



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

**Case reference** : **CAM/OOKC/PHC/2022/0010**

**Property** : **9 Nook Park, Willow Road, Great Harwood, Bucks, MK17OQJ**

**Applicant** : **Andy Waller**

**Representative** : **In person**

**Respondents** : **Joe Burns**

**Representative** : **In Person**

**Type of application** : **Application made pursuant to s.4 of the Mobile Homes Act 1983**

**Tribunal** : **Judge Shepherd**  
**Mary Hardman FRICS**

**Date of Decision** : **17<sup>th</sup> July 2023**

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**Decision**

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1. This case concerns an application by an occupier of a Park Home for a determination of a question arising under the Mobile Homes Act 1983 or agreement to which it applies. The Application is made pursuant to s.4 of the Mobile Homes Act 1983. The Applicant is Andy Waller (“The Applicant”) who

resides at 9 Nook Park, Willow Road, Great Harwood, Bucks, MK170QJ (“The home”). The Respondent is Joe Burns who is the owner of Nook Park Mobile Home site and director of Silk Mill Leisure Limited. As is usually the case on mobile home sites the Applicant owns the home and the Respondent owns the site. The Applicant has a license to a pitch on the site on which the home is located.

2. The Applicant is visually impaired. He purchased the home in September 2020. The site owner at this time was Mrs Tapsell. The Applicant obtained permission from Mrs Tapsell to replace a dilapidated outbuilding on his pitch.
3. A written statement under the Mobile Homes Act 1983 between Derek and Janet Moore (The predecessor occupiers) and Mrs Tapsell dated 2<sup>nd</sup> June 2007 contains a plan showing the size and location of the pitch, the size of the base on which the mobile home is stationed and measurements between identifiable fixed points on the site and the pitch and base. The identifiable fixed points are footpaths that surround the pitch. Dimensions of the pitch are given as 62 ft by 39.5 ft. For reasons which will become clear this rather primitive plan has become very important in this case.
4. Clause 11 of the agreement states that the occupier shall be entitled to quiet enjoyment of the mobile home together with the pitch during the continuance of the agreement. Clause 10 deals with re-siting of the mobile home which can only happen following an application to court or if there is a need for essential repairs or emergency works. Subsection (2) of that clause states that if the owner needs to re-station the home for works to take place the occupier can require it to be returned to the original pitch when the works are done. Clause 12 allows the owner to enter the pitch to deliver written communications or to read meters without notice. If the owner wants to enter the pitch for any other reason notice must be given (clauses 13 and 14).
5. The Applicant says that the Respondent is in breach of the written statement because he moved his pitch without permission. Specifically, he started construction works on 17<sup>th</sup> October 2021 and excavated parts of his pitch to build a new road without prior notice. The Applicant says his pitch was defined by the footpath borders. The Applicant complained about the incursion and the Respondent promptly removed more of the pitch. There was a site meeting on 28<sup>th</sup> October 2022 when nothing was resolved and the Applicant says the Respondent was aggressive. Thereafter the excavation continued and the paths were removed. The latest plans show a road being sited behind the pitch and the removal of the Applicant’s outbuilding.

6. On 26<sup>th</sup> October 2022 the Applicant write to Mrs Tapsell and asked her to confirm that the pitch lies between the 4 communal paths drawn on the pitch plan. In her reply Mrs Tapsell states that the pitch boundary is as described in the license. The Tribunal were provided with useful plans and photographs. We also visited the site and took measurements.
7. In his original application the Applicant said he wanted his pitch reinstated and damage to plants etc made good. The Application was broadened when additional information was sought by the Tribunal (see below).
8. In his written response to the original Application the Respondent denied that he had interfered with the pitch. He says the pitch does not extend to the communal paths. He says he wrote to residents on 27 June 2022 stating that work was to be done. The drainage and electricity systems were to be upgraded and the park improved. In fact it seems clear that the works were largely to extend the size of the park so that more mobile homes could be sited . This is described by the Respondent as “the vision” in correspondence dated 27<sup>th</sup> June 2022. The site license issued by Buckinghamshire Council on 19<sup>th</sup> November 2021 allowed the siting of 25 mobile homes.
9. The Respondent says that the workmen may have caused damage to the grass in the pitches but this will be reinstated.

### **The inspection**

10. The Tribunal inspected the site on 15 March 2023. The Applicant was in attendance with his representative . The Respondent was unable to attend as he had Covid but had asked a member of his contracting staff to assist the Tribunal.
11. There was a significant amount of construction work being undertaken on the site with the apparent installation of utility pipes and cables throughout and the construction of a large number of new concrete pitches around the perimeter of the site .
12. The Applicant’s pitch was surrounded by ditches and channels that had been excavated for utilities and by temporary metal fencing which made access to the pitch difficult and only accessible via a very narrow passageway bounded by temporary metal harris fencing . Together with the uneven ground and lack of lighting the Tribunal felt that this would be particularly treacherous in low light and at night.

13. It was difficult to precisely ascertain on the ground where the original pitch had been as the pathways shown on the plan as the boundaries of the pitch had largely been excavated . However ,it was clear from measurements taken by the respondents contractor and witnessed by the tribunal and the Applicant that , as the Respondent was anxious to show, the dimensions of the pitch still met the 62ft x 39.5ft as noted on the plan it did not occupy the same footprint as previously , having apparently been shifted sideways to the left hand side of the pitch where the applicants shed was located.
14. Following the inspection, the Tribunal asked the parties to identify any further wider issues they were concerned about. The Applicant sent submissions in which he detailed a chronology of incidents which collectively he identified as alleged harassment or a breach of the covenant of quiet enjoyment by the Respondent. These include an alleged illegal pitch fee increase, surveys of each home without permission and alleged confrontational behaviour. The primary breach of covenant according to the Respondent was the works including the incursion on the pitch. In addition to this the Applicant provided compelling photographs of asbestos from a demolished building which was left in situ for eight months. He says that the site was left in a hazardous condition without adequate lighting.

## **The law**

15. Section 4 of the Mobile Homes Act 1983 states the following:

*4.— Jurisdiction of a tribunal or the court*

*(1) In relation to a protected site*

*, 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.*

*(3) In relation to a protected site*

*, 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).*

16. On its face at least the Tribunal's jurisdiction is wide - to determine any question arising under this Act or any agreement to which it applies and to entertain any proceedings brought under the Act or any such agreement.

17. The powers of the FTT under section 4 of the 1983 Act are enhanced by provisions introduced into the Housing Act 2004 by the Transfer of Tribunal Functions (Mobile Homes Act 2013 and Miscellaneous Amendments) Order 2014. So far as is relevant, section 231A, Housing Act 2004 now provides as follows:

*231A. Additional powers of First-tier Tribunal and Upper Tribunal*

*(1) The First-tier Tribunal and Upper Tribunal exercising any jurisdiction conferred by or under the Caravan Sites and Control of Development Act 1960, the Mobile Homes Act 1983, the Housing Act 1985 or this Act has, in addition to any specific powers exercisable by them in exercising that jurisdiction, the general power mentioned in subsection (2).*

***(2) A tribunal's general power is a power to give such directions as the tribunal considers necessary or desirable for securing the just, expeditious and economical disposal of the proceedings or any issue in or in connection with them.***

*(3) [Directions under the Housing Act 2004]*

*(3A) [Directions under the Caravan Sites and Control of Development Act 1960]*

*(4) When exercising jurisdiction under the Mobile Homes Act 1983, the directions which may be given by the tribunal under its general power include (where appropriate – (a) directions requiring the payment of money by one party to the proceedings to another by way of compensation, damages or otherwise; (b) directions requiring the arrears of pitch fees or the recovery of overpayments of pitch fees to be paid in such manner and by such date as may be specified in the directions; (c) **directions requiring cleaning, repairs, restoration, re-positioning or other works to be carried out in connection with a mobile home, pitch or protected site in such manner as may be specified in the directions;***

*(d) directions requiring the establishment, provision or maintenance of any service or amenity in connection with a mobile home, pitch or protected site in such manner as may be specified in the directions.”*

### **The hearing**

18. The Applicant argued that the boundary of the pitch was defined by the paths. It was not unusual in this setting to use physical features to define the boundary. The Respondent said the dimensions of the pitch had remained the same. The Applicant identified on photographs how patches of lawn had been encroached upon during the works. The Respondent insisted the lawn would be replaced and the works are not complete.

19. The Applicant said he had been bullied and harassed by the Respondent. There had been veiled threats and his electricity had been cut off. He went through the chronology of events.

- He had bought the home in September 2021.
- In December 2021 the Respondent had sought to increase the pitch fee without using the proper procedure.
- In November 2021 the Respondent instructed surveyors to inspect the homes.
- In January 2022 the Respondent had evicted the short term tenants. The caravans were demolished and waste was left on site for 8 months including asbestos waste.

- In June 2022 the Respondent had threatened to move residents to different locations.
- In October 2022 the Respondent had removed hedging on a neighbour's land. The same month the works had been carried out encroaching on the Applicant's land.
- In November 2022 the Respondent had again tried to increase the pitch fees.
- In January 2023 the Respondent had cut down trees on the Applicant's pitch.
- He showed pictures of the asbestos which had remained in situ for 8 months.
- Lighting had been removed from the site which made it hazardous.
- Contractors were working every day between 8.30 am and 4.30 pm.
- In addition the Applicant said that he had been requesting water bills for the last two years.

20. The Respondent denied that he had harassed the Applicant. The surveys were carried out under the instruction of the bank. He had been interviewed under caution by Bucks CC and no further action had been taken. He said the works were being carried out properly with the guidance of an architect. He said the site was surrounded by Harris fencing which made it safe. He said the asbestos had remained on site but only for 3-4 months. A contractor had left site which meant a new one had to be instructed. This caused a delay.

21. With regard to water bills the Respondent said they had not yet received a bill for the site from the utility company, despite chasing them .

## **Determination**

### **a) *The pitch.***

22. The Tribunal finds that the Applicant's pitch has been encroached upon during the works. Trees and sections of lawn were removed without permission or consultation. Although the pitch may be the same size as it was originally it has been moved. The original designating points for the boundary of the pitch were the footpaths, these have been removed altogether. The movement of the pitch and incursion represents a clear breach of the written statement. The Respondent did not follow the procedure in the written statement. He did not give the Applicant proper notice of the works starting. He did not make an application to court. Instead he instructed his contractors to start work and they did so, in the process encroaching on the pitch thereby causing damage.

***b) Other breaches of the covenant of quiet enjoyment***

23. The manner in which the works have been carried out: without proper notice, without providing safe access to the mobile homes and without ensuring the lighting is maintained (which is particularly a problem for the Applicant) are clearly breaches of the covenant of quiet enjoyment. The mobile home owners did not contract to live on a building site. Allowing asbestos to stay in situ for any period after the disposal of garages was plainly hazardous despite the Respondent's best efforts to argue it was not.

24. Although the Respondent sought to argue that he was carrying out upgrading works this was only part of the picture. He clearly has major expansion plans and wants to site many more mobile homes. This will necessarily affect existing occupiers. Instead of seeking to accommodate the existing occupiers by for example trying to re-site their homes while the works take place the works have continued around them with all the resultant noise, dust and inconvenience. There are analogies with the case of *Guppys (Bridport) Ltd v Brookling* (1984) 14 HLR 1 where works carried out in a property around sitting tenants were found to be breach of the covenant of quiet enjoyment.

25. The Respondent's robust approach to what he perceived were his rights was evident at the hearing. He fails to acknowledge that he is dealing with people's homes.

26. The Respondent's clumsy attempts to increase the pitch fees demonstrated more his lack of knowledge of the law than any intention to harass. The surveys carried out were also not in breach of the covenant of quiet enjoyment. Neither was the failure to provide water bills. The clear breach here was the manner in which the works have been carried out.



## Remedy

27 The Tribunal can give directions including *restoration, re-positioning or other works to be carried out in connection with a mobile home, pitch or protected site*. The appropriate direction here is to require the Respondent to reinstate the Applicant's pitch to the condition it was in prior to the work starting. Practically it may be difficult to move the pitch to its original position however the Respondent is to replace all parts of the pitch removed as a result of the works including trees, lawn and buildings. A specification and timescale for these reinstatement works should be agreed between the parties. In the absence of agreement the matter can be referred back to the Tribunal. As well as ordering reinstatement the Tribunal intends to award damages to the Applicant for breach of the covenant of quiet enjoyment. It should be clear from the determination above as to which particular breaches are made out.

## Order

1. The Respondent is to reinstate the Applicant's pitch to its original condition replacing any trees, lawn and other items removed as a result of the works. The parties are to agree a specification and timescale for the works within 21 days of receipt of this order. If there is no agreement at the end of this period the matter can be referred back to the Tribunal for consideration. If there is any dispute as to the Respondent's compliance with the order this can also be referred to the Tribunal who may wish to inspect the site.
2. The Applicant is to provide to the Tribunal and Respondent written submissions detailing his losses in terms of general and special damages within 14 days of receipt of this order. He must include copies of any caselaw relied upon. The Respondent may reply to these submissions within 28 days of receipt of this order. The Tribunal will make a decision on the papers as to the level of damages to be awarded.
3. The Respondent is to reimburse the Applicant's hearing and application fee of £300 within 14 days of receipt of this order.

Judge Shepherd

26<sup>th</sup> July 2023

## RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the

First-Tier Tribunal at the Regional office which has been dealing with the case.

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.