



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

Case Reference : **CHI/24UE/PHC/2023/0018**

Property : **31 Hamble, Fleet End Road
Southampton, Hampshire
SO31 9JU**

Applicant : **Berkeley Leisure Group Ltd**

Representative : **David Blake
Operations Manager**

Respondent : **Pamela Bowditch**
Representative : **Tracey Beresford**

Type of Application : **s.4 MHA 1983**

Tribunal Members : **Judge Dovar
Mr Bourne
Ms Wong**

**Date and venue of
Hearing** : **11th June 2024, Havant**

Date of Decision : **12th June 2024**

DECISION

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Introduction

1. This is an application under s.4 of the Mobile Homes Act 1983 for the determination of breach. By s.4, the Tribunal has jurisdiction to determine any question arising under the Act or any agreement to which it applies.
2. The application dated 2nd November 2023 seeks a determination as to whether the Respondent is in breach of the terms of her Mobile Homes Act Written Statement as a result of permitting a person under the age of 50 years to reside in her home.
3. In the event that a breach is made out, the Applicant requests that the Tribunal gives directions for remedy.

Mobile Homes Act 1983

4. The Mobile Homes Act 1983 governs the terms of the agreement whereby the mobile home owner, the occupier, is allowed to station their home on land owned by another, the owner.
5. The term “mobile home” means:

“any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted but does not include (a) any railway rolling stock which is for the time being on rails forming part of a railway system, or (b) any tent”

(s.5(1) of the 1983 Act and s.29(1) of the Caravan Sites and Control of Development Act 1960).

6. The Mobile Homes Act 1983 applies to those entitled by agreement to station mobile homes which they intend to be their only or main residence on land forming part of a “protected site” (s.1 of the 1983 Act). Land forms part of a protected site when it is licensed for the purpose (or it is land which would be licensed if it were not owned by a local authority) under Pt I of the Caravan Sites and Control of Development Act 1960 (see s.5(1) of the 1983 Act, s.1 of the Caravan Sites Act 1968).
7. The Act also affords the occupier some security by implying into the agreement a number of important terms, for example terms relating to termination, requiring the owner to provide the occupier with a written statement of the agreement, alienation, pitch fees, obligations of either party (including maintenance obligations), a right of access and a right of the occupier to quiet enjoyment. The implied terms have effect notwithstanding any express term of the agreement and whether or not a written statement has been given as required (s.2(1) and Pt I of the Schedule to the 1983 Act). In addition, any site rules that apply to a protected site, will also become terms of the agreement (s.2C). The site rules can only be imposed on a site if the requirements of Mobile Homes (Site Rules) (England) Regulations 2014 (SI 2014/5) have been met.
8. The owner is required to give the occupier the written statement 28 days before the making of the agreement to occupy the site (s.1(3) of

the 1983 Act). The statement must set out various items, including the implied terms, and must be in prescribed form (s.1(2); Mobile Homes (Written Statement) (England) Regulations 2011 (SI 2011/1006).

9. Of the implied terms, term 4 permits the owner to seek to terminate the agreement if the occupier has breached a term of the agreement and after service of a notice to remedy the breach, the occupier has not complied with the notice within a reasonable time. If that time passes without remedy, then the owner can apply to the court for termination, which it will do if it considers it reasonable, and in which case it will set a date for termination.

The Rules

10. In this case, the Tribunal was provided with:
 - a. A copy of the written statement under the Mobile Homes Act 1983, in relation to an agreement commencing 17th June 1980, which was assigned to Ernest William Bowditch and the Respondent, Pamela Violet Bowditch ('the Agreement'), on 26th August 2011. That contained the terms implied by the Act as well as express terms. One of the express terms is clause 3 (j) which is *'to comply with the park rules from time to time in force a copy of the current park rules being annexed hereto'*;
 - b. A copy of the Park Rules dated 2014. Rule 13 provides as follows

Age of Occupants

13. No person under the age of 50 years may reside in a park home, *with the exception of the park owner, park manager and their family etc.*

a copy of the said Park Rules appears on the website of Fareham Borough Council, indicated that they have been deposited and registered with the that council under the 2014 Regulations.

c. A copy of the site licence dated 31st August 2000

Breach

11. In support of the application, the Applicant filed a statement from David Blake, their Operations Manager setting out the matters complained of. He confirmed his statement before us. In essence the complaint is that the Respondent has permitted a 38 year old man to stay with her in her home. In correspondence the Respondent has not denied this, but has said that he is her boyfriend and is homeless and was putting him up for 3 months. That was in September 2023.
12. The Applicant warned the Respondent that she was in breach of the Park Rules, and gave her until 11th October 2023 to remedy the breach; i.e. remove her boyfriend. On 9th October 2023, the Respondent emailed the Applicant informing them that her boyfriend would have to stay until he got a council place.
13. The Respondent did not comply and the Applicant served a 'Notice of Breach' on 17th October 2023 and requested that it was resolved within

7 days, in default of which, an application would be made. There was no response and this application was then made.

14. The Respondent attended the hearing and the Tribunal was informed of the following:

- a. When she first took up occupation she was only 47 years old;
- b. That her boyfriend, was now her fiancé, and that he continued to live with her. He had nowhere else to go;
- c. She was trying to sell her home. She had an offer from a person subject to him finding accommodation for one of his dogs as he had two, and only one was allowed on the site. If that sale failed to materialise she would put the home up for auction, but that that could take some time. She was aiming to move out by the end of July.

15. Mr Blake had no submissions to make in response, other than to confirm that he sought 28 days for the Respondent to remedy the breach.

Determination

16. The Tribunal accepts that the age restriction has been breached. The circumstances in which the Respondent first occupied are not known, in particular whether the Applicant was aware of her age or whether it made a particular concession for her. The Tribunal does not therefore consider there is any basis for saying that the Rule 13 and in turn clause 3(j) have not been breached.

17. It then falls to the Tribunal to consider what a reasonable period is for the Respondent to remedy the breach. The following factors are taken into account in setting the period by which the Respondent should remedy the breach:
- a. It is her home and if she does not remedy the breach she is at risk of losing it;
 - b. She is assisting her fiancé who needs to find alternative accommodation;
 - c. Her fiancé is part of her family and regard must be had to her right to respect for her right to a family life;
 - d. The Respondent acquired a home in a park which was restrictive of age;
 - e. The Regulations envisage (and therefore support) the ability of a Site Owner from setting rules restrictive of age (see Schedule 5, paragraph 2 (g));
 - f. The matter has now been continuing for around 10 months, and the Respondent initially said it would only be 3 months;
 - g. Complaints have been made by other owners;
 - h. The age restriction is an important part of the restrictions, and in some respects can be seen to advance community cohesion on the site (cf. Regulation 4(2)(b)) in that the cohort is all of a similar age;

- i. The Respondent has said she aims to leave by the end of July. Even if a sale is not obtained by then, the Respondent can avoid a breach by moving her fiancé out until a sale is completed and a new property is purchased.
18. The Tribunal therefore considers that the Respondent should remedy the breach by 31st July 2024. If she does not, then she is at risk that the Applicant will apply to the Court to terminate her agreement.

Judge Dovar

Appeals

A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

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.

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.

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.