



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

Case Reference : CHI/43UF/PHM/2023/0002

Property : 33 Fangrove Park, Chertsey, Surrey KT16
0BN

Applicant : Wyldcrest Parks (Management) Limited

Representative :

Respondent : The Estate of Mr Colin Warwick

Representative : Joanne Kingston acting as Executor

Type of Application : Application by owner of a Park Home site
for a refusal order
Paragraph 7B of Chapter 2 of Part 1 of
Schedule 1 Mobile Homes Act 1983 (as
amended)

Tribunal members : Regional Judge Whitney
Deputy Regional Judge Dobson

Date of Hearing : 5th January 2024

Date of Decision : 8th January 2024

DECISION

Background

1. The Applicant seeks a refusal order preventing the occupier from selling the park home and assigning the agreement to the proposed occupier. This application was received on 15 December 2023. The Tribunal acknowledged receipt of the application on 19 December 2023 and requested payment of the application fee. The fee was paid by the Applicant on the same day.
2. The Applicant has submitted a copy of the site rules and a copy of the Schedule 2 Notice of proposed sale together with copies of email correspondence between the parties. The grounds of the application at part 4 of the application form are that were the sale of the park home to go ahead, the proposed occupier would be in breach of the site rules by keeping animals that are of a description specified in the rule.
3. The Applicant notified the Respondent of the Application on 19th December 2023.
4. The Tribunal issued directions on 22nd December 2023 including provision for a hearing.
5. Ms Kingston confirmed that she authorised Mr D Bainbridge of Edward Barclay Estate Agents to act as her representative.
6. The Tribunal was supplied with an electronic hearing bundle and references in [] are to pages within that bundle. Mr Bainbridge supplied a copy of an email from the proposed purchaser Mr and Mrs Deacon dated 14th December 2023 which was within the bundle and on 2nd January 2024 an amended Schedule 2 Notice. On the morning of the hearing Mr Sunderland on behalf of the Applicant sent what was said to be the original Schedule 2 notice dated 9th December 2023.

The Law

7. Copies of the relevant sections of The Mobile Homes (Selling and Gifting) (England) Regulations 2013 were included within the bundle [42 & 43]. The Tribunal has also had regard to paragraph 7A of Chapter 2 of Part I of the Mobile Homes Act 1983 as amended:

“7A(1).....

(2)Where the agreement is a new agreement, the occupier is entitled to sell the mobile home and to assign the agreement to the person to whom the mobile home is sold (referred to in this paragraph as the “new occupier”) without the approval of the owner.

(3)In this paragraph and paragraph 7B, “new agreement” means an agreement—

- (a) which was made after the commencement of this paragraph, or*
- (b) which was made before, but which has been assigned after, that commencement.*
- (4) The new occupier must, as soon as reasonably practicable, notify the owner of the completion of the sale and assignment of the agreement.*
- (5) The new occupier is required to pay the owner a commission on the sale of the mobile home at a rate not exceeding such rate as may be prescribed by regulations made by the Secretary of State.*
- (6) Except to the extent mentioned in sub-paragraph (5), the owner may not require any payment to be made (whether to the owner or otherwise) in connection with the sale of the mobile home and the assignment of the agreement to the new occupier.*
- (7) The Secretary of State may by regulations prescribe procedural requirements to be complied with by the owner, the occupier or the new occupier in connection with—*
- (a) the sale of the mobile home and assignment of the agreement;*
- (b) the payment of commission by virtue of sub-paragraph (5).”*

The Hearing

8. The hearing took place remotely by CVP with the Tribunal sitting at Havant Justice Centre. Mr Sunderland was in his office in Thurrock accompanied by Miss Kelly his PA. Mr Bainbridge attended by telephone only being at a location in New Haw, Surrey. The hearing was recorded.
9. We set out below the most salient parts of the hearing.
10. Mr Bainbridge confirmed that Mr and Mrs Deacon were aware of the hearing today but had chosen not to attend.
11. Mr Sunderland highlighted that no evidence had provided that Ms Kingston was the Executor of her late father's estate, but no issue was being taken.
12. Mr Sunderland referred to an email [24] sent by email from Mr Bainbridge attaching the first Schedule 2 Notice. A copy of this

Notice Mr Sunderland had forwarded to the Tribunal immediately prior to the hearing. In fact three versions of the Schedule 2 Notice appeared to be in existence. In the covering email Mr Bainbridge stated that the Buyers, Mr and Mrs Deacon had confirmed they had no pets.

13. The first notice served simply crossed through reference to animals and vehicles. The other two notices in differing forms referred to three vehicles being on site and that there were no animals to be kept at the home.
14. Mr Bainbridge clarified in an email dated 14th December 2023 sent to the Applicant's [29] which stated "*We contacted the buyer again to clarify the situation. After a discussion and in accordance with the site rules stating that no dog must RESIDE at the site, the buyer has confirmed that in respect of the legal definition [sic]of RESIDE, there will be no dog that will reside on the site and he has confirmed [sic] compliance with the site rules displayed with Runnymede Borough Council.*"
15. Mr Sunderland referred to the original notice and the amended notice served [13 and 14] which indicated "*No dogs and no other animals*" with the amendment signed by Mr Deacon.
16. Mr Sunderland relied on his statement [40 & 41].
17. On cross examination by Mr Bainbridge Mr Sunderland confirmed the site rules say no dogs are allowed on the site. He was not aware of any other dogs being on the site.
18. Upon being questioned by the Tribunal Mr Sunderland said he was not aware of the date of the agreement as the Applicant did not have a copy on file. The Applicant took over the site in 2015 and Mr Warwick was already an occupier. Given the notice had been served he was satisfied the agreement related to one in existence prior to 26th May 2013 the date upon which the amendment to the Act came into force.
19. Mr Sunderland explained his reference in paragraph 7 & 8 of his statement [41] to a Mr Higgins were to the proposed Buyer of another home on the site which had been subject to a refusal order application CHI/43UF/PHM/2023/0001. Edward Barclay Estate Agents had been acting for the home owner in respect of the sale of

that home as well. As a result, he stated he had suspicions that they were manipulating sales to ensure they progressed and that the information contained within a Schedule 2 notice being served was inaccurate.

20. Mr Sunderland confirmed he personally had not spoken to Mr Deacon or attempted to make contact to avoid any allegation of sale blocking being levelled against him.
21. Mr Sunderland explained he had not served the application until after the Tribunal acknowledged safe receipt on 19th December 2023 due to issues in the matter of 11 Scatterdells Park [2014] UKUT 0351 (LC). As a result, it was his practice to not serve the application until the same had been received by the Tribunal and he stated this was in accordance with the Practice Direction of Sir Jeremy Sullivan of September 2013. Notice was given on 19th December 2023 [10].
22. Miss Kelly then confirmed her witness statement was true and accurate [37-39].
23. Mr Bainbridge had no questions for her.
24. The Tribunal questioned Miss Kelly as to her conversation with Mr Deacon. She had not kept any contemporaneous note but believed she had the conversation on 14th December 2023. She explained who she was and that she was telephoning from the Applicants, and it was in connection with the Schedule 2 Notice received. She stated that she told him they had a record he had previously enquired about a home at another park [23] when he had stated he had a dog and a cat as well as having his son living with him.
25. Miss Kelly stated that Mr Deacon told her he did have a cat but the dog belonged to his son. His son would mainly live with his girlfriend although he would have a bedroom at the property.
26. Miss Kelly explained she simply listened to the explanation given, asked no follow up questions and ended the call. She said she did not challenge Mr Deacon in order to avoid accusations of sale blocking.
27. She stated she reported her concerns to Mr Sunderland as she was not happy with the explanation given the amended Schedule 2 Notice indicated that 3 cars would be parked on the site. She

stated they would have had no issue over the cat (a single cat is allowed under the Site Rules [12]) but even this had not been disclosed which led her to believe the information contained on the Schedule 2 Notice [13 & 14] was untrue.

28. In summing up Mr Sunderland stated it was for the Tribunal to determine whether or not a refusal order should be made. In his submission the issues over the Schedule 2 Notice give reasonable grounds to suspect that if the sale is allowed to proceed a dog will be bought onto the site. In his submission it is the agents manipulating the process to ensure the sales proceed.
29. Mr Sunderland stated he does not believe the dog will be kept off the site. He suggests that the dog is in fact a family pet and not that simply of the son. Further he suggests on the basis of the evidence that the son will be living on the site for at least part of the time. He suggests the fact that 3 cars are referenced on the amended Schedule 2 notice is because at least one belongs to the son. The Respondent has put forward no evidence to rebut this belief.
30. Mr Bainbridge in reply explained he had a copy of the original agreement given to Mr and Mrs Warwick being dated 6th April 1993. Mrs Warwick had pre-deceased her husband. He was satisfied it was an old agreement and hence the need to serve a Schedule 2 Notice.
31. Mr Bainbridge believes Miss Kelly should not have contacted Mr Deacon directly. He asserted that Mr Deacon feels intimidated.
32. He explained neither he nor his office complete the Schedule 2 notices. The Buyer and Seller complete although his office then forward them on as the Sellers agent.
33. Mr Bainbridge explained he was told by Mr Deacon he had no dog. His son has a dog and the dog might visit with him. After Mr and Mrs Deacon had viewed and made an offer which was accepted, they had been given a Schedule 1 Notice together with a copy of the site rules [11 & 12].
34. Mr Bainbridge relied on a definition of the word “reside”. He stated that it meant someone was living permanently at the property. In this case there was no intention for the son to live permanently.

35. Mr Bainbridge upon questioning by the Tribunal stated he had been on annual leave when asked why there were no statements or the like from any person. He stated that he just relies with what is on the Schedule 2 notice and the buyer confirmed.
36. In response to the Applicants request for reimbursement of their Tribunal fees he stated that the Respondent was not in a position to pay the same.
37. Mr Sunderland replied briefly taking issue as to the fact there was no evidence as to how frequently Mr and Mrs Deacon's son would visit and stay. Further the Schedule 2 notice served contained false information in that the existence of the cat had not been disclosed. He stated this gave the Applicant a reasonable suspicion which could have been rebutted by evidence which the Respondent had failed to provide.
38. Mr Sunderland confirmed he was making no application for costs pursuant to Rule 13 of the Tribunal Procedure Rules but sought the reimbursement of the fees paid totalling £300. In his submission given the inconsistencies they had no choice but to make the application.

Decision

39. We considered carefully all the written and oral evidence together with the parties' submissions.
40. Essentially it was conceded by Mr Bainbridge that this was an "old agreement" for the purposes of the Act being one granted prior to 2013. As a result, prior to any sale a Schedule 2 notice must be served.
41. The first notice was served on 13th December 2023 bearing signature of the Seller dated 5th December 2023 and the Buyer dated 9th December 2023. The Application is dated 15th December 2023 and a copy was given to the Respondents on 19th December 2023. We are satisfied that the application for a refusal order was made within the statutory period of 21 days and notice was given to the Respondent.

42. The Buyers details were obtained, and they were also made aware of the application. Save for the email which Mr Bainbridge forwarded and what he says as to the conversation he had with Mr Deacon we have nothing further from them.
43. On the face of the Schedule 2 notice there are no grounds for granting a refusal order. However, Mr Sunderland points out that it must be a presumption that such notice is filled in truthfully and to the best of the parties' knowledge who are completing the same. Mr Bainbridge states it was not himself or his agency but the Seller and the Buyers who completed the relevant sections. It is they who have signed the same.
44. We are satisfied that Mr Sunderland's submission is correct. We do not accept that it is for a site owner to simply receive a Schedule 2 notice and be unable to apply for a refusal order even if they know the notice to be untrue and to not provide complete and proper disclosure. To find otherwise would in our judgment be perverse.
45. We are satisfied on the evidence that the Applicant raised a query as to the notice and then received the amended form within the bundle [13 & 14]. This notice referred to the Buyer having three vehicles and stated, "No dogs and no other animals". This later statement is untrue. Mr Bainbridge relies on the email from Mr Deacon to the Applicant dated 14th December 2023 in support of the case in which Mr Deacon admits to his intention to have a cat residing but denies a dog.
46. It is clear all versions of the notice (and we had sight of three different notices at the hearing) do not provide full disclosure in relation to the pets that will be residing at the home. Mr and Mrs Deacon have a cat and that cat will live with them. In none of the forms provided was this mentioned. We do not understand why, given under the site rules a single cat would be allowed. On balance we are satisfied that doubt has been cast as to whether or not a dog would be living at the home if the Buyer purchased the same.
47. The evidence as to the dog is inconclusive. The arguments about whether or not someone would "reside" smacks of semantics although the Tribunal is satisfied that in fact someone can reside in two places. Plainly if son and the dog are spending significant part of each week at the home it may be said they are residing there and

could also be residing for the remainder of the time with the son's girlfriend.

48. We were surprised no further evidence was adduced by the Respondent including evidence directly from Mr and Mrs Deacon. Without that, on a balance of probabilities we are satisfied that the dog will be residing on the site.
49. In conclusion we are satisfied that we should grant to the Applicants a Refusal Order preventing the assignment of the pitch fee agreement from the Respondent to Mr and Mrs Deacon.
50. Turning now to the question of reimbursement of fees. There is no presumption that simply because an order is made that an order requiring a party to pay the fees will be made. However, taking account of our findings and all the circumstances of the case we are satisfied that the Applicants had no choice but to bring the application and it is reasonable for these fees to be reimbursed. We order that the Respondent shall repay the fees totalling £300 within 28 days of the issue of this Decision.

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
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.