



FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference : **CAM/OOMX/PHC/2023/0006**

Property : **7 Nook Park, Willow Road, Great Harwood, Bucks, MK17OQJ**

Applicant : **Karen Phillips**

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 : **April 2024**

Decision

© CROWN COPYRIGHT 2023

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 Karen Phillips (“The Applicant”) who

resides at 7 Nook Park, Willow Road, Great Harwood, Bucks, MK170QJ (“The home”). The Respondent is Joe Burns who is the Director of Silk Mills Leisure, the owner of Nook Park . 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 was assigned the home on 1st February 2014. The site owner at this time was Mrs Tapsell.
3. A written statement under the Mobile Homes Act 1983 between the Applicant and Mrs Tapsell dated 1st February 2014 contains a plan showing the size and location of the pitch and the size of the base on which the mobile home is stationed. The identifiable fixed points are footpaths and a roadway. On the Eastern (right hand) side a grassed area and a willow tree are shown. Dimensions of the pitch are given as 36 feet by 20 feet. The plan given to the Applicant differed from the one held by the Respondent. The latter has a line drawn on the Eastern side which does not exist on the Applicant’s plan. This was the cause of some investigation and debate but ultimately the expert evidence obtained was inconclusive – see further below.
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 encroached upon, and removed parts of her pitch. This was part of major works carried out by the Respondent to expand the site and provide new access. A new road was provided immediately outside the home which meant effectively, the Applicant now leaves her home via the steps and goes straight onto the road. On the right -hand side of the pitch the Applicant argues land was encroached upon to build car parking spaces. The Respondent said there was no encroachment because at the front of the premises the Applicant had expanded her pitch without permission and the grassed area and willow tree to the right hand side were not part of the pitch. In support of this contention, he said the Applicant had asked for help to pollard the Willow. The Applicant accepted she had asked for help to pollard the tree.

The inspection

6. The Tribunal inspected the site on 13th December 2023. The Applicant was in attendance as was the Respondent.

7. Works were continuing on the site. A substantial tarmac road had been provided immediately outside the front door of the home. Grass had been removed. On the right side of the pitch a car parking area had been constructed causing the removal of some of the grassed areas, a hedge and a patio outside the home. The willow tree had also been removed. To the left hand side and to the rear what had previously been pathways had been removed and replaced with turf.

The law

8. 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).

9. 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.

10. 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

11. The Applicant argued that her garden had been taken away on the right-hand side. The road had also been an incursion and steps now went straight onto the road. The willow tree had been removed. She said the written statement plan she had differed from the one held by the Respondent because a line on the right hand side had been added. She alleged that the Respondent had done this. The Respondent produced evidence from his solicitor which confirmed the plan he was given at acquisition contained the extra line. He denied that he had encroached on the Applicant’s pitch but was willing to make efforts to reach a resolution of the matter.

12. The issue of the additional line on the Respondent’s plan became acute when the Applicant asked to be allowed to produce evidence on the issue. The Tribunal allowed this. In the event the expert evidence was inconclusive and unhelpful. The first report of Keith Borer Consultants dated 16th February 2024 said the following:

I found no evidence to support the view that a vertical line was ever present on page 5 of The Written Statement, in the position indicated on the copy plan held by Mr Burns.

That is, it is my opinion that the Written Statement plan on Page 5 has not been altered to remove a vertical line in the position indicated on the copy plan held by Mr Burns.

13. The expert rowed back from this position in his second report on 3rd April 2024. By this time he had been provided with the Respondent’s plan. He concluded the following:

All but two of the lines comprising the Plan on Page 5 of Mr Burns’ Booklet were drawn in both pencil and black ink. The exceptions to this are the far left vertical line (which is in pencil only) and the far right vertical line (the line in question), which is in black ink only. All other entries (words/numerals/sketches) are in black ink only.

It is not possible to determine if the pencil entries were written before the ink entries or vice-versa.

It is not possible to determine if the pencil and ink lines were written contemporaneously or at different time.

Determination

14. The Tribunal faced with inconclusive evidence such as this is unable to reach a conclusive decision as to the “line in question”. Both parties appear to be giving honest evidence on the issue. In any event it is questionable whether the line in question is important at all. In an email to the Tribunal Mr Burns indicated that some of the allegedly encroached land on the right - hand side had been given back to the Applicant. In any event the plan arguably makes the grass area and the willow tree part of the boundary rather than within the Applicant’s pitch. The new road remains a point of substantial contention however.

15. We consider that there has been a significant encroachment on the Applicant’s pitch by the new road. The old roadway was a point of delineation on the plan. Accordingly, the land up to the old roadway was part of the pitch. This land was removed from the pitch with the construction of the road. We do not, however, consider it reasonable to order the Respondent to remove the road or to move it as this would be expensive and cause further disruption to residents. Instead, we will award compensation to the Applicant. We invite submissions in relation to such compensation to be made by 4 pm on 8th May 2024.

Judge Shepherd

24th April 2024

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.