



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

Case reference : CHI/00LC/PHC/2023/0017

Property : 209 Damson Drive, Hoo Marina Park,
Vicarage Lane, Hoo, Rochester, Kent, ME3 9TF

Applicant : Berkeley Leisure Group Limited

Representative : David Blake
Operations Manager

Respondent : Mr M & Mrs V Wilson

Representative : None

Type of application : Application for a determination of any
question arising under Section 4 of the Mobile
Homes Act 1983

Tribunal members : Mrs J Coupe FRICS
Ms P Gravell

**Date of Hearing
and venue** : 12 June 2024
Ashford Tribunals, Ashford, Kent, TN23 1YB

Date of decision : 17 June 2024

DECISION

Introduction

1. The Applicant is the registered Licence Holder of Hoo Marina Park (“the site”) and is represented in these proceedings by the Operations Manager, Mr Blake. The Respondents are the occupiers of 209 Damson Drive, Hoo Marina Park, ME3 9TF (“the pitch”).
2. By way of an application dated 3 October 2023 the Applicant seeks a determination as to whether the Respondents are in breach of the terms of their Mobile Homes Act Written Statement, the Park Rules and the Site Licence, each as a result of the erection of a garden fence in excess of 1 metre in height.
3. In the event that any breach is made out, the Applicant requests that the Tribunal gives directions for its remedy.
4. The Tribunal received a hearing bundle extending to 98 pages comprising a Park Home Refurbishment Form (PHRF); copy of the Park Rules 2014; copy of the Site Licence dated 6 June 2022; copy of a Notice of Breach dated 31 August 2023; copy of a Written Statement dated 1 March 1983, noted as assigned to the Respondents 19 May 2015; and a copy of a Park Homes Fact Sheet. References in this determination to page numbers in the bundle are indicated as [].
5. These reasons address in summary form the key issues raised by each application. They do not recite each and every point raised or debated. The Tribunal concentrates on those issues which, in its view, go to the heart of the application.

The Law

6. The Mobile Homes Act 1983 (“the Act”) governs the terms of the agreement whereby the mobile home owner (occupier) is permitted to station a home on land in possession of the site owner.
7. The Act 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” (Section 1 of the Act). Land forms part of a protected site when it is licenced for the purpose (or it is land which would be licenced if it were not owned by a local authority) under Part I of the Caravan Sites and Control of Development Act 1960.
8. The Act affords pitch occupiers security by implying into the agreement a number of important terms such as terms relating to termination, the obligation of the owner to provide the occupier with a written statement of the agreement, alienation, pitch fee reviews, obligations of either party, rights of access and a right, on the part 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 provided. In addition, under Section 2C any site rules that apply to a protected site will also become terms of the agreement. The site rules can only be imposed on a site if the requirements on the Mobile Homes (Site Rules) (England)

Regulations 2014 have been met.

9. Section 1(3) of the Act requires the owner to provide the occupier with the written statement 28 days before the making of the agreement to occupy the site. The statement must set out various items, including the implied terms and must be in prescribed form.
10. Of the implied terms, term 4 permits the owner to terminate the agreement if a Tribunal is satisfied that there has been a breach of the agreement which, having been served with a notice to remedy the breach within a reasonable time the occupier has failed to do so, and where the Tribunal considers it reasonable for the agreement to be terminated.

The Agreement

11. The Respondents occupy the pitch under an Agreement dated 1 March 1983, assigned to them on 19 May 2015 [74].

The Hearing

12. The application was listed for final hearing on 12 June 2024 at Ashford Tribunals, Ashford, Kent, TN23 1YB. Mr Blake, on behalf of the Applicant, attended. Neither Respondent attended. The hearing was recorded.

The Inspection

13. The inspection, which preceded the hearing was attended by Mr Blake and Mrs Law (Park Manager), and both Mr and Mrs Wilson.
14. At the inspection the Tribunal were shown two timber fencing panels, each in excess of 1 metre in height, erected on the separation boundary between numbers 209 and 210 Damson Drive.

Alleged Breach

15. In support of the application, the Applicant submitted a statement from David Blake, their Operation Manager setting out the matters complained of. Mr Blake repeated these matters in oral submissions at the hearing. The alleged breaches are as follows:
 - i. Rule 2 of the Park Rules which state as follows –
You must not erect fences or other means of enclosure unless you have obtained our approval (which will not be unreasonably withheld or delayed). You must position the fences and any other means of enclosure as to comply with the park's site licence conditions and fire safety requirements and to a maximum of 1m in height. Park boundary hedges and or fences must not be interfered with and no unauthorised entrances to the park are permitted.
 - ii. In accordance with the Written Statement under the Mobile Homes Act 1983 being Part IV of the Express Terms of the Agreement and in particular the following points:

3(g) Not without the written consent of the owner to carry out any building works or erect any porches, sheds, garages, outbuildings, fences, or other structures on the pitch.

3(h) Not to do or cause to be done anything upon any part of the park which would constitute a breach of any of the conditions of any Site Licence applicable from time to time to the park and to comply with any enactments orders regulations and bye-laws which relate to the park the pitch or the Mobile Home whether national local or any other competent authority and

3(j) To comply with the park rules from time to time in force a copy of the current park rules being annexed hereto ...

iii. Whether the Respondents are in additional breach of the Site Licence as issued by Medway Council under the section of 'Density, Spacing and Parking Between Caravans', section (f) Fences and hedges, where allowed and forming the boundary between adjacent caravans, should be a maximum of 1 metre high. Any existing hedges or fences that contravene this clause should have been reduced to no more than 1 metre in height by 31st May 2011.

16. The Applicant states that the Respondents submitted a Park Home Refurbishment Form (PHRF) on 23 March 2022 seeking permission for 1.8 metre fence panels to be erected on the boundary line of their pitch. The form included a sketch of the home and indicated, on the eastern boundary, the location of the fence panels for which permission was sought. Permission was granted by the Applicant on 28 March 2022 and provided a twelve-month window within which the work was to be completed.
17. The Applicant states that in addition to the works for which permission was granted, the Respondents also erected timber panel fencing in excess of 1 metre in height along the western boundary of the pitch between the separation distance of their home and the home of 201 Damson Drive. The Applicant asserts that permission for this additional fencing had neither been sought by the Respondents nor granted by the Applicant.
18. The Applicant wrote to the Respondents on 22 March 2023 in relation to the unauthorised addition and carried out a pitch inspection on 6 April 2023 during which the fencing panels were measured to be a height of 1.8 metres. Photographs dated 21 March 2023 were included in the bundle. [32-36]
19. On 12 April 2023 the Applicant wrote to the Respondent advising that the additional fencing between the separation distance of the two homes was not in accordance with the park rules of the site licence. The Respondents were directed to remedy the matter within 21 days but failed to comply.
20. Written and verbal communication between the parties continued for some months during which the Respondents, due to ill health, requested additional time to reduce the height of the fence. Extensions of time were repeatedly provided by the Applicant. The Respondents also appeared to

attempt to rely on a postscript note added to the bottom of the PHRF form stating *“PS. May I just add, that due to the storm damage, I will be strengthening the front fence panels in due course and will where necessary renew where it is wanted”*.

21. The Applicant refutes the Respondents right to rely on the postscript note to the PHRF form stating that such wording related to a number of “front fence panels” as opposed to those now in contention. The Applicant states there to be no basis upon which the Respondents can rely on the PHRF to suggest permission was granted.
22. Having exhausted all routes of communication and failing to progress the matter the Applicant, on 24 July 2023, served a Letter Before Action on the Respondents outlining the breach and requesting remedy within 14 days. No response was received and accordingly, on 31 August 2023, the Applicant served a Notice of Breach on the Respondents, followed in due course by an application to the Tribunal.
23. Contrary to Tribunal Directions dated 18 April 2024, the Respondents chose not to submit a statement of case or any witness statement or copies of any other relevant documents upon which they relied. Furthermore, they chose not to attend the hearing.

Determination

24. The Tribunal carefully considered all the submissions and evidence presented both in the bundle and at the hearing. The Tribunal found the site inspection useful in reaching its determination.
25. The Tribunal finds that of the original breach complained of just two timber fence panels now remain in dispute. Mr Blake confirmed that he sought determination on those two panels alone.
26. The Tribunal finds that the two panels in question, located on the western boundary of the separation distance between pitches 209 and 201 Damson Drive, exceed 1 metre in height, a fact orally accepted by the Respondents during the site inspection.
27. The Tribunal finds it irrelevant that one of the two panels is partially obscured by a garden shed. The Tribunal does note that one of the two panels partially overlooks open space but also forms part of the separation distance.
28. Turning next to the PHRF form submitted by the Respondents and the question of whether permission had been granted by the Applicant. The Tribunal finds that the Respondent cannot rely on the PHRF form as evidence of permission by the site owner in this dispute. The form clearly identifies the location of the boundary fencing panels to be replaced and fails to include the panels that are the subject of this application. The use of a postscript, referring to ‘front’ fence panels, which these are not, fails to progress the Respondent’s case. There was clearly no indication on the form that the Respondent intended replacing fence panels between the separation distance and the Tribunal accepts the Applicant’s position that

had the form indicated as such, permission would have been refused.

29. The Tribunal therefore finds that the Respondents did not have permission to replace two fencing panels on the western boundary with panels exceeding 1 metre in height.
30. Having carefully considered the Applicant's submissions and evidence, the Respondent's admission that the fence panels in question exceed 1 metre in height and their lack of any participation (other than the inspection) in this hearing, and having inspected the pitch, the Tribunal finds that all of the breaches alleged above are made out.
31. The Tribunal has the power, pursuant to section 231A(4)(c) of the Housing Act 2004 to give directions requiring the cleaning, repairs, restoration or other works to be carried out in connection with a mobile home, pitch or protected site.
32. Accordingly, the Tribunal directs that the height of the two fence panels located on the separation distance between Numbers 209 and 210 Damson Drive are to be reduced to 1 metre, or less, in height within 35 days 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 to the First-tier Tribunal at the Regional office which has been dealing with the case.
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.
4. 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.