



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

Case reference : **BIR/17UF/PHC/2024/0004**

Subject property : **12 Poplars Mobile Home Park
Stubby Lane
Draycott-in-the-Clay
Ashbourne
Derbyshire
DE6 5BU**

Applicants : **(1) Christopher Hollingworth
(2) Jean Moses**

Respondent : **Development Park Homes Limited**

Type of application : **Application under section 4(1)(a)
of the Mobile Homes Act 1983**

Tribunal members : **Deputy Regional Judge N Gravells
Mr N Wint FRICS**

Date of decision : **14 October 2024**

DECISION

Introduction

- 1 This is the decision of the First-tier Tribunal on an application under section 4(1)(a) of the Mobile Homes Act 1983 ('the 1983 Act').
- 2 Section 4(1)(a) of the 1983 Act provides (so far as relevant) –
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
....
- 3 The Applicants, the occupiers of the subject property, have requested the Tribunal to determine the liability of the Respondent to take appropriate measures in respect of the site boundary fence on the subject property.

Factual background

- 4 The Poplars Mobile Home Park ('the site') is a protected site within the meaning of the 1983 Act. It is located on the edge of Draycott in the Clay in Derbyshire. It currently comprises 17 pitches. It has been owned and operated by Development Park Homes Ltd since December 2023. At all material times prior to that date the site was owned by Morgan Peto.
- 5 Christopher Hollingworth and Jean Moses ('the Applicants') are the occupiers of pitch 12 on the site ('the subject property'). The subject property is located in the south-west corner of the site and abuts the boundaries of the site at the southern end of the western boundary and the western end of the southern boundary. The land beyond the boundaries is farmland owned by a Mr Cawser.
- 6 In fact, Ms Moses originally occupied the subject property alone but in April 2022 Mr Hollingworth moved in and he and Ms Moses became joint occupiers. They signed a new Written Statement in their joint names dated 1 April 2022.

Inspection

- 7 Although the parties indicated that they would be content with a paper determination, the Tribunal arranged to inspect the subject property on 8 October 2024. Present at the inspection were the Applicants and Dean Vellam, representing the Respondent.
- 8 The Tribunal carried out an inspection of the boundaries of the subject property identified above (paragraph 5).
- 9 There is an original timber post and wire fence but this is in a poor state of repair. Mr Hollingworth has, as a result, patch-repaired certain sections of the fence where there were gaps - to secure the boundary and prevent the Applicants' dog from escaping on to the adjoining farmland. Finally, there is a haphazard and incomplete line of bushes on the farmland side of the timber post and wire fence. In the view of the Tribunal, it is impossible to agree with Mr Vellam's description of the bushes as a 'mature hedgerow'.
- 10 The Tribunal finds that the original timber post and wire fence is 'the site boundary fence' for the purposes of the present decision.

Relevant law

- 11 It is not disputed that the 1983 Act applies to the agreement between the parties and that section 2 of, and Chapter 2 of Part 1 of Schedule 1 to, the 1983 Act implies various terms.
- 12 Section 2(1) of the 1983 Act provides –

In any agreement to which this Act applies there shall be implied the applicable terms set out in Part I of Schedule 1 to this Act; and this subsection shall have effect notwithstanding any express term of the agreement.
- 13 For the purposes of the present decision, the relevant terms are paragraphs 21 and 22 of Chapter 2 of Part 1 of Schedule 1 to the 1983 Act.
- 14 Paragraph 21 provides (so far as relevant) –

The occupier shall—

 - (d) maintain –
 - (ii) the pitch, including all fences and outbuildings belonging to, or enjoyed with, it and the mobile home,

in a clean and tidy condition ...
- 15 Paragraph 22 provides (so far as relevant) –

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 ...

Representations of the parties

- 16 Mr Vellam, on behalf of the Respondent, argues that paragraph 21 takes precedence over paragraph 22 because the site boundary fence forms part of the pitch comprising the subject property and therefore falls within the occupier's responsibility to maintain the pitch and fences that belong to or are enjoyed with the pitch. Conversely, paragraph 22 only places an obligation on the site owner to maintain the site boundaries *which are not the responsibility of any occupier of a mobile home*.
- 17 In the alternative, and without prejudice to the above argument, Mr Vellam submits that the current boundary fence/hedge is entirely fit for purpose. He relies on the conclusions of a survey carried out by George Finney of Midland Paving.
- 18 Mr Vellam also states –
 - (a) that the fencing/hedging on the subject property had not been maintained by the previous owner of the site;
 - (b) that the Respondent has not done anything that would cause or would be likely to cause the boundary fencing/hedging to fall into disrepair;
 - (c) that the Respondent has not maintained, repaired or replaced boundary fences on the pitches of other occupiers;
 - (d) that he knows of no other complaints about boundary fencing on the site.

- 19 Mr Hollingworth, on behalf of the Applicants, states that paragraph 5 of Part 2 of the Written Statement dated 1 April 2022 includes an aerial photograph of the subject property, annotated by the then owner of the site and showing that the site owner has responsibility for the boundary fences of the subject property.
- 20 Mr Hollingworth makes no submissions in relation to paragraphs 21 and 22 of Chapter 2 of Part 1 of Schedule 1 to the 1983 Act.
- 21 Mr Hollingworth questions the relevance of the matters set out in paragraph 18 above.

Discussion

- 22 The Tribunal determines that the principal issue is the relationship between paragraphs 21 and 22 of Chapter 2 of Part 1 of Schedule 1 to the 1983 Act.
- 23 Before analysing those paragraphs, it is important to emphasize the finding of the Tribunal, based on its inspection of the subject property, that the site boundary fence is the original timber post and wire fence on the two sides of the subject property adjoining the neighbouring farmland. The bushes do not constitute the boundary either alone or in conjunction with the timber post and wire fence.
- 24 In the view of the Tribunal, when considering the effect of paragraphs 21 and 22, those paragraphs only make sense if a clear distinction is made between fences and site boundary fences. Paragraph 21 refers to fences; paragraph 22 refers to site boundary fences. On the one hand, by virtue of paragraph 21 the occupier of a pitch is responsible for the maintenance of all fences on the pitch that are not site boundary fences. On the other hand, paragraph 22 imposes responsibility for site boundary fences on the site owner unless responsibility has been imposed on an occupier of a mobile home on the site. If the distinction is not maintained, the reference to site boundary fences in paragraph 22 would be meaningless since responsibility for all fences (*including site boundary fences*) would always be imposed on occupiers by virtue of paragraph 21.
- 25 It follows that the Tribunal must look outside paragraphs 21 and 22 for any evidence that responsibility for site boundary fences has been imposed on the Applicants.
- 26 In the present case there is no such evidence. On the contrary, the Applicants' Written Statement provides that responsibility for the site boundary fence on the subject property is imposed on the site owner. Although the Respondent raised questions about the 'veracity and/or accuracy' of the annotated aerial photograph incorporated into the Written Statement, the Tribunal is satisfied that there is no basis for disputing the validity of the photograph and its annotation.
- 27 There is no conflict in the present case between the implied terms and the Written Statement (which section 2(1) of the 1983 Act would resolve in favour of the implied terms) because in the absence of evidence that responsibility for the site boundary fence has been shifted from the site owner to the occupier paragraph 22 imposes responsibility for the site boundary fence on the site owner.

- 28 The Tribunal therefore determines that by virtue of paragraph 22 of Chapter 2 of Part 1 of Schedule 1 to the 1983 Act the Respondent is responsible for maintaining the site boundary fences on the subject property at its own expense.
- 29 For the sake of completeness, the Tribunal finds that the matters set out in paragraph 18 above do not impact on that determination.
- 30 The Tribunal further determines, on the basis of its inspection of the subject property, that the site boundary fences are in their current state of disrepair not fit for purpose.
- 31 It remains to be considered whether the Tribunal should leave the Respondent to decide how to respond to the Tribunal's determination or should provide some further direction. Mr Vellam did indicate to the Tribunal during the inspection that, if he were required to replace the site boundary fences, he would do so without consulting with the Applicants and might not necessarily provide a fence that met their expectations or requirements.
- 32 The Tribunal has jurisdiction to provide further direction. Section 231A of the Housing Act 2004 ('the 2004 Act') provides (so far as relevant) –
- (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) The 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.
- ...
- (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;
- ...
- 33 The Tribunal is of the view that it would be appropriate to exercise its power under section 231A of the 2004 Act. The Tribunal therefore directs the Respondent at its own expense –
- (a) to instruct a competent contractor to design and erect new timber post and wire fencing along the site boundaries on the subject property;
- (b) to involve the Applicants in the consultation with the contractor before the specification is agreed and to take account of any reasonable concerns/suggestions that the Applicants raise;
- (c) to clear vegetation on the subject property near to the line of the site boundary so far as necessary to erect the fencing;

- (d) to use best endeavours to complete the works required as soon as practicable.

Appeal

- 34 If a party wishes to appeal this Decision, that appeal is to the Upper Tribunal (Lands Chamber). However, a party wishing to appeal must first make written application for permission to the First-tier Tribunal at the Regional office which has been dealing with the case.
- 35 The application for permission to appeal must be received by the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
- 36 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(s) for not complying with the 28-day time limit. The Tribunal will then consider the reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- 37 The application for permission to appeal must state the grounds of appeal and state the result the party making the application is seeking.

14 October 2024

Professor Nigel Gravells
Deputy Regional Judge