



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

Case Reference : CHI/24UN/PHD/2016/0001

Property : 23, Harewood Park, Andover Down,
Andover, Hampshire SP11 6LH

Applicant : Wyldecrest Parks (Management) Limited

Representative : Mr David Sunderland (Estates Director)

Respondent : Mrs Daphne Edgington

Representative :

Type of Application : Condition of Park Home

Tribunal Member(s) : Judge D. Agnew

Date and venue of CMH :

Date of Decision : 3rd November 2016

DECISION

Background

1. By an application dated 11th July 2016 the site owner of Harewood Park, Andover, Wyldecrest Parks (Management) Limited, applied to the Tribunal under paragraph 5A(2)(a) of Chapter 2 of Schedule 1 to the Mobile Homes Act 1983 (as amended) for a determination that the Respondent's mobile home at 23 Harewood Park, is in such a condition that it is having a detrimental effect on the amenity of the site.
2. The Tribunal issued Directions on 3rd August 2016 providing for a determination of the application without an oral hearing, unless either party objected within 28 days. No objection was received.
3. The Directions also provided for the Respondent to submit, by 14th September 2016, a statement to the Applicant stating full reasons for opposing the application. According to the Applicant no such statement has been received.

The Applicant's case

4. In compliance with Directions the Applicant submitted a statement of case exhibiting coloured photographs of the exterior of the Respondent's home and pitch together with some general views of Harewood Park.
5. Included with the application form were copies of letters written by the site owner to the Respondent complaining that her home and plot had become untidy and that this was having a detrimental effect on the amenity of the site. It was pointed out that this was a breach of an implied term in the Respondent's Mobile Homes Act agreement to maintain the outside of the home and the pitch in a clean and tidy condition.
6. By an email dated 30th September 2016 Mr David Sunderland, the Estates Director of the Applicant company, told the Tribunal that he had spoken with the Respondent's daughter who "seemed to accept that work needed to be done" and that the Applicant was prepared to allow sufficient time for this to be done, "say 3 or 4 months i.e. before next Spring." Mr Sunderland did not have any contact details for the daughter so the Tribunal was unable to confirm with the Respondent's daughter that this was the case.

The Tribunal's findings

7. From the photographic evidence supplied it is clear to the Tribunal that Harewood Park is generally a very neat and tidy Park. The homes are generally maintained in good condition. Gardens are well kept, hedges trimmed and there is an abundance of flowers in pots. In stark contrast the Respondent's garden is overgrown, weed infested and hedges are

untrimmed. Weeds are sprouting up through the paving slabs. And it is evident that the pitch has been left untended for some considerable time. The Tribunal has no hesitation in finding that the condition of the pitch is having a detrimental effect on the amenity of the site. There was no evidence, however, that the condition of the mobile home itself was unsatisfactory or having a detrimental effect on the amenity of the site.

The law

8. This application is brought under paragraph 5A(2) of Schedule 1 to Chapter 2 of the Mobile Homes Act 1983 (as amended) ("the Act"). This states as follows:-

"The [site] owner is entitled to terminate the [Mobile Homes Act] 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."

9. Paragraphs 5A(3) to 5A(5) state that:-

"(3) Sub-paragraphs (4) and (5) apply if, on an application to the tribunal under sub-paragraph (2)(a) –

(a) the tribunal considers that, having regard to the present condition of the mobile home, it is having a detrimental effect on the amenity of the site, but

(b) it also considers that it would be reasonably practicable for particular repairs to be carried out on the mobile home that would result in the mobile home not having that detrimental effect, and

(c) the occupier indicates to the tribunal that the occupier intends to carry out those repairs.

(4) In such a case, the tribunal may make an interim order –

(a) specifying the repairs that must be carried out and the time within which they must be carried out; and

(b) adjourning the proceedings on the application for such period specified in the interim order as the tribunal considers reasonable to enable the repairs to be carried out.

(5) If the tribunal makes an interim order under sub-paragraph (4) it must not make a determination under paragraph 2(a) unless it is satisfied that the specified period has expired without the repairs having been carried out"

10. In section 5 of the Act the term “mobile home” is defined as having the same meaning as “caravan” as in Part 1 the Caravan Sites and Control of Development Act 1960. There, “caravan” is defined as:-
“any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted”
11. By paragraph 4 of Schedule 1 to Chapter 2 of the Act the owner may terminate the agreement forthwith where the court
(a) is satisfied that the occupier has breached a term of the agreement and, after service of a notice to remedy the breach, has not complied with the notice within a reasonable time; and
(b) considers it reasonable for the agreement to be terminated.

Discussion

12. The question raised by this application is whether paragraph 5A applies where it is only the condition of the pitch as opposed to the condition of the mobile home itself that is having a detrimental effect on the amenity of the site.
13. The Tribunal invited submissions from the parties on this point as its preliminary view was that paragraph 5A did not apply to situations where it is the pitch alone that is said to be causing a detrimental effect. The Applicant made written submissions on the point in an email to the Tribunal dated 24th October 2016.
14. The gist of the Applicant’s submissions was as follows:-
 - a. It is an implied term of the Respondent’s Mobile Homes Act agreement set out in paragraph 21 of Schedule 1 to Part 1, Chapter 2 of the Act that the occupier shall maintain (i) the outside of the mobile home (ii) the pitch, including all fences and outbuildings belonging to or enjoyed with it and the mobile home, in a clean and tidy condition.
 - b. This shows that the home and the plot must be maintained and that they should be treated together.
 - c. If the Tribunal’s preliminary view were correct there would be a different legal process for termination of the agreement for a detrimental home or detrimental plot. The former would require a Tribunal determination before an application to terminate being made to the Court, the latter enabling an application being made to the Court without a prior determination by the Tribunal. The Applicant says that this makes no logical sense.
 - d. It says that it is more likely that the condition of the plot would cause a nuisance to others. As the home itself cannot be accessed by the site owner the condition of the home itself would have to

be assessed from external appearance only. This, it says, is no different from the appearance of the plot.

- e. If both the home and the plot were causing a detrimental effect then two separate legal processes would be required to deal with what is essentially the same issue.
- f. The Applicant would welcome a determination from the Tribunal, even if it is contrary to its submissions above, in order to provide some clarity and ammunition if a similar situation were to arise in the future and it was suggested that a prior determination by a Tribunal is a pre-requisite to commencing Court proceedings for termination of the agreement.

The Tribunal's determination

- 15. The Tribunal has considered the Applicant's submissions carefully but has not been persuaded that its preliminary view is wrong. The Tribunal confirms its original opinion that paragraph 5(A)(2) of the Act concerns only the condition of the mobile home itself having a detrimental effect on the amenity of the site and not the state of the pitch outside the home itself.
- 16. The Tribunal has construed paragraph 5A(2) in the context of paragraph 5A as a whole. First, the section refers specifically to the "mobile home" and not the "mobile home and pitch." As stated at paragraph 10 above the term "mobile home" is given a specific definition in section 5 of the Act. That definition is the same as "caravan" in the Caravan Sites and Control of Development Act 1960. That definition is restricted to a "structure designed or adapted for human habitation which is capable of being moved from one place to another". The pitch itself is not a structure, nor is it designed or adapted for human habitation and is certainly not capable of being moved. Consequently, the Tribunal is satisfied that paragraph 5A applies only to the home itself and not the pitch.
- 17. The Tribunal is reinforced in this construction of the paragraph by the fact that the remainder of paragraph 5A refers to repairs being carried out on the home. That language would be inappropriate to describe the maintenance of the pitch in a tidy condition.
- 18. Further, if Parliament had intended the paragraph to refer to the condition of the pitch as well as the condition of the mobile home itself it considers that it could have specifically included the pitch within the ambit of the paragraph as it did in paragraph 21d of the same schedule when referring to the obligation of the occupier to keep the outside of the mobile home and the pitch in a clean and tidy condition.
- 19. The Tribunal considers that it is not correct for paragraph 21d to be cited, as the Applicant does, in support of its construction of paragraph 5A. In the Tribunal's view, paragraph 5A is complementary to the obligation of the occupier as set out in paragraph 21(c), namely to "keep the mobile home in a sound state of repair". In effect paragraph 5A gives an opportunity for a Tribunal, which is an expert Tribunal that

includes chartered surveyors on its panel, to make an assessment as to whether a mobile home is in disrepair such that it is causing a detrimental effect on the amenity of the site and, if it is, to identify the repairs required to remedy the situation and give a time frame for such repairs to be carried out. This can be done without troubling the County Court which, with the greatest of respect to the Court, is less well equipped for determining such matters save perhaps with the aid of expert evidence which is likely to be costly to the parties. Disrepair is a different concept from cleanliness and tidiness.

20. The Tribunal notes that it is not a necessary pre-requisite of the site owner terminating the agreement for breach of the agreement for failing to keep the mobile home in a sound state of repair that he makes an application under paragraph 5A. He would be entitled to apply to the County Court direct for a termination order provided he has first served a notice to remedy the breach which has not been complied with within a reasonable time (paragraph 4 of Schedule 1 aforesaid). Consequently, if there is a failure to keep the mobile home in a sound state of repair and a failure to maintain the pitch in a clean and tidy state there is no need for there to be two sets of proceedings: one under paragraph 4 of the schedule and the other under paragraph 5A. Both may be included under paragraph 4. Also, if, as the Tribunal finds, paragraph 5A is not available to a site owner where the only detrimental effect is being caused by the state of the pitch, the occupier's protection is that under paragraph 4(b) of the schedule the court must find it reasonable for the agreement to be terminated before such an order can be made.

Conclusion

21. The Tribunal concludes that it has no jurisdiction to make the order sought by the Applicant under paragraph 5A(2) of Schedule 1 to Chapter 2 of the Act and dismisses the application.

Dated the 3rd November 2016

Judge D. Agnew