



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

Case Reference	: CHI/00LC/PHC/2024/0005
Property	: 14 Peninsula Crescent, Island Park (Medway), Hoo, Rochester, Kent, ME3 9GR
Applicant	: Ian Dunkley Jane Dunkley
Representative	:
Respondent	: Island Park (Medway) Limited
Representative	: Miss Osler, counsel
Type of Application	: Application for a determination of any question arising under the Mobile Homes Act 1983 or agreement to which it applies
Tribunal Members	: Regional Judge Whitney Mr C Davies FRICS Mr D Ashby FRICS
Date of Hearing	: 9 December 2024
Date of Decision	: 14 February 2025

DECISION

Background

1. The Applicant seeks a determination from the Tribunal of certain questions outlined at part 5 of the application form in relation to new site rules introduced on the park by the Respondent.
2. The application was received on 2 May 2024.
3. The Tribunal considered that an oral hearing and site inspection was necessary. Directions were issued on 2 October 2024 which were substantially complied with. This included provision of a hearing bundle consisting of 297 pdf pages and references in [] are to pages within the pdf bundle.

Inspection

4. The Tribunal inspected the site immediately prior to the hearing. The day of the inspection followed storms and it was dry but overcast.
5. The site is accessed via security barriers. We were admitted by an employee of the Respondent. Adjacent to the barriers is an office for the Marina complex and a small parking area where the Tribunal parked. From here we walked through the commercial marina with numerous vessels on the hardstanding either side of the roadway to access Island Park. We observed a camera which appeared to record the speed of vehicles.
6. At the roadway we met with Mr Dunkley (for the Applicant's), Ms Osler (counsel for the Respondent), Ms Apps (solicitor for the Respondent) and Mr Swann (director of the Respondent) all of whom accompanied us on our site inspection.
7. Immediately before you enter Island Park is a large car parking area adjacent to various moorings. There are bin stores. Island Park is connected to the shore by a roadway. All the homes are modern and appear to have been recently sited. There is a circular roadway around which we walked clockwise. We observed the Applicants home. The site appeared to be well maintained and we also observed a group of residents.

Hearing

8. The hearing took place at Medway Magistrates Court. Mr and Mrs Dunkley attended for the Applicants. Miss Osler, counsel represented the Respondent and was attended by Ms Apps and Mr Swann.

9. The proceedings were recorded and so we set out a precis of what took place at the hearing.
10. Miss Osler had supplied a skeleton argument and bundle of authorities which the Tribunal and the Applicant's had received.
11. Mr Dunkley presented the case for the Applicant. He relied upon a witness statement from Mrs Gurney who was unable to attend the hearing.
12. Miss Osler presented the case for the respondent. She called Mr Swann who confirmed the contents of his statement [187-202]. Mr Dunkley had no questions for Mr Swann.
13. Miss Osler then expanded upon her submissions within her skeleton argument and the authorities to which she referred.

Decision

14. The Tribunal thanks Mr Dunkley and Miss Osler for their submissions.
15. Mr Dunkley set out in box 5 of the Application form [6-9] the matters he invited the Tribunal to address.
16. This is an application made pursuant to Section 4 of the Mobile Homes Act 1983 as amended. Miss Osler referred us to *Wyldecrest v Turner (No.1) [2020] 2 P. & C.R. DG1* and *Wyldecrest Park (Management Limited) v Tony Turner (number 2) [2002] UKUT 322 (LC)*. These decisions set out and clarify the jurisdiction of this tribunal and we accept that we are bound by these decisions.
17. Mr Dunkley opposes the site rules. He and his wife purchased their home on 26th June 2018. They accept they were provided with a copy of the 2016 Site Rules [13-47] together with their written agreement.
18. It appears Mr Dunkley suggests that the 2016 Site Rules were not properly introduced, and he challenges whether the correct formalities for varying the same were followed by the Respondent. As a result he appears to suggest he is not bound by the same. Mr Dunkley within his application asks:

"1.12 In respect of the Site Rules that have been issued by the Respondent and are attached to the Written Statement issued to Mr & Mrs Dunkley in 2018 we therefore ask the Tribunal to:-

1.12.1 Determine if the Site Rules have any validity in law in that they appear not to have been properly proposed, consulted upon and

subsequently deposited in accordance with the Mobile Homes (Site Rules)(England) Regulations 2014 sections 7-9 and Sections 12 & 13

1.12.2 If the Site Rules are considered not to be valid, then to order the Respondent to Propose new Site Rules that are in accordance with the Mobile Homes (Site Rules) (England) Regulations 2014 and to follow the procedures for consultation and depositing of the Rules as stipulated in sections 7-9 and Sections 12 & 13 of the Mobile Homes (Site Rules) (England) 2014

1.12.3 If the Site Rules are considered to have been properly proposed, consulted upon and deposited in accordance with the Regulations then to order that the Rules listed above which appear to contravene Schedule 5 (Prescribed Matters) of the Mobile Home (Site Rules) (England) Regulation 2014 are struck out of the Site Rules as unlawful.”

19. Mr Swann gave evidence of the steps undertaken by his then business partner Mr Andrew Brice to consult on the proposed changes and that he then deposited these with the local authority. We note the local authority in its Freedom of Information response [65] acknowledge receipt of the 2014 and 2016 Rules. It is unclear what enquiries, if any, the local authority made at that time and it is apparent from the correspondence with them within the bundle that their records leave something to be desired. It is agreed by all parties that the local authority has failed to comply with its responsibilities to publish the rules.
20. We find on the evidence heard by this Tribunal that the 2016 Rules were properly consulted upon and were deposited with the Local Authority. It appears the Local Authority failed to comply with the requirements to deal with and publish the same. Further there is no suggestion that a challenge was made within the statutory time limits by any pitch occupier. Obviously at the relevant time the Applicant's did not occupy their pitch. We find no challenge was made to the Rules by a pitch occupier. We are satisfied and find on the evidence we heard and contained within the bundle that the obligations by the site owner at that time in respect of variation of the Rules were complied with.
21. We find that the Site Rules are valid and the Applicant's are bound by the same. We note that these were the Rules supplied to the Applicant's upon their purchase and we are satisfied that the Applicant's are bound by the same.
22. The Applicant's suggest that certain of the Rules contravene Schedule 5 (Prescribed Matters) of the Mobile Home (Site Rules) (England) Regulation 2014. Mr and Mrs Dunkley invite us to strike these out. Miss Osler, whilst not accepting any contravention of the Regulations, suggests we do not have any jurisdiction to strike out any of the Rules.

23. We agree and accept Miss Osler's submission. Pitch Occupiers could at the time of the variation of the Rules have made application to this Tribunal. No such application was made and the Applicant's purchased being aware of the Rules more than 6 years ago.
24. We make no determination as to whether or not the Rules are in breach of the regulations or are enforceable by the Respondent. We are satisfied that such determination is not required or allowed under this application.
25. We turn to the second part of the application. The Applicant contends that certain requirements imposed by Residential Marina Limited should cease:

"2.7 We therefore ask the Tribunal to rule that the imposition of these additional rules have no validity in law and to order the Respondent and the Landowner RML to -

2.7.1 Cease making additional administrative charges for any matters not contained within the Agreement and to repay all such sums previously charged and paid under the threat of removal of access rights..

2.7.2 Cease requiring maintenance and repair contractors to report to the site office.

2.7.3 Cease demanding to sight contractors' public liability insurance cover."

26. The Applicant's explain that certain requirements and charges are levied in connection with pitch occupiers accessing the site. The matters complained of include charges raised for exceeding a speed limit on the private roadway through the marina and requirements imposed upon contractors attending to carry out works on the home for the Applicant or other homeowners. Mr Swann responded within his statement.
27. Mr Swann is a director of the Respondent and also Residential Marine Limited ("RM"). Originally the mobile home site was owned by RM who owns the freehold for the whole of the Port Werburgh site. In April 2021 RM entered into a lease with the Respondent for Island Park being the mobile home site on which the Property is situated. This lease does not cover the access road via Port Werburgh Marina which remains owned and operated by RM. Island Park (Medway) Ltd is now the site owner under the written agreement under which the Applicants have the right to situate their home on their pitch.
28. Mr Swann explained (and it appeared to be accepted by the Applicants) that it is RM who have imposed the requirements which are disputed (as set out in the Application [8-10]. See [151-154] for examples of charges levied. Charges are levied for cars exceeding 10 mph on the access road and requirements are placed

upon contractors that contractors report to the site office and provide evidence of their insurance.

29. Miss Osler suggests given these are matters imposed by RM which is a separate legal entity to the Respondent these are not matters over which this Tribunal within this application had any jurisdiction to determine.
30. Mr Dunkley points out the commonality of the beneficial ownership and directors which is not disputed. He suggests that these are additional rules being imposed on the Mobile Homes which go beyond the written agreement and that the Applicant's should not be bound by these. See [164-170].
31. This Tribunal prefers the position advanced by Miss Osler. Given the charges and requirements are imposed by RM over land which does not form part of the mobile home site we accept we do not have jurisdiction to require cessation of these matters. It may be that RM is required to provide access but the written agreements are with the Respondent company. We are satisfied that we cannot within this application direct another legal entity to cease and desist in the way suggested by the Applicant's.
32. We must however comment that we do not accept the justification given by Mr Swann for these matters. Much was made of health and safety, particularly over the choice of contractor and the requirements for insurance. Given it is for the homeowner to maintain their homes it seems to us to be a matter for them. Equally several of the charges seem arbitrary and a method of control which goes beyond the terms of the written agreement. Whether these can be enforced is not a matter for us although we are far from convinced that a reasonable and proportionate response is being undertaken by RM. Further it seems the unilateral imposition of such matters given the rights of access afforded to the Applicants under their written agreement may go beyond RMs entitlement as the owner of such land subject to such rights. These are not however arguments for this Tribunal.

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
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.