



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

**Case References** : **BIR/00CT/PHC/2023/0004**

**Property** : **19 Eaves Green Park Showell Lane  
Meriden, West Midlands CV7 7JA**

**Applicant** : **Mr Henry Morrison t/a Morrison Park  
Home Estates**

**Representative** : **Mr Michael Mullin of Counsel  
instructed by Tozers LLP Solicitors.**

**Respondents** : **Mr & Mrs Hodson**

**Representative** : **None**

**Type of Application** : **An application under section 4 (1) (a)  
Mobile Homes Act 1983(as amended) (“the  
Act”) to determine any question arising  
under the Act or an agreement to which it  
applies**

**Tribunal** : **Judge P.J Ellis.  
Tribunal Member Mr D. Satchwell FRICS**

**Date of Hearing** : **1 March 2024**

**Date of Decision** : **13 March 2024**

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**DECISION**

***The Tribunal is satisfied the Respondents' construction more particularly described in paragraph 9 below, is a breach of the Park Rules which form part of the Agreement made between the parties on 5 February 2022***

### **Introduction**

1. The Applicant Site Owner has asked the Tribunal to determine the following questions:
  - a. Whether the Respondents are in breach of:- i. Express Terms 3(e) and (h) of Part 4 of the Agreement; and ii. Park Rule 7.
  - b. If, as the Applicant believes, the Respondents are in breach, the Applicant also requests that the Tribunal exercise its powers to direct the Respondents to remedy their breach deconstructing and removing the enclosure and making good any damage to the Pitch.
2. The application was issued on 28 July 2023. Directions were issued on 5 September 2023. The matter was heard by this Tribunal on 1 March 2024 after an inspection of the site. At the hearing the Applicant was represented by Michael Mullin of counsel. Mr Hodson attended unrepresented on behalf of himself and Mrs Hodson.
3. According to the parties' respective unchallenged submissions, Eaves Green Park has been in the ownership of the family of the Applicant in excess of 40 years. The Applicant has been the sole proprietor of the Park since 2020. The Respondents acquired plot 19 further to an agreement between the parties made on 5 February 2022. The agreement was written in accordance with the Mobile Homes Act 1983 as amended.
4. Park Rules pursuant to The Mobile Homes (Site Rules) (England) Regulations 2014 came into force on or around 16 December 2014 (the Park Rules).

## **The Agreement**

5. The Applicant's statement sets out the provisions of the agreement upon which he relies. Part 4 of the Agreement sets out the Express Terms between the Respondents and the Park Owner. Express Term 3 of Part 4 provides:-

*“(e) You must not, without the prior written consent of the site owner (which must not unreasonably be withheld) carry out any of the following: (ii) the erection of any porches, sheds, garages, outbuildings, fences or other structures.*

*(h) You must comply with the park rules.”*

The Park Rules were attached to the Agreement.

6. Paragraph 2(c) of the Act provides that Park Rules will become express terms of the Agreement provided that the prescribed statutory consultation procedure set out in the Mobile Homes Act (Site Rules) (England) Regulations 2014 (“the Regulations”) has been followed.

The Applicant confirmed that this procedure was followed before the Park Rules came into force.

7. A copy of the Park Rules were exhibited to this Statement. Rule 7 provides. *“You must not erect fences or other means of enclosure unless they are constructed of natural hedging or of a wrought iron railing type, no more than 1m in height and you have obtained our approval in writing (which will not be unreasonably withheld or delayed). You may however replace any existing forms of enclosure on a like for like basis.”*

8. The Respondents did not deny that he and his partner held the right to occupy pitch 19 under the terms of the Agreement or that the Park Rules were valid and in force.

## **The Dispute**

9. The action concerns the construction by Mr Hodson of a fence and gate forming an enclosure of the Respondents' pitch. According to unchallenged evidence of

the Respondents the purpose of the construction was a safety barrier to prevent the grandchildren running out of the site on their visits. The following description of the construction is taken from the Applicant's statement.

*The gate consists of three horizontal panels that are attached to two vertical panels, is approximately three feet in height and three and a half feet wide, has a locking mechanism, and is attached by black hinges to the mobile home on a slim wooden post. A further black-hinged gate/fence, consisting of two horizontal panels and two vertical panels of approximately two feet in height and six and a half feet wide spans the remaining width of the Pitch.*

10. There was no dispute over the construction, the materials used or its position on the plot. The Tribunal inspected the construction at the site visit on 1 March 2024. The issue for determination by the Tribunal was whether or not the construction was made with materials forbidden by the Park Rules.

## **The Parties Submissions**

### **The Applicant**

11. Mr Mullin conceded on behalf of the Applicant that the matter was reasonably innocuous but asserted the relevant rule was quite clear. The construction formed an enclosure of the pitch notwithstanding that it comprised two gates, one over a path alongside the property to the entrance door, the other over the driveway and access to the rear garden. The rule is specific about the materials which may be used. The materials used were neither hedging nor wrought iron.
12. The Applicant had no discretion to permit a departure from the Park Rules. He explained there had been a lengthy consultation with the owners including an appeal before their eventual promulgation in 2014. There was no appeal of Rule 7. The rationale for this rule was that wrought iron allowed light through any structure and hedge plants are a natural product.

13. He acknowledged some pitches had constructed enclosures with other materials than those specified in Rule 7 but in each case they were either in existence in 2014 or they were like for like replacements in accordance with the Rule. He denied there had been any inconsistent treatment of pitch owners. The refusal to remove the existing construction and replace it with material prescribed by the Rule was a continuing breach of the Respondents' obligations under the Agreement.

### **The Respondents**

14. Mr Hodson explained the purpose of the gates was to prevent his toddler grandchildren from running off the pitch. In his submission he asserted the construction was two gates and not either a fence or an enclosure as they can be opened and are not locked. He stated further they are made with fire rated materials, not exceeding 1m in height and fully accessible with no locking mechanism in case of emergency.

15. He believed the construction could not be described as a fence or enclosure because it was erected for safety reasons and as it has gates it is not a fence or a means of enclosure.

16. He referred to other pitches with wooden fences as an example of the Applicant's inconsistency in his enforcement of the rules. He described a fence 6ft high on a pitch close to the entrance to the site and another pitch with metal fences.

### **The Decision**

17. The Tribunal had the benefit of reviewing the subject matter of the dispute on the site inspection. It also observed that some other pitches had unapproved fencing. The Applicant conceded other pitches had fences made from material other than wrought iron or hedge plants because they were like for like replacements. The Respondents had not adduced any evidence to rebut this

explanation. The Tribunal is satisfied the materials used in the subject construction were unapproved.

18. Moreover, the position of the construction and its purpose makes it a fence or a means of enclosure. That it is in effect two gates does not prevent it being a fence or means of enclosure.
19. There were no significant disputes of fact or applicable law between the parties. The Respondents accept they are bound by the Park Rules. Their defence to the claim is that either the construction is not a fence or means of enclosure or that the Applicant has discretion to permit use of other materials which should be exercised in their favour. The Applicant understood the reasons for the erection of a fence but required that any construction should comply with Park Rules.
20. Although the Respondents pointed to other pitches with different materials the Tribunal was not given any evidence from those owners regarding the history of their use of alternative materials. Having seen the subject construction, considered the parties submissions and heard their evidence, the Tribunal is satisfied the subject construction is a fence or other means of enclosure made from materials other than wrought iron or hedge plants in breach of rule 7 of the Park Rules.
21. Moreover, the Applicant is correct that he does not have discretion to waive the rule which is contained in Park Rules drafted in consultation with other pitch owners in accordance with the Mobile Homes (Site Rules) (England) Regulations 2014 which were implemented for among other reasons to ban making new rules such as granting home owners certain rights, subject to the exercise of discretion by the site owners.
22. The Applicant seeks an order that the Respondents remedy their breach by deconstructing and removing the enclosure and making good any damage to the Pitch. S3(1) Tribunals Courts and Enforcement Act 2007 provides *(1) There is to be a tribunal, known as the First-tier Tribunal, for the purpose of exercising the functions conferred on it under or by virtue of this Act or any other Act.*

23. This is an application for determination of whether there has been a breach of the terms of an agreement. The Tribunals power to make that determination are in s4(1)(a) Mobile Homes Act 1983. This Tribunal is satisfied the Respondents' construction is a breach of the Park Rules which form part of the Agreement between the parties on 5 February 2022.
24. The power of enforcement of this determination is vested in the county court. However, having made this determination the Respondents will remain in continuing breach of the agreement for so long as they do not deconstruct and remove the enclosure and make good any damage to the pitch.

### **Appeal**

25. 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 (rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

Judge PJ Ellis Chair