



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

Case Reference: CHI/19UJ/PHC/2020/0012

Premises: 9 White Horse Park, Osmington Hill,
Weymouth DT3 6EDB

Applicant: Carmen Smith
Garry Smith

Representative: In Person

Respondent: Knightcrest Park Homes Ltd (formerly
White Horse Park Ltd)

Representative: Ms A Gourlay of counsel

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 A Cresswell (Chairman)
Mr B Bourne MRICS
Mr T Sennett MA FCIEH

Date and venue of Hearing: 8, 9 and 12 November 2021 by Video and
Telephone

Date of Decision: 15 November 2021

DECISION

The Application

1. On 30 November 2020, the Applicants, the pitch occupier, made an application to the Tribunal for the determination of a question, namely *whether they had been denied quiet enjoyment of the mobile home together with the pitch.*

Summary Decision

2. The Tribunal has defined the extent of Pitch 9 and found that there has been no breach of the Applicants' right to quiet enjoyment of their home and pitch.

Preliminary Issues

3. The Tribunal was presented with a bundle encompassing many and varied arguments on the part of the Applicants as to why they were upset with the site's history. However, the Tribunal pointed out that theirs is an application under Section 4 of Mobile Homes Act 1983 ("the Act") and as such could only relate to a request to the Tribunal to determine a question arising under that Act or any agreement to which it applies, the agreement being the agreement between the Site Owner and the Occupier of the pitch.
4. The only such question raised by the Applicants, after an exhaustive reading of all that they have to say in their lengthy pleadings, relates to the implied term of quiet enjoyment.
5. Section 2 of the Act says: *In any agreement to which this Act applies there shall be implied the [applicable] terms set out in Part I of Schedule 1 to this Act.* Paragraph 11 of Part I of Schedule 1 to the Act details the following: *The occupier shall be entitled to quiet enjoyment of the mobile home together with the pitch during the continuance of the agreement, subject to paragraphs 10, 12, 13 and 14 (which relate to entry by the owner).*
6. The right to quiet enjoyment only arose when the Applicants acquired an interest in the home and pitch by reason of the agreement between the parties.

7. **London Borough of Southwark v Mills** (1999) UKHL 40: Quiet enjoyment means *without interference - without interruption of the possession*. 'Enjoy' refers to the exercise and use of the right and having the full benefit of it, rather than to deriving pleasure from it.
The covenant for quiet enjoyment is therefore a covenant that the tenant's lawful possession of the land will not be substantially interfered with by the acts of the lessor or those lawfully claiming under him. For present purposes, two points about the covenant should be noticed. First, there must be a substantial interference with the tenant's possession. This means his ability to use it in an ordinary lawful way.
It is prospective in its nature: see Norton on Deeds (2nd ed. 1928) pp. 612-613. It is a covenant that the tenant's lawful possession will not be interfered with by the landlord or anyone claiming under him. The covenant does not apply to things done before the grant of the tenancy, even though they may have continuing consequences for the tenant.
8. **Lyttleton Times Co Ltd v Warners Ltd** [1907] AC 476: the location of the (demised) premises and the actual or anticipated use of adjoining premises are material factors in the construction of the covenant in any particular case.
9. The sole question, therefore, for the Tribunal to determine is whether the Respondent was in breach of the implied term of *quiet enjoyment of the mobile home together with the pitch* between the date of the agreement and the date of the application to the Tribunal. The one exception to the above is the need for the Tribunal to ascertain with some precision what constituted the pitch so as to be able to say whether there has been a breach of its quiet enjoyment.
10. Interesting as other aspects of the pleaded claim might be to the parties, the Tribunal's jurisdiction relates solely to the question detailed above, such that the Tribunal is disinterested in those other elements and would not hear evidence relating to them and makes little or no reference to them in this Decision. In making that decision, the Tribunal is mindful of its overriding objective, which it sets out below:

**THE TRIBUNAL PROCEDURE (FIRST-TIER TRIBUNAL)
(PROPERTY CHAMBER) RULES 2013**

Overriding objective and parties' obligation to co-operate with the Tribunal

3.—(1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.

(2) Dealing with a case fairly and justly includes—

(a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal;

(b) avoiding unnecessary formality and seeking flexibility in the proceedings;

(c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;

(d) using any special expertise of the Tribunal effectively; and

(e) avoiding delay, so far as compatible with proper consideration of the issues.

(3) The Tribunal must seek to give effect to the overriding objective when it—

. (a) exercises any power under these Rules; or

. (b) interprets any rule or practice direction.

(4) Parties must—

. (a) help the Tribunal to further the overriding objective; and

. (b) co-operate with the Tribunal generally.

11. The Tribunal told the parties that it would take the Tribunal's earlier Decision of 25 January 2021 ("the earlier Decision") as its starting point. As both parties have the full text of the earlier Decision it would be otiose as well as unnecessarily verbose to repeat those findings in this Decision. Anyone coming to this matter afresh will need to read the earlier Decision too.

Inspection

12. The Tribunal did not inspect the property. It believed that there was a huge amount of material available to it in the form of maps, photographs and descriptions including from the site inspection in the earlier Decision. It also believed that there was little point in inspecting the site when the features present at the time of the agreement were no longer present. An added factor was the extra time which would be involved; three days were spent on the hearing and a fourth day would not have been proportionate to the issue in question, given the added costs to the parties and the public.

Directions

13. Directions were issued on various dates.
14. The Tribunal directed that the parties should submit specified documentation to the Tribunal for consideration. This determination is made in the light of the documentation submitted in response to those directions, and the evidence and submissions made by the parties at the hearing.
15. The Tribunal heard evidence from the Applicants, Mr and Mrs Smith, Ben Eiser, Karen Mason, Kevin Riggs, Henry Simmons, Keith Barnfield, Dennis Stevens, Nicholas Garland and Kirstie Apps.
16. The parties confirmed at the end of the hearing that they had been able to say all that they wished to say to the Tribunal.

The Law

17. The law is contained primarily in 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.

18. In this case, the Tribunal has had regard to the totality of the evidence available to it.
19. The relevant law is set out below:

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 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

Section 2 of the Act says: *In any agreement to which this Act applies there shall be implied the [applicable] terms set out in Part I of Schedule 1 to this Act.* Paragraph 11 of Part I of Schedule 1 to the Act details the following: *The occupier shall be entitled to quiet enjoyment of the mobile home together with the pitch during the continuance of the agreement, subject to paragraphs 10, 12, 13 and 14 (which relate to entry by the owner).*

20. In **Elleray v Bourne** [2018] UKUT 0003(LC), the Upper Tribunal advised: *“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.”

21. 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.

22. In **Wyldcrest Parks (Management) Ltd v Santer** (2018) UKUT 0030 (LC), the Upper Tribunal suggested that the policy of the legislation was that most mobile homes disputes should be dealt with in tribunals rather than courts because of their greater expertise and accessibility and lower cost. The enhanced powers conferred by section 231A Housing Act 2004 were consistent with that policy since they reduced the risk that proceedings to resolve disputes may be required to be commenced in more than one forum.

“The language of section 4 of the 1983 Act is very broad, and the powers conferred by section 231A of the 2004 Act are extensive and expressed in general terms. It should therefore be taken that (with the exception of disputes over termination) the proper forum for the resolution of contractual disputes between park home owners and the owners of protected sites in England is the FTT.”

The Dispute: Discussion and Findings

23. **The Applicants** argue that they were cheated out of a larger pitch by the Respondent. They were told that theirs was the only single pitch on the site. They realised they had been cheated when phase 2 of the site took place and there were single units with larger pitches for the same price, subsequently purchased for less.
24. They say that the Respondent had no right to site Plot 10 where it did. In the alternative, Plot 10 was given their driveway.

25. They insist that the estate agent, Karen Mason, had told them that they would have the space between Plots 9 and 10 and that this is supported by the plan used by Ms Mason and supplied to the council.
26. They assert that their right to quiet enjoyment has been breached by the Respondent.
27. The park rules were breached by the siting of Plot 10 and the habitable windows were facing Plot 9.
28. Quiet enjoyment was breached by the Respondent's failure to take down the wall built above Plot 10 and to site Plot 10 in Field B.
29. The Applicants' closing submissions contain much which is not relevant to the issue before the Tribunal.
30. **The Respondent** argues that the Applicants were given the pitch agreed with them and that there has been no breach of the right to quiet enjoyment.
31. Ms Gourlay submitted that there could be no breach of quiet enjoyment if the state existed before the Applicants came on site and that there was a need to look at the environment of a mobile homes site, where homes would inevitably be close together. The environment being known to Mrs Smith as she had visited another site run by Mr Simmons before making her purchase.
32. Privacy is not a term of the contract. In any event, it is not physically possible to actually look directly into the windows from close up due to the wall on the side to Plot 10 and the wall and slope on the side to Plot 8. It was also clear at the time of purchase that Plot 10 was already there with a door and windows facing Plot 9.
33. There is no suggestion that Mr Simmons has caused or procured or suggested or asked or is in any way connected with Mr Garland standing where he did in the photographs, and no evidence that Mr Garland did so regularly.

34. Mr Garland has only 1 car and parks at the rear only when charging it. He never has more than 2 or at times 3 cars on his drive at times of visits and gave evidence that he maintains the correct separation distance.
35. White vans shown in photographs are mainly on the roadway.
36. It should be noted that the Applicants actually oppose a park rule, which would have limited the number of cars parked, in the proceedings leading to the earlier Decision, which is inconsistent with their current complaint about the number of cars parked.
37. A letter has been written by Mr Simmons to park residents to remind them of the rules about parking.
38. **The Tribunal's** first task is to establish what constituted the home and pitch.
39. The Applicants were provided with a plan by the selling agent, which detailed Plot 9 (then Plot 7) as having a home size of 45 x 13 feet and the model of home as Omar Middleton at a price of £189,000. All other plots had a home with a width of either 20 or 22 feet. The picture on the plan of the plot layout showed no apparent distinction in terms of widths of the plots and appeared to have been produced using a generic drawing tool rather than being an attempt to accurately portray the size of the plots. It was an impression of the proposed layout of a developing site. It would have been very clear to the Applicants when they saw the concrete pads and then the homes on site before they made their purchase that the actual layout differed from that shown on the illustrative plan.
40. The Tribunal has been supplied with the Written Statement under the 1983 Act signed by Carmen Smith on 16 November 2018 with an expressed start date for the agreement to commence on 3 December 2018. The agreement describes the land on which Mrs Smith will be entitled to station her mobile home as Plot 9 White Horse Park. Section 5 of the agreement, which should detail
“A plan showing

(a) the size and location of the pitch;

(b) the size of the base on which the mobile home is to be stationed;

and

(c) measurements between identifiable fixed points on the site and the pitch and base;

is either detailed below or attached to this statement.”

is missing from the agreement.

41. The Tribunal commenced proceedings by positing 3 possible circumstances. The Applicants had believed they were buying X, but were given Y; the Applicants believed they were buying X and did so, but when they left for abroad it was converted to Y; the Applicants thought they were buying X and X is what they got. The Applicants said during their evidence that their position was the first or second proposition. As the Tribunal will explain, it finds the third proposition to be the correct one.
42. The Applicants have striven to assert that their view of what took place is the only true version of events, but the Tribunal has found otherwise. Indeed, there is a preponderance of evidence against their view.
43. The Tribunal heard considerable evidence about what the councils did and when they did and about the site licence, who held it, etc, but this was all chaff thrown up by the Applicants in their desperate attempt to prove their case. None of it was relevant to their decision to purchase. It was clear, in any event, from the Decision of the Planning Inspectorate of 3 June 2019 that the following use for the whole park, both Field A and Field B would have been lawful on 19 February 2018: *The use of land for up to 17 caravans for the purposes of human habitation throughout the year including as a person's sole or main accommodation.*
44. There is, of course, a history to the development of the park and its licensing. One interesting factor is that the site was developed on land which had originally been split across 2 administrative boundaries, with the portions being referred to as Field A and Field B (phase 2). The Tribunal could see no relevance, however, to its first task from a consideration of this history. There was simply no evidence to support

the contention of the Applicants that the separation space between plots 9 and 10 was ever intended to belong to Plot 9, whatever arguments the site owner was having with the councils.

45. Mr Simmons gave very clear, credible and compelling evidence as to how he had gone about the division of the land to fit as many pitches as he could. He told the Tribunal that, with permission to develop Field A, he had worked in 3 metres from the boundary for Plot 10, then placed Plot 8 at the other end of the available land by the entrance and then slotted in Plot 9 to the gap between those 2 units. He was able to achieve the necessary 6 metres separation by buying a bespoke unit for Plot 9 from Omar. The bespoke unit was made 1 foot wider and made shorter to accommodate the space at the front of the unit. This adds considerable weight to Mr Simmons' evidence as to the intended size of Plot 9 before the Applicants had ever even seen the plot. The very fact that the bespoke, smaller than usual unit was procured from Omar for Plot 9 adds considerable weight to the finding that the Tribunal reveals later as to the dimensions of Plot 9.
46. The Applicants argued that Plot 10 was sited partly in Field B, being in another administrative area and that it had been the intention of the owner to provide Plot 10 with a separation space on the Field B side if and when permission to develop Field B was granted. This ignores, however, 3 very relevant factors. Firstly, a brick retaining boundary wall was placed between Plot 10 and the land leading up to Field B.
47. Secondly, there is no reliable evidence available to the Tribunal to show that any part of Plot 10 was within Field B. Emails from a council site licence officer, Mr Felgate, could have been explained by him in the form of a witness statement or by his attendance at the Tribunal but neither happened. The Applicants were clearly trying to read between the lines and to make sense of a subject beyond their experience, hanging on to individual references for support. The Tribunal did, however, hear live evidence from Mr Eiser, a planning consultant working on behalf of Mr Simmons, who gave clear evidence that Plot 10 fits within Field A.

48. Thirdly, when Field B was developed and Mr Simmons again had to consider how many units he could place there, he was left with a parcel of land to Plot 10's side of the new Plot 11; he offered that land to Plot 11, not Plot 10. It is inconceivable that Mr Simmons would be giving "Plot 10's land" to Plot 11 when this could have been his opportunity to give back to Plot 9 the separation space between 9 and 10 had he stolen it from them in the first place.
49. Mr Simmons properly accepted that he was at fault for not completing Section 5 of the agreement. Had he done so, he said, it is very unlikely that this case would have proceeded. In the absence of a section 5 description, the Tribunal has had to examine the available evidence. It is not assisted either by any section 5 description of Plot 10, because Mr Garland told the Tribunal that he did not believe that his agreement had section 5 completed. Mr Simmons confirmed that he had never had a request from the Applicants under Rule 22 *to provide accurate written details of*
- (i) the size of the pitch and the base on which the mobile home is stationed; and*
- (ii) the location of the pitch and the base within the protected site; and such details must include measurements between identifiable fixed points on the protected site and the pitch and the base;*
50. Mr Simmons also accepted that he had been unable to attend a formal meeting to discuss the plot before purchase, but that he had spoken to the Applicants on site and explained to them where their parking space was at the front of the home and explained to them about the steps at the side. When this occurred is not clear.
51. Mr Simmons also accepted that he had not given the Applicants a site licence with the agreement, nor the park rules, neither of which were available at the time.
52. The site licence was issued on 21 August 2019. The Tribunal could see no support whatsoever for the assertion by the Applicants that they had the "master copy" of the site licence and that it was unsigned when it was clear that they had received their electronic copy as an email attachment from Mr Felgate.
53. There were no rules at the date of purchase.

54. Mr Simmons also accepted that the written statement had not been provided to the Applicants 28 days before the purchase.
55. The Applicants made much of the adverts for the park and the reference to all homes having private driveways, decking and gardens and the reference to French doors opening out to a garden. The Tribunal notes that these were just adverts and that there was a disclaimer as to accuracy.
56. Ms Mason asserts that she discussed the plot with the Applicants on their first and second visits and pointed out to them that their parking space was at the front end of the pitch and that they should discuss boundaries with the construction team, i.e. Mr Riggs, and Mr Simmons. She pointed out to them that an Omar Middleton was on order and that it had side doors, such that they could not be opening out on to a garden. She later, on 19 September 2018, supplied them with a floor plan and they visited the home on site before the purchase, which again would make it very clear to them that the doors were not going to open on to a garden and that those doors face the entrance door and side windows of Plot 10.
57. It would have been obvious to the Applicants when visiting the site on their first visit that the pitches were not physically defined at that time. The illustrative plan given to them by Ms Mason was annotated as a proposed site plan. It showed no indication of a garden. Mrs Smith said that she did not expect to see driveways between the homes, yet the illustrative plan showed such.
58. Ms Mason told the Tribunal that she told the Applicants that they would get a small property with space for only one car to be parked at the front of the unit. The fact that the 3 people may or may not have stood in the gap between Plots 9 and 10 when discussing this adds, the Tribunal finds, no weight to the Applicants' assertion that they believed they were buying that space given that on the first visit there was just the concrete pad and on the second just the homes without any of the brickwork, blockwork or hard landscaping completed. Indeed, the questions asked by Mrs Smith at the hearing were based on what she was not told rather than what she was told about the driveway.

59. Ms Mason explained, and the Applicants accepted, that they could only afford £189,000 and not the larger homes and plots costing considerably more. The next cheapest model was some £50,000 more expensive. The Applicants were very keen indeed to live on the park. Plot 10 was sold for some £100,000 more than Plot 9. Common sense says that they must have realised that the difference in price was reflected in both the size of the home and the size of the plot.
60. It was indicative of their wishful evidence that Mrs Smith first said that Ms Mason had indicated that they would have all of the space between Plots 9 and 10 and then watered this down to Ms Mason having stood in the space and waved her arms around and not actually saying what had first been claimed and also saying that the area had been shown to them with no indication that they would only have as far as their boundary wall. The Tribunal notes that none of this was mentioned in the statement the Applicants provided to the Tribunal.
61. Mr Riggs told the Tribunal that he had a good discussion with the Applicants about their plot; they first met when it was just a pad. They used to come to the site quite often. They discussed the brick steps and the need for a long landing because there were both a front door and French doors on the side facing Plot 10. It was obvious that the area beyond the wall belonged to Plot 10 and he told them that the wall and laurels continuing the line of the wall would be the defining point.
62. Despite later bemoaning the lack of decking, and although still disputing that Mr Riggs had said that they would need a longer landing beyond the brick steps because there were 2 doors, Mrs Smith told the Tribunal that she had discussed whether to have brick or decking for the landing and made no mention of any other discussion of decking.
63. Mr Riggs said that the Applicants had been very happy with the work he had done and they confirmed that they were happy with the quality of his work. *“We might have discussed the lack of space, but I referred you to the discussion we had before you went away.”* He told the Tribunal that the walkway at the steps and the railing topped wall at the other side were discussed with the Applicants before they left for abroad. They did not start to complain until phase 2 began, he said.

64. The Tribunal finds that the Applicants were delighted with the site, delighted too with the home and moved into that home and pitch knowing its limitations in size. The Tribunal finds that there was some rush on their part to acquire the pitch because they were living in bedsit accommodation at the time and were due to go abroad for work. Mrs Smith told the Tribunal that she had never taken much notice of Plot 10 and had not noticed that its French doors also opened out on to the same side opposite hers.
65. They did not engage a solicitor, which was their choice, but a costly choice given their current claims. The Tribunal can find no reason to accept the assertion by the Applicants that Ms Mason had said “*Are you mad?*” when asked whether they should engage a solicitor, particularly as she referred to a solicitor with expertise in the field of park homes. Ms Mason said that the advert’s reference to “no stamp duty or conveyancing fees to be paid” was correct because there is no stamp duty to be paid and no conveyancing fees to be paid to the owner.
66. Mrs Smith told the Tribunal that she had trusted Ms Mason when she said that theirs was the only single unit on site, but the Tribunal finds that any hope of further single units on site was simply hope as it depended on a second stage of the development which, in turn, was dependent upon the necessary consents from the local authority.
67. Whilst the Tribunal did examine the various issues raised by the Applicants about the adverts, it had no confidence that these adverts had all been seen, studied and relied upon by the Applicants before they made their purchase. There was significant evidence of a search by the Applicants for each and every tool they could use to argue their case.
68. When the Applicants returned to the home in March 2019, they had opportunities to raise any concerns they may have but failed to do so. Mrs Smith accepted in cross-examination that the wall to the steps and the laurels formed a physical boundary. What better time to complain than when they wrote to Mr Simmons’ assistant on 29 March 2019 to seek Mr Simmons’ views on whether to convert the

steps to a slope so as to ease the passage of a bike to their shed? Anyone reading that email and knowing what the Applicants now say about stolen land would be utterly astounded at their failure to mention the “theft”. This Tribunal can only conclude that the Applicants knew full well that the space beyond the boundary wall was not part of their pitch. Had it been their belief, the email would have been wholly unnecessary as the Applicants could simply have wheeled their bikes across the driveway to their shed. This email is some of the strongest evidence of the unreliability of the claim now made by the Applicants.

69. There is further reason to disbelieve the assertions of the Applicants in the messages sent to Ms Mason by the Applicants upon their return to the park in March 2019, where there is no mention of any concern about the size of the pitch. Nor in the message to Ms Mason of 6 June 2019 complaining about a neighbour’s washing.
70. There is very clear evidence of their understanding that the driveway belonged to Plot 10 in their email to Mr Simmons of 19 August 2019, where Mr Smith says the following:
*“We have been parking at number 10 and have only just started parking in front our property and this has happened.
We are going to park at number 10 again.
We are concerned what will happen when number 10 is sold.”*
71. The above is also illustrative of an expectation that the space was to be used for parking, the very use to which they themselves were putting it.
72. Mr Smith said in the witness statement for the hearing leading to the earlier Decision: *“Pitch 9 is unique in having no driveway to its side, only a hard standing to the front.”*
73. Mrs Smith told the Tribunal that Mr Simmons did not give them the driveway because he had sold it to Plot 10, but that is clearly nonsense because Plot 10 was not sold until October 2019.

74. The Applicants also argue that the park rules were breached by the siting of Plot 10. This is clearly wrong because the home on Plot 10 was in situ before that of Plot 9 and there were no site rules until August 2019 at the earliest. Rule 11 is said to have been breached, but this rule is for Occupiers to obey, not the Owner.
75. The Applicants argue that quiet enjoyment was breached by the Respondent's failure to take down the wall built above Plot 10 and to site Plot 10 in Field B. This cannot be the case, and runs counter to the Applicants' other claim that Plot 10 is already in Field B, because the Tribunal has already found that the siting of Plot 10 is irrelevant to the position of Plot 9 save that its position and that of Plot 8 determined the space available for Plot 9, which the Applicants agreed to purchase.
76. Ms Mason said that it was 7 months later before they expressed any dissatisfaction to her, by which time phase 2 had started and they were unhappy that similar homes to Plot 9 were being sold with larger plots and decking. Mrs Smith told the Tribunal *"I went mental when I learned of the prices"* of the single units in phase 2 and *"we would never have bought this park home if we had known there were going to be other single units on this park"*. All of this is indicative of a fury caused not by the allocation of the pitch of the size it was, but rather a feeling of being cheated by events.
77. An email of 12 October 2019 appears to be the start of the Applicants' campaign to get a different and better pitch. *"I hope you don't mind the Smiths voicing there opinion, we just feel disappointed that we have paid the same price as the new homes and those homes have decking to the front and car parking space for 2 to 3 cars."* But, still not a word about their pitch size being reduced.
78. A pre-action letter from solicitors instructed by the Applicants of 26 March 2020 to Mr Simmons very significantly makes no mention of the Applicants returning home in March 2020 to find part of their pitch removed or that their pitch was too small. Rather it referred to the reality of the driveway that Mrs Smith had been promised in the pictorial map and advertisements to the right of the Home (when looking straight on) belonged to her neighbours at number 10. The letter says specifically

“Mrs Smith was the only home without a private driveway for two cars on Phase 1 of the development”.

79. The Tribunal takes account also of the evidence of Mrs Smith. She told the Tribunal how delighted she was with the park and that she would have lived in a tent on the pitch.
80. Mr Stevens told the Tribunal how Mrs Smith had said that she was more than happy with her home and she loved it. *“You enjoyed sitting in the sun enjoying the sea views.”* He had never heard anyone say that they had been had.
81. Mr Stevens also related how the Applicants parked their vehicles on the driveway of Plot 10 from June 2019 and before it was sold in October 2019. During that period, he distinctly recalls Mrs Smith saying to him on more than one occasion words to the effect of *“once number 10 is sold, we will no longer be able to park our car on that driveway”*. This was a clear indication to him, and to the Tribunal, unchallenged as it was, that Mrs Smith was both aware of and accepted the fact that the driveway was not hers to use and that it belonged exclusively to number 10.
82. Mrs Smith referred to the use of the driveway between the 2 homes as being useful for having friends around and to chill.
83. For the sake of clarity, the Tribunal finds that Pitch 9 consists of the concrete pad and the land around the mobile home bounded by and including the rear garden and the railing topped wall to its side with Plot 8 and the wall adjacent to the steps to its side with Plot 10 and the continuation of that wall in the form of beds filled with laurel hedging and to the road at the front of the home to the kerbside.
84. The Applicants have sought to denigrate their neighbour, Mr Garland. It was suggested that he was told that he could park as many cars as he wanted in the separation space, something denied by Mr Garland, who owns one car, and there is nothing to support the Applicants’ submission in this respect. Mr Garland was painted in the Applicants’ case as some sort of peeping tom, who regularly watched the Applicants, on occasions from very close to their home. Mrs Smith pointed out

how close he was to their home in photographs she had taken and specifically said *“that’s how close he stands”* and *“he can’t be that close”*. The Tribunal finds this evidence to be wholly wrong as well as the photographs in question postdating the application.

85. Mr Garland came across to the Tribunal as a very honest witness, who had been the victim of a cynical attempt by the Applicants to portray him in a bad light. He is a retired Ministry of Defence police officer. The Applicants presented photographs of Mr Garland, which he had posed for at their request, one showing him leaning on their boundary wall and then used it to support their case of his claimed intrusive nature. It was very revealing how the Applicants rowed back from their accusations when he actually gave evidence against them. It was revealing too that Mrs Smith evinced a desire to do in the separation space exactly what Mr Garland did, i.e. park a car, (move his bins) and “chill”.
86. Mr Garland said that Section 5 had not been completed on his agreement, but that he had been told when viewing the pitch that the separation distance to the boundary wall with Plot 9 was included.
87. Mr Garland told the Tribunal that at no time after he moved in in October 2019 and immediately commenced using the driveway between Plots 9 and 10 did the Applicants say to the Garlands that they were using their driveway or gave them any impression that they believed that they were using land which only they were entitled to use, until August 2020. He reported that the Applicants were parking their cars in the road causing problems to him and neighbours and provided photographic evidence to support this.
88. Ms Mason referred to a product available to ensure that park home residents can see out of their windows, but others cannot see in and that she had offered this product to the Applicants at the time of their purchase. Mr Garland told the Tribunal that he uses solar film for this very purpose. The Tribunal is very aware that issues of privacy can arise on a mobile home park. Mr Simmons made the point that all of the walls of a park home have windows. For the avoidance of doubt, the Tribunal finds specifically that there is no sufficient evidence to support any

contention that Mr Garland has abused the privacy of the Applicants in any way. He has used the space available to him in a perfectly proper way.

89. After the earlier Decision, there is no evidence that any vehicles have been parked in the separation space less than 3 metres from the Applicants' home and there is evidence that Mr Simmons reminded residents in a letter of 2 April 2021 about this requirement and the requirement not to obstruct entrances to caravans and access around them.
90. The Applicants made much about being able to park their cars in the separation space, whilst at the same time denigrating others for doing so, whether on the grounds of fire safety or otherwise. They even persuaded the Garlands to let them park their cars on the disputed driveway in preparation for a visit by Mr Felgate and then refused to move them, which is far from supportive of their current stance that they are not interested in parking spaces and indicative of a desire to bolster their case. Far from supportive too is the unchallenged evidence of others that the Applicants park their cars in vacant driveways and Mr Barnfield's unchallenged evidence of their parking within the 3 metre gap of Plots 12 and 15 in the knowledge that Mr Felgate was to attend the site and measure distances of cars from homes and their bringing of the application about parking leading to the earlier Decision and the fact that their initial complaint to the council was about parking and the fact that parking was raised by their solicitors in the letter of 26 March 2019 referred to above.
91. It was very clear to the Tribunal that the Applicants had bought in haste. When Mrs Smith's attention was drawn to her signature on the agreement, she said "*I was reckless, I shouldn't have done it. Anyway, I did it.*"
92. The Applicants had returned to the park in March 2019 after leaving for work abroad on 5 December 2018 and expressed their complete satisfaction with arrangements to Mr Riggs. There were teething problems, however, in that where they placed their wheelie bin was an issue; as a temporary measure Mr Riggs pulled out a laurel to allow the wheely bin to be moved. Longer term, Mr Riggs suggested that the bin could be placed elsewhere.

93. The Applicants complain about a lack of communal parking, but that is a complaint about the status quo when they made their purchase.
94. They raise too issues of health and safety and fire risk, but these are not supported by expert evidence and, in any event, are not relevant to the issues before the Tribunal of quiet enjoyment.
95. There is no evidence before the Tribunal of any of the suggested breaches of the site licence or of the compliance notices served by the council being actively pursued. Indeed, the 3 compliance notices were revoked on 1 December 2020 after the council receiving fresh evidence from the Respondent, including a Fire Safety Report.
96. The Applicants presented a series of photographs, illustrative they said of being contrary to their quiet enjoyment. The Tribunal has already referred to the concocted photographs showing Mr Garland. Other photographs are illustrative of a park in development, showing as Mr Simmons said for one such a van involved in tarmac work and one involved in snagging operations.
97. The Applicants expressed concern that Mr Barnfield had erected cameras at his home, having some pre-knowledge of the outcome of the earlier Decision and being under the influence of Mr Simmons to aim cameras at Plot 9. Mr Barnfield appeared to the Tribunal to be a thoroughly honest witness. He provided evidence of his intention to obtain security cameras on 3 December 2020, before the earlier Decision, and there was no evidence that any camera was able to observe anything at Plot 9 or do anything other than described by Mr Barnfield as covering the entrance to his home. A further example of the Applicants casting around for any stone to throw at the Respondent. They appear to have turned on their neighbours in a desperate attempt to further their futile case.
98. The erection of cameras too post-dated the application.
99. The Tribunal has detailed earlier what constitutes quiet enjoyment as defined by the House of Lords. The Tribunal has not seen nor heard any evidence remotely capable

of leading it to conclude that that right has been infringed in any way possible by the Respondent or those claiming under him. For the sake of clarity, the Tribunal finds that there has been no interference with the right, let alone substantial interference.

100. Whilst the Tribunal has referred to some matters which postdate the application, it is because they reflect upon the credibility of the Applicants.
101. The Applicants submitted a number of letters from estate agents expressing an inability to market the home and pitch, but the Tribunal does not find these to be documents to which it can apply any weight. It was clear for instance that the agents had done no detailed enquiry into the circumstances and also there were misstatements of the circumstances.
102. The Applicants talked of bringing further claims to cover what has happened after the date of the current application. The Tribunal cautions them that they risk a high costs payment if they bring forward any application as lacking in merit as the current application. Whilst the Tribunal can sympathise with the bad luck of buying their home and pitch only to find a subsequent development would have given them more for their money, their conduct has only counted against them.

Conclusion

103. **The Tribunal** has defined the extent of Pitch 9 and found that there has been no breach of the Applicants' right to quiet enjoyment of their home and pitch.

APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. 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. Where possible you should send your application for permission to appeal by email to rpsouthern@justice.gov.uk as this will enable the First-tier Tribunal Regional Office to deal with it more efficiently.
3. 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.
4. 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.