FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/22UL/PHC/2023/0002**
Property	**:**	**39 Crouch Park, Pooles Lane, Hullbridge, Hockley, Essex SS5 6PX**
Applicants	**:**	**Leonard and Rosemary Busby**
Representative	**:**	**Alan Swaby**
Respondents	**:**	**1. Wyldecrest Parks (Management) Limited** **2. David Cox (No. 41 Crouch Park)**
Representative	**:**	**1. David Sunderland, Estates Director** **2. Unrepresented**
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** **Mary Hardman FRICS IRRV (Hons)**
Date of hearing	**:**	**5 September 2023**
Date of decision	**:**	**7 September 2023**

DECISION AND REASONS

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DECISIONS OF THE TRIBUNAL

For the reasons that follow, the tribunal determines that:

(1) By consent, the tree is located within the pitch of No 41 Crouch Park.

(2) The Second Respondent is responsible as the occupier for maintaining pitch No 41, including the tree, in a clean and tidy condition under the implied term of their pitch agreement within Paragraph 22(d) of Schedule 2 of Part 1 of the Mobile Homes Act 1983.

(3) Whether works are needed to maintain the tree in a clean and tidy condition is a matter between the First and Second Respondents.

(4) There is no breach of the express or implied terms of the Applicants' pitch agreement in respect of the tree.

(5) The Second Respondent shall pay to the Applicants £100.00 in total within 28 days of this Decision, in reimbursement of 50% of the tribunal hearing fees paid by the Applicants.

REASONS

The application

1. The Applicants own and occupy a park home located at Crouch Park, a protected site within the meaning of the Mobile Homes Act 1983 ('the Act').

2. The Applicants right to station their park home on the pitch at 39 Crouch Park is governed by the terms of a written agreement and the provisions of the Act. The relevant pitch agreement made between the First Respondents and the Applicants is headed up 'Written Statement'. It was signed and began on 14 August 2021.

3. The Applicants apply under section 4 of the Act for the determination of questions arising under the Act or an agreement to which the Act applies.

4. The application form contains a long narrative detailing complaints concerning a tree on the neighbouring plot at No 41, occupied by Mr Cox, the Second Respondent. A summary of the text is as follows:

5. Upon purchase of their park home, the Applicants say they were unaware of how close the tree would be to the home once it was in situ and how large the tree would grow.

6. They say that the tree canopy overhangs their plot and overshadows their home affecting levels of internal light, especially to the living room. Their parking space is directly beneath the tree. Problems arise with sticky sap, fallen branches and twigs, and "severe bird excrement". Sap and tree pollen has also had an adverse impact upon the health of Mrs Busby.

7. The Applicants are aggrieved that having reported their concerns to their neighbour, Mr Cox, he denied responsibility for the tree. In February 2022, the First Respondent indicated responsibility for the tree as site owner if it is not within the Applicants' plot. It would arrange works to the tree once photographs were supplied. In March 2022 the First Respondent advised that a price for pollarding was being obtained. Having requested an update, the First Respondent advised the Applicants they could cut back the overhanging branches as per the Act.

8. The Applicants obtained a quote for pollarding the tree in May 2022. They copied the quote to the First Respondent requesting clarification on covering the costs and securing access to the neighbouring plot to undertake the works. No response was received until 23 June 2023 when the First Respondent advised that the whole tree would need to be pruned and a copy of liability insurance for the contractor supplied to them prior to work commencing. The costs would be the Applicants' responsibility as the works would be at their request.

9. There followed an email from the First Respondent indicating that the tree had previously been regularly trimmed between the former pitch owner and Second Respondent who was willing to trim his side. The Applicants should make arrangements to trim their side of the tree.

10. The Applicants say that despite their efforts they have been unable to resolve matters. Essentially, the First Respondent does not accept responsibility. It does not object to the Applicants removing or cutting back the tree but maintains it has no grounds to compel Mr Cox to do so. The Second Respondent is content with the tree as it is and has not given permission to access his plot for the work to be undertaken.

11. The Applicants believe they are caught in the middle with the Respondents saying different things to each other. They suggest that the First Respondent should take the lead with costs of pollarding/cutting back equally shared between the three parties now and in the future, or total removal of the tree. Alternatively, the First Respondent could take over responsibility for the tree and associated costs to maintain a good relationship between both residents.

12. As confirmed at the Hearing, the questions arising are-

(1) Who is responsible for the tree? Is the maintenance of the tree the responsibility of either or both occupiers under Schedule 1, Chapter 2, paragraph 21 of the Act or the owner under paragraph 22 (d) thereof?

(2) Whether there is any breach of the express or implied terms of the Applicants' pitch agreement?

(3) Has damage occurred to the Applicants' park home as a result of a breach of the implied and/or express terms by the Respondents?

(4) Whether an order for reimbursement of tribunal hearing fees should be made.

The inspection

13. The tribunal conducted a site inspection on 9 August 2023. Also present was Mr Swaby (the Applicants' son and representative) and Darren Busby (Sales Director at Wyldecrest). Conditions were bright and sunny. The tribunal inspected the tree from various external viewpoints. It also viewed the tree from inside the living room of No 39 given the references made by the Applicants to the effect upon internal light.

14. During the visit, the tribunal observed that plots 39 and 41 are located in a corner position on the site. The park home at No 41 is sited perpendicular to the Applicants' home, on a bend in the road.

15. The plan within the Written Statement with dimensions of the pitch at No 39 show a rectangular plot. On the ground, No 39 is irregular in shape. The fenced side boundary with No 41 is not straight but angled. It noticeably veers inwards into plot 39. The front boundary curves to follow the line of the road. As it does so, the amount of frontage reduces.

16. The trunk of the tree (an Ash) is within the front garden of No 41. It is very close to the side fence line. The tree is tall and towers high above the rooftops of the park homes. The canopy overhangs much of the frontage used for parking provision at No 39 for one small vehicle. At the time of inspection, there was some leaf litter, small broken branches, and bird droppings on the Applicants' pitch beneath the tree.

17. Due to the curved frontage, the tree is directly in line with the Applicants' living room window. From inside, the tree dominates the view. Given its size and position, it is bound to cause some over-shadowing to the living accommodation. There is another window and

glazed doors to the living room, but they are north-facing and so will not receive direct sunlight.

The hearing

18. To accommodate the availability of all parties, the hearing took place at a later date than the site visit, i.e., 5 September 2023. The start of the hearing was delayed by 15 minutes due to technical difficulties experienced by the tribunal. The hearing was attended by Mr Swaby who sat with the Applicants alongside, and Mr Sunderland on behalf of the First Respondent. Mr Cox did not attend, and Mr Sunderland explained that this was due to age and health considerations.

Documents before the tribunal

19. The Tribunal issued Directions in this case on 3 May 2023. One of the Directions required the Applicants and First Respondent to submit a bundle of relevant documents to the Tribunal and other party. The First Respondent was informed that they would need to liaise with Mr Cox, as necessary, so that any witness statement/statement of case and evidence is included in the bundle.

20. A single bundle of documents was produced by the Applicants composed of twelve chapters. It includes the application, transcript of a meeting between the Applicants' representative and Second Respondent, copy of the Written Agreement with purchase receipt and plot drawing, colour copy photographs, Leasehold Advisory Service correspondence, quote for works, copy emails and other correspondence.

21. The tribunal received the First Respondent's statement and Applicants' response. When the tribunal queried if it should have a witness statement or response from Mr Cox as Second Respondent, it emerged that the tribunal did not have the Respondents' bundle of 90 pages (including index). An adjournment took place to enable the tribunal and Applicants opportunity to read these documents.

22. Most documents in the Respondents' bundle were duplicates of those already received. Exceptions were an earlier witness statement made by Mr Sunderland on 27 April 2023 and a witness statement from Mr Cox of 28 April 2023. In the statement, Mr Cox stated that he did not consider that he should be a Respondent. He moved to his home in May 2013 and has had no issue with the tree, has no contract with the Applicants and no obligation to remove/cut back or pollard the tree.

23. The Directions record that an application made by Mr Cox on 28 April 2023 to be removed from these proceedings was refused. An application made by the First Respondent on 25 April 2023 to strike out the application was also refused. The tribunal was content that the application was sufficiently clear that a question was being put over responsibility for the tree.

24. During the course of the Hearing, Mr Sunderland mentioned an email to Mr Swaby sent on 19 June 2023, which was subsequently produced.

25. This determination is made in the light of the documentation submitted in response to the Directions and evidence heard, with one exception. Mr Swaby had produced a recording and transcript of a conversation between himself and Mr Cox. Mr Swaby confirmed that Mr Cox was unaware the discussion was being recorded. With that in mind, the tribunal has disregarded the transcript, which as background information was unlikely in any event to assist the tribunal in deciding the specific points.

The Law

26. 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.

27. 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.

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 –

(a) directions requiring the payment of money by one party to the proceedings to another by way of compensation, damages or otherwise;

(b) directions requiring the arrears of pitch fees or the recovery of overpayments of pitch fees to be paid in such manner and by such date as may be specified in the directions;

(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;

(d) directions requiring the establishment, provision or maintenance of any service or amenity 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

Occupier's obligations

21. The occupier shall—

(d) maintain— (i) the outside of the mobile home, and (ii) the pitch, including all fences and outbuildings belonging to, or enjoyed with, it and the mobile home, in a clean and tidy condition; and ….

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**, *[emphasis added]* 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.

In ***Elleray v Bourne*** [2018] UKUT0003(LC), the Upper Tribunal said:

"*Despite the apparent breadth of section 4, a power to determine questions or entertain proceedings is not the same as a power to grant specific remedies. The FTT has no inherent jurisdiction and may only make such orders or grant such remedies as Parliament has given it specific powers to make or grant. Although it is rather strangely described as part of a "general power" to "give directions", in section 231A(4)(a) of the Housing Act 2004 Parliament has given the FTT a specific power to require the payment of money by one party to the proceedings to another. Such "directions" may be given where the FTT considers it necessary or desirable for securing "the just, expeditious and economical disposal of the proceeding." The use of the word "directions" in this context might give the impression that section 231A(2) is concerned only with procedural matters. It is clear from section 231A(4), however, that the power to give directions is a power to make substantive orders, including for the payment of money, the carrying out of works, and the provision of services."*

28. In ***Away Resorts Limited v Morgan*** (2018) UKUT 0123 (LC), the Upper Tribunal said this: "The power to grant additional remedies is exactly what section 231A, Housing Act 2004 provides."

29. The Written Agreement reflects the implied terms above. In addition, Part 5 contains other terms agreed between the occupier and site owner.

30. At paragraph 3, the site owner is permitted to have reasonable access to the pitch (a) for the purpose of carrying out essential works on the pitch; or (b) for the better management of the park.

31. Paragraph 4 contains the occupier's express undertakings to the site owner. They include at (l) "Not to do or allow to be done on the Park or the Pitch any act or thing which shall or may: (i) be or become a

nuisance or cause annoyance, inconvenience or disturbance to Us, our employees, contractors or other mobile home park owners on the Park or cause damage to property belonging to Us, our employees, contractors or such other mobile home park owners."

32. Paragraph 6 prohibits any mobile home to be sited on the pitch except one purchased from or through the site owner's agent "who shall be responsible for siting such mobile home…".

Submissions heard

33. Given that neither party was legally represented or intending to call witnesses, the Hearing took the form of questions posed by the tribunal pertinent to the main issues identified, with equal opportunity for both sides to make submissions and raise questions.

34. At the start of the Hearing discussion, Mr Sunderland refuted that Mr Cox is an employee of the First Respondent. He is a "just another resident" who acts as Park Manager, being someone who takes an interest in the site and arranges for things to be fixed. Mr Sunderland described the position as an "armchair manager". There is no copy of the pitch agreement for No 41 within the bundles, but Mr Sunderland confirmed that it will be in essentially the same form as the Applicants'.

35. There was consensus that the tree is owned by the First Respondent as site owner, and it is situated on the pitch occupied by the Second Respondent. The First Respondent denies maintenance responsibility for the tree. Mr Sunderland contended that Mr Cox is responsible for the tree insofar as it falls within his pitch. According to Mr Sunderland, the Applicants are responsible for the canopy overhanging their pitch which they are free to cut back. He could not identify any caselaw to support this stance but relies upon the implied term within paragraph 21(d) that each occupier is liable to maintain their own pitch.

36. Although paragraph 21(d) does not mention trees, Mr Sunderland submitted that maintaining the 'pitch' includes those items explicitly listed and other things thereon including hedges and trees.

37. The parties disagree on whether works to the tree are needed. Mr Sunderland argued that the tree is not dying or rotten and the works sought by the Applicants are desired rather than necessary. Mr Sunderland had not been on site to look at the tree but had seen the photographs in the Applicants' bundle and said there had previously been no issue with the tree for 14 years. He regards the issues of leaf litter, sap and bird droppings to be naturally occurring events which any homeowner must endure.

38. Mr Swaby had checked with the Council that there is no tree preservation order protecting the tree although he does not have it in writing. Mr Sunderland had no information on the point but did not dispute what Mr Swaby had been told.

39. The Applicants obtained two quotes from a tree surgeon. One quote of £562.50 plus VAT is for a crown reduction, usually performed on a 2 to 5 year cycle. The other quote is for removal of the tree at £937.50 (plus VAT). It was confirmed that neither Respondent objects to the proposed works whether for pollarding or complete removal. However, Mr Sunderland warned that other residents could be upset by removal of the tree as it is considered a feature in the street scene. Of the two options presented, the Respondents' preference is for crown reduction.

40. The Applicants wish the costs to be divided three ways between the parties. The Respondents deny liability for any costs.

41. Mr Sunderland disputed that Mr Cox had ever refused access to his pitch for the purposes of maintaining the tree. As site owner, he insisted that permission was granted for the Applicants' contractor to enter No 41 to do the tree works. That is subject to appropriate public liability insurance being in place, as required by the site rules applicable for all works. To confirm approval was in place, our attention was drawn to an email from Mr Sunderland to Mr Swaby on 19 June 2023 stating: "*The occupiers are free to enter his pitch for the purposes of maintaining the tree subject to general care being taken and any necessary respect shown*".

42. When the tribunal queried the basis for the site owner authorising entry to pitch 41, Mr Sunderland said that he was authorised for and on behalf of Mr Cox to relay such agreement. When Mr Swaby suggested that written consent was still needed by the contractor to authorise entry and to undertake the works, Mr Sunderland reaffirmed that consent to enter and undertake the works was being granted. On the basis that access was now agreed and pollarding was acceptable to all parties, an adjournment was granted for the parties to discuss if agreement could be reached.

43. Upon resumption, Mr Swaby confirmed that the Applicants wished to have a determination from the tribunal. Before proceeding, the tribunal cautioned over the Applicants' expectations as its powers are restricted by statute. The offer of resolution appeared wider than the directions available through these proceedings. The Applicants confirmed they wished nonetheless to proceed without further opportunity to negotiate.

Determination

44. Section 4 of the Act is about dispute resolution. However, the tribunal does not have carte blanche to regulate the relationship between owners and occupiers (Wyldecrest Park (Management) Ltd v Turner (No.2) [2022] UKUT 322 (LC)).

45. The tribunal has the power, pursuant to section 231A(4)(c) of the Housing Act 2004 to give directions requiring repairs and other works to be carried out, depending upon the circumstances.

46. It is an implied term (paragraph 21(d)(ii)) of the pitch agreement between the First and Second Respondent that Mr Cox will maintain the pitch in a clean and tidy condition. That is an obligation owed to the site owner and not to other residents. The First Respondent acknowledges that this implied term covers trees. Such interpretation is consistent with the terminology of paragraph 22(d) where the owner's obligations explicitly mention trees in the context of maintaining parts of the site "in a clean and tidy condition". Mr Sunderland does not consider the tree to be in an untidy condition for the site owner to act against Mr Cox. That is a matter of judgement with which the tribunal does not interfere.

47. However, the tribunal is not swayed by Mr Sunderland's argument that the Applicants are responsible for the tree where it overhangs their pitch due to the implied obligation to maintain. In our view, such a strained interpretation of paragraph 21(d) is unmeritorious. It could result in any number of pitch occupiers responsible for parts of the same tree, all with different ideas over how it should be maintained. Moreover, if a pitch occupier is only responsible for the parts of a tree within their pitch, then it follows that the First Respondent has responsibility for branches overhanging the road under paragraph 22(d).

48. Even though the Applicants may have a right at common law to cut back overhanging branches as a nuisance, that is a different matter altogether. It does not give rise to a contractual duty to do so and should not be confused with the obligations implied by statute. Whether or not the Applicants have an actionable civil claim is not for this tribunal to decide.

49. Having accepted that paragraph 22(d)(ii) applies to trees, and the tree in question is located on the pitch of No 41, that is where responsibility lies under the pitch agreement.

50. The site owner only has responsibility to maintain trees that are not the responsibility of any occupier. Therefore, the First Respondent is not responsible for the tree. There is no basis under the implied or express terms to require the First Respondent to either carry out any works to the tree or to make payment.

51. The difficulty for the Applicants in these proceedings is that the site owner is not responsible for maintaining the tree. It is Mr Cox's responsibility, and he owes no obligation to the Applicants under their pitch agreements for the tribunal to give direction. It is only the site owner who can enforce obligations. Under the express terms, the site owner could potentially enforce paragraph 5(l) of its pitch agreement with Mr Cox for allowing the tree to become a nuisance or causing annoyance to the Applicants as 'other mobile home park owners'. That is a matter for the First Respondent to consider.

52. None of these matters give rise to a breach of the implied or express terms regulating the relationship between the Applicants and First Respondent. There is no basis for the tribunal to direct either Respondent to contribute to the cost.

53. The Applicants are clearly right that their contractor could not enter the neighbouring plot and pollard the tree without Mr Cox's consent. Only the site owner has a right of entry, on notice, under individual pitch agreements. Consent has now been forthcoming if the Applicants wish to proceed with the works, subject to agreed restrictions.

54. Progress has been made towards resolution. The tribunal urges all the parties to open dialogue and to proceed in a conciliatory manner to resolve this dispute in the interests of all involved.

Refund of fees

55. The Applicants accept that in taking the decision to apply to the tribunal, they should bear the £100 application fee. They seek recovery of the £200 Hearing fee as they were content with a paper determination and the First Respondent requested the Hearing.

56. Mr Sunderland defended the application as the First Respondent had exercised its legal entitlement to be heard. He is firmly of the view that a Hearing was needed not least because the tribunal was missing two witness statements without which it would not have had the full evidence. The Applicants had insisted upon a site inspection. The First Respondent did not object, but considers the visit was unnecessary in view of the volume of photographs available. He believes that it would not be fair or reasonable to penalise the First Respondent who had tried to resolve matters in line with the overriding objective. Agreement could have been reached but for the Applicants' refusal to engage.

57. It is within the discretion of the tribunal under rule 13(2) of the Tribunal Procedure Rules[1] whether to make an order requiring

[1] Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

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)).

58. Whilst the Applicants requested a site inspection, it was the decision of the tribunal to inspect. At the Hearing it became apparent that the Respondents' bundle was missing, but that is not the fault of the Applicants. The First Respondent was entitled to ask for a Hearing. In doing so, the Applicants were exposed to a further fee but that is a risk applicants take when commencing tribunal proceedings. Given that the tribunal has made no finding against the First Respondent, it would not be fair and just to award the fees against them under the overriding objective (rule 3).

59. From the chronology, the Applicants have demonstrated a willingness to resolve matters without resort to legal redress. However, such attempts have not proven successful. They referred to a lack of engagement on the part of the Second Respondent resulting in a situation whereby the tree continued to grow to the frustration of the Applicants.

60. Whilst it was contended that Mr Cox never withheld consent, the evidence indicates that it was only once these proceedings were instituted that authority to enter No 41 was explicitly forthcoming for the purposes of the tree works. Indeed, Mr Cox in his witness statement has denied all responsibility. Clearly, relations have deteriorated, but it seems to the tribunal that the whole process could have been avoided with better co-operation from Mr Cox. Whatever happened in the past with previous occupiers has no real bearing on the current situation.

61. Whilst mindful that Mr Cox was not present at the Hearing, opportunity was given to make full submissions and to attend. Both he and the Applicants refer to their age, health, and limited income as relevant factors. In the circumstances, the tribunal considers it fair and just for the Second Respondent to bear one-half of the Hearing fee.

Name: Judge K Saward Date: 7 September 2023

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).