



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

Case reference : CHI/00LC/PHC/2023/0007

Property : 120 Larch Crescent, Hoo Marina Park,
Vicarage Lane, Hoo, Rochester, Kent,
ME3 9TF

Applicant : Berkeley Leisure Group Limited

Representative : David Blake
Operations Manager

Respondent : Susan Smith

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
Mr C Davies FRICS
Mr D Ashby FRICS

**Date of Hearing
and venue** : 15 May 2024
Hoo Marina Park Site Office, Hoo, ME3 9TF

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 Respondent is the occupier of 120 Larch Crescent, Hoo Marina Park, ME3 9TF (“the pitch”).
2. By way of an application dated 27 June 2023 the Applicant seeks a determination as to whether the Respondent is in breach of the terms of her Mobile Homes Act Written Statement and the Park Rules, as a result of the erection of a fence, said to have been constructed without the written consent of the site owner.
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 106 pages comprising copies of a Written Statement dated 14 October 1993 and Assignment of the same in favour of the Respondent dated 5 September 2013; 2014 Hoo Marina Park Rules; Park Home Refurbishment Form dated 22 July 2022 (PHRF); Letter before Action dated 17 April 2023; Notice of Breach dated 15 May 2023; Site Licence dated 6 June 2022; Park Home Fact Sheet; Applicant’s Statement of Case; and various correspondence between the parties.
5. References in this determination to page numbers in the bundle are indicated as [].
6. 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

7. 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.
8. 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.
9. 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.

10. 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.
11. 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

12. The Respondent occupies the pitch under an Agreement dated 14 October 1993, assigned to Mrs Smith on 5 September 2013 [22].

The Hearing

13. The application was listed for final hearing on 15 May 2024 at Ashford Tribunals, Ashford, Kent, TN23 1YB. In the event, Mrs Smith explained at the inspection that due to poor health and a lack of transport she was unable to attend Ashford. In accordance with the Tribunal's overriding objective to conduct matters fairly and justly, and with the agreement of both parties, the hearing was conducted onsite from within the Hoo Marina Park site office.

The Inspection

14. The inspection, which preceded the hearing, was attended by Mr Blake and Mrs Law (Park Manager) on behalf of the Applicant, and by the Respondent, Mrs Smith.
15. At the inspection the Tribunal were shown a fence structure erected on the separation boundary between number 120 and 121 Larch Crescent, which comprised a number of individual timber pallets, each with one side removed and held in place by a number of timber struts.

Alleged Breach

16. 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(j) To comply with the Park Rules from time to time in force a copy of the current Park Rules being annexed hereto as the Third Schedule.

17. The Applicant states that they first became aware of the alleged breach during a general site inspection in July 2022, when it was observed that, without seeking the site owner's prior consent, the Respondent had erected a new fence within the separation distance of her home and that of 121 Larch Crescent, constructed from pallets.
18. The Respondent subsequently, on 22 July 2022, submitted a Park Home Refurbishment Form (PHRF) seeking permission for the fence which included a rough sketch. Permission was granted by the Applicant on the 25 July 2022 on the condition that the fence was not constructed of pallets, a form of build not considered appropriate by the Respondent, and that the fence should not exceed 1 metre in height. A twelve-month window was provided for the works to be completed.
19. The Respondent failed to remove the newly erected fence, arguing that the pallets had been reconfigured by the removal of one side and, accordingly, that the materials should be classified as re-purposed timber. The Applicant disagreed and wrote to the Respondent as such, reminding her that the permission granted specifically excluded the use of pallets as a fencing material.
20. Written and verbal communication between the parties continued for several months but the matter remained unresolved.
21. Having exhausted communication and failing to progress the matter the Applicant, on 17 April 2023, served a Letter Before Action on the Respondent outlining the breach and requesting remedy within 14 days. No response was received and accordingly, on 15 May 2023, the Applicant served a Notice of Breach on the Respondent, followed in due course by an application to the Tribunal.
22. Contrary to Tribunal Directions dated 9 February 2024, the Respondent chose not to submit a statement of case or any witness statement or copies of any other relevant documents upon which she relied. However, in pursuit of the overriding objective of the Tribunal, Mrs Smith was

permitted to make oral submissions at the hearing.

23. In her oral submissions, the Respondent accepted that the fence was erected without the Applicant's permission and that when retrospective permission was granted it was on the condition that any such structure was not built of pallets.
24. The Respondent explained that having struggled to meet the cost of traditional fencing materials and having encountered a reluctance on the part of her neighbour to contribute to the project, she had no option but to utilise pallets which had been provided to her at no cost. Mrs Smith argued that having reconfigured each pallet, they could no longer be used for their original purpose and, therefore, should be approved as repurposed timber.
25. The Respondent accepted that the fence contravened the Park Rules but argued that various rules were routinely broken by other residents and that the Applicant was simply raising a petty objection.

Determination

26. 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.
27. The Tribunal finds that the fence complained of comprises a number of free standing and unsecured pallets, inadequately supported by timber struts.
28. The Tribunal noted the height of the fence, in part, to be marginally above 1 metre. However, the Applicant chose not to pursue this point and the Tribunal therefore makes no finding in such regard.
29. Turning next to the PHRF form submitted by the Respondent. The Tribunal finds that permission was granted for a fence not exceeding 1 metre in height and which was not to be constructed of pallets. The Tribunal finds, however, that the structure erected by the Respondent was built of timber pallets. The Tribunal finds it irrelevant that the pallets have been reconfigured as they remain as intended, albeit with less structure and integrity than originally constructed.
30. The Tribunal therefore finds that the Respondent did not have permission to erect the pallet fence as inspected by the Tribunal on 15 May 2024.
31. Accordingly, the Tribunal finds that all of the breaches alleged above are made out.
32. 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.

33. Accordingly, the Tribunal directs that the fence on the separation distance between Numbers 120 and 121 Larch Crescent is to be removed within 28 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.