



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

**Case reference** : CHI/00HX/PHC/2022/0009, 0011 & 0012

**Property** : 19, 36 & 40 Kingsdown Park, Stratton St. Margaret,  
Swindon, Wiltshire, SN25 6PG

**Applicant** : Oaklands Property Development Limited

**Representative** : IBB Law LLP

**Respondent** : Mr J Hemming (19 Kingsdown Park)  
(First Respondent)

Mrs F Richards (36 Kingsdown Park)  
(Second Respondent)

Ms S Stephens (40 Kingsdown Park)  
(Third Respondent)

**Representative** : Mr Fifield (19 Kingsdown Park only)  
**Mr I Dulmeer of Counsel – Instructed on a  
Direct Access basis (36 Kingsdown Park & 40  
Kingsdown Park only)**

**Type of application** : Application for a determination of any question  
arising under the Mobile Homes Act 1983

**Tribunal member(s)** : Mrs J Coupe FRICS  
Mr P Smith FRICS  
Mr M Jenkinson

**Date Hearing  
and venue** : 12 January 2023  
Swindon Magistrates Court, Islington Street,  
Swindon, SN1 2HG

**Date of decision** : 24 March 2023

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**DECISION**

**TYPOGRAPHICAL ERROR CORRECTED UNDER RULE 50 OF  
TRIBUNAL PROCEDURE RULES 2013 BY ADDING “Mr I Dulmeer of  
Counsel – Instructed on a Direct Access basis (36 Kingsdown Park &  
40 Kingsdown Park only) to ‘Representative’.**

**Dated 22 May 2023**

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## REASONS

### Background

1. By way of an application dated 6 July 2022 the Applicant sought a determination from the Tribunal for a determination of questions arising under the Mobile Homes Act 1983 (“the Act”).
2. The grounds of the application were set out in section 5 of the application form and are summarised as:
  - 19 Kingsdown Park: Breach of the terms of the agreement by way of failure to keep the home in a sound state of repair.
  - 36 Kingsdown Park: Breach of the terms of the agreement by way of failure to keep a mobile home in a sound state of repair.
  - 40 Kingsdown Park: Breach of Rule 13 of the site rules and breach of the terms of the agreement by keeping a dog on the Park.
3. On 10 October 2022, the Tribunal issued directions setting out a timetable for the exchange of documentation between the parties and the preparation of a hearing bundle. On receipt of case management applications from all three Respondents requesting a site inspection and an oral hearing, the Tribunal issued further directions on 9 November 2022 advising that the three applications would be consolidated and set down for an oral hearing. The hearing was subsequently set for 12 January 2023.
4. A number of further case management applications were submitted by both sides, the content of which were decided by the Tribunal in written determinations and which are not repeated in full here. As a result of such applications two points are noteworthy. Firstly, the Tribunal granted permission for the Applicant and for Mrs Richards and Ms Stephens to rely on expert evidence. Secondly, an appeal against a Tribunal decision refusing Mr Hemming’s application to strike out the case against him was dismissed.
5. A hearing bundle extending to 326 (electronic) pages was submitted by the Applicant. References in this determination to page numbers in the bundle are indicated as [ ].
6. The site inspection, which was carried out prior to the hearing, was attended by Mr Shaun Gorman in his capacity as Director of the Applicant company, his legal representative Mr Clements and assistant Mr Suker. Also in attendance were Mr John Gorman and Mr William Gorman.
7. Mrs Richards of 36 Kingsdown Park attended the inspection and was accompanied by Mr Stephens.

8. Mr Hemming permitted an external inspection of 19 Kingsdown Park by the Tribunal and Applicant, and a brief internal inspection of approximately one minute by the Tribunal surveyor who immediately reported his findings to the full Tribunal and Applicant.
9. These reasons address in summary form the key issues raised by each application. They do not recite each and every point raised or debated. The Tribunal concentrates on those issues which, in its view, go to the heart of the application.
10. Where the Tribunal finds a particular matter as a fact, it does so on the basis that it is confident that on the available evidence that fact is established or proven on the balance of probabilities.

### **The Agreements**

11. The first Respondent, Mr Hemming, is the park home owner of 19 Kingsdown Park, Stratton St. Margaret, Swindon, Wiltshire, SN25 6PG (“the Property”). The proprietor of the site upon which the Property is situated is Oaklands Property Development Limited (“the Applicant”).
12. Mr Hemming occupies Pitch 19 Kingsdown Park under an Agreement dated 6 October 1999. A Written Statement in favour of Mrs H Allen and Mr J Hemmingway was included within the bundle [145].
13. The second Respondent, Mrs Richards, is the park home owner of 36 Kingsdown Park, Stratton St. Margaret, Swindon, Wiltshire, SN25 6PG (“the Property”). The proprietor of the site upon which the Property is situated is Oaklands Property Development Limited (“the Applicant”).
14. Mrs Richards occupies Pitch 36 Kingsdown Park under an Agreement dated 14 July 1989. A Written Statement in favour of Mrs Richards was included within the bundle [160].
15. The third Respondent, Ms Stephens, is the park home owner of 40 Kingsdown Park, Stratton St. Margaret, Swindon, Wiltshire, SN25 6PG (“the Property”). The proprietor of the site upon which the Property is situated is Oaklands Property Development Limited (“the Applicant”).
16. Ms Stephens occupies Pitch 40 Kingsdown Park under an Agreement dated 6 July 2018. A Written Statement in favour of Ms Stephens and dated 5 July 2018 was included within the bundle [176].

### **The Law**

17. The relevant law is set out in the Mobile Homes Act 1983, parts of which follow:

#### **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.”

**Schedule 1, Part 1 Terms implied by the Act:**

“(21) The occupier shall –

- (c) Keep the mobile home in a sound state of repair;”

**The Hearing**

- 18. The hearing was held at Swindon Magistrates Court. Those present at the inspection attended the oral hearing. Additionally, Ms Stephens of 40 Kingsdown Park, Ms Stephens’ partner and further Kingsdown Park residents attended.
- 19. As requested, video conference facilities were set up for Mr Fifield to join the hearing remotely. However, in the event neither Mr Fifield nor Mr Hemming chose to attend the hearing either in person or remotely.
- 20. Throughout the hearing the Tribunal Chairman confirmed that each party was able to navigate the bundle and indexation successfully. No issues were raised.

**The Issues**

- 21. It is common ground that each Respondent occupies their respective park home in accordance with the terms of an Agreement regulated by the Act.
- 22. Paragraph 21(c) of Schedule 1, Part 1 of the Act provides an implied term in each Agreement requiring the occupier to “keep the mobile home in a sound state of repair”.
- 23. Further to reports prepared by Steren Surveyors (“Steren report”) dated 1 April 2022, the Applicant averred that each of the Respondents were in breach of their obligation to keep their respective homes in a sound state of repair. In addition, the Applicant sought a determination that the third Respondent is in breach of her Agreement and the site rules by keeping a dog onsite.
- 24. Turning to each Property and application in turn.

## **19 Kingsdown Park**

25. It is the Applicant's case that the Respondent failed to comply with his obligation under paragraph 21(c) of the statutory implied terms to keep his mobile home in a sound state of repair.
26. The Applicant relies on the Steren report dated 1 April 2022 and an update to that report dated 12 December 2022, within which the surveyor notes that some remedial works have been undertaken but that the majority of defects remain outstanding.
27. The alleged breaches are set out in a Notice of Breach dated 5 May 2022 which the Applicant served on the Respondent. [250] The remedial works ordered within such Notice are as follows:
  - i. Roof should be repaired or replaced as necessary to render it watertight and the damaged/loose tiles and verge ends should be repaired or replaced;
  - ii. Worn out fascias should be repaired or replaced;
  - iii. Damaged rainwater goods should be repaired or replaced;
  - iv. Damaged chassis should be repaired, cleaned of all corrosion and painted with rust inhibitor paint;
  - v. Damaged and cracked external UPVC wall cladding should be repaired or replaced;
  - vi. Damaged sealant around the external windows should be replaced;
  - vii. Additional supports should be installed beneath the home to enhance its stability;
  - viii. Unsecured electrical wiring beneath the home should be remedied by a qualified electrician;
  - ix. Waste pipe system should be properly supported.
28. In oral submissions the Applicant withdrew point (viii), advising that the unsecured electrical wiring beneath the home had been rectified to the Applicant's satisfaction.
29. The Applicant stated that the Respondent had not sought to rely on any expert advice contradicting the findings of the Steren report and, in the absence of such evidence, the Applicant's evidence should be accepted.
30. The Applicant noted that the Respondent had twice refused inspection access to the Applicant or their contractors. Such point being raised in earlier Tribunal proceedings.

## **Respondent**

31. In the absence of the Respondent or his representative at the hearing the Tribunal relied on the Respondent's written submissions, summarised below. The Respondent also questioned the quality of the Steren report, the credentials of Steren Surveyors and the experience of their surveyor Mr Ellicock.
32. Roof: The visible pitched roof is a decorative and insulating feature that was installed above the existing aluminium roof. The Respondent stated that both roof structures were in a sound condition, as proven by the

absence of any water ingress or internal damp patches.

33. Fascias: Original timber soffit and fascia boards have been replaced with uPVC boards 22m in depth. Upon recent inspection, all boards and joints were confirmed to be in a sound, watertight condition and were cleaned.
34. Rainwater goods: A small number of attachment screws exhibit minor surface oxidisation but remain sound. The rainwater goods are inspected and cleaned at least annually and are in good working order.
35. Chassis: As part of routine maintenance the chassis was professionally inspected in June 2022 and no defects were identified. The chassis was professionally de-rusted, cleaned and repainted in industry standard rust inhibiting chassis paint.
36. Wall cladding: The Kingspan and Upvc cladding were added for insulation and fire safety purposes to the original external walls. The original walls are sound and watertight, having been inspected by the site owner's representative at the time the outer cladding was installed. The historic bowing occurred during the relocation of the home to the current pitch and has never caused water ingress. The cladding follows the nature of the bowing. An area of storm damaged cladding was repaired by the Respondent in October 2022.
37. Windows: During routine maintenance in July 2022 all external doors and windows were professionally resealed. There is no evidence of damp or water ingress.
38. Supports: The home has been onsite over twenty four years during which time it has been exposed to various weather patterns but has no experienced no movement. The home is not sited in a high wind risk area. The minor damage noted to one leg support occurred in 1999 whilst the then site owner facilitated installation. As the leg remains adjustable and load bearing no remedial work is required. Should the Applicant require additional support installed this should be at their cost.
39. Electrical wiring beneath the home: The entire electrical installations have been upgraded and such wiring is therefore redundant.
40. Inadequately supported waste pipes: The waste pipe support system has been in place for over twenty four year and remains as installed by the then site owner. If the Applicant considers additional support is now required this should be at his expense.
41. Finally, on behalf of the Respondent, Mr Fifield notified the Tribunal in writing that twenty great crested newts, a protected species, had been sighted around the Respondent's home, the presence of which would need to be taken into account if works were ordered. The Applicant advised the Tribunal that he was unaware of such report but confirmed orally that should works be directed they would respect the protective status of any species.

## Discussion and Decision – 19 Kingsdown Park

42. The site inspection lasted for approximately one hour. Throughout the entire time that the Tribunal were onsite and for many of the preceding hours persistent rain had been falling. Such inclement weather assisted the Tribunal when considering the contradictory evidence submitted by the parties in regard to the water tightness, or otherwise, and condition of various parts of the home's structure.
43. We turn next to each alleged breach of condition.
44. Roof: Steren report that as a consequence of some areas of lifted roof coverings the timber roof structure, assuming there to be no suitable sarking felt or breathable membrane, are "*likely*" to "*be saturated and rotten and will more than likely require urgent repairs and replacements*". In finding the roof pitch uneven with signs of dishing and distortion, Steren concluded it likely that the roof timber structure was experiencing inadequate support/bracing or decay.
45. Whilst taking on board the Applicant's point that the Respondent had twice, allegedly, refused the Applicant inspection access, the Tribunal finds little assistance in expert conclusions based on assumptions and likelihoods. However, the site visit enabled the Tribunal, which included two experienced Chartered Surveyors, to inspect the areas in dispute and to draw their own conclusions whilst still having regard to the expert evidence.
46. The Tribunal finds that there is no evidence to conclude that the roof is in anything but a sound condition. Partial lifting of the coverings was noted however the Tribunal found that the roof is still performing its function and, despite the persistent rainfall noted above, there was no evidence of any water ponding, damp staining or water ingress. The Tribunal finds that the requirement for general maintenance inconsequential to the performance and condition of the structure.
47. Fascias: The Applicant contends that the boards are worn out and should either be repaired or replaced. The Tribunal finds that the boards have been replaced in uPVC and that, despite the prolonged period of rain, there was no evidence that they were failing to perform their function adequately and correctly, despite their fitting.
48. Rainwater goods: The Applicant contended that damaged rainwater goods should be repaired or replaced. Whilst in principle the Tribunal concurs with this statement, on inspection there was no evidence bar minor oxidisation of some screws as admitted by the Respondent, that any of the goods were damaged. The persistent rain experienced during the inspection was flowing through the rainwater goods without obstruction and was correctly discharging, with no evidence of overflowing or leaking.
49. Chassis: Steren report that the chassis is bent and "*therefore, structurally unsound, and requires urgent repairs*". Reporting on their follow-up inspection, undertaken on 28 November 2022, Steren advise that some remedial works had been undertaken, including a partial painting of the chassis, but that other alleged defects remain outstanding. In response, the

Respondent referred to a professional inspection of the chassis undertaken in June 2022 which found no defects. However, the Respondent did not submit a copy of this report in evidence and the Tribunal find that little weight can therefore be attributed to such statement.

50. On inspection, the Tribunal found no evidence of a distorted chassis. The Tribunal did find that the repainting of the chassis was yet to be completed. The Tribunal directs that such painting be completed within six months, such time period enabling the work to be undertaken in the summer months.
51. Wall cladding: On inspection, the Tribunal noted the partial bowing of the external wall cladding which it finds consistent with the Respondent's explanation. Despite the wet weather, the Tribunal found no evidence that rainwater was tracking beneath the cladding or any evidence of timber or mastic decay. Although aesthetically unattractive, the Tribunal finds no evidence that the uneven cladding is either damaging the structural integrity of the home or permitting water ingress.
52. Windows: On inspection, the Tribunal found no evidence of failed sealant to any doors or windows.
53. Supports: Steren report that the home is inadequately supported by an arrangement of free-standing blocks and slate, and that there are no axle props. The Tribunal noted this configuration during inspection. The Respondent argues that the current arrangement is satisfactory, as proven by the lack of movement in over twenty four years. The Respondent further argues that if additional support is now deemed necessary this should be provided at the Applicant's cost as the damage to one leg occurred whilst the then site owner facilitated the installation of the home onsite.
54. Whilst the Tribunal may accept the Respondent's evidence that the home has not moved since installation, it does not follow that any life-threatening or damage-inflicting movement may not occur at some future point. The Tribunal finds that the supports evident during inspection are inadequate and that additional support is required. The Tribunal directs the installation of additional support within three months.
55. Electrical wiring: Alleged breach withdrawn by the Applicant.
56. Inadequately supported waste pipes: On inspection, the Tribunal noted the inadequate support of waste pipes beneath the home. The Tribunal note the Respondent's argument that such configuration has served the home well for an extended period of time however, as previously noted, the Tribunal does not consider the lack of any incident in such regard a reasonable excuse to preclude proactive maintenance being undertaken.
57. In conclusion, the Tribunal finds as a fact that the Respondent has failed to maintain his home in accordance with his obligations.
58. As such the Tribunal determines that the Respondent is in breach of Paragraph 21 Chapter 2 of Part 1 of Schedule 1 to the Mobiles Homes Act 1983.



59. The Tribunal has the power, pursuant to section 231A(4)(c) of the Housing Act 2004 to give directions requiring the payment of money by one party to another and the cleaning, repairs and other works to be carried out. Given that the Applicant's aim, repeated in oral submissions, is to remedy the breaches it is the Tribunal's intention to make such Directions.
60. The Tribunal therefore Directs that the Respondent will undertake the following:
- **By 24 September 2023** complete the repainting of the chassis with a suitable rust inhibitor paint
  - **By 24 June 2023** install additional support to the underneath of the home by way of axle props
  - **By 24 June 2023** undertake repair and maintenance to the waste pipes and install additional support.

### **36 Kingsdown Park**

61. It is the Applicant's case that the Respondent failed to comply with her obligation under paragraph 21(c) of the statutory implied terms to keep her mobile home in a sound state of repair. In support, the Applicant relies on the Steren report dated 1 April 2022 and an update to that report dated 12 December 2022.
62. The Respondent challenged the stated breaches and relied on a report prepared by Clifford Corker LLP ("Corker report"). The Applicant accepted that some remedial works had been undertaken but stated that the condition of the roof and external walls remain in dispute.
63. The alleged breaches are set out in an incorrectly addressed Notice of Breach dated 5 May 2022 which the Applicant served on the Respondent. [259] The remedial works ordered within such Notice are as follows:
- i. The roof, roof tiles and verge ends should be repaired or replaced;
  - ii. Rainwater goods should be realigned;
  - iii. Damaged exterior wall cladding and drip rail should be repaired or replaced;
  - iv. Damaged exterior window and door sealants should be replaced and the timber external door replaced.
64. The Applicant invited the Tribunal to prefer the evidence of their expert surveyor on the grounds that Steren Surveyors is a RICS regulated firm specialising in park home surveys and that only the Steren report contained photographic evidence supporting the surveyor's conclusions.

### **Respondent**

65. Roof, roof tiles and verge ends: The Corker report questions whether the Applicant's surveyor inspected the correct home as the surveyors conclusions vastly differ. The Corker report finds no "*no evidence of any verge, ridge of [sic] roof tiles lifting nor any material signs of degradation*". There was also "*very little, if any, moss or algae*". The

Corker report found no evidence of an undulating roof but argued that even if the Tribunal finds such, that of itself is not sufficient to justify a conclusion that the roof was out of repair as undulation of supporting timbers is entirely normal as timbers dry.

66. Rainwater goods: The Respondent advised that, on 29 October 2022, the guttering was cleaned and realigned. Furthermore, the gutters were tested and found to be in sound working order. The Corker report, dated 25 November 2022, found no evidence of undulating or misaligned gutters. Instead the report concluded that the gutters are in good order, clean, properly aligned and properly affixed with clips at regular intervals.
67. Damaged exterior wall cladding and drip rail: The Corker report found no examples of cracked render or that the render had detached from the timber paneling beneath. The report concluded that the walls are in a sound state of repair. The Respondent stated that following receipt of the Applicant's Notice she instructed the replacement of a timber panel, which was pointed out to the Tribunal on inspection.
68. Window and door sealants, and external door: The Respondent advised that, on 28 September 2022, she instructed a contractor to supply and install a new Upvc front door. The Corker report noted the replacement front door and also that the window sealant, despite being untidy in part, was in sound condition showing no sign of cracking or displacement.

### **Discussion and Decision – 36 Kingsdown Park**

69. The two expert reports vary in their conclusions so significantly that the Tribunal finds it convenient to make general comment at the outset.
70. The Tribunal finds the Steren report useful to the extent that it clearly identifies and evidences in photographs the points in dispute. The partial generic content and the repeated adoption of assumptions and likelihoods were of less use to the Tribunal.
71. The Corker report provides no supporting photographs by way of evidence and, it was disclosed at the hearing, was undertaken after some of the reparatory works to the home had been undertaken and without conducting an internal inspection. The latter point the Tribunal finds surprising given that this is the Respondent's own expert report and one would assume therefore that the Respondent would have encouraged the surveyor to internally assess the Property.
72. The Tribunal has had regard to the contents of both reports in so far that they were of use. However, the Tribunal found both reports unreliable in part and was therefore reliant on its own findings drawn from a site inspection, undertaken during persistent rain. The rain important only in so much as some of the alleged defects relate to potential water ingress.

73. Roof, roof tiles and verge end: On inspection, the Tribunal identified a small number of ever so slightly raised roof tiles which would benefit from general maintenance. The Tribunal noted very little moss and algae to the roof surfaces and no significant deflection of the roof structure. Accordingly, the Tribunal finds the roof, roof tiles and verge ends to be in good repair.
74. Rainwater goods: On inspection, the Tribunal found the rainwater goods to be partially out of alignment to a minor degree. The goods were noted to be flowing freely during the inspection with no apparent leaks. Accordingly, the Tribunal finds the rainwater goods to be in good repair.
75. Damaged exterior wall cladding and drip rail: On inspection, the Tribunal noted the replacement panel which had been repainted in common with the exterior of the home. The Tribunal also identified two areas of timber decay beneath the exterior wall cladding, both of which were identified to the Respondent and Applicant during the inspection. The Respondent did not dispute such findings at the oral hearing.
76. Window and door sealants, and external door: On inspection, the Tribunal noted the replacement front door. The Tribunal concurs with the Corker report that although some of the window sealant is untidy, it nevertheless serves its purpose. Accordingly, the Tribunal find the sealants and door to be in good repair.
77. The Tribunal finds as a fact that the Respondent has failed to maintain her home in accordance with her obligations solely in regard to the Applicant's point 3, that being the exterior wall cladding.
78. As such the Tribunal determines that the Respondent is in breach of Paragraph 21 Chapter 2 of Part 1 of Schedule 1 to the Mobiles Homes Act 1983.
79. The Tribunal has the power, pursuant to section 231A(4)(c) of the Housing Act 2004 to give directions requiring the payment of money by one party to another and the cleaning, repairs and other works to be carried out. Given that the Applicant's aim, repeated in oral submissions, is to remedy any breach it is the Tribunal's intention to make such Directions.
80. The Tribunal therefore Directs that the Respondent will undertake the following:
  - **By 24 September 2023** to effect repairs to the exterior wall cladding.

#### **40 Kingsdown Park**

81. The Applicant's application in regard to 40 Kingsdown Park stated that the Respondent had failed to comply with her obligation under paragraph 21(c) of the statutory implied terms to keep her mobile home in a sound state of repair, for which the Applicant relied upon the findings of the

Stereon report dated 1 April 2022 and for which Notice of Breach was served on 4 May 2022. However, by the date of the hearing the Applicant was satisfied that such defects had been remedied by the Respondent and, accordingly, no longer pursued a determination in such regard.

82. The only remaining issue which formed part of the Applicant's application related to Ms Stephens keeping a dog onsite, which the Applicant alleged was in breach of Rule 13 of the site rules. Rule 13 states "*In order to promote and maintain community cohesion, we do not permit dogs to be kept on the Park*". The Respondent was formally notified of the alleged breach within the Notice of Breach issued by the Applicant on 4 May 2022.
83. Following consultation, Kingsdown Park site rules were introduced in 2014 and were registered with Swindon Borough Council on 14 September 2014.
84. The Respondent occupied her home on Kingsdown Park from 6 July 2018, some four years after the rules were affected and relied on verbal permission granted by the then site owner for her to keep a dog onsite.
85. The Applicant denied that the Respondent was given permission by the previous site owner, Mrs Large, to keep a dog. In support of such assertion, the Applicant relied upon a hand written letter from Mrs Large to such effect dated 1 November 2022.
86. For the Applicant, Mr Shaun Gorman denied granting verbal permission to the Respondent for her dog, instead relying on the correspondence issued to the Respondent advising her that the dog must be removed.
87. Additionally, the Applicant argued that the Respondent is out of time to appeal Rule 13 of the site rules, which prohibits the keeping of any dog.
88. The Applicant further argued that the support of other residents of Kingsdown Park, evidenced by way of a signed petition to keep the dog, was irrelevant, referring to the determination of the Tribunal in *Rickwood Estates Limited v Fisher* (LON/00AF/PHC/2015/00010).

### **The Respondent**

89. The Respondent agreed that she moved into her home on 6 July 2018 and stated that, having been granted permission by Mrs Large, her dog, which lived with her in her previous home, moved in with her on the same date.
90. The Respondent purchased her home directly from Mrs Large. The home was in a poor condition and had been on the market for a considerable period of time. Mrs Large was apparently keen for the sale to progress, in part as the Respondent would affect the necessary repairs.
91. The Respondent stated that she was aware of the site rules prohibiting the keeping of dogs onsite when she entered into negotiations with Mrs Large and, accordingly, the only reason she agreed to the purchase was on the understanding that the condition was waived and that permission was granted for her dog to live onsite.

92. The Respondent reiterated that her dog had lived with her at her previous address and that this was not a new pet. Hence, purchasing the home on Kingsdown Park was conditional on the waiver of the site rules in this matter.
93. The Respondent stated that verbal permission was granted by Mrs Large and that the sale/purchase completed. Upon Tribunal questioning, the Respondent advised that neither party had ever considered it necessary for the waiver to be committed to documentation, although in hindsight this was an error on her part.
94. Site ownership subsequently transferred to the Applicant in 2020 and, aware that her verbal agreement with Mrs Large had never been confirmed in writing, the Respondent contended that she twice, on or around 20 November 2020, approached Mr Shaun Gorman for confirmation that the dog could continue to live with her and that on both occasions Mr Gorman verbally extended the permission.
95. On at least one of these occasions the Respondent stated that her father, Mr Tony Stephens, was with her when she sought and was granted verbal permission from Mr Shaun Gorman. Mr Stephens signed a witness statement to such effect and attended the hearing for cross examination.

#### **Discussion and Decision – 40 Kingsdown Park**

96. The sole issue in this dispute is that relating to the keeping of a dog onsite, which the Applicant averred contravenes Rule 13 of the site rules which states *“In order to promote and maintain community cohesion, we do not permit dogs to be kept on the Park.”*
97. The Respondent does not dispute the site rule and is not looking to challenge or to amend the rule. Her argument centres around her assertion that the previous site owner granted verbal permission for her to keep her dog onsite.
98. The evidence before the Tribunal is contradictory.
99. On the one hand, the Applicant denies that verbal permission was ever granted by the previous site owner, citing her letter by way of corroboration. He also denies having given verbal permission, despite evidence to the contrary given by Mr Stephens.
100. On the other hand, the Respondent argues that she would never have contemplated purchasing the home if permission hadn't been granted at the time and that, irrespective of the previous permission, subsequent verbal permission was provided by Mr Shaun Gorman.
101. The Tribunal had two further pieces of evidence before it. The first is a handwritten note purportedly from Mrs Large confirming the Applicant's position that no permission was granted to the Respondent for the keeping of a dog.

102. Mrs Large did not provide a witness statement nor did she attend the hearing for cross examination. In response to a Tribunal question on this point, the Applicant responded that Mrs Large is elderly and that her attendance would have been difficult to facilitate. The Chairman reminded the Applicant that he was aware that video conferencing had been set up for this hearing and that an application could have been made to the Tribunal for their witness to attend remotely. That said, the Respondent didn't seek to rely on a witness statement from Mrs Large either, again suggesting that Mrs Large was considered too elderly to be inconvenienced. Without a witness statement or an opportunity to cross examine Mrs Large on the contradictory submissions of the parties, the Tribunal was unable to attribute weight to the handwritten letter submitted by the Applicant.
103. The second piece of evidence before the Tribunal was the witness statement of Mr Stephens, attesting that Mr Shaun Gorman provided verbal permission when so requested. Mr Stephens is the father of the Respondent and is therefore undoubtedly conflicted. However, the Tribunal found Mr Stephens evidence measured and reasoned, and concluded that his willingness to attend the hearing and to be cross examined on his statement credible.
104. Turning next to the submissions and evidence of the parties. The Tribunal found the evidence of Ms Stephens compelling. It appeared to the Tribunal inconceivable that the Respondent would have considered investing a significant sum of money in a home, which required extensive repair and refurbishment, in the full knowledge that dogs were prohibited, without first obtaining permission from the site owner that the rule would be waived. The fact that the home in question was in disrepair and was being sold by the site owner herself raises further questions that only Mrs Large could answer in regard to her motivation in basically turning a blind eye in this instance.
105. From 2018 to 2020 Mrs Large continued to accept the presence of the dog onsite. Furthermore, in oral evidence, the Applicant confirmed that Mrs Large did not alert him to any potential breach in this regard when selling her interest in Kingsdown Park to the Applicant. Both points, in the Tribunal's view, offer support to the position that Mrs Large did grant the disputed permission.
106. The Tribunal further finds that the Respondent made no attempt to hide the dog, instead she proactively sought further verbal consent from the new site owner at the first opportunity.
107. The Tribunal does not accept the Applicant's account and, on the balance of probabilities and on the evidence heard, are satisfied that Rule 13 of the site rules was waived for this dog and for this dog only. Accordingly, the Tribunal finds that the Respondent is not in breach.
108. The Tribunal finds it irrelevant to this application that other residents onsite either support the Respondent in this matter or that additional dogs live onsite.

109. For the avoidance of doubt, the Tribunal’s decision in this regard extends to the lifetime of this one dog only and not to any future dogs owned by the Respondent or to any other dogs already living onsite.

### **Compensation**

110. Mrs Richards and Ms Stephens written submissions invited the Tribunal to compensate them for “*discomfort, inconvenience and stress*” pursuant to section 231A(4)(a) and (c) Housing Act 2004.
111. The Respondent’s claim was quantified as a sum equal to a refund of pitch fees paid for the period 4 May 2022 to 30 November 2022, that being £735.54 paid by Mrs Richards and £735.54 paid by Ms Stephens.
112. For the Applicant, Mr Clements argued that there was no provision in the Housing Act 2004 to compensate for distress and, irrespective, that all three applications had been justified. Mr Clements pointed out that Mrs Richards and Ms Stephens had both effected repairs to their homes as a direct consequence of the serving of a Notice of Breach, whilst Ms Stephens ownership of a dog was undisputed. Mr Clements therefore argued that no basis for compensation had been established.
113. The Tribunal finds that the case for an award of compensation pursuant to section 231A of the Housing Act 2004 is not made out by the Respondents. The Tribunal finds no behavior on the part of the Applicant which could warrant such an award.

### **Rule 13 Costs Application against Mr Hemming**

114. The Applicant sought an order that Mr Hemming of 19 Kingsdown Park pay partial costs of these proceedings under Rule 13(1)(b)(ii) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 in the amount of £787.50, on the basis that the Respondent acted unreasonably in conducting these proceedings.
115. Under Rule 13(1)(b)(ii), where a Tribunal finds that a person has acted “unreasonably in bringing, defending or conducting proceedings” the Tribunal may make an order in respect of costs.
116. The Applicant argued that the Respondent, or his representative, had acted unreasonably and in a vexatious manner in this matter by seeking to have the Applicant’s application against him struck out on procedural grounds and, further, that the amount of additional work as a result of case management applications submitted on behalf of the Respondent had resulted in the Applicant incurring additional costs. Mr Clements argued that such behavior met the three stage test set out by the Upper Tribunal in *Willow Court Management Co (1985) Ltd v Alexander* (2016) UKUT 290 (LC) (“Willow Court”).
117. At paragraph 24 of its decision in Willow Court the Upper Tribunal stated:  
“An assessment of whether behaviour is unreasonable requires a value judgement on which views might differ but the standard of behaviour expected of

*parties in tribunal proceedings ought not to be set at an unrealistic level. We see no reason to depart from the guidance given in Ridehalgh at 232E, despite the slightly different context. “Unreasonable” Conduct includes conduct which is vexatious, and designed to harass the other side rather than advance the resolution of the case. It is not enough that the conduct leads in the event to an unsuccessful outcome. The test may be expressed in different ways. Would a reasonable person in the position of the party have conducted themselves in the manner complained of? Or Sir Thomas Bingham’s “acid test”: is there a reasonable explanation for the conduct complained of?”*

118. In support of the application, the Applicant relied on Judge Dobson’s directions of 10 January 2023 which, at paragraph 13, stated that the points argued on behalf of Mr Hemming, such points relating to pagination, content and delivery of the bundle, were so minimal and the lack of prejudice so apparent that it was unnecessary and disproportionate for the point to have required addressing. Judge Dobson’s directions set out in detail the grounds of the case management application and the Tribunal does not intend repeating them here.
119. It is a requirement of Rule 13(1)(b) that the party against whom an order may be made must act “unreasonably” in defending the proceedings. The Tribunal must consider whether or not the behaviour complained of can be described as unreasonable.
120. The Tribunal is of the opinion that the threshold for an unreasonable costs award is a high one. Whilst the application submitted on the Respondents behalf may have lacked substance and unquestionably subjected both the Applicant and the Tribunal to additional effort and expense, the Tribunal does not consider, by a small margin, that such behavior met the Willow Court threshold of unreasonable behavior. The Tribunal also had regard to some minor omissions in the preparation of the bundle by the Applicant, which contributed to the Respondent’s case management application.
121. As the first stage of the tests laid out in Willow Court has not been met the Tribunal need not consider the following two stages. Accordingly, the Tribunal does not find that the Respondent’s conduct unreasonable in this application and, accordingly, the Applicant’s costs application is refused.



## **RIGHTS OF APPEAL**

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to [rpsouthern@justice.gov.uk](mailto:rpsouthern@justice.gov.uk) to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.