



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

**Case Reference** : CHI/45UG/PHC/2022/0005

**Property** : 3 Lark Rise, Turners Hill Park, Turners Hill, Crawley, West Sussex, RH10 4QR

**Applicant** : The Berkeley Leisure Group

**Representative** : Huw Shephard of Counsel

**Respondent** : Sylvia Pullen

**Representative** :

**Type of Application** : Any question section 4 of the Mobile Homes Act 1983 (1983 Act)

**Tribunal Member(s)** : Judge Tildesley OBE  
M J F Donaldson FRICS

**Date and Venue of Hearing** : Havant Justice Centre  
23 February 2023

**Date of Decision** : 27 March 2023

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DECISION

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## **Summary**

The Tribunal directs the Applicant to carry out a review of its decision to refuse the Respondent's request to park two cars on Turners Hill Park dated 13 December 2022, paying particular attention to its responsibilities under the Equality Act 2010. The review shall be carried out within 56 days from the date of this decision, and shall be sent to the Respondent by no later 8 June 2023

The Tribunal declines to Order the Respondent to remedy the breach of the site rule 21 regarding the parking of one vehicle per Park Home pending the outcome of the decision on review.

## **The Application**

1. This decision concerns an outstanding matter from when the application was first heard on 22 September 2022
2. The Applicant is the site owner of Turners Hill Park which is a protected site within the meaning of the 1983 Act. The Respondent occupies a mobile home stationed on 3 Lark Rise, Turners Hill Park, pursuant to an agreement under the 1983 Act made on 24 November 1976 and assigned to the Respondent on 12 June 2014 ("the Agreement"). The Respondent moved into her new home in July 2014. From September 2018 the Respondent's occupied her home with her partner, Mr Jeff Robinson, who was added as an "Occupant" to the Agreement on 15 February 2021. The Applicant has deposited the current Park Rules for Turners Hill Park ("the New Rules") with the Local Authority and these Rules came into effect on 8 November 2014.
3. The Applicant applied for a determination under section 4 of the 1983 Act for the Respondent to remedy a breach of Express Term 3J of the Agreement within 28 days of the Tribunal's determination by her failure to comply with Rule 21 of the Park Rules by parking more than one vehicle on the site.
4. The Tribunal heard the Application on 22 September 2022 and published its decision on 14 October 2022. At the hearing Mrs Pullen accepted that she and her husband owned separate cars which they parked on the drive of 3 Lark Rise. The Respondent, however, raised two potential defences to the alleged breach of the New Rules, namely that, (1) the New Rules could not be applied retrospectively, and that she was entitled under the Old Rules to park two cars on the Site, and (2) the Applicant had not exercised its discretion to permit the parking of two cars on the drive of 3 Lark Rise and as a result the Applicant was treating the Respondent and her partner differently from other occupiers on the site and discriminating against them.

5. On 22 September 2022 the Tribunal found that Mrs Pullen did not enjoy the benefit of parking more than one car on the site prior to the coming into effect of the New Rules on 8 November 2014. Mrs Pullen was, therefore, not entitled to rely on the “Old” rules to enable the parking of two cars on the site. The Tribunal decided that the Respondent was in breach of sub paragraph 3(J) of the Express Terms of the Agreement and rule 21 of the New Rules by parking two cars on the site on various periods from January 2021.
6. The Tribunal then went onto to consider the question whether it should Order the Respondent to remedy the breach within 28 days by arranging for the second car to be parked off the site. The Tribunal took the view that this question brought into play the second defence.
7. The Applicant argued that it had no discretion under the 2014 Regulations to depart from the Rule regarding the parking of more than one vehicle. The Tribunal determined that the Applicant was partly correct in that sub paragraph 2(a) of schedule 5 of the 2014 Regulations provides that a rule is of no effect which is expressed to grant an occupier a right subject to the discretion by the owner. However, the prohibition on the exercise of discretion is subject to two exceptions: (1) improvements to an occupier’s plot and (2) to grant an occupier a right in order to accommodate that occupier’s disability (paragraph 3 of schedule 5 of the 2014 Regulations).
8. The Tribunal noted that the Respondent in her statement of case contended that she and her partner who was now a named occupier on the Agreement required two cars on the grounds of disability. The Respondent set out the grounds for her contention but it was not supported by documentary evidence and the Respondent had made no formal application to the Applicant to exercise its discretion on the grounds of disability. Mr Blake in evidence accepted that the Applicant was duty bound to consider such an application if one was made.
9. The Tribunal, therefore, declined at the previous hearing on 22 September 2022 to make an Order requiring the Respondent to remedy the breach of parking more than one vehicle on the site until the Applicant has considered whether to exercise its discretion under paragraph 3 of schedule 5 of the 2014 Regulations to accommodate the Respondent’s request to park two vehicles on the drive of 3 Lark Rise on the grounds of disability. In this regard the Tribunal directed that the Respondent apply in writing to Mr Blake requesting that the Applicant exercises its discretion on the grounds of disability to park two cars in the drive of 3 Lark Rise.
10. On 17 November 2022 the Respondent asked the Applicant to exercise its discretion to permit the parking of two vehicles on the drive of the property on the grounds of disability. On 13 December 2022 the Applicant considered the Respondent’s request and

refused it. On 10 January 2023 the Applicant renewed its application to the Tribunal to Order the Respondent to remedy the breach of the site rule.

11. On 23 February 2023 the Tribunal heard the renewed Application at Havant Justice Centre. Mr Huw Shepherd of Counsel represented the Applicant. Mr Blake, the Operations Manager, was in attendance and gave evidence. Mrs Pullen and Mr Robinson appeared for the Respondent. The Applicant supplied an amended bundle of documents which was received in evidence.

### **Consideration**

12. Section 2C(8) of the Mobile Homes Act 1983 enables Regulations to specify rules are of no effect if they make provision for prescribed matters. Paragraph 2(a) of schedule 5 of the 2014 Regulations state that rules which refer to any matter conferring on an occupier a right subject to the exercise of a discretion by the owner is of no effect. This prohibition in sub-paragraph 2(a) is subject to paragraph 3 which enables an owner to exercise discretion to grant an occupier a right in order to accommodate that occupier's disability.
13. The issue for the Tribunal is whether the Applicant as owner should exercise its discretion to permit the Respondent to park two vehicles on the drive of the pitch for 3 Lark Rise, Turners Hill Park on the ground of Mr Robinson's disability. Mr Robinson is the Respondent's husband and is a named occupant on 1983 Mobile Home agreement for 3 Lark Rise.
14. The Tribunal has jurisdiction to determine this matter by virtue of section 4 of the 1983 Act because the issue in dispute concerns questions about how the 1983 Act and the agreement should be applied to the circumstances of this case.
15. Counsel submitted that the Tribunal should approach the issue of the owner's discretion by considering whether the owner had regard to relevant matters and disregarded irrelevant ones in arriving at its decision. Counsel argued that the Tribunal should not substitute its own decision for the Applicant's decision, but to determine whether the Applicant had acted reasonably when making its decision. The Tribunal agrees with Counsel's submissions.
16. The Tribunal finds the following facts in respect of Mrs Pullen and Mr Robinson:
  - 1) Mrs Pullen and Mr Robinson own separate cars which they require for their own circumstances. Mrs Pullen uses her car for work whilst Mr Robinson needs his car to get around and attend medical appointments.

- 2) The drive for 3 Lark Rise can accommodate the parking of two vehicles. The Applicant accepted that visitors to 3 Lark Rise could park their car on the drive with the occupier's car. The restriction of parking one vehicle per Park home applied to the occupier and authorised residents at the home. Visitors could either park on the drive of the home provided it was large enough or in authorised parking spaces on the site.
  - 3) Mrs Pullen has had stage 2 & 3 bilateral breast cancer, and currently suffers from a tumour of the spine, neuropathy which was caused by the chemotherapy, polyradiculopathy, fibromyalgia and osteoporosis. Mrs Pullen holds a Blue Badge Parking Card for Disabled People issued by West Sussex County Council valid from 13 November 2020 to 12 November 2023.
  - 4) Mr Robinson's employment as a Technician at an Adult Education College was terminated for medical incapability in August 2012. Mr Robinson supplied a letter from his GP Practice dated 16 November 2022. This confirmed that Mr Robinson had Type 2 diabetes with a history of septic arthritis and diabetic neuropathy which had an impact on his mobility due to chronic pain. The letter also stated that Mr Robinson experienced being short of breath due to Asthma which can impact the length of time that he can walk for. Mr Robinson holds a Blue Badge Parking Card for Disabled People issued by West Sussex County Council valid from 16 January 2022 to 15 January 2025.
  - 5) Mr Robinson explained that if he was unable to park his car on the drive of 3 Lark Rise he would not be permitted to park it on the Site. His two options were a nearby farm which provided parking at the cost of £80 per month and the local village located about one mile away from 3 Lark Rise. Access to the village and the nearby farm was via a steep hill.
17. The Tribunal is satisfied from the facts found that Mr Robinson has a disability which impacts upon his mobility and that access to his car alleviates some of the adverse impacts of his disability on his ability to carry out normal day to day activities.
18. Mr Blake explained that the Applicant's Directors took the decision to refuse Mrs Pullen's request to park two cars on the drive of 3 Lark Rise. Mr Blake was not present at the meeting when the Directors took the decision. Mr Blake said that the Directors had the benefit of legal advice. Mr Blake emphasised that the Applicant was only considering the position of Mr Robinson and his entitlement to park his car on the drive of 3 Lark Rise. Mr Blake stated that the Applicant acknowledged that Mrs Pullen had disabilities and required a vehicle.

19. The Applicant explained its decision in a letter dated 13 December 2022 to Mrs Pullen.

“As a Park Owner we are generally not allowed to exercise discretion in relation to our implementation of Park Rules and consequently we have no set guidelines as to how we would consider doing so. In terms of the exceptions to the general rule against exercising discretion we must therefore take each decision on a case-by—case basis dependent upon and considering all the relevant circumstances.

Having further considered your correspondence and the documentation that you have supplied, we have taken time to consider your application, review and weigh up all the relevant factors in your case. These have included, but are not limited to:

- The evidence that you have provided in relation to your and Mr. Robinson’s medical Issues.
- Alternatives to allowing you to park 2 vehicles that take into account your medical issues. Our rights and obligations under the relevant legislation.
- Parking space available on the park.
- The parking issues on the Park and Site Licence requirements.
- The knock-on effect with other residents and their potential reactions to allowing you to park 2 vehicles and potential precedent.
- Whether yours and Mr. Robinson’s circumstances are likely to have changed significantly since Mr. Robinson moved onto the Park in 2018.

As a Company we recognise disability and wherever possible we work towards alleviating any problems to assist with any of our resident’s requirements, such as approving ramps and lifts. However, in this case and after due consideration we do not consider that the evidence provided justifies the exercise of a discretion to allow you to park 2 vehicles on the Park.

As we are sure you can appreciate, many of our residents are granted a blue badge and this provides them with accessibility benefits when out and about. These badges are for individual use for any vehicle that a person is in and do not equate to each person requiring an individual vehicle. The fact that both residents have a blue badge does not mean the requirement to have two cars and then therefore two car parking spaces.

There have been no changes to the Park Rules since Mr Robinson officially took up occupancy in the home and you were fully aware of the Park Rules surrounding one car when doing so. While we do understand individual needs can change, we are not able to adapt the Park Rules with exceptions to cater for changing resident’s personal requirements, when the Park Rules are in place for all residents to abide by, and in doing so brings a consistency and harmony to the park for all.

A discretionary change in the Park Rules would create great ill feeling with other residents and as a company we are acutely aware of parking issues on parks and the impact upon the other residents that may arise from allowing you or any other person to park 2 cars on the Park. We consider that those and other factors outlined above outweigh the evidence that you have provided in support of your application when parking is already carefully managed for the peaceful enjoyment of all our residents”.

20. The Tribunal observes that the Applicant’s decision letter dated 13 December 2022 makes oblique reference to its responsibilities under the Equality Act 2010. The Tribunal would have expected the analysis of its responsibilities to be at the forefront of its decision making process. The purpose of the exemption under paragraph 3 of schedule 5 of the 2014 Regulations is to enable the Site owner to meet its legal obligations under the Equality Act 2010 when applying the site rules to individual circumstances.
21. The Applicant’s failure to appreciate the purpose of the exemption is exemplified in its statement that Mrs Pullen’s request concerns “a discretionary change in the Park Rules”. The Applicant’s granting of such a request would not change the Park Rules. It would simply allow the Applicant to fulfil its legal responsibilities to a disabled person, and it would be specific to that person so long as that person remained on the Site. It does not create a right attached to the particular pitch which could be assigned to another occupier of the pitch.
22. The questions missing from the Applicant’s decision are (1) whether the site rule of parking one vehicle on the Park puts Mr Robinson, a disabled person, at a substantial disadvantage in comparison with persons who are not disabled, and (2) if the answer to (1) is Yes what reasonable adjustments, if any, could be made to avoid the disadvantage to Mr Robinson.
23. The Tribunal acknowledges that the Applicant in its decision refers to “*Our rights and obligations under relevant legislation*”, and that “*We recognise disability and wherever possible we work towards alleviating any problems to assist with any of our resident’s requirements*”. The Tribunal, however, considers that the thrust of the Applicant’s refusal to allow Mr Robinson to park his car on the Site was that he knew of the site rule about parking when he became an occupier, and that it would cause disharmony amongst the park home community if the Applicant granted a specific exemption to Mr Robinson.
24. The Tribunal considers that the correct approach for the Applicant was to start with its general obligation to make reasonable adjustments, if it was accepted that Mr Robinson was at a disadvantage as a result of his disability. The Tribunal understands that the reasonable adjustment that Mr Robinson was asking for

was to park his car on the drive of 3 Lark Rise along with Mrs Pullen's car. The Tribunal observes that there is sufficient space on the drive to park a second car, which would mean that such an adjustment would be at no cost to the Applicant, and it would not aggravate the issue of parking on the site roads and verges. Further the Applicant may be entitled to impose conditions, such as, the drive could not be used at any time for the parking of visitor's cars even where Mrs Pullen or Mr Robinson was not parking the vehicles on it at the time, and that the reasonable adjustment would apply only to Mr Robinson so long as he remained an occupier at 3 Lark Rise.

25. The Tribunal concludes that the Applicant did not apply the relevant legislation correctly to the request of Mrs Pullen with the result that it gave weight to irrelevant considerations and disregarded relevant matters. As such the Tribunal is satisfied that the Applicant's decision to refuse Mr Robinson the facility of parking his car on the Site was unreasonable.
26. The question then is how should the Tribunal determine this Application. The Tribunal has accepted that it does not have jurisdiction to substitute its own decision for the Applicant's decision. The Tribunal considers that its power under section 231A(2) of the Housing Act 2004 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 includes a direction requiring the Applicant to review its decision to refuse Mr Robinson the facility of parking his car on the Site was unreasonable. The Tribunal emphasises that the Applicant may come to the same conclusion on review. The purpose of ordering the review is to ensure whatever decision is reached, it is done so on the correct legal footing.
27. The Tribunal considers that after making this direction, it brings an end to these proceedings with the Tribunal declining to order the Respondent to remedy the breach of the site rule. The parties would then have to decide following the outcome of the review of the Applicant's decision whether to institute fresh proceedings.

## **Decision**

28. The Tribunal directs the Applicant to carry out a review of its decision to refuse the Respondent's request to park two cars on Turners Hill Park dated 13 December 2022, paying particular attention to its responsibilities under the Equality Act 2010. The review shall be carried out within 56 days from the date of this decision, and shall be sent to the Respondent by no later 8 June 2023



29. The Tribunal declines to Order the Respondent to remedy the breach of the site rule 21 regarding the parking of one vehicle per Park Home pending the outcome of the decision on review.

## **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 to the First-tier Tribunal at the Regional office which has been dealing with the case. The application must be made as an attachment to an email addressed to [rpsouthern@justice.gov.uk](mailto:rpsouthern@justice.gov.uk) .
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.