



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

**Case Reference:** BIR/17UK/PHC/2024/0001

**Property:** Westonhill Chalet Park, Bridge Lane, Weston-on-Trent, Derby DE72 2BU

**Applicant:** Mr Dennis Bushell

**Representative:** Mr James Lawrenson

**Respondents:** Mr Michael MA White and Mr Michael T White

**Representative:** Mr David Sunderland

**Type of Application:** An application under section 4 (1)(a) of the Mobile Homes Act 1983 (as amended) for the Tribunal to determine any question arising under this Act or any agreement to which it applies

**Tribunal Members:** Mr N Wint BSc (Hons) FRICS ACI Arb and Judge M K Gandham

**Date of Decision:** 20 January 2025

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**DECISION**

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*I have corrected this decision in accordance with the power under Rule 50(a) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 to show the correct spelling of the Respondent's Representative's name on page 1.*

## **Introduction**

1. The Tribunal received an application under section 4(1)(a) of the Mobile Homes Act 1983 (as amended) ('the Act') on 30 January 2024.
2. The Applicant asked the Tribunal to determine the following questions:
  1. *Who is responsible for the mature trees on the site; and*
  2. *There are a few trees that require urgent action. Who should take this action?*
3. Further to the Tribunal's Directions dated 9 August 2024, Mr Bushell of 23 Westonhill Chalet Park requested that he be substituted as the Applicant in these proceedings and that Mr James Lawrenson be appointed as his representative. The Respondent did not object to the substitution of the Applicant. Accordingly, the Tribunal, under Rule 10 of the 2013 Rules, substituted Mr Bushell as the Applicant in these proceedings.
4. As the parties have not been able to agree on the location of the trees which are the subject matter of this dispute, the Tribunal decided the dispute was not suitable for a paper determination and carried out an inspection of the site on 17 October 2024, in the presence of the Applicant and Respondents, followed by a remote video hearing later on the same day.
5. An issue raised initially regarding whether the occupiers have a properly constituted Qualifying Residents Association was not relevant to this application.
6. In accordance with the Tribunal's further Directions dated 4 September 2024, the parties submitted various documents which the Tribunal has carefully considered in conjunction with their findings from the inspection and hearing.

## **Background**

7. The Respondents are the site owners and operators of Weston Hill Chalet Park ("the Park").
8. The Applicant is an occupier of a mobile home on the Park.
9. The Park extends to approximately 43 homes and covers two sites known as Westonhill and Hidden Valley, the latter being a holiday park only. Westonhill is a protected site as defined by section 1 of the Caravan Sites Act 1968 and has a Residential Caravan Site Licence issued by South Derbyshire District Council.
10. Not all of the occupiers have Written Statements with the Respondents under the Act in respect of their pitches on the Park. It is understood several are occupied under different types of agreements.
11. There are four trees that have been specifically identified as being in dispute. The dispute concerns whether they are located on the occupiers' pitches or on the site owner's land and who is ultimately responsible for their maintenance.

12. The dispute has arisen because some of the occupiers, including the Applicant, consider the trees dangerous and feel they require urgent action to make them safe. The crux of the issue being that the Applicant (along with some of the other occupiers) consider the site owners are responsible for the maintenance of the trees whereas the site owners consider the maintenance falls on the occupiers.
13. The matter appears to have been a contentious issue for a number of years. The Applicant claims that, prior to the Respondents acquiring the site, the previous owners looked after all of the trees on the Park. Furthermore, the Applicant does not consider that his contract requires him to maintain the trees, his responsibility only extending to keeping his pitch and all fences, sheds, outbuildings and gardens in a neat and tidy condition. He is, therefore, of the view that all the mature trees on the Park whether or not they are on an occupier's pitch or on any communal area are the responsibility of the site owners.
14. The Applicant also advises that the Respondents have previously felled some trees on the Park, so must have accepted that they are responsible for their maintenance and refers the Tribunal to a previous First-tier Tribunal decision where it was decided that the Park owner was responsible for trees on an occupier's pitch (CAM/00MF/PHC/013/0011).

## **The Law**

15. The Mobile Homes Act 1983 provides at section 4:

*'In relation to a protected Site in England [or in Wales], 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,*
- (c) subject to subsections (2) to (6).'*

16. The legal framework regarding park home sites is set out in the Act as amended. In essence, it says that people who acquire park homes and put them on a pitch in a registered park home site have the protection of an occupation agreement. The Act sets out very detailed implied terms for each agreement and which cannot be excluded by the Site owner.
17. The Respondent has provided the Tribunal with a standard form of agreement. The Implied Terms set out in Chapter 2, Part 1 of Schedule 1 of the Act apply to all pitches occupied under the Act whether or not they are written down in the contract between the parties. Where there is a conflict between an express and implied term in an agreement, it is the implied term that takes precedence.
18. Under Occupier's Obligations, in para. 21(d)(ii) it provides the occupier shall maintain -  
  
*'the pitch, including all fences and outbuildings belonging to, or enjoyed with, it and the mobile home,  
in a clean and tidy condition;...'*
19. Under Owner's Obligations, in para. 22(d) it provides the owner shall -

*‘maintain in a clean and tidy condition those parts of the protected site, including accessways, site boundary fences and trees, which are not the responsibility of any occupier of a mobile home stationed on the protected site’.*

20. Part 4 clause 2f of the Express Terms of the Agreement (supplied by the Applicant) - provides that the occupier undertakes with the owner -

*“To keep the pitch and all fences, sheds, outbuildings and gardens thereon in a neat and tidy condition ...”.*

21. Part 4 clause 3A of the Express Terms also provides that the owner undertakes with the occupier –

*“To keep and maintain those parts of the park which are not the responsibility of the occupier”.*

22. The Tribunal’s jurisdiction is limited to determining a question arising under the Act or any agreement that may involve it in interpreting the provisions of the Written Statement. Enforcement of any obligations under the Act or Written Statement is a matter for the County Court. Enforcement of the Site Licence Conditions is a matter for the local authority.

### **The Inspection/ Hearing**

23. The Tribunal carried out its inspection of the Park and the location of the various trees in question on 17 October 2024.

24. The trees, identified as A, B, C and D, are individually situated around the Park. Tree A is adjacent to No. 21 and No. 22, Tree B is close to No. 10, Tree C is between No. 10 and No. 11 (part of this tree had been strapped up by one of the residents who had been concerned with its safety) and Trees D are situated between No. 18 and No. 19 (one of the trees had again been strapped up following concerns regarding its safety and some of these trees had recently been cut back and the branches left on the pitch of No. 18).

25. The hearing was conducted immediately after the inspection via remote video. The Tribunal heard from both parties, Mr Lawrenson for the Applicant and Mr Sunderland for the Respondents.

### **The Submissions**

#### **Applicant**

26. In summary, the Applicant’s position is that the Respondents are responsible for the maintenance of the ‘mature’ trees on the Park (the Applicant provided an extract from Woodland Trust defining a ‘mature’ tree). The Applicant contends there is nothing in their agreements that make them responsible for their upkeep and given Mr White has previously carried out some felling of trees on the Park and the fact that previous owners undertook to carry out this work, led the Applicant to believe the responsibility must rest with the Respondents.

27. As the Applicant now considers the Trees are unsafe, needing urgent attention, he required the Respondents to undertake and pay for the trees to be made safe and for the work to be carried out immediately.

28. Mr Lawrenson advised that most of the trees were planted on the Park before the residents took up occupation of their homes and submitted that occupiers should only be responsible for the upkeep of their pitches.
29. Mr Lawrenson acknowledges that Tree A sits between No. 21 and No. 22 and is not on communal land and that Tree B is on No. 10 and believes that Tree C is on communal land and Trees D are either on No. 18 or No 19 or both as it was difficult to establish exactly the line of the boundary between the two pitches as the trees had grown and matured, although there was some evidence of an old metal wire fence running along the line of the trees forming the original boundary between the two sites.

## **The Respondents**

30. In summary, the Respondents' position is that the occupiers are responsible for the trees located on their pitches and only those on communal land are the responsibility of the Respondents.
31. In support of this, Mr Sunderland referred the Tribunal to the Implied Terms of the resident's agreements and in particular para. 21(d)(ii) and para. 22(d) which he submitted effectively state that occupiers are responsible for any trees on their pitch and owners are responsible for any trees not on their pitches, in essence anywhere else on the Park. He also referred the Tribunal to a decision by the First-tier Tribunal in which he stated the occupier of a pitch was found to be responsible for the maintenance of a tree located on their pitch (CAM/22UL/PHC/2023/0002).
32. Mr Sunderland stated that, in his view, Tree A sits on No. 21 but as this pitch is not subject to the Mobile Homes Act (MHA) it is not under the jurisdiction of the Tribunal in any event. However, if the Tribunal found that the tree sat on No.22, Mr Sunderland advised it would be the responsibility of the occupier who is subject to an MHA and not the Respondent.
33. Mr Sunderland advised the Tribunal that he had been advised that Tree B had been planted by the occupier of No.10 and, from his inspection, was of the view it was clearly on the pitch of the occupier.
34. Although Mr Sunderland initially accepted in written submissions that Tree C was on communal land, on reflection he considered that it is in fact on No 10 as it is adjacent to the roadway and it would be unusual for it to be considered communal land. In addition, he advised the Tribunal that there was no evidence this tree was causing any safety issues or a problem.
35. As regard Trees D, Mr Sunderland advised the Tribunal that these were cut back by the council sometime ago and not 1 to 3 months ago as suggested by the Applicant. The council had issued a notice in April 2024 against the site owner and occupier of No. 19 which required the tree to be cut back and, if it wasn't, would undertake the work themselves and charge the appropriate person or person's. Mr Sunderland advised that the council were of the opinion that the trees' responsibility was with the occupier of No. 19 but did accept that it appeared some of the trees appeared to sit on the site of No. 18.
36. Mr Sunderland concluded by advising that the Respondents would accept responsibility for any trees on communal land and that any Implied Terms must take precedence over any Express Terms where a conflict may exist.

## Decision

37. The Tribunal has carefully considered all the written evidence submitted both in document form and the parties evidence adduced at the hearing, as well as its findings from its inspection. The parties should note that the decision is based on the limited evidence provided to it and the terms of the Implied and Express Terms, as set out above, being applicable to all of the pitches. (There was a query regarding the status of pitch 21, however, the Tribunal was not provided with any corroborating evidence as to the legal status of the agreement for the same).
38. The mobile home agreements for the Park did not include plans and, therefore, the Tribunal has, based on its inspection of the Property and taking into account the evidence of the parties, made the following findings of fact upon the location of the trees.
39. The Tribunal finds that Tree A (a mature oak tree) is situated along the boundary of No. 21 and No. 22 and adjoining the access road, it is not located on communal land; Tree B (a mature pine tree) lies adjacent to and in part overhanging the mobile home at No. 10 and is situated within pitch No. 10; Tree C lies on communal land – its neighbours the boundary of No. 10 and No. 11, adjoining the driveways to Nos. 14, 15, 11, 12 and 13 and lies in close proximity to an electric box which controls the sewerage in that part of the Park; and Tree D (which in fact is several trees) are situated somewhere along the boundary between pitches No. 18 and No. 19.
40. The Applicant considers that the trees in question pose a safety risk on the residents of the park homes they were adjoining and that the Respondents should be made responsible for their maintenance and upkeep.
41. The Applicant also sought to extend the question as to who was effectively responsible for all the mature trees on the Park. The Tribunal has only considered the questions in relation to the 4 trees sites in question but hopes this decision may be of some guidance in respect of other trees on the Park.
42. The Tribunal is satisfied that the Implied Terms which are to be read in conjunction with the Express Terms require an occupier to be responsible for maintaining their pitch and consequently any trees on their pitch, in a 'clean and tidy condition' and 'neat and tidy'. The site owner is responsible for trees not located on particular pitches so the Respondents are responsible for those trees situated on any communal parts of the Park.
43. The occupiers' responsibility to maintain or keep their pitches clean, tidy and neat extends to their whole pitch, including any trees, mature or otherwise, on the same. As such, the responsibility for any 'mature' trees is the same as the responsibility for any of the other trees. This depends, firstly, on where the tree lies and, secondly, on what work is required to the same – whether it is simply maintenance or something more substantial.
44. The Tribunal does consider that that there is an important caveat to this, in that any tree which has been planted by an occupier belongs to that occupier and remains that occupiers' responsibility whilst they are in occupation. The owner can, and probably should, to avoid future problems, therefore insist on any such tree being maintained in a clean, tidy and neat condition as stated above.
45. As to the ownership of the trees in relation to this application, as none of them lie on the Applicant's pitch, there was insufficient evidence before the Tribunal to confirm who

they belonged to, other than Tree C, which the Tribunal found lies on communal land and, thus, belongs to the Respondents.

46. As such, based on the limited evidence before the Tribunal, in relation to the trees which are the subject of this application, it finds as follows:

**Tree A** The tree is not on communal land, therefore, the responsibility for maintaining the same in a clean, tidy and neat condition lies with the occupier of either No. 21 or No. 22

**Tree B** The tree is not on communal land, therefore, the responsibility for maintaining the same in a clean, tidy and neat condition lies with the occupier of No. 10

**Tree C** The tree is on communal land and is the responsibility of the Respondents

**Trees D** The trees are not on communal land, therefore, the responsibility for maintaining the same in a clean, tidy and neat condition lies with the occupiers of either No. 18 or No. 19.

47. The Applicant's second question referred to trees requiring 'urgent action'. Unfortunately, the Applicant had provided no corroborating evidence to indicate urgent action was required in relation to the trees in question, although the Tribunal accepted that the trees were quite large and unkempt.

48. Based on the Tribunal's findings, as set out above, any urgent action required to Tree C would be the sole responsibility of the Respondents. In relation to the other trees, if urgent action - encompassing more than mere maintenance of the trees in a clean, tidy and neat condition - was required, the Tribunal finds that responsibility to carry out such action would also lay with the Respondents unless it could be shown that it was the occupier who owned the relevant tree or trees.

### **Costs**

49. The Applicant has made an application for costs under Rule 13 of the Procedure Rules.

50. It was unclear whether the application was for a costs order under Rule 13(b), which the Tribunal had previously confirmed it would not deal with at the current time and the Applicant would need to make a separate application for the same following the issuing of this decision, or simply the reimbursement of expenses under Rule 13(2).

51. It is within the discretion of the Tribunal under Rule 13(2) of the Tribunal Procedure Rules whether to make an order requiring reimbursement of the whole or part of any fees paid. An order may be made on application or of its own initiative (Rule 13(3)).

52. Further, any order made by the Tribunal in this respect is subject to the overriding objective (Rule 3) which is to act fairly and justly in deciding whether or not to award any fees against a party to a dispute.

53. In view of the nature of the dispute, the Tribunal found it necessary to undertake an inspection and hold a hearing.

- 54. The Tribunal also considered that the dispute could not have been avoided and was necessary for the parties to bring it before the Tribunal to be resolved. Both parties participated in the matter and assisted the Tribunal in its considerations.
  
- 55. The Tribunal finds that neither party has been wholly successful in their arguments and, therefore, mindful of the Tribunals overriding objective finds that it is fair and just that the costs of the application fee (£100) and hearing fee (£220) are shared equally with the Respondent. Accordingly, the Tribunal orders the Respondent to reimburse to the Applicant the sum of £160.

**Appeal**

- 56. If either party is dissatisfied with this decision, they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties and must state the grounds on which they intend to rely in the appeal.

**Nicholas Wint FRICS - Chair**  
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