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

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| **Case reference** | **:** | **MAN/36UE/PHI/2024/0020** |
| **Property** | **:** | **Wensleydale 10, Chantry Caravan Park, West Litton, Leyburn DL8 4NA** |
| **Applicant** | **:** | **Dr Gillian Danby** |
| **Representative** | **:** | **None** |
| **Respondent** | **:** | **Park Leisure 2000 Ltd** |
| **Representative** | **:** | **Tozers, Solicitors (Mr Paul Kelly)** |
| **Type of application** | **:** | **Application by occupier for determination of a new level of pitch fee** |
| **Tribunal member** | **:** | **Judge C Goodall** |
| **Date and place of hearing** | **:** | **21 August 2024 by Cloud Video Platform** |
| **Date of decision** | **:** | **22nd August 2024** |

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**DECISION ON PRELIMINARY ISSUE OF JURISDICTION**

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## Background

1. The Applicant is the occupier of a caravan park pitch at Chantry Caravan Park ("the Park"). The site owner is the Respondent.

2. The Respondent served a notice of increase of pitch fee at some point prior to 30 January 2024 on the Applicant. I have not seen that notice, but for the purposes of this preliminary decision, that is not relevant.

3. On 30 January 2024, the Applicant applied on the Tribunal's standard form for a determination of the new level of pitch fee under paragraph 16 of Chapter 2 of Part 1 to the Mobile Homes Act 1983 (as amended).

4. Directions were issued by the Tribunal on 22 April 2024.

5. On 3 May 2024, the Respondent made an application to strike out the application on the grounds that the Tribunal had no jurisdiction to consider it.

6. On 13 June 2024, the Tribunal directed by email to the parties that the jurisdiction issue be determined as a preliminary issue and directed the Respondent to provide a bundle of documents relevant to the issue.

7. The bundle was supplied. The case was listed for a Case Management Conference for 21 August 2024 under cover of a letter dated 24 June 2024 setting out the purposes of a Case Management Conference. That letter was not entirely clear, as it did not explain in terms that the CMC would be the hearing at which the preliminary point was to be decided.

8. The Respondent clarified in correspondence to the Applicant that it would be seeking a determination of its application to strike out at the CMC.

9. The CMC proceeded by video on 21 August 2024, at which the Applicant and the Respondent's solicitor attended, along with staff from the Respondent as observers.

10. I determined at the CMC that I would hear the substantive application to strike out at that hearing despite the confusion over the terms of the Tribunal's letter of 24 June 2024, as it did not appear necessary for any further directions go be made before the preliminary issue could be resolved, and to save the costs of organising another hearing. The Applicant did not object. Both the Applicant and Mr Kelly, the Respondent's solicitor, then each made representations and submissions as appear below.

11. This document sets out my determination and the reasons for it, as appear below.

## Law

12. Section 1 of the Mobile Homes Act 1983 ("the Act") provides:

> "1 Particulars of agreements
>
> (1) This Act applies to any agreement under which a person ("the occupier") is entitled—
>
> (a) to station a mobile home on land forming part of a protected site; and
>
> (b) to occupy the mobile home as his only or main residence."

13. Section 5 of the Act includes a definition of a protected site as follows.

> "5 Interpretation.
>
> (1) In this Act, unless the context otherwise requires—
>
> …
>
> "protected site" … has the same meaning as in Part I of the Caravan Sites Act 1968.

14. Section 1 of the Caravan Sites Act 1968 ("the 1968 Act") provides:

> "1. Application of Part 1
>
> (1) This Part of this Act applies in relation to any licence or contract (whether made before or after the passing of this Act) under which a person is entitled to station a caravan on a protected site (as defined by subsection (2) below) and occupy it as his residence, or to occupy as his residence a caravan stationed on any such site; and any such licence or contract is in this Part referred to as a residential contract, and the person so entitled as the occupier.
>
> (2) For the purposes of this Part of this Act a protected site is any land in England in respect of which a site licence is required under Part I of the Caravan Sites and Control of Development Act 1960 or would be so required if paragraph 11 or 11A of Schedule 1 to that Act (exemption of gypsy and other of Schedule 1 to that Act (exemption of local authority sites) were omitted, not being land in respect of which the relevant planning permission or site licence—
>
> (a) is expressed to be granted for holiday use only; or
>
> (b) is otherwise so expressed or subject to such conditions that there are times of the year when no caravan may be stationed on the land for human habitation.
>
> (3) References in this Part of this Act to the owner of a protected site are references to the person who is or would apart from any residential contract be entitled to possession of the land.

**Documents**

15. The Respondent's bundle of documents included the following:

a. A copy of a site licence for the Park dated 1 November 2012 issued by Richmondshire District Council ("the RDC licence"). The licence recited the Respondent's extant planning consents for the Park (being under references YD/2/4/490M, YD/1/91/11C, and R/91/11/H) and granted a licence subject to conditions. It stated, "See attached conditions for a Holiday Caravan Site". The Respondent was not able to produce the actual conditions themselves, despite, according to Mr Kelly, attempts to locate them;

b. A copy of an undated site licence issued by North Yorkshire Council ("the NYC licence"). It recites that "on 22 August 2023 North Yorkshire Council received an application for a site licence in respect of [the Park]", so it must have been issued after that date. Mr Kelly informed me that his clients understanding was that it was issued on 19 October 2023.

c. The existence of planning permissions to operate the Park is again cited in the NYC licence with reference being made to consents under references YD/2/4/490M, R/91/11/H, and R/91/11/K.

d. The NYC licence granted a license subject to conditions, though none are specified on the front page of the licence.

e. Attached to the NYC licence is a page of notes. In the Respondents bundle, there then follows a set of conditions for Holiday Caravan Sites issued by Richmondshire District Council with a date reference at the bottom of all pages referring to April 2016.

f. These conditions contain the following restrictions:

"2. To ensure approved holiday accommodation is not used for unauthorised permanent residential occupation the following restrictions apply:

A) The caravans (or cabins/chalets) are occupied for holiday purposes only

B) The caravans (or cabins/chalets) shall not be occupied as a person's sole or main residence

C) The owners/operators shall maintain an up-to-date register of the names of all owners/occupiers of individual caravan/log cabin/chalets on the site and of their main home addresses and shall make the information available for inspection by the local authority"

g. A copy of planning consent numbered R/91/11/H dated 18 October 2012 which contains the following paragraphs:

"3. The caravans that are the subject of this permission shall be occupied for holiday purposes only and shall not be occupied as a person's sole or main place of residence.

4. The owners/operators shall maintain an up-to-date register of the names of all owners/occupiers of individual caravans/log cabins/chalets on the site, and of their main home addresses, and shall make this information available at all reasonable times to the Local Planning Authority.

…

Reason(s):

…

3. To ensure that the caravans are used for holiday purposes and not as permanent residential accommodation, in accordance with saved policies GP1 and GP2 of the adopted Yorkshire Dales Local Plan and the NPPF.

h. A copy of the Applicant's contract with the Respondent. This is dated 18 April 2021, this being around the time that the Applicant purchased the caravan and started to occupy the pitch. This contains the following clauses relating to the permitted nature of occupation:

   i. The contract is headed "Licence Agreement for a Holiday Home Pitch";

   ii. On page 1, a note in these terms:

      **Please note**

      Under this Licence Agreement you are not allowed to live in the holiday home as your only or main residential home. You can only use the holiday home for holidays and recreational purposes. The frequently asked questions at the end of this licence agreement explain what we mean by this. …

   iii. On page 3, under the heading "Summary of some important terms of this agreement", a box summarises that there can be "No use as an only or main residence". The text alongside is:

      "You can only use the holiday home for holiday and recreational purposes. You must not use the holiday home as your only or main residential home. Please see the FAQ at the end of this licence agreement for an explanation of what we mean by this. If you do use the holiday home as your only or main home, then you will be breaking the terms of this licence agreement. …"

   iv. Paragraph 2.1 of the Terms and Conditions allows the Applicant to use the home "for holiday and recreational purposes";

v. Paragraph 4.2 of the Terms and Conditions provides:

[You agree that you will] "**Use the holiday home only for holiday and recreational purposes.** You must not use the holiday home as your only or main residence. If we ask you to do so, you must give us satisfactory proof that your only or main residence is at the address registered with us as set out in part one of this licence agreement or another permanent address that you may tell us from time to time. …";

vi. A set of Frequently Asked Questions at the end of the contract includes this question and answer:

"**Q. What can my holiday home be used for?**

A. Holiday homes at our park can only be used for holiday purposes. This means the holiday home may not be someone's main residence. This is why we ask you about the address of your main residence and will continue to do so you own the holiday home.

vii. Virtually all references throughout the contract to the home use the phrase "holiday home" to describe it.

**Submissions**

16. Mr Kelly's submissions were that the documents in the case clearly demonstrate, firstly, that the Park is not a protected site, and secondly that the Applicant occupies her pitch as a holiday home. As the Act only applies to her agreement if the Park is a protected site **and** if it permits her to occupy it as her only or main residence (see section 1 of the Act), and neither test is met, it follows that she does not have the benefit of the right to seek a determination from the Tribunal of the new level of pitch fee.

17. Mr Kelly took the Tribunal through the documents summarised above to support his analysis of the issue in this case.

18. The Applicant firstly provided some factual information which she said was relevant. Firstly, her assertion was that the Site Licence on display at the Park was a licence dated 2007 (and thus pre-dating both the RDC licence and the NYC licence) which contained no reference to the Park being a holiday park.

19. Secondly, the Applicant submitted that there was no evidence that the RDC licence contained restrictions limiting use of the Park to holiday use. She pointed out that the conditions could not be located.

20. Thirdly, the Applicant submitted that the NYC licence had no reference on the face of the licence to the substance of the conditions either. She noted that the conditions that had been provided were RDC conditions

and she did not accept that they were the conditions provided to the Respondent on the grant of the NYC licence, as was the position taken by the Respondent.

21. Fourthly, the Applicant pointed out that the 1968 Act referred to the phrase "holiday use" whereas the licences and the planning consent referred to "holiday purposes". The use of different phrases must create an ambiguity in the interpretation of the statutory provision.

22. Therefore, the Applicant submitted, there is no basis for saying that the Park was prevented from being a protected site by virtue of it being for holiday use only.

23. The Applicant then moved to discuss whether her contract might allow her to argue that she met the test of occupying her pitch as her only or main residence. Her argument was that this phrase is highly contentious with many different aspects to its definition. The plain fact is that her agreement allows her to occupy for 365 days a year if she wishes. She was asked by the Tribunal whether she was arguing that she **did** occupy as her main residence. She was not willing to go that far and said she did have another residence, but which was her main residence was a moot point.

24. In short, the Applicant believed the Act did apply, and she should be allowed to challenge the pitch fee review under its provisions.

**Discussion**

25. It is simplistic to say so, but I will say it anyway. If the Park is not a protected site, and/or if the Applicant does not occupy her pitch as her only or main residence, the Act does not apply (section 1 of the Act), and the Tribunal would therefore have no jurisdiction to hear the application to determine a new level of pitch fee using its powers in paragraph 16 of Schedule 1 of the Act.

26. I will look at each question in turn.

*Is the Park a protected site?*

27. The test for determining what a protected site is, is in the 1968 Act, and is:

"A protected site is any land in England in respect of which a site licence is required … not being land in respect of which the relevant planning permission or site licence … is expressed to be granted for holiday use only."

28. I do not accept that a failure to display the current licence at the Park and displaying an out of date historic licence instead has any bearing on this test. That omission (if it was the case, on which I make no finding) may well be a breach of the site licence, for which the local authority may have a remedy, but the statutory test makes no reference to the

obligation to display the licence. It simply refers to the terms of the licence itself.

29. It is certainly unfortunate that the conditions attached to the RDC licence, (which was the extant licence at the date of the Applicant's purchase of the caravan) cannot be found. But there is a clear reference on that licence to the Park being subject to "conditions for a Holiday Caravan Site". It is much more likely than not that those conditions required the Park to be used only for holiday use, and I so find.

30. Could the NYC licence, only issued, according to the best information I have, in October 2023, have changed the position? It was certainly intended that this licence should have conditions; it said so expressly. Again, it is unfortunate that the conditions offered by the Respondent are not NYC conditions, but it is not beyond the bounds of reasonable possibility that NYC used an old form inherited from RDC, which appears to have been the predecessor local authority. If so, it is certainly the case that those conditions do restrict the licence to use for holiday purposes only.

31. It is also unfortunate that only one of the planning permissions referred to in the RDC and NYC licences has been provided. However, that permission (under reference R/91/11/H) is crystal clear in imposing a planning condition limiting use of the Park to holiday purposes only, and this feature supports my view that the site licences required that the Park only be used as a holiday site, as each licence makes specific reference to the planning consent.

32. I do not think there is anything in the Applicant's point about the use of slightly different words to describe the holiday use /purpose requirement. If a property is being used for a holiday, its purpose is for a holiday.

33. I do not find it difficult to determine, based on the documents I have considered, that it is highly likely that both the RDC and the NYC licences limited the use of the Park to holiday use only, as did the planning permission under reference R/91/11/H. That being the case, I determine that the Park cannot be a protected site by virtue of the exception referred to in section 1(2) of the 1968 Act.

*Does the Applicant occupy her pitch as her only or main residence?*

34. In my view, the primary source for finding the answer to this question is the Applicant's contract. That is the core document that establishes the Applicant's rights over her pitch.

35. The contract is crystal clear. It does not permit any occupier under the terms of that contract to occupy the pitch as their only or main residence. I have set out some of the more obvious provisions of the contract that establish this point above, but there are even more references that could

have been included. In short, the contract is littered with contractual provisions establishing that the only basis for occupation is as a holiday home, and clear obligations **not** to occupy as an only or main residence.

36. I noted above that the Applicant (sensibly) did not in fact claim that her caravan was her only or main residence, no doubt because such an admission might expose her to a breach of contract claim. But she was in a cleft stick, because to succeed on this point, in fact she **needed** to argue that her caravan was her only or main residence, and she declined to go that far.

37. I therefore have no hesitation in finding that the Applicant does not have the right to occupy her pitch as her only or main residence. She thus fails to meet the test contained in section 1(b) of the Act.

38. Accordingly, the Act does not apply to her agreement because neither of the tests set out in section 1(a) and 1(b) are met, and the Tribunal therefore has no jurisdiction to exercise its powers in paragraph 16 of Schedule 1 of the Act to determine a new level of pitch fee.

39. Under Rule 9(2)(a) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal must strike out the whole of proceedings brought to it if it does not have jurisdiction in relation to those proceedings.

40. I therefore have no option but to strike out the Applicant's application for the Tribunal to determine the new pitch fee, and I so order.

## Appeal

41. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Judge C Goodall
First-tier Tribunal (Property Chamber)