



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

Case reference : **CAM/22UN/PHC/2023/0008**

Site : **Sacketts Grove Residential Park, Jaywick Lane,
Clacton-on-Sea, Essex CO16 7JB**

Park home address : **12A The Spinney**

Applicant : **Mr Dennis Wood**

Respondent : **Tingdene Parks Limited**

Type of application : **Mobile Homes Act 1983, Section 4– Determination of
a Question arising under the Act or agreement to
which it applies**

Tribunal members : **Judge K. Saward** **Mr G.F.**
Smith MRICS FAAV

Date of decision : **16 April 2024**

DECISION AND REASONS

Description of hearing

This has been a determination on the papers. A face-to-face hearing was not held because all issues could be determined on paper and no hearing was requested. The Decisions made are described below.

Decisions of the Tribunal

For the reasons that follow, the Tribunal determines that:

- (1) The Respondent has not refused to allow test pits to be dug. It has requested details reasonably required before permission is considered or given.
- (2) It finds no breach by the Respondent of the implied terms of the written statement with regard to the Applicant's request in (1) above.
- (3) No order of the Tribunal is made to allow four test pits to be dug to allow samples and assessment of the sub-strata and concrete of the Applicant's park home base.

REASONS

The application and background

1. The Applicant is the owner of the park home sited at 12A The Spinney located at Sacketts Grove Residential Park, a protected site within the meaning of the Mobile Homes Act 1983 ('the Act').
2. The Applicant's right to station their park homes on the pitch is governed by the terms of a written statement (i.e., an agreement) and the implied terms of the Act. The relevant pitch agreement is dated 30 November 1999 made between T.S.T (Parks) Limited and a former occupier. The agreement was assigned to the Applicant on 22 January 2010. The Respondent acquired the park in 2014 and is the current owner.
3. One of the implied terms is that the owner shall be responsible for repairing the base on which the mobile home is stationed (paragraph 22(c) of Chapter 2 of Schedule 1 of the Act).
4. The Applicant applies under section 4 of the Act for the determination of a question arising under an agreement to which the Act applies in relation to matters concerning the concrete base on which the park home sits. The application is dated 12 July 2023.
5. It follows a similar application made by Mr and Mrs Wood to the Tribunal which was determined on 8 August 2022. In the first application, the Applicants claimed their property was being damaged through the failed concrete base of their park home, for which the Respondent is responsible. At that time, the Tribunal was asked whether the Respondent was in breach of its implied duty to maintain the concrete base. They also sought findings on the Respondent's liability for associated works and damage. The Respondent had accepted responsibility for repairing the base but disputed whether the concrete base required replacement.
6. Having been presented with Surveyors' reports on the condition of the base, the Tribunal found there to be insufficient evidence to conclude that the Respondent was in breach of the implied term in paragraph 22(c). More information was required through ongoing monitoring, as recommended by SEA Structural Engineers

Limited ('SEA') in its report of 4 September 2021. The Tribunal determined that the Respondent should commence monitoring of the concrete base of the park home by a suitably qualified and experienced person/s with appropriate expertise as directed and detailed in the Decision.

7. Following the issue of the Tribunal's Decision, Mr and Mrs Wood requested an additional requirement that the Respondent should provide unabridged copies of all survey reports pertaining to their park home. The Respondent raised no objection to such an addition, which was included in an amended Decision dated 14 September 2022. It included a Direction that the reports secured pursuant to the Tribunal's Decision be copied to Mr and Mrs Wood within 14 days of receipt and before any works were undertaken.
8. A subsequent application by Mr and Mrs Wood for an extension of time to make an application to appeal (having apparently discovered a lack of hardcore beneath the base) was refused by the Tribunal on 14 October 2022. Since then, monitoring of the concrete base has been undertaken by SEA, as commissioned by the Respondent.
9. The latest application claims that the Respondent is acting unreasonably by failing to reply to a request for permission to dig test pits for a survey he wishes to commission. It is submitted that the Respondent is "de-facto refusing the request". By refusing the request, the Applicant believes the Respondent is preventing the occupiers from complying with their obligations of repair and maintenance under the implied terms in paragraph 21 (c) and (d) of the Act.

10. The questions put to the Tribunal in the application form may be summarised as:-

- (1) Is the Respondent refusing to allow test pits to be dug?
 - (2) If so, is the Respondent denying the occupiers the ability to understand the cause of damage to their park home and to protect their property from further damage?
 - (3) Is there a breach of the owner's obligation in paragraph 23 of the implied terms to "not do or cause to be done anything which may adversely affect the ability of the occupier to perform his obligations under paragraph 21(c) and (d)"?
 - (4) Will the Tribunal make an order to allow four test pits to be dug to allow samples and assessment of the sub-strata and concrete to be taken by an "experienced expert witness"?
11. If an order is made, the Applicant undertakes to provide the Respondent with a copy of all survey reports within 4 calendar weeks of receipt and endeavour to reach an amicable resolution to the situation based on that report.
 12. To address the four questions posed above, it has not been necessary for the Tribunal to conduct a site inspection in view of the documentary material provided.
 13. The Applicant's statement of case seeks further orders to require the Respondent to (i) replace the whole base; (ii) to seek and follow expert advice for the protection

and preservation of the two lime trees within the pitch, and (iii) to ensure the works are undertaken to appropriate standards. These requests are beyond the scope of the original application. Moreover, they depend upon the outcome of a report yet to be obtained and which the Tribunal will not have seen. For those reasons alone, no such further orders will be considered.

Documents before the Tribunal

14. The Tribunal issued Directions in this case on 12 December 2023 requiring both parties to submit a bundle of relevant documents to the Tribunal and other party. The bundles were required to include any reports or investigations in respect of the state of repair of the base of the park home since the Tribunal's previous decision.
15. The Respondent's bundle runs to 112 pages. The Applicant's bundle is 150 pages, plus a copy of the document titled '*Model Standards 2008 for Caravan Sites in England, Caravan Sites and Control of Development Act 1960 – Section 5*', published by the Department for Communities and Local Government in April 2008. In addition, the Applicant submitted a 9-page response to the Respondent's case along with appendices. These include documents said to be missing from the Respondent's bundle, being an email from SEA on 25 March 2022 with corrected Appendix B of its report dated 4 September 2021.
16. It is noted that the Applicant also appended a report from SEA of 17 November 2022 along with photographs and details of the park home roof and flue. All concern water ingress. The main bundle also contains copies of pitch fee review forms. The Tribunal is unsure of the relevance of these documents to the questions concerning the park home base.

The Law

17. Primarily, the law is contained within the Mobile Homes Act 1983. Under section 4, a Tribunal has jurisdiction to determine any question arising under the Act or any agreement to which it applies. The relevant law is set out below:

The Mobile Homes Act 1983, as amended:

Section 2(1): In any agreement to which this Act applies there shall be implied the terms set out in Part 1 Schedule 1 to this Act; and this subsection shall have effect notwithstanding any express term of the agreement.

Section 4: (1) In relation to a protected site in England, 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.

18. These powers 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 relevant, section 231A, Housing Act 2004 provides as follows:

Housing Act 2004

Section 231A: Additional powers of the 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]

(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 –

(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;

Implied terms – Chapter 2 of Part 1 of Schedule 1 to Mobile Homes Act 1983

11. The occupier shall be entitled to quiet enjoyment of the mobile home together with the pitch during the continuance of the agreement, subject to paragraphs 10, 12, 13 and 14.

Occupier's obligations

21. The occupier shall—

(c) keep the mobile home in a sound state of repair;

(d) maintain—
the outside of the mobile home, and
including all fences, and outbuildings belonging to, or enjoyed with, it and the mobile home,

in a clean and tidy condition;

Owner's obligations

22. The owner shall—

(d) maintain in a clean and tidy condition those parts of the protected site, including access ways, site boundary fences and trees, which are not the responsibility of any occupier of a mobile home stationed on the protected site;

23. The owner shall not do or cause to be done anything which may adversely affect the ability of the occupier to perform his obligations under paragraph 21(c) and (d) above.

Applicant's case

19. The Applicant states that Mr Webb of SEA has now undertaken four surveys in total all proving ongoing and continuous movement of the base. The last two surveys were undertaken in pursuance of the Tribunal's Decision of 14 September 2022. The survey undertaken on 27 April 2023 found the home to be out of level again around 2 weeks after the Respondent's contractors stated they had carried out home levelling work and provided photographic evidence. No prior notification was given to the Applicant that contractors had been instructed.
20. The Applicant says that on three separate occasions the occupiers were unable to find any hardcore beneath the base whilst gardening in different areas. The Applicant believes this is new evidence, which the Respondent has not investigated. On each occasion, the Applicant alerted the Respondent's Solicitors and Mr Webb.
21. The Applicant now wishes to instruct his own Surveyor to establish what is happening to the base and the remedy required. Having made contact with a suitably experienced "Expert Witness Surveyor", the surveyor requires permission from the Respondent to have four test pits dug. This is in order that a soil and tree root sample can be taken, any sub-strata assessed along with composition of the concrete base.
22. The Applicant wrote to the Respondent on 14 June 2023 by recorded delivery post and again on 22 June 2023, but "received no reply."
23. The Applicant considers that there has been a complete disregard of the Tribunal's Decision. It is stated that damage is continuing to occur to the park home as recorded by two insurance loss adjusters and the Respondent's own expert.

Respondent's case

24. The Respondent denies any breach of the implied terms.
25. It says that the first post-decision survey was scheduled for 7 October 2023 and then re-arranged to 13 October 2022. As Mr Webb was unwell, and the Applicant questioned the suitability of his intended replacement, the survey was postponed until 10 November 2022. In the meantime, the Applicant asserted that there is no hardcore beneath the base. The Respondent made it clear that it would not extend the remit of the survey to address this new point because the Respondent was satisfied from the previous reports that the base was doing its job.
26. The SEA report was issued on 17 November 2022. It concluded and recommended that: *'The levels across the floor of the home are similar to those previously recorded. There is a continued trend of the home having a slight fall towards the patio area local to the front entrance door. At this time, we recommend the home be levelled.'*

When the home is levelled the operatives shall take dated photographic records confirming the level has been achieved.'

27. The Respondent says it wrote to Mr and Mrs Wood to advise that the recommended levelling work would be undertaken on 20 January 2023. However, the contractor only took spirit level photographs without doing the works, which were subsequently undertaken by a different contractor on 7 March 2023.
28. The fourth SEA report of 27 April 2023 concluded: *'The levels across the floor of the home are similar to those previously recorded as are the levels to the insitu concrete base slab corners. There is a continued trend of the home having a slight fall towards the patio area local to the front entrance door. At this time, we recommend the home be levelled. When the home is levelled the operatives shall take dated photographic records confirming the level has been achieved.'* The report recommended further readings be taken in another 6 months, at which point there would be readings over autumn, spring and towards the end of summer. At that point, if the readings remained similar to those previously recorded, then the monitoring could be stopped.
29. Mr and Mrs Wood were emailed on 4 December 2023 to inform them the contractor would visit on 18 December 2023 i.e., for the levelling work. The Respondent believes that it has done more than was required in the recommendation of SEA in the April 2023 report with the second contractor undertaking periodic monitoring as well as levelling work. The fifth report is due but not yet commissioned as the Respondent fears the Applicant will not accept its findings.
30. A copy of the Respondent's email to the Applicant on 12 July 2023 is provided in response to the request to permit four test pits to be dug. The response referred to the SEA reports confirming the base is doing its job and stated: *"Consequently, the company is not willing at this stage to grant the permission you seek. However, if you provide us with full details of the expert you wish to instruct (name, address, qualifications and CV) and a summary (prepared and signed by the expert) of precisely what is intended, the company will give your request further consideration."*
31. Attention is drawn to the Applicant not having produced any evidence that the concrete base is damaged or is likely to suffer damage in future. The park home was manufactured in 1998. To the Respondent's knowledge, the base has never been replaced and is at least 26 years old, possibly much older. It emphasises that the Respondent's obligations is to repair not replace the base. No evidence of damage caused by a damaged base has been provided.

Determination

32. The Tribunal observes that much of what is said by both sides describes events since the previous application. Whilst helpful background, and illustrating the extent of

discord, the questions being put are limited to those summarised at the start of this Decision. We focus on those questions.

33. The first question is whether the Respondent has refused to allow test pits to be dug. Mr and Mrs Wood had written to the Respondent on 14 June 2023 requesting permission to allow an un-named surveyor to dig four test pits alongside the concrete base to assess (a) the concrete construction (b) the substrata of the concrete (c) the soil type, and (d) the tree roots. A copy of the letter was re-sent on 22 June 2023 and email sent on 3 July 2023. There was a delay, but the Respondent did reply by email on 12 July 2023. The reply did not refuse permission altogether but requested full details of the expert to be instructed and summary (prepared and signed by the expert) of what was intended whereupon "*the company will give your request further consideration*".
34. There is no evidence those details were provided. The requested details were not unreasonable. It would be normal practice to expect, as a minimum, details of the surveyor, their qualifications and experience with copy CV. Given the suggestion of an intrusive survey by way of digging test pits, it would be reasonable to have precise particulars of the works to be undertaken and reinstatement. Indeed, full details of the surveyor's professional indemnity insurance would also be standard.
35. The Tribunal finds that the Respondent has not refused to allow test pits to be dug. It follows that the Respondent has not denied the occupiers the ability to understand the cause of damage to their park home and to protect their property from further damage. Nor has the Respondent breached the owner's obligation in paragraph 23 of the implied terms to not do or cause to be done anything which may adversely affect the ability of the occupier to perform his obligations under paragraph 21(c) and (d).
36. Before the Tribunal would consider making an order to permit the digging of test pits it would not only expect full details of the surveyor as already outlined, but the measures proposed and what is expected to be achieved. This should follow the submission of all the requested details to the Respondent with reasonable opportunity to respond. In the interests of dispute resolution, permission for the test pits should not be unreasonably withheld, and co-operation is urged by both parties. No order of the Tribunal is made at this time, and it is anticipated that an order should not be required if the parties reflect and co-operate.
37. Going forward, it is flagged that if a surveyor's report is to be of value to any future application before the Tribunal, it would need to address the crux of the dispute over the base. In the simplest terms, in the professional opinion of the suitably qualified and experienced person, is the base defective, and if so, how, why, and what remedy is needed? It will serve no real purpose to learn that the base does not adhere to current construction methods that were not in place at the time of construction.

38. The Applicant refers to both securing his “own” report and an “expert witness”. The Tribunal recognises that SEA is the Respondent’s appointed specialist, and the Applicant may feel that he wishes to obtain another opinion at his own cost from a specialist he has appointed. However, the Tribunal wishes to avoid any confusion or misunderstanding in terms of expert reports, particularly as reference is made to Part 35 of the Civil Procedure Rules. These apply in civil litigation. The provision of expert evidence before the Tribunal is governed by Rule 19 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. Rule 19(1) makes clear that the duty of an expert is to help the Tribunal on matters within the expert’s expertise and this duty overrides any obligation to the person from whom the expert has received instructions or by whom the expert is paid.
39. By Rule 19(2) expert evidence cannot be adduced without the permission of the Tribunal. There is a list of requirements for the content of an expert report set out within Rule 19(5). It includes an acknowledgement that the expert understands their duty is to the Tribunal. Thus, an expert report is not the same as someone commissioning their ‘own’ evidence.
40. The Tribunal gives a cautionary note that if the Applicant’s insurers say that damage is not above the financial threshold required for a claim then a Tribunal compliant expert report may often exceed the sums in dispute.

Name: Judge K Saward

Date: 16 April 2024

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).