hand side of the pitch to Number 40 it was noted that until 2021 the boundary had been marked by the flank wall of a garage which was 2 metres high and a 2 metre high Leylandii hedge.

The Law

7. The relevant sections are set out in Appendix 2.

The Written Agreement, Site Licence and Conditions and Site Rules

8. A copy of the Site Licence and Conditions dated 15th November 2021 issued by Peterborough City Council was provided.

9. A copy of the Site Rules was provided, also known as the Park Rules. Reference was made in particular to Rule 2 of the Site Rules which states as follows: -

   (2) You must not erect fences or other means of enclosure unless you have obtained our approval (which will not be unreasonably withheld or delayed). You must position the fences and any other means of enclosure so as to comply with the park's site licence conditions and fire safety requirements and to a maximum of 1 m in height. Park boundary hedges and or fences must not be interfered with and no unauthorised entrances to the park are permitted.

10. The original Written Statement of 1996 was lost and therefore extracts from Written Statements which were extant at that time were provided. Reference was made in particular to Part IV points 3(g) and 3(j) of the Express Terms of the Agreement which states as follows: —

   3 (g) Not without the written consent of the owner to carry out any building works or erect any porches. sheds, garages, outbuildings, fences. or other structures on the pitch.
   3 (j) To comply with the park rules from time to time in force a copy of the current park rules being annexed hereto as the Third Schedule.

The Hearing

11. A hearing was held on 24th March 2023, which was attended by Mr John Hardcastle, Counsel for the Applicant, together with Mr David Blake, Operations Manager, and Mr David Curson, Operations Director, and the Respondents Mrs Elliott and Mr Burgess who were supported by Mrs Jean McNeill chair of the Residents' Association.

Evidence and Submissions

Applicant's Case

12. The Applicant provided a written statement of case.

13. The Applicant stated that it did not have a copy of the original Agreement on file. From the Applicant's records, neighbouring Park Homes were also sited around this time and the Agreements issued for these Park Homes, which the Applicant does have copies of, contain the same Implied and Express Terms of the Agreement, so it is reasonable to believe the Agreement for the

Respondents' Park Home will also be the same. The Applicant said that a letter was sent to Respondent on 19th September 1996 (copy provided) enclosing 2 copies of the Agreement Under the Mobile Homes Act of 1983 requesting they be signed and one returned to the Applicant. A copy was not signed and returned.

14. A copy of the Agreement signed by Mrs Elliott and Mr Burgess circa 2021 was provided.

15. The Applicant stated that contrary to Rule 2 of the Site Rules the Respondents have erected fences without seeking the permission of the Applicant and that the fences erected are a height of 1.5 metres from the ground which is in breach of the Park License and Site Rules which specify a maximum height of 1 metre and are therefore in breach of the express terms of the Written Agreement.

16. The Applicant said that it sought a determination from the Tribunal as to whether the Respondent is in breach of the Site Rules and the Written Agreement and an order to remedy the breach.

17. The Applicant said it believed that by allowing the fencing to remain in situ it would be showing discretion towards the Respondent and leaving the Applicant with little redress when dealing with any future breaches of this kind on the Park. It stated that in accordance with Government guidelines and following the amendments to the Mobile Homes Act in 2013, it had been obliged to carry out a full consultation on all its parks to introduce a new set of rules. One of the requirements of the "new" rules was to remove any ambiguity or ability to use discretion. Government guidelines stated that the new rules must pass a test to ensure acceptable standards were maintained on the park for the general benefit of homeowners.

18. The Applicant set out the order of events as follows:

In September 1996 the Respondent moved to the Park.

- On 1st April 2022 the Respondent submitted a Park Home Refurbishment Form outlining a proposal for a 13 metre in length x 1.5 metre in height metal panelled fence (copy provided).

- On 5th April 2022 the Applicant acknowledged receipt of the completed form and advised that the Refurbishment Form had been amended to 1 metre in height for the fencing, which was to include any trellis or gravel boards, in accordance with the Site Rules (copy provided).

- On 11th April 2022 the Manager of Keys Park informed the Applicant's Head Office that the Respondent had erected a 1.5 metre in height metal fence which was not in accordance with the Site Rules or the Refurbishment Form as amended and approved.

- On 5th May 2022 the Applicant wrote to the Respondent outlining the breach of the Site Rules and requested that in accordance with the Site Rules the breach was remedied within 28 days (copy provided).

- On 6th May 2022 the Respondent replied via letter in which the Respondent referred to other Occupiers whose fences exceeded 1 metre in height. The Applicant said that it was aware of Occupiers who currently have fencing that is over 1 metre in height, however, these residents are considered to have a retrospective right as the fencing was in situ prior to the Site Rule consultation which took place in 2014 (copy provided).

- The Applicant submitted that the Respondents' opportunity to approach the Tribunal for consideration of any amendments to the Site Rules was at the time of their introduction.

- On 8th June 2022 due to the fence remaining in place the Applicant wrote to the Respondent reminding the Respondent that the previously submitted Refurbishment Form had been declined as the fence was not in accordance with the Site Rules and the Respondent was requested to reduce the height of the fence or remove it (copy provided).

- On 22nd June 2022 the Respondent replied via email to the Applicant's letter dated 8th June 2022 stating that "All boundary fences should be to this standard". The Applicant stated that the Respondent's Park Home and the fencing are not positioned on the boundary of the Park (a copy of part of the Park plan highlighting the Respondents Park Home and surrounding Homes together with images of the 1.5 metre fencing was provided).

- On 27th June 2022 the Applicant wrote to the Respondent stating that the fence was in breach of the Site Rule 2 and a further breach of parts 3(g) and 3(j) of Part IV of the Express Terms of the Agreement and gave the Respondent 14 days for the breach to be remedied (copy provided).

- On 29th June 2022 the Respondent replied via email (copy provided).

- On 20th September 2022 the Applicant issued the Respondent with a Notice of Breach requesting for the breach to remedied within 28 days (copy provided).

19. The Applicant submitted that it had a right to have a choice over how the park looked and as the Owner of the site it required all new fencing and hedging to be in accordance with the Site Rules that have been in place since 11th October 2014. The Applicant said that these rules are in place to ensure acceptable standards are maintained on the park, which will be of general benefit to occupiers, and to promote and maintain community cohesion. They form part of the Agreement by which homeowners occupy the pitch in accordance with the Mobile Homes Act 1983, as amended.

20. The Applicant referred the Tribunal to a decision of the Y Tribiwnlys Eiddo (Welsh Residential Property Tribunal) of 13th July 2021 Case Reference RPT/0027/02/21 between the Applicant and a resident of Berkeley Parks (a copy of the Tribunal's Decision was provided).

21. The Applicant said that unfortunately, the breach has to date still not been remedied. The Applicant and the Respondent have been unable to remedy the situation and now seeks the assistance of the Tribunal.

Respondent's Case

22. Mrs. Jean McNeil, chair of the Keys Park Residents Association (KPRA) and chair of Peterborough United Park Homes (PPH), provided a written statement on behalf of the Respondent. Her statement was provided under the following headings (the Tribunal changed the order with a view to highlighting the matters in contention):

The Site Licence

23. The Site Licence states:

22. Density, Spacing and Parking Between Caravans

(iv)(f) Fences and hedges, where allowed and forming the boundary between adjacent caravans, must be a maximum of 1 metre high.

24. Mrs McNeil said that this has become known as 'The 1 Metre Rule' and has been called into question nationally since it appeared in the Site Licence Model Standards 2008 for Caravan Sites in England Caravan Sites and Control of Development Act 1960 — Section 5

25. Mrs McNeil provided some background to the discussions as to the reasons for the condition being included in the Site Licence Model Standards which had involved local authorities, the Department of Levelling Up, LEASE and the National Fire Chiefs.

26. In the event, by letter dated 26th May 2022 the Council Executive informed the Applicant that it had decided not to enforce the condition on any mobile home park in their area until fact finding, and negotiations were completed to everyone's satisfaction and that the decision is still extant.

Missing Agreement

27. The Respondent recalled that she and her husband Mr. Johnathan Trevor Holden Elliott, purchased 40 Keys Park from a Mrs. Neath and that the Agreement was assigned on 2nd September 1996. It was said that the Respondent was not aware of the absence of copies of the Agreement until she requested that her new partner's name, Mr. Paul Burgess, be added to the Agreement to protect his rights should she die before him.

28. The Applicant was obviously not sufficiently concerned about the return of the original signed agreement to further pursue it following their one and only letter on the subject claimed to have been sent by the applicant 25 years has passed without any further attempts by the Applicant to secure a signed Agreement.

29. The Respondent said she did not recall ever seeing the letter dated 19th September 1996 regarding the request to return the Agreement as her late husband who passed away on 8th May 2015 dealt with all paperwork. The paperwork was stored in a garage which was demolished in 2021, prior to which, on removing belongings the Respondent discovered that most of these papers had suffered severe water damage and it is surmised that the Agreement may have been amongst the lost papers. The Respondent did not dispute that there was an Agreement. The Respondent also agreed that the same Implied and Expressed Terms and Site Rules would be as those of other residents who moved onto the Site around the same time.

30. It was stated that agreements assigned on or after 26th May 2013 are regarded as a new agreement, under section 1(1) of the Mobile Homes Act 1983 and those before as Existing agreements. Since Mr. and Mrs. Elliott had been the constant holders of the agreement for number 40 since 1996 until Mr. Elliott died in 2015 at which time Mrs. Elliott, as his widow, automatically became the holder of the agreement and owner of the home the Agreement is and remains an Existing Agreement.

Written Agreement and Express Terms

31. The Respondent moved into 21 Keys Park owned by Mr. Burgess while 40 Keys Park was being refurbished. On completion they both moved into 40 Keys Park. Mr Burgess was added to the Agreement for 40 Keys Park in order to protect his rights should the Respondent predecease him.

32. The addition of Mr Burgess to the Agreement took place in July and August 2021. An exchange of communications took place in the course of which it became apparent that an original copy of the Agreement could not be found by either the Applicant or the Respondent.

33. By a letter dated 6th August 2021 it was confirmed by the Applicant that it did not hold a copy of the Agreement and stated that the only thing they could do was to provide:
"a copy of the Express Terms in force at that time and a copy of the Implied Terms which would override any agreement that you may have had. We suggest that you keep these as evidence that you have the protection of the Mobile Homes Act and these are the terms that should apply to the occupancy of your home at 40 Keys Park. I also enclose a copy of the Site Rules and suggest you keep these three documents, together with a copy of the correspondence as evidence for future reference."

34. By a letter dated 17th August 2021 the Respondents wrote to the Applicant enclosing the last two pages of the Express Terms signed and witnessed by her

and Mr Burgess, but not dated stating that this "overrides any previous documents regarding ownership of said home."

35. By a letter dated 19th August 2021 from the Applicant to the Respondents returning the two signed pages of the Agreement confirmed that Mr. Burgess was now a party to the Agreement.

Documents Supplied by The Applicant in Place of Lost Agreement

36. The Respondents stated that the Implied Terms provided by the Applicant were not the ones that were in force in 1996 but accepted that that was as a result of legislative changes. It was also said that it was not known whether the Express Terms provided were the same as those in 1996. In addition, it was said that the copy of the Site Rules sent to the Respondents were the new Site Rules. The Applicant submitted that she should have been given the Site Rules for 1996 which were understood to state:

    4. The planting of trees and shrubs is subject to the Company's approval as to variety and position. They must not be permitted to grow to size or shape as to interfere with a neighbour's pitch. Existing trees and shrubs may not be cut down or removed without permission of the Company or damaged and gardens must be left intact when the Occupier vacates the pitch. Vegetables are not to be grown.
    5. Fences are not to be erected except with the written permission from the Company. Existing fences which fall into disrepair must be removed and not replaced other than with the consent of the Company. Boundary hedges must not be interfered with and no unauthorised enhances to the Park are permitted.

37. It was submitted that as the new Rules are not retrospective, they cannot be applied to the Respondents as their Agreement is an existing agreement.

38. The Applicant did not supply a complete replacement Written Agreement. The only sections provided were Part 1 showing the parties to the agreement, the start date of which was 2nd September 1996, the particulars of the pitch, a plan, site owner's interest, the pitch fee or the review of the pitch fee. Apart from the addition of Mr Burgess in lieu of the late Mr Elliott the original Agreement is still in force as are the Site Rules in force in 1996 which are part of those Express Terms.

39. Mrs Elliott went on to state that she need not have sought to have Mr Burgess entered on the Agreement because since she had an Existing Agreement, she could have protected his position by other means about which the Applicant should have advised her. In particular:
    a) Mrs Elliott could bequeath the home to Mr. Burgess in her will as per the Wills Act 1837. The Applicant would have accepted such a bequest as the Respondents have been living as man and wife since 2018.
    b) Mrs Elliott said she could have gifted the home to Mr Burgess in her lifetime, for instance, if they spilt up, under Schedule 3 - Notice of proposed gift form [The Mobile Homes (Selling and Gifting) (England) Regulations 2013] SI 2013/981.

c) Mrs Elliott had added Mr. Burgess' name as an occupier as per para 12 of the Express Terms of The Agreement and the Applicant did not object to that. They could simply have advised the Respondents that adding Mr Burgess's name to the Agreement as an occupant was sufficient and that there was no requirement to sign anything.

40. The Respondents were under the impression that they had been required to enter a new agreement. They had written to the Applicant on receipt of the Express Terms stating that these terms 'would override any that came before it' and this had not been contradicted by the Applicant.

The Site Rules

41. The Respondents are not seeking to change Rule 2.

42. It was agreed that the Applicant, as Owner, had the right to have a choice about how their park looks and, as they followed the correct procedure, to update and make new rules which came into effect on 11th October 2014. It was further agreed that those rules should be followed according to the requirements of the Express Terms provided that they are not applied retrospectively to residents who are on existing agreements. The preface at page 1 para 5 of these rules state "No occupier who is in occupation on 11th October 2014 will be treated as being in breach due to circumstances which were in existence on that date, and which would not have been in breach of the rules in existence before that date".

43. Rule 2 mentions the site licence conditions and fire safety requirements and links them to the 1 metre requirement for hedges and fences. The current risk assessment only covers the office, the workshop (now demolished) and the yard, it does not cover the remainder of the site, the homes or the pitches including fences and hedges (copy provided).

Original Enclosures of the pitch at number 40.

44. Mrs Elliott said that in 1996 when she bought the home with her late husband the boundaries which enclosed the pitch were on three sides. No fence or hedge existed at the front between the home and the road. Pic 1. To the right was the side wall of the closest of the two brick garages that were rented from the Applicant plus a high Leylandii hedge completing the right-hand boundary ending at the road. Photographs were provided.

45. At the rear a high Leylandii hedge which over time it had grown to over 8ft in height and 6 ft in depth. This is the hedge that was later removed and replaced by the fence. Photographs were provided.

46. The garages were demolished in 2021. No offer was made by the Applicant to replace the brick wall and reinstate the benefit of privacy and security that the Respondents had enjoyed, even though the Applicant replaced a high fence for another resident who lost part of their privacy and protection after the demolition of the garages and the construction of the car park which replaced them.

47. The Respondents submitted that the Applicant replaced the lost benefit of privacy and security by removing the section of an 8ft high Leylandii hedge which stretched from the front edge of the demolished garage to the road. They replaced that hedge by planting a new Laurel hedge from the road to the front of their newly installed metal shed at the back of the garden. Photograph provided.

48. The Respondents said that the passage of events regarding the new fence were as follows:

- On 28th January 2022 the Respondents had obtained permission to remove the Leylandii hedge, at the rear of the pitch, which formed a boundary between their home and the home of other residents at the rear and left side (as viewed from the road. They stated on the form that no decision had been made as to what to replace it with as they had to see what they were left with. The stumps of the Leylandii could not be safely removed in case they caused land slippage so they remained in situ and the replacement would have to work around them.

- On 1st April 2022 the Respondents emailed the Applicant confirming removal of the 8ft high conifer hedge from the back garden and submitted a Refurbishment Form seeking permission to erect a new non-combustible fence to replace the hedge to the height of 1.5m. In the email the Respondents said that the fence could be reduced to 1 metre in the event that the Site Licence Condition was enforced. The Respondents also said that the height of the fence to 1.5 metres was to block out the unsightly view. Photographs provided.

- On 5th April 2022 the Respondents received the letter giving permission for a fence of 1 metre only.

- On 5th May 2022 the Respondents received the letter stating that they were in breach.

- On 6th May 2022 the Respondents sent a letter to the Applicant stating that their garden was well maintained that the new fence was an improvement and blocked out the unsightly view following the removal of the Leylandii and benefited the Site Owner in that it did not have to trim the hedge adding that if other Occupiers reduced their fences to 1 metre, then so would they.

49. On 8th June 2022 the Respondents referred to the correspondence regarding the claimed breach already mentioned, during which time the Respondents said that they made attempts to mediate and negotiate.

Previous Tribunal Case

50. Mrs McNeil on behalf of the Respondents said that the Tribunal decision of the Y Tribiwnlys Eiddo (Welsh Residential Property Tribunal) of 13th July 2021 Case Reference RPT/0027/02/21 had recognised that 2 metre fences

erected prior to the new 2016 Site Rules coming into force could remain as the rules were not retrospective. It went on to state that such fences could be replaced by similar fences over 2 metres high.

51. Mrs Elliott submitted that as she had an existing agreement her benefits were protected and she was entitled to replace a hedge with a fence which echoes the height of the hedge. Therefor, she was not in breach of the Site Rules or Written Agreement.

Discussion

52. It was noted at the hearing that the Applicant's Statement of Case attached to the Application set out above had referred to Park Rule 2 and Express Terms 3(g) and 3(j). The Applicant had then given an account of the Respondents having constructed a fence of 1.5 metres which was said to be contrary to those provisions and to the permission the Respondents had given for a fence of 1 meter high in accordance with those provisions.

53. The Respondents had provided a Statement of Case in response also set out above which the Applicant had not had an opportunity to counter until the hearing. Counsel for the Applicant therefore submitted a skeleton argument which addressed the particular issues raised by the Respondents.

54. With a view to assisting the parties the Tribunal referred to each of the arguments put forward by the Respondents in response to the Application and to the submissions made by Counsel on the Applicant's behalf in reply.

The Site Licence

55. Reference was made to condition 22 (iv)(f) of the Site Licence which specified that forming the boundary between adjacent caravans, must be a maximum of 1 metre high.

56. The Tribunal appreciated the problem that the inclusion of the provision could cause to both Site Owners and Occupiers, at least so far as the version included in the Keys Park Site License was concerned, because the condition as expressed is absolute. It does not have a similar limitation as is included in condition 2(ii) which requires that no caravan is to be stationed within 2 metre distance of a road but allows any non-compliance at the time of the Licence to be remedied on change of ownership or when the owner moves out of the unit.

57. However, it noted the letter dated 26th May 2022 from the Council Executive that it had been decided not to enforce the condition on any mobile home park in their area until fact finding, and negotiations were completed. Therefore, this was not an aspect that the Tribunal should take into account in this matter.

Missing Agreement, Written Agreement and Express Terms & Documents Supplied by The Applicant in Place of Lost Agreement

58. On examining the Respondents' Statement of Case and Counsel for the Applicant's argument both parties accepted that the Agreement for 40 Keys Park was assigned on 2nd September 1996 to the late Mr Elliott and Mrs Elliott. Neither party had a copy of the original Agreement. In the letter dated 19th September 1996 (copy provided) from the Applicant to the late Mr Elliott and Mrs Elliott appeared that the Applicant had sent two copies of the assigned Agreement them, one to be signed and returned and the other retained, but neither could now be found. Mrs Elliott said her late husband dealt with all such matters and she suggested it may have been lost amongst other papers which had been stored in a garage demolished in 2021.

59. The missing Agreement was not noticed by either party until in July 2021 when the Applicant requested that her new partner's name, Mr. Paul Burgess, be added to the Agreement, in place of her late husband, to protect his rights should she die before him. An exchange of communications took place relating to the addition of Mr Burgess's name to the Agreement in the course of which Mrs Elliott was, by reason of a letter dated 6th August 2021, under the impression that she and her partner were being granted a new agreement to replace the one that had been assigned to her and her late husband in 1996. The letter stated that as a copy of the original Agreement could not be found the only thing the Applicant could do was to provide: "a copy of the Express Terms in force at that time and a copy of the Implied Terms which would override any agreement that you may have had." She took this to mean that she was being given a new agreement on new terms which she submitted was not lawful.

60. Counsel for the Applicant said that this was not the case. The Express Terms referred to in the letter dated 6th August 2021 were, so far as it could be ascertained, those that applied in 1996. The Implied Terms, which are set by statute and applicable to both parties will have altered in accordance with legislation that had come into force since 1996.

61. The Tribunal found that the phrase "a copy of the Express Terms in force at that time" meant in force in 1996 and phrase "the Implied Terms which would override any agreement that you may have had" referred to the current Implied Terms which had changed in accordance with legislation since 1996.

62. Having seen the evidence adduced and read and heard the submissions and made its finding regarding the letter, the Tribunal found that it was common ground that Mr Burgess had been added to the original Agreement as assigned in 1996 and that, so far as could be ascertained, the Express Terms at that time applied which included 3(g) and (j). The current Implied Terms also apply as amended by legislation, as they do to all site owners and occupiers. The Agreement therefore should be regarded as an Existing agreement, under section 1(1) of the Mobile Homes Act 1983.

63. With regard to Mrs Elliot's submission that the Applicant should have advised her of the different means by which she could protect the interest of her partner Mr Burgess, the Tribunal found that it would not be appropriate for the Applicant as Site Owner to give such advice to an Occupier of a Park

Home. It is for an Occupier to obtain independent legal advice on such matters appropriate to an Occupier's individual circumstances.

The Site Rules & Original Enclosures of the pitch at Number 40.

64. On considering the parties submissions the Tribunal noted that the parties agreed that a consultant process in accordance with the Mobile Homes (Site Rules) (England) Regulations 2014 had taken place to update the Site Rules and the present Site Rules had come into effect on 11th October 2014. Apart from reservations expressed regarding fences being limited to 1 metre high in the Site Rules, the Respondents appeared to accept that the Site Rules restricted the height of fences erected by those on Written Agreements entered after 11th October 2014 to 1 metre and did not seek to change Rule 2.

65. However, the Respondents submitted that the new rules could not be applied retrospectively to residents who are on existing agreements. In support of the submission the Respondents referred to the preface at page 1 para 5 of the Site Rules which states "No occupier who is in occupation on 11th October 2014 will be treated as being in breach due to circumstances which were in existence on that date, and which would not have been in breach of the rules in existence before that date". They also mentioned enjoying a benefit of privacy which the Tribunal took to be a reference to Paragraph 4 of Schedule 5, of The Mobile Homes (Site Rules) (England) Regulations 2014 which states:

4. (1) Where—
   (a) prior to the deposit of a site rule, the occupier of a site enjoyed a benefit; and
   (b) the effect of the coming into force of the deposited site rule is that the enjoyment of the benefit by the occupier will be in breach of the deposited site rule;
   the occupier will not be in breach of the deposited site rule for the period that the benefit continues to subsist.
   (2) On the cessation of the benefit, the occupier will be bound by the deposited site rule.

66. It appeared that they suggested that the Site Rules that were in existence on 2nd September 1996, when 40 Keys Park was assigned to them, should apply and not the new Site Rules. Counsel for the Applicant said this was not the case. The new Site Rules applied to a Park Home Owners on the Site except that a Park Home Owner would not be treated as being in breach due to circumstances which were in existence on 2nd September 1996, and which would not have been in breach of the rules in existence before that date. The exception is specific to individual circumstances. In this case Park Home Owners on the Site who had a fence that was over 1 metre on 11th October 2014 would not be treated as being in breach. However, a Park Home Owner who was in residence prior to 11th October 2014 who had a fence of 1 metre or less could not erect a fence of over 1 metre after that date merely because they had an existing agreement. Refence was made to the Tribunal decision of the Y Tribiwnlys Eiddo (Welsh Residential Property Tribunal) of 13th July 2021 Case Reference RPT/0027/02/21. In the case the Park Home Owner had no boundary demarcation of a fence or hedge and sought to erect a 2 metre fence after the date when the new Site Rules took effect and sought to claim that the

structure came within the Paragraph 4 exception. The Tribunal decided that it did not. The Tribunal was of the opinion that a fence could only be replaced by a similar structure.

67. The parties accepted that the Respondents had removed a hedge of about 2 metres and replaced it with a fence of 1.5 metres.

68. Applicant's Counsel submitted that the exception in the preface at page 1 para 5 of the Site Rules only applied to pre-existing circumstances. Therefore, the Respondents replacement of a hedge with a fence did not come within the exception as it ws not a pre-existing circumstance. In any event, the Respondents had not asked the Applicant whether they could remove the hedge and replace it by a fence. They had obtained permission to remove the hedge which was granted. They had then asked permission to erect a fence of 1.5 metres and the Applicant gave permission for a 1 metre high fence only, in accordance with the Site Rules. They were two separate requests and two separate actions.

69. In response to the Tribunal's questions to determine what the Applicant considered to be the parameters of pre-existing circumstances, the Applicant's Counsel said that he thought a fence over 1 metre could be repaired but was more circumspect as to whether it could be replaced, conceding that possibly it could if done so on a like for like basis. He said the use of the words "circumstances which were in existence" meant that any repair or replacement would have to be on a like for like basis. He said it might be argued that should a part of a hedge die it could be replaced by a plant of similar species e.g., Leylandii being planted to fill the gap in a Leylandii hedge. He doubted that the planting of a laurel would be acceptable, much less the replacement of a whole hedge of one species such as a Leylandii by another such as a laurel. He submitted the new hedge would be limited to 1 metre.

70. The Respondents stated that they had to make their request for removal of the hedge and the erection of the fence in two stages as it was not clear before they removed the hedge what could be put in its place because their pitch was higher than the adjoining pitch. They submitted that they enjoyed a benefit of privacy afforded to them by the hedge prior to the coming into effect of the new Site Rules on 11th October 2014 and that benefit had not ceased.

71. The Respondents referred to the original enclosures of 40 Keys Park. The photographs provided showed that these had been to the rear a 2 metre Leylandii hedge to the right the side wall two brick garages plus a 2 metre Leylandii hedge and to the left a 2 metre leylandii hedge. At the inspection the Tribunal found to the rear the 2 metre Leylandii hedge had been removed and a 1.5 metre metal fence erected. To the right, the side wall of the two brick garages and 2 metre Leylandii hedge and to the left the 2 metre Leylandii hedge had been replaced for threequarters of the length of the boundary on each side from the road by a laurel hedge about a metre high. The remaining quarter on each side had been replace by metal fence sloping from about a metre high to 1.5 metres high to match the rear fence.

72. The rear fence of 1.5 metres and the rise of the side fences to a height of 1.5 metres were in issue. The Respondents had mentioned the ease of maintenance of the fences compared with the hedge and the view of the neighbour's garden at the rear. They had also mentioned that other Park Home Occupiers had 2 metre fences which were pre-existing on 11th October 2014. These were not considerations for the Tribunal.

73. The Respondents were critical of Rule 2 in so far that it seemed to state that the fence or hedge must be 1 metre high to comply with fire safety requirements. Counsel said that the requirements referred to in Rule 2 were several and separate. Each provision must be complied with in that the fences and any other means of enclosure must comply with the park's site licence conditions, fire safety requirements and be a maximum of 1 metre height. The latter specification was not a fire safety requirement.

74. The issue for the Tribunal was whether a hedge of over 1 metre was a benefit enjoyed by the Occupier prior to 11th October 2014 and whether its replacement by a 1.5 metre fence amounted to a cessation of that benefit or whether it was a continuation of the benefit in which case the Occupier was not in breach of the Site Rules that limited fences and hedges to 1 metre.

75. If the Occupier was not in breach, then the orders applied for by the Applicant could not be made.

Decision

76. The Tribunal considered all the evidence and submissions both written and oral presented by the parties.

77. Firstly, the Tribunal considered whether the hedge of over 1 metre had been a benefit. Whether or not it had been a benefit was subject to an objective test i.e., whether a reasonable person would consider that it was a benefit. The Tribunal found that it was a benefit in that it provided a screen which afforded privacy to the Occupiers of Number 40 and the adjacent pitches. Therefore, the hedge of over 1 metre was a benefit enjoyed by the Occupier prior to 11th October 2014 when the Site Rules were deposited with the local authority. Pursuant to Paragraph 4(1) of Schedule 5 of The Mobile Homes (Site Rules) (England) Regulations 2014 the occupier was not in breach of Park Rule 2 requiring fences and any other means of enclosure to be a maximum of 1 m in height for the period that the benefit continues to subsist.

78. Secondly, the Tribunal considered whether the replacement of the hedge by a fence amounted to a cessation of the benefit under Paragraph 4(2) of Schedule 5, if it was, then the occupier will be bound by the deposited Site Rule. The Tribunal noted from its inspection of the Site that some of the pitches were enclosed by fences and others by hedges. The Tribunal took the view that a fence over 1 metre could be repaired and the benefit did not cease as a result of the repair even if the disrepair required replacement of the fence or a proportion of it. Similarly, if a part of a hedge died and required to be replanted then the benefit did not cease as a result of the hedge dying.

79. The Tribunal considered that it followed that if a whole hedge of more than 1 metre died or became unmanageable and the appropriate action was to replace it by a fence, the benefit of privacy the benefit continued to subsist.

80. There was not provision in the Site Rules specifying that the enclosure had to be replaced on a like for like basis. The only restriction is that it would have to be reasonable, in that the Site Owner would not withhold permission unreasonably. An unreasonable enclosure might be one that might cause harm such as a hedge of thorny plants or a fence of barbed wire.

81. Thirdly, the Tribunal considered whether the request for permission to remove the hedge caused the benefit to cease in this case.

82. On 28th January 2022 the Respondents had obtained permission to remove the Leylandii hedge, and on 1st April 2022 the Respondents submitted a Park Home Refurbishment Form confirming the hedge had been removed and outlining a proposal for a 13 metre in length x 1.5 metre in height metal panelled fence. The Tribunal found that, on the facts, the Respondents always intended to replace the hedge with an enclosure. The type of enclosure depended on what the situation was when the hedge was removed. It was found that the remaining tree stumps and the ground level between the pitches made a fence the only viable alternative. It was reasonable for it to take two months to have the hedge removed, assess the situation, source a suitable replacement and apply for permission. The hiatus between the two requests was not such as to consider it amounted to a cessation of benefit.

83. The Tribunal determines that the replacement of the hedge by a fence did not amount to a cessation of the benefit under Paragraph 4(2) of Schedule 5, of The Mobile Homes (Site Rules) (England) Regulations 2014 and that the benefit prior to the deposit of the Site Rules continues to subsist. Therefore, pursuant to Paragraph 4(1) of Schedule 5, the Respondent Occupiers are not in breach of Site Rule 2 requiring fences and any other means of enclosure to be a maximum of 1 m in height nor of Part IV points 3(g) and 3(j) of the Express Terms of the Agreement.

Judge JR Morris

APPENDIX 1 - RIGHTS OF APPEAL

1. If a party wishes to appeal the 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.

2. 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.

3. 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.

4. 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.

APPENDIX 2 – THE LAW

The Law

Section 4 of the Mobile Homes Act 1983 (as amended)

(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 subsection (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.

(3) In relation to a protected site in England, the court has jurisdiction—
  (a) to determine any question arising by virtue of paragraph 4, 5 or 5A(2)(b) of Chapter 2, or paragraph 4, 5 or 6(1)(b) of Chapter 4, of Part 1 of Schedule 1 (termination by owner) under this Act or any agreement to which it applies; and
  (b) to entertain any proceedings so arising brought under this Act or any such agreement,
subject to subsections (4) to (6).

(4) Subsection (5) applies if the owner and occupier have entered into an arbitration agreement before the question mentioned in subsection (3)(a) arises and the agreement applies to that question.

(5) A tribunal has jurisdiction to determine the question and entertain any proceedings arising instead of the court.

(6) Subsection (5) applies irrespective of anything contained in the arbitration agreement mentioned in subsection (4).

Paragraph 4 of Schedule 5, of The Mobile Homes (Site Rules) (England) Regulations 2014 states:

4. (1) Where—
   (a) prior to the deposit of a site rule, the occupier of a site enjoyed a benefit; and
   (b) the effect of the coming into force of the deposited site rule is that the enjoyment of the benefit by the occupier will be in breach of the deposited site rule;
   the occupier will not be in breach of the deposited site rule for the period that the benefit continues to subsist.
   (2) On the cessation of the benefit, the occupier will be bound by the deposited site rule.