

IN THE UPPER TRIBUNAL (LANDS CHAMBER)



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TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

PARK HOMES – JURISDICTION – *whether a mobile home park with planning permission and site licence for mixed seasonal and permanent use is a “protected site” – s.1(1), Mobile Homes Act 1983 – s.1(2), Caravan Sites Act 1968 – appeals dismissed*

**IN THE MATTER OF APPEALS AGAINST DECISIONS OF THE FIRST-TIER
TRIBUNAL (PROPERTY CHAMBER)**

BETWEEN:

JOHN ROMANS PARK HOMES LIMITED

and

Appellant

**MICHAEL HANCOCK
JULIE HANCOCK
ALISON NEWEY
PATRICK HALL**

Respondents

**Re: 43 and 48 Morn Gate Caravan Park,
Bridport Road,
Dorchester,
Dorset**

Martin Rodger QC, Deputy Chamber President

Royal Courts of Justice, Strand, London WC2A 2LL

26 June 2018

Mr A. Walder, instructed by Apps Legal Ltd, for the appellant

Mr J. Burton, instructed by Laceys, for the first and second respondents

Ms A. Newey and *Mr P. Hall*, the third and fourth respondents, represented themselves

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The following cases are referred to in this decision:

Berkeley Leisure Group Ltd v Hampton [2001] EWCA Civ 1474

Balthasar v Mullane [1985] 2 EGLR 260

Murphy v Watt [2011] 1 WLR 2129

Introduction

1. Statutory security of tenure is provided to the occupiers of mobile homes by the Mobile Homes Act 1983 (“the 1983 Act) which applies to any agreement under which a person is entitled to station a mobile home on a “protected site”, and to occupy the home as their only or main residence (section 1(1), 1983 Act). The policy of the 1983 Act is to confer statutory protection on the occupiers of permanent residential caravans or mobile homes, but not on the occupiers of caravans intended only for holiday or seasonal use.
2. The issue in these two appeals concerns the status of sites with planning permission for a mixture of seasonal holiday caravans and permanent residential mobile homes. More specifically the issue is whether two pitches on the Morn Gate Caravan Park at Bridport Road in Dorchester (“the Park”) are, or are part of, a protected site.
3. The Park (which has recently changed its name to Hardy Country Park) is used by both seasonal holiday caravans, and permanent residential mobile homes and chalets.
4. The appeals are against two decisions of the First-tier Tribunal (Property Chamber) (“the FTT”) made on 27 September 2017, by which it determined that agreements for the occupation of two pitches on the Park were agreements to which section 1(1) of the 1983 Act applies. It reached that conclusion because it considered that the Park in its entirety was a protected site.
5. The appellant, John Romans Park Homes Ltd, purchased the Park in May 2015 from A & M Properties (Dorset) Limited (“A&M”). The principle shareholder of A&M was a Mr Jackson, a solicitor, whose family had run the Park for many years.
6. The older of the two agreements considered by the FTT permitted the stationing of a mobile home on Pitch 48, and had been made between A&M and a previous occupier of the pitch, Mrs Ann Ashmore, on 1 March 2001. By the time of the hearing the appellant was the owner of the Park and the person with the benefit of the pitch agreement was now Alison Newey, the third respondent; the fourth respondent, Mr Hall, lives with Ms Newey in her mobile home on Pitch 48, although he is not an assignee of the benefit of the pitch agreement.
7. The second agreement considered by the FTT was for the occupation of Pitch 43. The agreement had been made on 29 November 2003 between A&M and Mr and Mrs Hancock (the first and second respondents).
8. The arguments in the two appeals apply equally to both agreements. Those arguments were presented by Mr Aaron Walder, on behalf of the appellant, and by Mr Jamie Burton on behalf of Mr and Mrs Hancock. Ms Newey and Mr Hall also attended the hearing and

invited me to treat the submissions made by Mr Burton as applying equally to their position, which I am happy to do.

The meaning of “protected site”

9. The 1983 Act is intended to benefit the occupiers of permanent residential caravans or mobile homes, rather than the occupiers of caravans intended only for holiday or seasonal use. Effect is given to that policy by both of the qualifying conditions expressed in section 1(1), which applies the 1983 Act to any agreement under which a person is entitled to station a mobile home on land forming part of a protected site, and to occupy the mobile home as their only or main residence.

10. By section 5(1) of the 1983 Act “protected site” has the same meaning as in Part I of the Caravan Sites Act 1968 (“the 1968 Act”). Section 1 of the 1968 Act is concerned with the application of Part I. So far as is material, and as amended, section 1(2) provides as follows:

“1(2) For the purposes of this Part of this Act a protected site is any land in England in respect of which a site licence is required under Part I of the Caravan Sites and Control of Development Act 1960 ..., not being land in respect of which the relevant planning permission or site licence —

 - (a) is expressed to be granted for holiday use only; or
 - (b) is otherwise so expressed or subject to such conditions that there are times of the year when no caravan may be stationed on the land for human habitation.”

11. To be a protected site, therefore, land must first be land in respect of which a site licence is required under Part I of the Caravan Sites and Control of Development Act 1960 (“the 1960 Act”). It must additionally satisfy the negative condition of not being land in respect of which the relevant planning permission or site licence is expressed to be granted for holiday use, or which have effect so that there are times of the year when no caravan may be stationed on the land for human habitation.

12. By section 1(1) of the 1960 Act a site licence is required for any land which is a “caravan site”. Section 1(4) explains that the expression “caravan site” means “land on which a caravan is stationed for the purposes of human habitation and land which is used in conjunction with land on which a caravan is so stationed”.

13. In *Balthasar v Mullane* [1985] 2 EGLR 260, the Court of Appeal considered the definition of “protected site” in section 1(1) of the 1968 Act. Glidewell LJ concluded (at 263B) that the definition involves the site being one in respect of which planning permission has been granted for the stationing of one or more caravans so that “if planning permission has not

been granted, then the site is not a protected site within the meaning of [the 1968 Act] or, thus, within the meaning of the 1983 Act".

14. In *Murphy v Watt* [2011] 1 WLR 2129, the Court of Appeal held that the occupier of a mobile home would only have the benefit of the 1983 Act if the agreement pursuant to which he or she occupied the mobile home had come within section 1(1) of the 1983 Act at its inception. That was said to be the natural meaning of section 1(1), and was supported by the requirement that a written statement be offered to the occupier before an agreement to which the Act applies is made. If an agreement could come within the Act because of matters occurring after its inception, this requirement could not be satisfied.
15. It follows, as the parties in this appeal agreed, that the question whether an agreement is one under which a person is entitled to station a mobile home on land forming part of a protected site must be answered having regard to the planning and regulatory status of the site at the date the relevant agreement is entered into.

The Park

16. The FTT provided a careful description of the layout of the Park. On entering from the A35 the visitor first encounters a sign giving directions to holiday sites on the left and to residential sites on the right. To the east of the entrance, on the "holiday side" of the Park, there were twenty seven caravans and chalets. Pitch 48, occupied by Ms Newey and Mr Hall, is located in this area. On the western side of the entrance there are three chalets on Pitches 45, 2 and 43 (Mr and Mrs Hancock's pitch). A further twelve pitches are located in an enclosure at the south west corner of the Park. This is said by the appellant to represent the permanent residential part of the site. According to the appellant the rest of the site is reserved for seasonal and holiday use.
17. When the appellant acquired the Park in May 2015 it was provided with a list of "holiday units" by Mr Jackson of A&M. There were thirty one units on the list, including Pitch 43 and Pitch 45. Despite featuring on Mr Jackson's list of holiday units, Pitch 45 was occupied under the terms of a written statement complying with the 1983 Act.
18. The Park has been used for the stationing of caravans and mobile homes since at least the early 1960s. In October 1961 planning permission was granted to "Continue Caravan Site at Morngate Farm" subject to conditions limiting the total number of caravans which could be situated on the land at any one time to twenty, and requiring that not more than twelve of those were to remain occupied during the period 31st October to 31st March.
19. The number of what were referred to as "static holiday caravans" permitted on the site was increased from eight to thirty by a planning permission granted on 21 July 1977. The permission referred to a plan submitted with the application, and included conditions requiring that access and landscaping should be in accordance with that plan, but there was no requirement that the static holiday caravans should be stationed in a particular area. Nor

did either the 1961 permission or the 1977 permission refer expressly to any part of the Park as being available for permanent pitches. Nevertheless, a subsequent letter of 26 August 1977 from the Chief Executive of the local planning authority to the site owner's agent explained that the planning officer regarded the new permission as "covering the 12 residential mobile homes" which were "quite clearly shown" on the plan referred to in the permission. The location of those homes was shown on the plan as being in the south west corner of the Park.

20. A further planning permission was granted in 1992 for the use of one pitch as a permanent residence for a site warden. The plan referred to in this permission designated nine pitches in the south west corner of the Park as "existing 9 No. mobile homes" and a further three pitches towards the centre of the site as "existing 3 No. mobile homes".
21. With twelve caravans able to be occupied all year round, the total number of caravans permitted on the Park by July 1977 was 42. This was reflected in the terms of a site licence issued by West Dorset District Council and transferred to A&M on 2 September 1978, which provided that "Not more than thirty Seasonal and twelve Residential caravans shall be stationed on the land at any one time".
22. The site licence was subsequently amended by the local authority in September 1989 in response to a request by Mr Jackson that occupation of seasonal caravans should be permitted all year. This request was refused, but the licence was varied to provide that the thirty seasonal caravans could be occupied from the sixteenth of March until the fourteenth of January in the following year. This licence remained in force in 2001 and in 2003 when the agreements for the occupation of Pitch 43 and Pitch 48 were entered into by the appellant's predecessor.
23. On 25 October 2012 the site licence was varied again "to permit the 30 seasonal caravans to be occupied all year round". The former condition limiting total numbers to "Not more than thirty Seasonal and twelve Residential caravans" remained applicable, so the effect of the variation would appear to have been that there was no longer a restriction on the period of the year during which the "seasonal" caravans could be occupied.
24. A final variation of the planning status of the Park was implemented on 30 January 2015, when a certificate of lawful use was granted by the local planning authority in respect of "the unrestricted residential occupation of 30 mobile homes". The basis of this change seems to have been a concern on the part of the authority that the manner in which the 1977 planning permission had sought to restrict the thirty units to seasonal or holiday use only had not been valid.

Pitch 43 - Mr and Mrs Hancock

25. The proceedings concerning Pitch 43 began in the County Court as a claim by the appellant for possession of the pitch. When the respondents claimed to be entitled to the protection of

the 1983 Act the proceedings were transferred to the FTT in October 2016 to enable that question to be determined under section 4 of the 1983 Act which gives the FTT jurisdiction to determine any question arising under the 1983 Act or an agreement to which it applies.

26. Mr and Mrs Hancock's involvement with the Park goes back to August 2003 when they sold their former home in Staffordshire and moved to Dorset, where they purchased the mobile home situated on Pitch 43 for £45,000. They have lived there as their only residence for almost 15 years.

27. Although they purchased their mobile home from its previous occupier, Mr and Mrs Hancock did not take an assignment of the occupier's pitch agreement. Instead, they entered into a new written agreement in November 2003 under which they are entitled to station their mobile home on the Park. The document described itself as a "Licence" and referred to Mr and Mrs Hancock as "the Licensee". It began by recording that the Park Owner (A&M) was the holder of a caravan site licence in respect of the Park granted by the District Council. The Park Owner then agreed that the Licensee was entitled to enter and station one "chalet" on the Park and:

"...for that purpose only to have the necessary use of that part of the Caravan Park known as Pitch No. L1 or such other pitch thereon as may be available at the commencement of this Licence as the Park Owner may from time to time during the continuance of this Licence require the Licensee to occupy (hereinafter called "the Pitch")."

The effect of the agreement was therefore that while they were initially entitled to occupy Pitch L1, the pitch allocated to Mr and Mrs Hancock could be moved from time to time by the site owner. The pitch referred to in the agreement as Pitch No. L1 is now known as Pitch 43.

28. By clause 2 of the agreement the licence was to continue for a period of 15 years from 9 February 2001 unless determined for breach. By clause 3 a sum of £3,234 (referred to as "the Payment") was payable by the Licensee to the Park Owner in advance on 1 January each year. By clause 4(2) Mr and Mrs Hancock agreed to comply with the Park rules, and by clause 4(9) they were obliged to observe and perform the terms of the site licence. By clause 4(4) they agreed to use their chalet for private occupation only, for themselves and their family and no others. On the termination of the agreement they were required by clause 4(6) to remove their chalet.

29. Two specific provisions of the Park rules are relevant to the issue in these appeals. They provide as follows:

"1. The Payment is payable on 1 January in full. Statements will not normally be sent, and all Payments must be paid promptly. No relaxation of this rule will be permitted and a caravan lodge or chalet remaining on the Caravan Park unlicensed a

month before the opening of the Season (15 March) will be removed from site and disposed of together with its contents.

2. Licensees who do not wish to renew their Licence must ensure that the Licensee's Caravan Lodge or Chalet and property are completely removed from the Caravan Park at the end of the letting Season (31 October) and on failure to remove the Caravan Lodge or Chalet the Licensees will be responsible for a winter storage charge to the 1 January."

As the FTT pointed out, the references in the Park rules to "the letting Season" do not appear to have been kept up to date with changes in the site licence, which since 1989 had permitted occupation of seasonal caravans except between 14 January and 16 March each year.

30. The FTT accepted evidence given by Mrs Hancock that Mr Jackson told them "from the outset" that they could occupy their mobile home permanently without moving out for two months each year. It is not clear whether this assurance was given before the pitch agreement was signed. In a written statement admitted in evidence by the FTT Mr Jackson denied having given any such assurance, but the FTT found Mrs Hancock to be a credible witness. There was no dispute that she and Mr Hancock had in fact occupied their pitch, without vacating the mobile home, continuously since 2001.

Pitch 48 – Ms Newey and Mr Hall

31. The proceedings concerning Pitch 48 commenced in the FTT when Ms Newey and Mr Hall applied for an order requiring the appellant to provide them with a written statement of the terms on which they occupy the pitch, as it is obliged to do by section 1(2) of the 1983 Act if the agreement is one to which the 1983 Act applies.
32. The agreement under which the respondents occupy Pitch 48 was granted to their predecessor, Mrs Ashmore, in March 2001. It is in substantially the same terms as the agreement for Pitch 43.
33. Before Ms Newey acquired Mrs Ashmore's mobile home, and took an assignment of the pitch agreement in June 2011, she and Mr Hall had lived on the Park during the winter of 2009-10 and again from about October 2010 until May 2011. Ms Newey's evidence to the FTT was that before she purchased the mobile home on Plot 48 she was told by Mr Jackson that she and Mr Hall would have the right to full time residence, for twelve months a year, without any holiday restrictions. This was consistent with a letter written to them by Mr Jackson in September 2012 in which he advised them that they were not liable to pay VAT on their pitch fees and service charge because they lived permanently on the Park and the mobile home was their principal private residence. On other occasions, however, Mr Jackson referred to the mobile home in correspondence as a "holiday home".

The FTT's decisions

34. Although the proceedings were not heard together, or by identically constituted tribunals, Judge Tildesley OBE, presided at each hearing and the decisions in each case reach the same conclusion and apply the same reasoning.
35. The FTT found that the Park was a protected site within the meaning of the 1983 Act and that the Act did apply to the disputed pitches. The basis of the decision was that a site with planning permission or a licence for a mixed residential and holiday use was a protected site because no particular part of the site was restricted to holiday use only.
36. The FTT distinguished a decision of the Court of Appeal on which the appellant relied, *Berkeley Leisure Group Ltd v Hampton* [2001] EWCA Civ 1474, in which it had been held that an individual pitch on a mixed holiday/residential park was not a protected site. In that case specific pitches had been designated in the relevant planning permission as available for permanent residential occupation, with the remainder being subject to a holiday restriction. The pitch in issue was not one of those identified as having permission for permanent residential use. The occupier's case was that since the planning permission for the site as a whole was not restricted to "holiday use only", the entirety of the site was a protected site and he was entitled to statutory protection. Robert Walker LJ did not accept that it would always be possible to ascertain the status of a site as a whole, and said this at [35]:

"However, if the terms of a planning permission and a site licence distinguish between different parts of a caravan park as regards the permitted user, it may be both natural and necessary to treat the area as divided into two or more parts for the purposes of identifying any "protected site"."
37. The FTT concluded that, since neither the planning permission nor the site licence restricted the use of Pitches 43 and 48 (or indeed any specific area of the Park) to holiday or seasonal use, the Park as a whole was a protected site. It was also satisfied that in each case the respondents were entitled to occupy the mobile homes on their pitches as their only or main residence (and that either they or their predecessor had been so entitled at the date of grant of the relevant agreement).
38. The FTT nevertheless acknowledged the importance of the issue of whether a mixed use site could be a protected site and gave permission to appeal to this Tribunal on that issue. In each case it refused permission to appeal on three additional issues. The appellant has renewed its application for permission to appeal on those issues, and the Tribunal directed that it would consider whether to grant permission at the hearing of the appeal on the main question. I will return to those issues later in this decision.

Submissions on the appeal

39. The Appellant's case before the FTT, and on the appeal, was that upon detailed

consideration of both the 1977 planning permission and the 1989 site licence so far as they related to Pitch 43 and Pitch 48, these were “expressed to be granted for holiday use only” so as to fall within the exception in section 1(2)(a) of the 1968 Act.

40. Mr Walder submitted that it was clear that the Court of Appeal in *Berkeley* considered that section 1(2) of the 1968 Act allowed for mixed use sites to be outside the application of the legislation if the relevant planning permission or site licence was so expressed that the plot in question falls within one of the two exceptions at s.1(2)(a) or (b). The successful appellant in *Berkeley* had submitted that a protected site must be a site capable of lawful use for the stationing of the caravan in question, because it cannot have been Parliament’s intention that the landowner would be liable to enforcement (for breach of planning permission or site licence) while simultaneously being unable to lawfully remove the caravan due to its statutory protection. This “absurdity”, as it was described, could be avoided by focusing on the planning and regulatory status of the individual plot, rather than focusing on the Park as a whole.
41. Where a planning permission and site licence distinguish between different parts of a site as regards their permitted use, Mr Walder suggested that the focus must be on the status of the specific plot alone and not the whole site. Nor was it enough to consider, as the FTT had done, whether one particular area of the Park could be distinguished; what was required was consideration how in practice a specific plot could be used having regard to the planning permission and site licence which governed it. Where the number of pitches available for permanent residential occupation was limited, as in this case, it was necessary to ask whether a permanent right of occupation could lawfully have been granted at the date of the agreement in question. If twelve pitches were already the subject of permanent residential rights, it was not possible, Mr Walder submitted, for the pitch on which a thirteenth mobile home was to be stationed to be a protected site. The FTT had erred in law by failing to consider the issues on that basis.
42. Had the FTT not concluded that the whole Park was a protected site, and had it instead focussed its attention on Pitches 43 and 48, Mr Walder submitted that it would have found evidence from which it should have concluded that those pitches were not available for permanent residential use, and were instead confined to holiday occupation only.
43. The evidence on which Mr Walder relied comprised the letter written by the Chief Executive of West Dorset District Council in August 1977, and the 1992 planning permission for the permanent warden’s accommodation. The 1977 letter had referred to the twelve residential mobile homes as being clearly shown on the plan mentioned in the recent planning permission, while the plan attached to the 1992 permission identified twelve pitches in the south west corner of the site as “existing mobile homes”. Evidence had been given at the hearing by Mr Romans that when his company had acquired the Park he had been given a copy of the 1992 plan and told it identified the 12 permanent residential pitches. Neither Pitch 43 nor Pitch 48 was on it.

44. Other factors which were said to make it clear that pitches were either for permanent residential occupation, or for holiday occupation, included the location of the pitch, the level of the pitch fee and the manner in which it was increased, the commission paid to the site owner on the sale of the caravan, and the price paid to the previous occupiers for the caravan and for the benefit of the pitch agreement. Most tellingly, Mr Walder suggested, was that the pitch agreements for Pitches 43 and 48 were not in the form required by section 1(6) of the 1983 Act, whereas the agreements for the twelve plots which enjoyed full residential status were.
45. It was therefore clear, Mr Walder submitted, that the twelve pitches which had planning permission for permanent residential use were being utilised elsewhere, and neither Pitch 43 nor Pitch 48 could have had such permission when the agreements were entered into. They were permitted to be used only for holiday occupation, and as a result the pitches on which the respondents' mobile homes were stationed were not protected sites for the purposes of the 1983 Act.
46. On behalf of Mr and Mrs Hancock, Mr Burton supported the decision and reasoning of the FTT. He also presented a more elaborate argument which had not been considered by the FTT, to the effect that the 1989 site licence (which for the first time had introduced a restriction on the period of the year during which the seasonal caravans could be occupied) was *ultra vires* the powers of the local authority.

Discussion

47. Although Mr Walder sought to persuade me that the FTT had misunderstood and misapplied the decision of the Court of Appeal in *Berkeley*, I do not accept that it did.
48. The facts in *Berkeley* were rather different from this case, in that although the *Berkeley* site was a mixed use site, the pitches on which permanent residential occupation was permitted were specifically identified in the relevant planning permission and site licence. The respondent's pitch was not one of those so identified. It was therefore obvious, from the outset, that permanent residential occupation of the pitch occupied by the respondent was not permitted. Had the whole park been designated a protected site, the applicant would have been unable to remove the respondent from his pitch, and would have been liable to enforcement proceedings and criminal sanctions under the planning legislation. The Court of Appeal accepted the appellant's contention that the 1983 Act could not have been intended to operate in that manner. The solution it found was to recognise that, when applying section 1(2) of the 1983 Act to a particular site, it was necessary to treat the whole site as sub-divided into two or more parts "if the terms of a planning permission and a site licence distinguish between different parts of a caravan park as regards the permitted user."
49. In this case, the planning permission and site licence for the Park do not, in terms, restrict permanent residential occupation to specific parts of the site. The 1961 permission referred only to the total number of caravans, and to the number which could be occupied during the

winter. The 1977 permission increased the permitted number of holiday caravans but did not require that the caravan or mobile home situated on any particular pitch should be occupied permanently or only seasonally. The owner of the Park had complete freedom over where permanent and seasonal occupation was to be permitted. The same was true of the 1989 site licence.

50. The question whether a caravan site with planning permission is a protected site for the purpose of the 1983 Act depends solely on the terms of the relevant planning permission and site licence pertaining to the site (if a site licence has been granted). That is as true where the site is a single pitch on which only one mobile home could be stationed, as it is for a large site suitable for many mobile homes. It is the consequence of the express language of section 1(2), 1968 Act, which provides that land in respect of which a site licence is required is a protected site unless the relevant planning permission or the site licence is “expressed to be granted for holiday use only” or is “otherwise so expressed or subject to such conditions that there are times of the year when no caravan may be stationed on the land for human habitation”. What matters are the terms in which the permission and licence are expressed.
51. Is the planning permission relevant to Pitch 43 and Pitch 48 “expressed to be granted for holiday use only”? No it is not. The relevant planning permission is the 1977 permission, which leaves the Park owner free to use any part of the Park for either static holiday caravans or permanent residential mobile homes. Mr Walder is no doubt correct that once twelve pitches have been occupied for permanent residential use, the Park owner would be in breach of planning control if it licensed a thirteenth permanent residential occupier, but that is not the question. No matter how many permanent residential mobile homes there are on the site, it cannot be said of any individual pitch that the relevant planning permission is expressed to be granted for holiday use only. Unlike *Berkeley*, the relevant planning permission does not distinguish between individual pitches but permits mixed holiday and residential use of the whole site.
52. Nor is the relevant planning permission “otherwise so expressed or subject to such conditions” that only seasonal occupation is permitted of any individual pitch.
53. The proper interpretation of the 1977 planning permission is not affected by the plan referred to in it. None of the conditions which mention the plan requires any particular part of the Park to be used for any particular type of occupation. The owner was not prevented by the planning permission from changing the lay out of the Park, or allocating a different area to permanent residential pitches from those marked on the plan. Nor could the understanding of the planning officer, as reported in the letter of July 1977 from the Council’s Chief Executive, make any difference to the meaning and effect of the planning permission.
54. Mr Walder also referred to the terms of the site licence which prohibited the use of the thirty seasonal caravans between 14 January and 16 March each year. Had that restriction

been applied to specific pitches, or to a specific part of the Park, it would have been sufficient to take that pitch or the relevant part of the Park outside the scope of the 1983 Act, by reason of section 1(2)(b), 1968 Act. But once again the licence was not prescriptive about which area could be used for which type of occupation.

55. Mr Walder's contention that, where in fact there were already twelve permanent homes on protected sites, the 1983 Act would not apply to a thirteenth, which could not be on a protected site, must fail because it focuses on matters other than the terms in which the planning permission and the site licence are expressed.
56. The suggested absurdity of a site owner being unable to comply with an enforcement notice in respect of a mixed site because the whole site would qualify as protected is easily avoided. No occupier of a mobile home can acquire the right to station his or her home on a pitch except by agreement with the site owner, or by taking an assignment of the benefit of such an agreement. If the number of permanent residential pitches which may be allowed on a site is limited, to ensure that the 1983 Act does not apply to the agreement the owner need only make it a condition of the agreement that the occupier may not use the pitch as their only or main residence. Such a term would make it impossible for the occupier to satisfy section 1(1)(b), 1983 Act. If the site owner does not impose such a restriction, he may find itself in difficulty, but the difficulty is one against which it (or its predecessor) could easily have protected themselves and there is no reason to allow their failure to do so to influence the proper interpretation of the 1968 Act.
57. In my judgment, therefore, the FTT came to the correct conclusion on the main issue in both appeals, for the reasons it gave. In those circumstances it is not necessary to consider Mr Burton's additional argument that the seasonal limitation in the site licence was *ultra vires*.

The application for permission to appeal on additional grounds

58. The FTT refused permission to the appellant to argue on appeal that the evidence showed that the Park was designated into different sectors, with permanent residential homes in the south west and seasonal or holiday homes elsewhere. In my judgment there is no realistic prospect of a successful appeal on that issue and the FTT was right to refuse permission. The evidence relied on had nothing to do with the terms in which the planning permission or site licence were expressed, and in any event it did not establish the strict segregation suggested.
59. The FTT also refused permission to appeal on the question whether the pitch agreement prohibited use of each of the pitches as the occupier's only or main residence. Once again I consider the FTT was right to refuse permission. The basis of the appellant's submission was that the agreement required the occupier of the pitch to comply with the Park rules, which contained the terms set out in paragraph 29 above. It was said that these imported a requirement that the occupier must vacate the pitch between 31 October and 15 March the

following year. In my judgment they do no such thing. The first rule relates to the date and manner of payment, and the reference to “the opening of the Season (15 March)” imposes no limitation on the occupier’s right to live on the pitch all year round. The same is true of rule 2, which simply fixes a date by which an occupier whose licence to occupy is seasonal must remove their caravan if they do not wish to renew for the next season. It imposes no requirement of seasonal occupation, and none is included in the Pitch agreements for either Pitch 43 or Pitch 48.

60. Mr Walder also sought permission to argue that certain features of the pitch agreements, such as are mentioned in paragraph 44 above, indicated that the pitches were not intended to be occupied as the only or main home of the respondents. None of those features includes, or has the effect of, an agreement that the occupier may not occupy throughout the year, or may not occupy as their only home. The FTT refused permission to appeal on that argument and I do the same.

Disposal

61. For these reasons I am satisfied that the FTT reached the correct conclusion on both of the applications before it. I therefore dismiss both appeals. The whole of the Park, including Pitch 43 (Mr and Mrs Hancock) and Pitch 48 (Ms Newey and Mr Hall), is a protected site to which the 1983 Act applies.
62. In the case of Pitch 43 the parties should now apply to the County Court for it formally to determine the appellant’s claim for possession of the Pitch and any ancillary matters such as costs which may arise.
63. In the case of Pitch 48, I direct the appellant to provide Ms Newey with a written statement of the terms on which she occupies the pitch, under section 1(6), 1983 Act, including those matters specified in section 1(2)(a)-(e), of the Act. The written statement must be provided within 14 days of the date of this decision, that is by 10 August 2018.

Martin Rodger QC
Deputy Chamber President

27 July 2018

