



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

Case Reference : CAM/42UG/PHC/2017/0009

Property : 8A Milano Avenue, Falcon Park, Martlesham Heath,
Ipswich IP5 3RN

Applicants : Mr Brian Ribbans & Mrs Patricia Ribbans
[in person]

Respondent : Tingdene Parks Ltd

represented by : Ryan & Frost, solicitors

Type of Application : by occupier for a determination of any question
arising under the Mobile Homes Act 1983 or
agreement to which it applies

Tribunal Members : G K Sinclair, G F Smith MRICS FAAV REV

Date of Determination : 9th November 2017

Date of this decision : 22nd January 2018

DECISION

- Decision paras 1–4
- Introduction paras 5–6
- Material provisions in written statement paras 7–11
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1. In his application Mr & Mrs Ribbans, occupiers of a park home sited at Falcon Park at Martlesham Heath, raise the question of the responsibility – as between site owner and pitch licensee – for maintenance of a pitch boundary fence which is also the boundary of the site. This the tribunal is asked to determine.
2. The applicants also seek a means of ensuring that all previous references claiming that they are contractually responsible for the boundary fence are withdrawn and that the written statement be amended to protect them and any future occupier from incorrect administration of the relevant clause.
3. For the reasons set out below the tribunal determines that :
 - a. The site licence requires that the boundaries of the protected site shall be clearly marked, for example by fences or hedges. [Licence dated 16th June 2011, condition 1]. These are only examples. A series of short wooden or concrete posts would suffice.
 - b. The occupier cannot without the prior written consent of the site owner (such consent not to be unreasonably withheld) erect, inter alia, any new fence on the pitch [Part 5, express clause 3(e)(ii)]. This includes a fence on or just within the site boundary.
 - c. The occupier shall keep the mobile home in a sound state of repair [Part 3, implied clause 21(c)] but maintain the outside of the mobile home and the pitch and any fences, etc belonging to or enjoyed with it in a clean and tidy condition [Part 3, implied clause 21(d)].
 - d. The site owner shall maintain in a clean and tidy condition those parts of the protected site, including site boundary fences and trees, which are not the responsibility of any occupier of a mobile home stationed on the protected site [Part 3, implied clause 22(d)].
 - e. The obligation in clauses 21(d) and 22(d) to maintain in a clean and tidy condition is lesser in character than that to keep in a sound state of repair, in clause 21(c).
4. The tribunal’s jurisdiction is limited to determining a question arising under the Act or any agreement to which it applies. In the context of this case that involves interpreting the provisions of the agreement. There is no jurisdiction to amend the written statement. The applicants are advised to keep a copy of this decision (and/or of any decision on appeal against it) with their written statement, as a decision on its proper interpretation. While a decision by the First-tier Tribunal may be treated as persuasive it lacks the binding nature of a decision of the Upper Tribunal, which is of equivalent status to the High Court.

Introduction

5. The applicants entered into a written agreement dated 12th March 2010 to occupy a corner pitch, number 8A Milano Avenue, as from that date. The other party

was the respondent site owner, which – according to its director, Mr Jeremy Pearson – had acquired this residential park as a going concern in 2003. The most recent site licence, containing some amendments to the previous version (but none material to this case), was granted by Suffolk Coastal District Council on 16th June 2011.

6. The applicants are members of the Falcon Park Residents Association and invite the tribunal to treat this very much as a test case for those other residents with similarly worded written statements. The respondent points out, by contrast, that not all of the pitch agreements are the same. An example exhibited to Mr Pearson's witness statement is that of Mr & Mrs Shipham of 30 Woodside, but this merely substitutes the word "keep" for "maintain." No other resident has applied to be joined to this application, but what use others care to make of this decision is a matter between them and the respondent company.

Material provisions in written statement

7. The written statement dated 12th March 2010 contains a mixture of express and statutorily implied terms. Those that are material to this dispute, and to which the parties have drawn attention, are the implied terms contained in paragraphs 21 and 22 in Part 3 and an express term to be found at paragraph 3 in Part 5.

8. The material parts of paragraph 21 include some provisions which neither party seemed to rely upon, but which the tribunal considers merits attention. These read as follows :

21. The occupier shall –

...

- (c) keep the mobile home in a sound state of repair;
- (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; ...
- (e) if requested by the owner, provide him with documentary evidence of any costs or expenses in respect of which the occupier seeks reimbursement.

9. Paragraph 22 concerns the site owner's obligations, and states that 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, which are not the responsibility of any occupier of a mobile home stationed on the protected site; ...

10. By paragraph 3 in Part 5 the occupier (referred to as "you") agrees with the site owner :

- (e) You must not, without the prior written consent of the site owner (which must not be unreasonably withheld) carry out any of the following :

...

- (ii) the erection of any porches, sheds, garages, outbuildings, fences or other structures; ...

In consideration of any request for consent to carry out any such works, the site owner shall have regard to all the circumstances, including the weight of any proposed works and their likely effect (if any) on the mobile home, the pitch, the base on which the mobile home is stationed, and the amenity of the site.

11. The site licence provides at condition 1 that the boundaries of the site should be clearly marked, for example by fences or hedges. It also recommends that a 3 m wide area should be kept clear within the inside of all boundaries (except for storage sheds). These are quite standard provisions.

Applicable law

12. The relevant principles of law are to be found in the Mobile Homes Act 1983 (as amended).

13. By section 1 of the Act :

- (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.
- (2) Before making an agreement to which this Act applies, the owner of the protected site (“the owner”) shall give to the proposed occupier under the agreement a written statement which –
 - (a) specifies the names and addresses of the parties;
 - (b) includes particulars of the land on which the proposed occupier is to be entitled to station the mobile home that are sufficient to identify that land;
 - (c) sets out the express terms to be contained in the agreement (including any site rules (see section 2C));
 - (d) sets out the terms to be implied by section 2(1) below; and
 - (e) complies with such other requirements as may be prescribed by regulations made by the Secretary of State.
- (3) The written statement required by subsection (2) above must be given –
 - (a) not later than 28 days before the date on which any agreement for the sale of the mobile home to the proposed occupier is made, or
 - (b) (if no such agreement is made before the making of the agreement to which this Act applies) not later than 28 days before the date on which the agreement to which this Act applies is made.
- (4) *[not relevant]*
- (5) If any express term other than a site rule (see section 2C) –
 - (a) is contained in an agreement to which this Act applies, but
 - (b) was not set out in a written statement given to the proposed occupier in accordance with subsections (2) to (4) above,the term is unenforceable by the owner...

14. By section 4 of the Act a tribunal has jurisdiction to determine the issues which have been raised and it is therefore the “appropriate judicial body” referred to in the above provisions, and as defined in section 5.

15. What is meant by the word “maintain”? According to *Dowding & Reynolds* :

*Dilapidations – The Modern Law and Practice*¹, at 14–37, it is rare to find a covenant referring only to maintenance, and consequently there is little authority in the context of leasehold covenants. However, maintenance is said to be a flexible concept, and much depends on the context. Citing the observations of Ackner LJ in *ACT Construction Ltd v Customs & Excise Commissioners*² that :

Without entering into the realm of definition, maintenance generally involves the following characteristics : firstly, an element of repetition, because the object is to keep the building in the condition in which it started; secondly, that the work is generally speaking foreseeable...; thirdly, again generally speaking, that the work is of a minor character and habitual, although naturally there are exceptions as in the case of roof works; fourthly, that generally speaking in maintenance one does not add something substantial which is new; and lastly, that you do not in ordinary maintenance make a substantial improvement to that which you maintain.

Determination on the papers

16. The tribunal had no need to inspect the site as it had before it various plans and a series of photographs, produced by the respondent site owner, of the wide variety of fences, of different heights and styles, forming the boundary between individual pitches and adjoining woodland. The issue at stake is also really one of contractual interpretation, making a visit unnecessary.
17. The tribunal was provided with not one but two separate bundles; that from the respondent including its evidence that the applicants had not waited for so as to include in theirs. This was not in compliance with the tribunal's directions. Together, however, the documentation gave the tribunal ample information; and in some respects too much. Exchanges of correspondence between the parties or, in the applicants' case, an organisation to which they belong or solicitors acting on their behalf, do not greatly assist with interpretation of the agreement.
18. The park home site comprises a rough triangle on to which a boot-shaped area has been added at one corner, toe pointing upwards. It is in this area that the applicants' pitch is situate. Of the current total of 221 pitches on the site about 60 back on to the park boundary with adjoining land. At a nearby point the main site access road passes too close to the boundary for a very substantial distance to enable any pitches to be located between road and boundary. In this area, which can be described as the base of the triangle, the boundary structure must therefore be owned and maintained by the site owner.
19. Running parallel to the boundaries close to the applicants' pitch are public footpaths. Consequently, in at least 16 cases the many and varied types of fence erected by residents (with or without express permission) include a gate leading on to the adjoining land. By letter dated 10th November 2008 the firm of John Arkwright & Co, acting for the owners of the adjoining woodland, wrote to complain that occupiers of the park home site were encroaching beyond their boundary fences and on to their clients' land using gates "introduced into the boundary fence". The firm asked that such fences be removed, but it does not appear that any steps were taken by the respondent to bring this to the occupiers'

¹ 5th ed (Sweet & Maxwell, 2013)

² [1981] 1 WLR 49

attention.

20. According to Mr Pearson, at paragraph 11 of his witness statement, his experience since 2003 has been that occupiers for the most part attend to their individual fences without reference to the site owner at all. Only on one occasion was the company's consent ever sought.

Discussion and findings

21. Noting the passages quoted from *Dowding & Reynolds*, the tribunal considers that the proper interpretation of the obligation placed upon occupiers (but also on the site owner, where appropriate) is governed by the following context :
- a. The interest of the occupier in the pitch is not as a long lessee but only as protected licensee, although potentially for a long time – subject to the site owner's right to relocate the home to some different part of the site at a future date
 - b. Paragraph 21(c) refers to keeping the mobile home in "a sound state of repair"
 - c. By contrast 21(d) mentions only a duty to maintain "the pitch, including all fences..." in a "clean and tidy condition"
 - d. 21(e) hints at the possibility, in unspecified circumstances, that the cost of work undertaken might be reimbursable by the site owner
 - e. The site owner, in circumstances where the obligation to maintain is not the responsibility of the occupier, has a duty to maintain which is just as limited in character : to keep fences in a "clean and tidy condition".
22. It might be perfectly proper for the site owner, if granting consent for the erection of fences or other structures under paragraph 3(e) in Part 5 and having regard to the effect such structure might have on the amenity of the site, to impose upon the occupier a duty to keep it not just clean and tidy but in reasonable condition – especially if in a prominent position where it can be seen by other occupiers or intending occupiers. However, on this site the tribunal notes that in all cases but one the occupiers have gone ahead with erecting fences – in some cases with gates in the boundary – without seeking any prior consent, and that the site owner has neither objected nor taken any step which might prevent the occupier concerned claiming a defence of estoppel if later challenged.
23. Noting the contrast between the obligations in paragraph 21(c) to repair and in (d) simply to maintain in a clean and tidy condition, and having regard to the fact that these are protected occupiers rather than those with the better security of a long leasehold interest, the tribunal considers that the obligation placed upon the occupier by paragraph 21(d) is merely periodically to wash and/or brush the pitch and any fences and other structures, keep the pitch clear of rubbish, weeded and with any grass cut, so that it is kept in a clean and tidy condition. There is no obligation actively to repair fences or to replace them.
24. The fact that the fences in question also lie on the site boundary with adjoining land makes no difference. Such fences, even if not erected by the particular occupier, are enjoyed with the pitch because they provide a degree of screening from public view – relevant here because of the proximity along the boundaries of public footpaths. – and perhaps shelter from the weather.

25. The terms of the site licence really take matters no further. The boundary is to be clearly marked. That can be achieved by a post and wire fence or even by the installation of a series of short wooden or concrete posts. On this site the owner has historically taken a rather relaxed view to the pitch occupiers undertaking the task themselves by erecting their own fences, taking a line from their neighbours or from some other features not referred to in the papers.
26. Although the site owner or its solicitors may in the past have insisted that the boundaries belong to the site owner that is only a statement of the legal fact that it is the freehold owner and, in certain limited circumstances, may be held liable to the adjoining owner for any trespass or nuisance caused by its licensees, viz the occupiers of the material pitches. The land belongs to the company and it can, if it chooses, erect its own boundary fences. Until now it has not done so but has instead acquiesced in the occupiers erecting their own fences of their own style and choosing, thus creating not a single fence but a line of many. If estoppel can be relied upon then the occupiers cannot be compelled either to take them down or to repair or replace them.
27. One might think, however, that pride in one's own pitch might encourage occupiers to maintain their boundary (and any other) fences not only in a clean and tidy condition but also in good repair. If not, what is to stop the site owner from erecting its own boundary fence outwith the existing line of one that due to its dilapidated and/or dangerous condition may invite intruders, upset other occupiers and conflict with the general appearance and amenity of the site?
28. The tribunal so determines.

Dated 22nd January 2018

Graham Sinclair

Graham Sinclair
Tribunal Judge