



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

Case Reference : **BIR/17UK/PHC/2023/0001**

Property : **17 and 18 Weston Hill Chalet Park, Bridge Lane
Weston-on- Trent, Derby DE72 2BU**

Applicants : **Mr Simon Bird (Pitch 18)
Mrs M Simpson (Pitch 17)**

Respondents : **Mr Michael MA White
Mr Michael T White**

Representative : **Mr D Sutherland**

Type of Application : **Application under section 4 Mobile Homes Act 1983**

Tribunal Members : **Judge T N Jackson
Mr N Wint BSc (Hons) FRICS ACI Arb**

Date of Decision : **27 October 2023**

DECISION

Reasons for decision

We determine the following:

Whether the Respondents are obstructing implementation of the Upper Tribunal Order dated 4 February 2022.

The Respondents are not obstructing implementation of the Upper Tribunal Order dated 4 February 2022.

Whether the works done on the park, adjacent to Pitches 17 and 18, have caused damage to those pitches, and/or have had the effect of preventing the Applicants from maintaining their pitches, and if so, whether such works constitute a breach of the terms of the Agreement.

The works carried out adjacent to Pitches 17 and 18 have not caused damage to Pitches 17 and 18 nor had the effect of preventing the Applicants from maintaining their pitches. The works do not constitute a breach of the terms of the agreement.

Whether sanctions can be imposed which require the Respondents to remove and remediate any damage caused by the works and/or pay all costs associated with these proceedings.

No sanctions are imposed which require the Respondents to remove and remediate any damage caused by the works. The Tribunal does not order reimbursement of the application fee of £100.

Introduction

1. The Applicants have applied for a determination of questions under section 4 Mobile Homes Act 1983 (“the 1983 Act”). They also seek reimbursement of the application fee. Directions were issued on 24 January 2023 which identified the questions being asked and set out the case management timetable.
2. The Applicants complied with paragraph 1 of the Directions (Applicants Statement of Case). The Respondents’ solicitor stated that the Respondents did not receive a copy of the application or Directions which were sent by the Tribunal on 25 January 2023 to the Office, Weston Hill Chalet Park, Bridge Lane, Weston on Trent DE72 2BU.
3. By Further Directions dated 6 March 2023, further copies were sent to the Respondents’ solicitor and the time limits to comply with the Directions dated 24 January 2023 were extended. The Respondents’ representative submitted a Respondents’ Statement of Case and the Applicants submitted an Applicants’ Response to the Respondents’ Statement of Case.
4. Further Directions dated 16 May 2023 and 10 August 2023 were issued regarding proposed remedial works which are referred to later in this decision.

Background

5. The Respondents are the owners and operators of Weston Hill Chalet Park (“the Park”). The Applicants both have Written Statements with the Respondents under the 1983 Act (“the Statements”) in respect of their pitches on the Park.

6. There has been a long running dispute between Mr Bird and the Respondents since Mr Bird was assigned the original structure on Pitch 18 in May 2017. This has resulted in previous applications by Mr Bird under section 4 of the 1983 Act which were determined in First Tier Tribunal Decisions dated 11 July 2018 (BIR/17UK/PHC/2018/0003) and 30 June 2021 (BIR/17UK/PHC/2020/0004). The history of this matter is clearly set out in detail in those decisions. The 2021 decision related, in part, to a question regarding the siting of the mobile home placed by the Respondents on Pitch 38, (which is to the rear of Mr Bird's Plot 18), following a period during which the Respondents had failed to adequately respond to Mr Bird's numerous requests for approval as to the location to site a mobile home on his pitch. The siting of the mobile home on Pitch 38 would result in a breach of the Site Licence Conditions regarding spacing between mobile homes if Mr Bird were to place his mobile home in its intended location.
7. On 30 June 2021, the First Tier Tribunal determined, inter alia, that:

“...the Respondents approved the location (as distinct from the construction, size and design) of the mobile home and garage as detailed in the Second, Third and Fourth Plans prior to the siting of the “blocking home” on Pitch 38. Noting the approved location, the Respondents and the Council therefore need to consider whether the current siting of the “blocking home” complies with the Site Licence Conditions”
8. The Respondents appealed that decision to the Upper Tribunal but on 4 February 2022, they withdrew the appeal on the terms of an Order of the Upper Tribunal under case reference LC-2021-526.
9. The Order stated, inter alia, that:

‘(c) In order to conclude the steps required to obtain approval for the siting of the proposed mobile home, Mr Bird should provide details of the proposed model or specification in writing to the appellants as soon as he has identified a suitable example and should request their consent to it being sited on Pitch 18, which shall not be unreasonably withheld. Within 28 days of receiving such a request for consent the appellants will either give consent or provide a full explanation for the reasons for refusing consent’

(d) If the appellants do not respond to the application for consent within the 28 days allowed or if they refuse consent on unreasonable grounds, Mr Bird will be entitled to place the proposed mobile home on the pitch without the need to obtain the appellants’ consent in writing.’
10. On 25 February 2022, Mr Bird emailed the Respondent's solicitors. We have a partial copy of the email as the right hand of the copy provided to us is incomplete. From the Respondents' solicitors letter of 16 March 2022, we understand the missing phrase to read *‘requesting permission for this 20 x 32 residential BS3632 home as per photos’* to be sited on Pitch 18. He flagged up that the Upper Tribunal's Order required the Respondents to respond within 28 days. He asked for the email to be sent to the Respondents.
11. On 16 March 2022, the Respondents' solicitors wrote to Mr Bird to seek clarification of the following:

- a. 'What is the model of the proposed home:
- b. Alternatively, what is the specification of the proposed home i.e.BS 3632:2005 or 3632:2015;
- c. Confirmation that the proposed home has a chassis and wheels affixed to its underneath which are in a reasonable state and condition and to provide photos of the same.'

12. The letter sought a response by 22 March 2022.

13. In an undated letter, Mr Bird responded to the above letter, commenting that, in his opinion, its intention was to delay and disrupt. He did not provide the information requested. Mr Bird lost the opportunity to buy that particular mobile home.

14. Mr Bird has not yet identified a further suitable home but says that to position a new mobile home on Pitch 18, it is necessary for the site owners to first remove the "blocking home" positioned on Pitch 38, which they have failed to do.

15. Both Applicants allege that the Respondents have undertaken works both on pitch 38, (to the rear of Pitch 18) and also to the rear of Pitch 17 which are causing damage to pitches 17 and 18.

The Law

16. The Mobile Homes Act 1983 provides at section 4:

'In relation to a protected Site in England [or in Wales], 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,*
- (c) subject to subsections (2) to (6).'*

17. The legal framework regarding park home Sites is set out in the Mobile Homes Act 1983 as amended. In essence, it says that people who acquire park homes and put them on a pitch in a registered park home Site have the protection of an occupation agreement. The 1983 Act sets out very detailed implied terms for each agreement and which cannot be excluded by the Site owner.

18. The Tribunal has considered sections 1 and 3 of the Act and the implied terms set out in Chapter 2, Part 1 of Schedule 1 to the Mobile Homes Act 1983

19. We have also considered the terms of the Written Statements.

20. Clause 3E provides that "the owner undertakes with the occupier as follows :-

"That the occupier duly paying the pitch fee and observing and performing the undertakings herein contained and on the part of the occupier to be observed and performed shall and may peacefully and quietly occupy the pitch during the continuance of the agreement".

21. Our jurisdiction is limited to determining a question arising under the 1983 Act or any agreement and that may involve us in interpreting the provisions of the Written Statement. Enforcement of any obligations under the 1983 Act or Written Statement

is a matter for the County Court. Enforcement of the Site Licence Conditions is a matter for the local authority.

The Inspection/ Hearing

22. We inspected both the Properties and Pitch 38 on 9 May 2022. Mr Bird (Pitch 18) did not attend but provided Mrs Simpson with a key to allow the Tribunal access to Pitch 18. Mrs Simpson (Pitch 17) attended as did Mr MT White. Neither party requested a hearing and we therefore considered the matter on the basis of the written submissions.
23. The Tribunal noted that various works had been carried out to Pitch 38. These included a timber skirt around the lower edge of the mobile home and timber frame steps erected with a wooden handrail to the rear door. Also, along the rear boundary of Pitch 18, a series of concrete paving slabs had been set on end as a sort of dwarf retaining wall separated from the timber fence on Pitch 18 by a small gap which had been filled with what appeared to be waste material from the works that included concrete spoil and other such waste materials. Slabs had been positioned in a similar fashion to the rear of the fence to Pitch 17 and along part of the pathway between Pitches 17 and 18 and which, in places, were directly abutting Mrs Simpson's fence and shed.
24. At the inspection, Mr White accepted that the quality of the workmanship was below the standard expected, in particular in relation to the use of the waste material in the gaps between the slabs and the fences. Mr White offered to carry out remedial work on a without prejudice basis.
25. In an attempt to assist the parties, the Tribunal issued Directions dated 16 May 2023, which directed the Respondents to describe the nature of the proposed remedial works to the rear of pitches 17 and 18 and timescale within which they were to be carried out. The Directions directed the Applicants to respond to confirm whether they agreed to the proposed works. The Respondents' representative set out the proposed remedial works in an email dated 16 June 2023, further clarified by an email dated 23 June 2023.
26. By email 3 July 2023, Mr Bird made it clear that he did not agree to the Respondents carrying out any remedial works as they involved the Respondents entering his pitch in order to carry out works involving his fence. Mrs Simpson required further clarification of the works to be completed. The Tribunal agreed that the proposed remedial works were not sufficiently clear to allow Mrs Simpson to make an informed decision.
27. By Directions dated 10 August 2023, the Respondents were directed to provide, by 24 August 2023, a method statement setting out in detail exactly the works to be carried out and the proposed date of completion. They were also to confirm that they consented to their response being incorporated into the Decision as their response to the second and third question the subject of the application. The Directions encouraged the Respondents (or their representative) and Mrs Simpson to meet on site to allow further clarification before the method statement was returned to the Tribunal. Mrs Simpson was directed to confirm by 7 September 2023 whether or not she agreed to the proposed remedial works and timetable.

28. In relation to Plot 17, in an email dated 15 August 2023 which was accompanied by a photo with blue and red lines, the Respondents agreed, at their own expense, to the following:
- a. To replace the slabs located between the two red vertical lines;
 - b. To clarify the slabs to be removed have a blue horizontal line running through them;
 - c. These slabs will be removed and a 300mm edging kerb will be installed to retain the hardcore that forms the access path and allows the Applicant to better maintain her shed.
 - d. Works will be carried out within 3 months of the final Tribunal decision.
29. The Respondents' representative subsequently confirmed that the remedial works could be incorporated into the Tribunal decision.
30. By email of 15 August 2023, Mrs Simpson required clarity that all the old concrete would be removed and any damage to the shed and adjoining fence would be remedied to her satisfaction.
31. By email on Friday 1 September 2023 at 8.06pm, she sought a meeting on site that weekend for further discussion and a response to her query referred to above. As she received no response and still had concerns, on Sunday 3 September 2023 at 7.36 am, she advised the Tribunal and the Respondents' representative that she could not agree to the method statement provided.
32. The Respondents' representative replied to the Tribunal on 4 September 2023 advising that the request for a site meeting was not considered to be genuine, based both on the extremely short notice given for such a meeting and Mrs Simpson's response to the Tribunal on 3 September 2023. It also stated his view that Mrs Simpson would never be happy with anything the Respondents offered to do unless the Respondents acceded to her unreasonable requests. He stated that the Tribunal now had all information before it and the Respondents awaited the Tribunal determination.
33. By email dated 4 September 2023, Mrs Simpson advised that if the method statement was amended to state that the concrete spoil would be removed and any damage repaired, she would be happy to agree to it. The Respondents' representative did not respond, we suggest based on his comment in his email of 4 September 2023 detailed above.

The submissions

The Applicants

34. Mr Bird says that despite the Upper Tribunal Order dated 4 February 2022, the "blocking home" positioned on Pitch 38 has not been removed and the Respondents have continued to carry out works to the "blocking home". He says that he feels that he cannot continue to search for a home until the "blocking home" is removed due to the fire risk and the spacing requirements in the Site Licence Conditions.
35. The Applicants allege that the back filling with concrete which abuts and is positioned against the Applicants' fences and sheds prevents them from treating or repairing

those areas and will cause the wood to rot quicker. The Applicants want the paving slabs and concrete to be removed, replaced by kerb stones and any damage corrected.

36. Mrs Simpson wrote to the Respondents' solicitors on 20 December 2022 to set out the joint concerns of herself and Mr Bird regarding the paving slabs and concrete, identifying that the work would prevent them from treating or repairing the lower part of the fences which they are required to keep in repair. She asked that the works stop until a discussion took place. She also approached both Mr White junior and senior separately, but we understand that there was no substantive discussion regarding the matter.
37. Mrs Simpson emailed the Respondents' solicitors in December 2022 raising concerns regarding the works and also tried to discuss the matter with both Respondents separately but was unable to get any substantive response. The Applicants therefore request that the Respondents pay any Tribunal fees.

The Respondents

38. The Respondents' representative submits that the Applicants' response to the Respondents case states that they are seeking advice of the Tribunal and that is not the Tribunal's role.
39. The determination of the position of the home behind Pitch 17 is a matter for the local licensing authority under the Site Licence conditions. No enforcement action, including issuing a Notice under section 9A of the Caravan Sites and Control of Development Act 1960, has been taken by the local authority. As such, the Tribunal is unable to make a determination as to whether the Site Licence Conditions have been complied with.
40. The Respondents' representative accepts that works have continued to be carried out on Pitch 38, which they are entitled to do under permitted development rights. He says that Mr Bird has not yet sourced a new home and that should he do so, the Respondents will comply with the decision made by the Upper Tribunal. He comments that Mr Bird currently occupies a home sited on Pitch 18.
41. He submits that the Respondents have placed a boundary collar of concrete paving slabs as a result of Mr Bird breaching Express Term 2 (g) of his written agreement by not seeking prior written consent to erecting a fence on the boundary of his pitch. The Respondents placed the boundary collar to mitigate "the breach" rather than taking action for breach of the agreement. He submits that the Applicants have not identified what damage has alleged to have been caused.
42. He further submits that neither the 1983 Act nor the Written Statements prevent the Respondents from laying paving slabs or laying concrete on a neighbouring pitch. The Respondents' representative confirms that the Respondents are happy to rectify any damage caused although nothing has been pointed out to the Respondents prior to the application and the Respondents are unaware of the alleged damage.
43. In relation to the Applicants' assertion that the paving slabs and concrete prevent them from being able to repair and maintain in accordance with their Written Statements, the Respondents' representative submits that the Respondents are not alleging any breach of their agreements due to lack of repair/maintenance and the Applicants have provided no evidence to suggest that the Respondents have done

anything which adversely affects the ability of the Applicants to perform the obligations under the implied terms of their agreements.

44. The Respondents' representative submits that as the application is premature and unreasonable, it would be just and reasonable for the Applicants to pay the application fees, particularly as the application appears to be a customer service complaint to seek advice rather than asking questions under section 4 arising from their agreement or the Act.
45. He reserves his position regarding making an application for costs under Rule 13(1) of the Procedure Rules¹.

Decision

46. We considered all the written evidence submitted and answer the questions as set out below.

Whether the Respondents are obstructing implementation of the Upper Tribunal Order dated 4 February 2022.

47. Following the Upper Tribunal Order of 4 February 2022, Mr Bird sought approval as required by the Order. In a letter of 16 March 2022, the Respondents' solicitors sought clarification of certain matters arising from his request. Instead of providing the information, Mr Bird responded with an undated letter and stated that the information requested was irrelevant. In the Tribunal's opinion, the points of clarification were relevant and perfectly reasonable, particularly as there had been concerns with the lack of chassis on the original structure on pitch 18 when it was assigned to Mr Bird. Further, the questions were not onerous and could have been responded to quite simply as the information should have been at hand to Mr Bird and he could have responded immediately. He chose not to do so. Neither do we accept that the solicitor's actions, as suggested by Mr Bird, were with the intention to delay and disrupt.
48. If a mobile home is to be placed on Pitch 18 in the location which the First Tier Tribunal determined on 30 June 2021, we accept that, due to spacing requirements, there is likely to be an issue of a potential breach of the Site Licence conditions by the Respondents if the mobile home at Pitch 38 remains in its current position. This was explicitly referred to in the First Tier Tribunal's decision at paragraph 125. However, unless and until there is a mobile home about to be sited on Pitch 18, then there is no potential breach.
49. Mr Bird states that in order to position a new mobile home on Pitch 18, it is necessary first for the mobile home on Pitch 38 to be removed. The Upper Tribunal Order dated 4 February 2022 does not require the mobile home at Pitch 38 to be removed. In our view, until Mr Bird has sought and obtained approvals as referred to in the Upper Tribunal Decision of 4 February 2022 and any other approvals required under the Written Statement or Site Licence Conditions, the point regarding pitch 38 is academic.
50. Until Mr Bird completes the required steps of the approval process, there is no potential breach and the Respondents can continue to use and develop Pitch 38

¹ The Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013

within appropriate permitted development rights, at their own risk, until any potential breach becomes a reality. Mr Bird has been attempting to locate a mobile home on the pitch since 2018, but as previous Tribunal decisions have demonstrated, he tends not to comply with the processes required. Presently, action is required on the part of Mr Bird, not the Respondents. If and when an alleged breach occurs, then enforcement of any alleged breach is a matter for the licensing authority, not the Tribunal. We suggest that Mr Bird may wish to speak to the licensing authority and also obtain legal advice as to how to progress the matter.

51. We determine that the Respondents are not obstructing implementation of the Upper Tribunal Order dated 4 February 2022.

Whether the works done on the park, adjacent to pitches 17 and 18, have caused damage to those pitches, and/or have had the effect of preventing the Applicants from maintaining their pitches, and if so, whether such works constitute a breach of the terms of the Agreement.

52. Neither Applicant adduced evidence as to the alleged damage caused nor quantified it. At the inspection, we did not identify any damage caused to either Pitch. On Pitch 18, when Mr Bird renewed his fence, he did not use concrete gravel boards but simply posts and timber fence panels. Therefore, damp is likely to affect the bottom of the fence posts in any event. In the Tribunal's expert opinion, it does not consider that the works carried out by the Respondents have significantly increased the likelihood, severity or timing of damp that will necessarily occur over time to the Applicants fences. Neither do we accept that the works done prevent the Applicants from maintaining their respective Pitches. They can still access the fences and buildings from their own Pitches. They would have needed permission, in any event, to enter land falling outside their pitches to carry out maintenance work, unless it was common area.

53. The Applicants have not stated which term of the Written Statement they allege has been breached. We have considered Clause 3 E but, following the inspection and having had regard to the works carried out, we do not find that the Respondents are in breach of the covenant regarding peaceful and quiet occupation of the pitches.

Whether sanctions can be imposed which require the Respondents to remove and remediate any damage caused by the works and/or pay all costs associated with these proceedings.

54. As we have determined that there has been no damage or breach of the Written Statements, we do not require the Respondents to remove the works or carry out any remedial action. The Respondents had offered to carry out remedial works on a without prejudice basis which, if agreed by the parties, the Tribunal was willing to include within the Decision by way of a Consent Order under Rule 35 of the Procedure Rules. However, Mr Bird made it clear that he did not accept the proposed remedial works. Regarding Mrs Simpson, despite clarification being sought by her and responses by the Respondents representative, there was no ultimate agreement as to the works to be carried out. It is unfortunate, as the majority of the remedial works had been agreed, but the Tribunal cannot make a Consent Order in the absence of a final agreement. Therefore, Mrs Simpson will have to pursue any proposed remedial works with the Respondents outside of these Tribunal proceedings.

Reimbursement of fees

55. As the Applicants have failed in their application, we do not consider it appropriate to reimburse the application fee of £100.

Costs

56. The Respondents’ representative has reserved his position as to costs. As neither party has made an application for costs under Rule 13 of the Procedure Rules and we make no such order.

Obiter

57. The matter between Mr Bird and the Respondents has a long history involving several Tribunal applications and an application to the Upper Tribunal. We repeat the comments made by the First Tier Tribunal in its decision of 30 June 2021, that matters relating to Pitch 18 may be more effectively and holistically resolved by mediation rather than repeated applications to the Tribunal considering one aspect at a time. We encourage the parties to consider that path.

Appeal

58. If either party is dissatisfied with this decision, they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties and must state the grounds on which they intend to rely in the appeal.

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Judge T N Jackson