



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

Case Reference : **CHI/00HY/PHC/2013/0001 and
CHI/00HY/PHC/2013/0006.**

Property : **44 Bungalow Park, Bradenstoke,
Wiltshire, SN15 4EP.**

Applicant : **Ashwin Hill t/a R S Hill & Sons**

Representative : **Miss K McLennan, Solicitor, Tozers
LLP**

Respondent : **Miss Jennifer Elizabeth Hipps**

Representative : **In Person**

Type of Application : **Mobile Homes Act 1983 (as
amended), section 4 and paragraph
5A(2)(a) of Chapter 2 of Schedule 1**

Tribunal Members : **Judge J G Orme (Chairman)
Mr. J S McAllister FRICS (Member)
Mr. S Fitton (Member)**

**Date and Venue of
Hearing** : **29 August 2013.
The Castle Inn, Castle Combe,
Wiltshire**

Date of Decision : **2 September 2013.**

DECISION

For the reasons set out below, the Tribunal determines that:

1. **The Respondent, Miss Jennifer Elizabeth Hipps, is the successor in title to Mr. G T Hipps and is liable under the terms of an agreement which commenced on 1 April 1984 relating to Plot No. 44 The Bungalow Park, Bradenstoke, Wiltshire, SN15 4EP and is the owner of the mobile home situated on that plot.**
2. **The pitch fees due and owing by the Respondent to the Applicant, Ashwin Hill t/a R S Hill & Sons, at the date of the hearing amount to £4,018.28 and are accruing at a monthly rate of £118.01.**
3. **At the date of the hearing the condition of the mobile home situated at 44 Bungalow Park was not such that it was having a detrimental effect on the amenity of the site at Bungalow Park, Bradenstoke, Wiltshire.**

Reasons

Background

1. The Applicant, Ashwin Hill t/a R S Hill & Sons, is the owner of a park home site situated at Bungalow Park, Bradenstoke, Wiltshire, SN15 4EP. The site consists of 35 pitches.
2. Mr. G T Hipps acquired a licence to occupy pitch no. 44 on the site in about 1979 and a park home ("the Home") was erected on that pitch at that time. The Tribunal had before it a copy of a written statement given under the Mobile Homes Act 1983 recording an agreement made between Neyuint Limited and Mr. Hipps which commenced on 1 April 1984 ("the Agreement").
3. The Respondent, Miss Jennifer Elizabeth Hipps, is one of two daughters of Mr. Hipps. Mr. Hipps died in 2009. The Home has not been occupied since before the death of Mr. Hipps. Since that time, the condition of the Home has deteriorated.
4. The Applicant has made 2 applications to the Tribunal. The first application, dated 22 May 2013, was made under section 4 of the Mobile Homes Act 1983 (as amended) ("the Act"). The questions which the Applicant asked the Tribunal to determine were:
 - a. *Is Miss Hipps the sole holder of the Agreement and owner of the Home?*
 - b. *What are the total pitch fees outstanding and accruing monthly and due for payment by the Respondent to the Applicant?*
5. The second application, dated 8 May 2013, was made under paragraph 5A(2)(a) of chapter 2 of schedule 1 to the Act and asked the Tribunal to determine that, having regard to its condition, the Home was having a

detrimental effect on the amenity of the site. Both applications were supported by a witness statement made by Mr. Douglas Houston.

6. On 15 July 2013 the Tribunal issued directions in relation to both applications in similar terms. The Tribunal directed the Respondent to file by 13 August 2013 a statement saying whether or not she agreed with what was said in the Applicant's statement of case and, if not, why she did not agree and to provide copies of any documents on which she wished to rely. The directions provided that if any party wished to rely on the oral evidence of any person at the hearing, then a written witness statement must be provided at least 21 days before the hearing. The directions provided for the applications to be listed for hearing consecutively.
7. The Respondent did not comply with the directions and did not provide a written statement until the day of the hearing.
8. The applications were listed for hearing on 29 August 2013.

The Law

9. The Act as originally enacted provided limited security of tenure to the owner of a park home whose home was located on a protected site. The Act has been considerably amended over the years. Section 1(1) of the Act provides:

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.*

Section 1(2) provides that the owner of the protected site must give the occupier a written statement setting out the terms of the agreement. The statement must comply with the provisions of the Act.
10. Section 3(1) of the Act provides:

An agreement to which this Act applies shall be binding on and enure for the benefit of any successor in title of the owner and any person claiming through or under the owner or any such successor.

Section 3(2) provides for an assignment of the agreement. Section 3(3) deals with the circumstances which exist when the owner dies at a time when he is occupying the home as his only or main residence.
11. Section 4(1) provides:

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,*
subject to subsections (2) to (6).

Subsections (2) to (6) are not relevant in these applications.

12. Section 2 of the Act provides that in any agreement to which the Act applies, there are implied the terms set out in part 1 of schedule 1 to the Act. The terms which are applicable in this case are those set out in chapter 2 of part 1. Paragraph 5A(2) provides:

The owner is entitled to terminate the agreement forthwith if

- a. *on the application of the owner, a tribunal has determined that, having regard to its condition, the mobile home is having a detrimental effect on the amenity of the site; and*
- b. *then, on the application of the owner, the appropriate judicial body, having regard to the tribunal's determination and to any other circumstances, considers it reasonable for the agreement to be terminated.*

Sub-sections 3 to 5 provide for circumstances where the tribunal considers that it would be reasonably practicable for repairs to be carried out. In those circumstances, rule 48 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013/1169 applies.

Inspection

13. The Tribunal inspected the park home site on 29 August 2013. The Applicant was represented by Mr. Douglas Houston who is employed by the Applicant as the company accountant and the Applicant's solicitor, Miss K McLennan of Tozers LLP. The Respondent appeared in person accompanied by a friend, Miss Amanda Williams.
14. The Tribunal walked around the park home site. Mr. Houston informed the Tribunal that it consisted of 35 plots of which 3 were empty at the time of the inspection. It has the benefit of mains water, drainage and electricity. Gas is supplied by means of propane tanks. The park home site appeared to be maintained in a generally good and tidy condition although one or two of the pitches were not so well maintained.
15. The only entrance to the park home site is adjacent to plot 42. Plot 44 is accessed by a footpath running in front of plots 42 and 43. The grass area in front of plots 42 and 43 was mown and well maintained. At the entrance to plot 44 are 2 trees which have been allowed to grow so as to block out much of the view of the Home when viewed from the access path.
16. It was also possible to view plot 44 from plots 2 and 4 which were empty at the time of the inspection. Therefore it was possible to see the side of the Home and the kitchen door from the roadway in front of plots 2 and 4.
17. On inspecting the Home from both the front and side, it was apparent that it was in a neglected state. The walls and guttering were dirty, possibly with mould growing on them. There were some steps leading to the kitchen door with a porch over them both of which appeared rickety and in danger of collapse. There were some concrete steps leading to the front door which were intact but the wooden balustrade

was in a poor condition. The cover over the gas bottles at the rear of the Home was in poor decorative order.

18. The garden area surrounding the Home was unkempt. It was clear that some attempt had been made to keep the growth under control but the garden area was a mass of weeds, including nettles and grass. The hedge at the rear of the plot was overgrown. An elder bush was growing from beneath the Home adjacent to the kitchen door.
19. The Tribunal was able to inspect the interior of the Home. The Home had been emptied of the majority of furniture and all floor coverings. The inside of the Home was in very poor condition and appeared to have been unoccupied for some considerable time. There were 2 holes in the floor of the lounge area. There appeared to have been a leak in the kitchen which had caused some damage.

The Hearing and the Issues

20. The hearing took place at The Castle Inn, Castle Combe on 29 August 2013. The Applicant was represented by Miss McLennan and Mr. Houston. The Respondent appeared in person and was accompanied by Miss Williams.
21. The Respondent explained that she had not prepared a statement of case in advance of the hearing because she was too emotionally involved. The Home had been her home as a child and she had not been able to deal with the matter properly since her father died. She had also found it difficult to deal with the Applicant. She accepted that she had received copies of the applications, the supporting witness statement and the Tribunal's directions although she had not read them completely.
22. As the Respondent had not filed a statement of case, it was necessary to establish her position in relation to the various issues arising as a result of the applications which the Tribunal identified as:
 - a. Was she legally liable under the terms of the Agreement and was she the owner of the Home?
 - b. If so, did she dispute the amount of the pitch fees said to be due and owing?
 - c. Was the condition of the Home having a detrimental effect on the amenity of the site?
 - d. If so, was it reasonably practicable for particular repairs to be carried out which would result in the Home not having that detrimental effect and was the Respondent prepared to carry out those repairs?
23. The Respondent informed the Tribunal that she accepted that she was legally liable under the terms of the agreement and that she had inherited the Home. She disputed the amount of the pitch fees. She disputed that the condition of the Home was having a detrimental effect on the amenity of the site. In the circumstances, the Tribunal only had to consider issues b, c and d.

The Evidence and the submissions

24. The Applicant relied on the evidence contained in the witness statement of Mr. Houston.
25. The Respondent produced a witness statement at the hearing. Miss McLennan did not object to that statement being adduced in evidence but she objected to the Respondent being able to rely on the evidence of Allan Hawkins which was referred to in the Respondent's statement. The Respondent said that Mr. Hawkins was not present to give evidence in person and had not provided a written witness statement. The Respondent also produced copies of the Agreement, a copy having been provided to the Tribunal at an earlier date.
26. In relation to pitch fees, Miss McLennan relied on paragraph 13 of Mr. Houston's statement and the statement of account attached to his statement. She said that the arrears as at the date of the hearing were £4,018.28 and continued to accrue at a monthly rate of £118.01. The Respondent accepted the calculation of the amount of the arrears. She said that following her father's death, she and her sister had paid the pitch fees until March 2010. At that time they were hoping to sell the Home but the sale fell through. Since March 2010, only a few payments had been made. She said that Mr. Hill had refused to allow her to sell the Home or to carry out repairs. She was unable to put forward any legal argument as to why that meant that she did not have to pay the pitch fees.
27. In relation to the detrimental effect on the amenity of the site, Miss McLennan submitted that "*amenity*" meant the visual impact and that the Oxford English Dictionary defined "*amenity*" as something being pleasant or agreeable. She submitted that the present condition of the Home had a detrimental effect on the amenity of the site. She relied on the evidence of the Tribunal's own inspection. She also relied on the evidence of Mr. Houston at paragraphs 14 to 21 of his statement and a letter from an estate agent, Mr. Newton, exhibited to the statement. In particular she pointed to the state of the external steps and porch, the mould on the stucco finish of the Home and the gutters and downpipes, the skirting being bowed and cracked in places and the bush growing through the base. Miss McLennan accepted that the internal condition of the Home was not relevant to the question being considered by the Tribunal. In relation to paragraph 20 of his statement, Mr. Houston said that he had no evidence to support his contention that the condition of the Home was having a detrimental effect on the value of the rest of the park. He said that it was the possibility of an effect on the value rather than an actuality. He said that he was not aware of any complaints from neighbours about the condition of the Home. Miss McLennan pointed to 2 letters from Tozers to the Respondent complaining about the condition of the Home.
28. The Respondent said that the condition of the Home was not as bad as she had anticipated and that it could be cleaned up with a little effort.

She had not received any verbal or written complaints about the condition of the Home from her neighbours.

Conclusions

29. In the light of the oral statement by the Respondent to the Tribunal and the contents of her written statement, the Tribunal did not have to consider the first issue. The Respondent accepted that she is the owner of the Home and legally liable under the terms of the Agreement.
30. In relation to pitch fees, the Tribunal accepts the evidence of Mr. Houston. The Respondent accepted that the pitch fees had not been paid since March 2010 except for a few small payments. Although the Respondent disputed her liability to pay the pitch fees on the basis that the Applicant had refused to allow her to sell or repair the Home, she was unable to point to any legal basis on which that would absolve her of liability to pay. The Tribunal does not consider that those matters do absolve her of liability to pay the pitch fees. The Respondent must seek legal advice as to whether she has other remedies in relation to such matters. The Tribunal finds as a fact that as at the date of the hearing, the Respondent owed to the Applicant the sum of £4,018.28 in respect of pitch fees and that they continue to accrue at a monthly rate of £118.01.
31. As was apparent from the Tribunal's own inspection, the Home is in a dilapidated and neglected condition and the garden area of the pitch was untidy and neglected. However, the question which the Tribunal has to consider is not whether the Respondent is in breach of a condition to maintain the Home and the pitch but whether the condition of the Home is such that it is having a detrimental effect on the amenity of the site. The Tribunal accepts Miss McLennan's submissions that what is meant by amenity in this context is the impact on the visual amenity of the site.
32. There was no evidence to show that the internal condition of the Home had any effect on the amenity of the site.
33. The external condition of the Home is poor. However, the Home is not immediately apparent on entering the site. There is only one access road into and out of the park home site and plot 44 is extremely difficult to see when driving in or out of the site. It is set back from the roadway and behind plots 42, 43 and 47. It is partly hidden by those plots. In addition it is partly obscured by the presence of 2 trees which have been allowed to grow. The Tribunal notes that the Home is located in a corner of the site. The side of the Home can be seen from the empty plots 2 and 4 but the impact from that viewpoint is not substantial. The Tribunal notes that there was no evidence to suggest that the condition of the Home was having an adverse effect on the letting of plots 2 and 4. The Tribunal also notes that there was no evidence of complaints from other occupiers of the site or other adjoining neighbours.

34. The Tribunal accepts that the Home was in a poor condition. However the Tribunal considers that it is not every defect or lack of condition that will cause a detrimental effect on the amenity of the site. It is a matter of fact as to whether or not the actual condition is such that the visual impact of the condition is detrimental to the whole site. From certain viewpoints, the Home is not an attractive site. However, taking the Home in the context of the whole site, the Home did not stand out as being an eyesore. It was not particularly prominent in the context of the whole site. For those reasons, the Tribunal was not satisfied that the condition of the Home was such that it was having a detrimental effect on the amenity of the site.
35. In the light of that finding, it was not necessary to consider whether it was reasonably practicable to carry out repairs to remove that detriment nor whether the Respondent was prepared to carry out such repairs.

Right of Appeal

36. Any party to this application who is dissatisfied with the Tribunal's decision may appeal to the Upper Tribunal (Lands Chamber) under section 231C of the Housing Act 2004 or section 11 of the Tribunals, Courts and Enforcement Act 2007.
37. A person wishing to appeal this decision must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with this application. 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. 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. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal and state the result the party making the application is seeking.
38. The parties are directed to Regulation 52 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 SI 2013/1169. Any application to the Upper Tribunal must be made in accordance with the Tribunal Procedure (Upper Tribunal)(Lands Chamber) Rules 2010 SI 2010/2600.

J G Orme
Judge of the First-tier Tribunal
Dated 2 September 2013