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

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| **Case Reference** | **:** | **CAM/42UG/PHC/2018/0004** |
| **County Court Claim No** | **:** | **E87YJ977** |
| **Property** | **:** | 8A Milano Avenue, Falcon Park, Martlesham Heath, Ipswich IP5 3RN |
| **Applicants** | **:** | Mr Brian Ribbans & Mrs Patricia Ribbans |
| **represented by** | **:** | Mr Ribbans, assisted by Mr Shipham, of Falcon Park Residents Association |
| **Respondent** | **:** | Tingdene Parks Ltd |
| **represented by** | **:** | Stephen Wood, of Ryan & Frost, solicitors |
| **Type of Application** | **:** | 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 & C Gowman BSc MCIEH MCMI |
| **Date of hearing** | **:** | Tuesday 11th December 2018 at |
| **and venue** | **:** | Cambridge Magistrates Court |
| **Date of decision** | **:** | 20th December 2018 |

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**DECISION**

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1. At a directions hearing held at Cambridge County Court on 9th September 2018, and which both parties attended, the tribunal directed that the following were the questions arising under the Mobile Homes Act 1983 or agreement to which it applies that required determination by this tribunal :
   a. Who is responsible for replacing, or has the right to replace, fencing on a pitch which also comprises a site boundary feature : the site owner or the occupier of the pitch?
   b. If the fence reasonably requires replacement, must it be on a like for like basis or can, for example, a 6 ft fence be replaced with one half the height?
   c. Does the agreement make any provision governing the circumstances of this case, namely the replacement by the pitch occupier of a low but undamaged fence erected by the site owner?

2. The tribunal now determines that the answers to the above questions are :
   a. The site owner (as expressly conceded by it at the hearing)
   b. Yes, because the substitution of a lower fence affects the amenity of the site. The purpose of the fence is to provide both privacy and security and the standard prevailing at the commencement of the occupier's licence should not be compromised by a unilateral decision of the site owner to reduce that standard
   c. No.

3. The tribunal having exercised its exclusive jurisdiction to determine questions arising under the Mobile Homes Act 1983 or agreement to which it applies, the judge (sitting as a judge of the County Court) rules that :
   a. The deliberate replacement by or to the order of the site owner of these sections of fence with 3 foot fence panels constitutes a breach of covenant of quiet enjoyment and/or the tort of nuisance
   b. That the pitch occupiers (Mr & Mrs Ribbans) were entitled to abate that nuisance by reinstating a full-height fence after the site owner declined to do so
   c. That the rest of the full-height fence panels were in such poor condition that it was reasonable in the circumstances for Mr Ribbans to replace it all
   d. That the cost of replacing the fence, viz the £1 325.00 quoted by Hardman Oakley Fencing, is accepted by the site owner as reasonable

4. The defendant site owner shall pay damages to the claimant pitch occupiers in the above sum of £1 325.00 plus the court fee of £115.00 and fixed costs of £80.00, being the total sum of £1 520.00, within 28 days of the accompanying Order.

**Background**

5. By a previous decision dated 22nd January 2018 the tribunal determined some questions arising out of a dispute between the site owner and pitch occupiers as to who was responsible for maintaining and/or replacing fences, including site boundary fences, enjoyed with individual pitches. The determination made was 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).

6. The events giving rise to these proceedings predate the above determination, but the above findings were insufficient to provide a clear answer to the questions now arising.

7. Pitch 8a Milano Avenue occupies a corner position within the licensed site, with fences 5 or 6 feet high to one side and along the rear of the pitch forming the site boundary with neighbouring land owned by a third party. On the other side of the fences are two public footpaths, which cross at the corner. During the winter of 2015-16 parts of the rear boundary fence blew down while Mr & Mrs Ribbans were away. Friends propped up the fallen panels, but in January 2016 they blew down again during a storm and were damaged beyond repair. In late summer 2016 the site owner arranged for the damaged panels to be replaced – but only with fence panels 3 feet tall. Full size fence posts were installed but then, apparently on the orders of the site owner, they were cut down to 3 feet high.

8. Mr & Mrs Ribbans were concerned that passers by could now look into the rear of the pitch and see them inside their home through their kitchen window. During the night 8th September 2016 someone climbed over a low panel in the rear fence and entered the pitch with a view to burglary. Awoken, Mr Ribbans investigated and challenged the intruder, was assaulted by him, and the intruder then fled back over the low fence and escaped via the footpath. The incident, in which Mr Ribbans suffered injury, was reported to the police.

9. Mr Ribbans had written concerning responsibility for the fence on numerous occasions but, on raising with the site owner by telephone this specific incident

and the need to reinstate a full-height fence not only here but where large parts of the original posts and panels were rotten at ground level, he was put through to a male employee who basically told Mr Ribbans that what he wanted to do about it was up to him. Thereupon, Mr Ribbans arranged to have a fencing contractor quote for and later install a new post and rail fence with feather-edged close boarding along the entire boundary on one side and at the rear of the pitch. According to the quotation produced to the tribunal the total cost was £1 325.

10. Mr & Mrs Ribbans issued a County Court money claim seeking recovery of the cost of this fencing. The site owner immediately challenged this by persuading a deputy District Judge at the Money Claims Centre (in the absence of a response from the claimants) that the claim really concerned a question or questions arising under the Mobile Homes Act 1983 or agreement to which it applies, and that the tribunal has sole jurisdiction to deal with such matters. A transfer was requested and granted.

11. Upon receipt of the file the tribunal judge arranged for an oral directions hearing at which the actual questions that the site owner considered had to be determined were actually crystallised, and at which the judge explained that the money claim could only be resolved by the County Court; but that under a pilot scheme that is currently in force both matters could be dealt with together at one hearing by both tribunal and court. Appropriate directions were then issued.

**Material provisions in the written statement**

12. The written statement dated 12th March 2010 contains a mixture of express and statutorily implied terms. Those that were material to the dispute determined in January 2018, and to which the parties then drew the tribunal's 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.

13. 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; ...

14. 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.

15. In Part 3 (Implied terms) paragraph 11 provides that :

> 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.

16. Of those, only paragraphs 13 and 14 are relevant here. They provide that :

> 13. The owner may enter the pitch to carry out essential repair or emergency works on giving as much notice to the occupier (whether in writing or otherwise) as is reasonably practicable in the circumstances.
>
> 14. Unless the occupier has agreed otherwise, the owner may enter the pitch for a reason other than one specified in paragraph 12 or 13 only if he has given the occupier at least 14 clear days' written notice of the date, time and reason for his visit.

17. 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**

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

19. 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…

20. 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.

21. What is meant by "quiet enjoyment"? Until the decision of the House of Lords in *Southwark LBC v Tanner*[1] a covenant for quiet enjoyment was generally regarded as being no more than a covenant for good title by the landlord, entitling the tenant to complain of breach thereof only if, as a result of a claim by a person with a title superior to that of the landlord, it was deprived of its use and enjoyment of the whole or a part of the demised premises altogether. Prior to that case the general view was that a tenant could not sue for breach of the covenant of quiet enjoyment merely by reason of his use and enjoyment of the demised premises being substantially interfered with by activities carried out by the landlord or persons authorised by the landlord in adjoining premises; his only cause of action in such circumstances was to sue in the tort of nuisance.

22. The House of Lords disagreed. It held[2] that the covenant for quiet enjoyment was breached if the landlord or persons authorised by the landlord carried out activities on land adjoining the demised premises which substantially interfered with the use and enjoyment of the premises by the tenant, it being irrelevant that the activities would support also an action in nuisance.

**The hearing**

23. The tribunal had before it a relatively slim bundle containing the claim form, statements of case, and one statement each from Mr Ribbans and Mr Pearson, a director of the site owner company. The hearing was commendably short, as both parties treated the background as being essentially agreed, and neither wished to cross-examine the other. The site owner was represented by Mr Wood, its solicitor, and Mr Ribbans was assisted by Mr Shipham of the Falcon Park Residents Association. The hearing proceeded by way of questions from the tribunal and oral submissions.

24. On behalf of the site owner Mr Wood submitted that under the written agreement and the findings made previously neither party was obliged to anything more than keep any fences, etc in a tidy condition. On behalf of his client he conceded that pitch boundary fences that also marked the site boundary with neighbouring land were owned by and the responsibility of the site owner. It could choose to repair or replace such fences as it wished. However, by paragraph 3(e)(ii) of Part 5 a pitch occupier needed the written consent of the site owner if s/he wished to erect a fence. Replacing an existing fence with a new one involved the erection of a new fence, very much as replacing an old car with a new one would be treated as getting a "new" car. In this case written consent had not been sought, let alone obtained. He did, however, say that he did not believe that the provision goes so far as to say that **any** repair so far as replacement of a section of fence requires

[1] [2001] 1 AC 1

[2] Per Lord Hoffmann at pages 10E–11C, and Lord Millett at page 23D–E

permission.

25. In answer to the first question he submitted that the site owner had the right to replace the fence because it owned the fence, but it was not obliged to replace the fence because it was under no contractual obligation to do so. Its only obligation concerning the boundary is that in the site licence and, under its terms, the site owner if it wished to could mark the boundary with hedges. Responsibility did not therefore lie with either party. There was a right on the part of the site owner to replace a fence, but it was not obliged to replace it with a fence.

26. In answer to the second question, there is no express or implied term in the written statement which requires the site owner even to replace a fence with a fence, and it therefore follows that it is not obliged to replace like with like. There is no contractual provision to that effect. The terms concerning both owner and occupier refer to keeping fences in a clean and tidy condition – no more than that.

27. Finally, on the third question, there was no contractual provision enabling the occupiers to remove a low but undamaged fence. They had an obligation which they did not meet, viz to seek the site owner's permission. They neither obtained nor sought permission.

28. In response, Mr Shipham relied upon Mr Ribbans' statement – but which was to a large degree written submissions. He said that he did not dispute that the site owner was compliant with the conditions of its local authority site licence. The crux of the case, however, was that the pitch in question was bounded on two sides by public footpaths on adjoining land. By reference to photo 2 on page 52 he argued that about 50% of the panels were replaced with reduced height panels. Mr Ribbans, speaking directly, said that his decision to replace the fence himself was not taken easily. He had repeatedly tried to contact the site owner, both by letters and phone calls. He had sent about twenty letters (at this time mostly saying that the fence was the site owner's responsibility – while about then it was writing to occupiers saying that the condition of fences enjoyed with the pitch was the occupier's responsibility).

29. Mr Ribbans said that he rang up the site owner about people spying on his wife over the half-height fence panels but the response was that it was up to him. He spoke to reception and was put through to someone, but it was not Mr Pearson. He replaced the entire fence, as the other panels rotten and falling. He accepted that it was a new fence, but a necessary replacement.

30. He also commented that when the site owner had come to replace the broken panels with the 3 foot panels it had done so without his permission, and without giving the required 14 days' notice.

31. He sought to argue that "like for like" is more to do with the height than anything. His contractor had said that the only fence that would work around the tree is a post and rail fence. The new fence avoids the tree, which has a preservation order on it. He thought that the installation of lower fence panels was unreasonable if the amenity of the pitch is disturbed, referring to photo 4 on page 52. He said that there are many pitches along that boundary, all having 5 or 6 foot fences.

32. In answer to a question by the tribunal whether, if all fences are reduced then that affects amenity, he said that we are dealing with what was there when the pitch agreement was entered into. One should not end up with less privacy than at the outset.

33. On County Court issues the judge asked Mr Wood whether the facts set out in the Ribbans' statement of case at page 17 justify a claim to abatement of a nuisance? He responded that it was not clear from the claim form that nuisance was being pleaded.[3] On quantum he submitted that the cost of replacing the entirety of the fence is not unreasonable. His client did not dispute that this was a reasonable price. Its position was that it was under no obligation to replace the fence and that Mr Ribbans was not entitled to do so, and therefore there was no liability.

**Discussion and findings by tribunal**

34. While the provisions of the written statement concerning the parties' obligations concerning fences did not deign to mention liability for repair or replacement question 1 was in part conceded by the site owner when it accepted ownership of site boundary fences and therefore the right to repair or replace those boundary features that were present. However, jurisprudential theory tends to the view that a legal "right" is balanced with a corresponding "duty." What is the "duty" here?

35. The tribunal considers that amongst the purposes for a high, close-boarded fence are security and privacy. Mr Shipham very fairly said that in other parts of the site the boundary feature comprises only a post and rail fence but that if, when the occupancy commenced, the pitch was bounded by a full-height close-boarded fence then it was wrong for the site owner to replace it with lesser protection.

36. Whether this interference should be classified as breach of the covenant of quiet enjoyment, derogation from grant, or an actionable nuisance, the tribunal is satisfied that if the fence blows down and is damaged to the extent that repair or replacement is required then the site owner – and owner of the fence :
    a. Not only has the right but is under a duty to replace the fence; and
    b. Must do so in such a manner as at least to maintain the degree of privacy and security previously enjoyed by the occupier of the relevant pitch.

37. The tribunal agrees that the written statement does not provide an answer to the third question. However, on the evidence, this occurred at a time when the site owner was either encouraging occupiers to believe that it was their responsibility to maintain fences or at least to go half on the cost of repair or replacement. It is perhaps not surprising then that when Mr Ribbans complained to the site owner about strangers staring at his wife from the public footpath beyond the new low panels he was led to believe that if he wanted to do something about it was down to him. Whether this constitutes consent or not, it was not written consent.

**Discussion and findings by County Court**

38. The tribunal having made the above determination of the questions posed under the Act or written statement, this section dealing with the County Court money

[3] The brief details of claim in the Claim Form at page 1 in the bundle refer, in the final 3 lines, to "This restored pitch security to the previous level and alleviated the unacceptable level of stress that the lack of security created."

claim is the sole responsibility of the judge.

39. Although during the hearing Mr Ribbans was inclined to the view that the action of the site owner in replacing his broken fence panels with new ones only half as high was motivated by spite that is not a matter that, in the absence of any cross-examination, it is fair to decide on very limited evidence (and both the statement of case by the site owner and the witness statement provided by its director were extremely brief). However, it suffices to record Mr Pearson's evidence that in 2016 the site owner fell into dispute with Mr Ribbans regarding the condition of his fence, and that he had declined the company's "goodwill offer" to pay one half of the replacement cost. It is also noteworthy that this is the only part of the site where full-height panels have been replaced with much lower ones.

40. The court is satisfied that by depriving Mr & Mrs Ribbans of the privacy to their rear garden and security enjoyed since the start of their occupancy in 2010 (and according to Mr Pearson the fence was already there when his company acquired the site in 2003) the site owner has breached its covenant of quiet enjoyment, as now more generously understood.[4] By deliberately reducing the degree of privacy and protection afforded by a high fence the site owner also created a nuisance, in that Mr & Mrs Ribbans' enjoyment of their property was adversely affected by :
    a. Strangers being able for the first time to observe them inside their home while standing or walking on adjoining land
    b. An intruder being able to hop over the low fence and, when challenged, assault Mr Ribbans
    c. Them being put in fear of further such incursions and possible break-ins and – through their pitch, perhaps – across other parts of the park home site.

41. There exists a right to self-help against a nuisance, called the right of abatement; and a very similar right of self-redress for trespass by encroachment. The victim of a nuisance can lawfully put an end to it by acts done on his own property, where this is possible. Thus he can trim the overhanging branches of his neighbour's tree. But more important, he can lawfully enter the wrongdoer's property and remove the trouble at source.[5] While the subject of some judicial disfavour, the learned authors of *Clerk & Lindsell on Torts* argue[6] that it may now be considered subject to certain conditions :
    a. It must be possible to abate the nuisance peacefully
    b. The abatement must be done so as to cause as little damage as possible
    c. The right of abatement is generally lost if it is not exercised promptly
    d. Although the authorities are not entirely clear, the wrongdoer must in some cases be given notice.

42. However, if the wronged party does abate a nuisance, he is still entitled to

[4] See for example *Timothy Taylor Limited v Mayfair House Corporation and anor* [2016] EWHC 1075 (Ch); [2016] 4 WLR 100. In order to carry out building works on the adjoining upper floors of a building the landlords erected scaffolding which enveloped the building, restricting access to the tenant's gallery and giving passers-by and would-be visitors the impression that it was closed. The works also caused frequent and substantial noise in the tenant's premises. This was held to be a breach of the landlords' covenant of quiet enjoyment.

[5] Clerk & Lindsell on Torts (22nd ed), at 30–26

[6] At 30–27

damages sustained before the abatement or for the costs incurred (or to be incurred) in abating the nuisance.[7]

43. In this case Mr Ribbans did notify the site owner of his concerns about the fence and was told that what he wanted to do about it was up to him. That, in fairness, is not an acknowledgement of liability, or of a willingness to pay for a new fence.

44. The court is satisfied that the site owner was under both a contractual duty (the covenant of quiet enjoyment) and a tortious one (not to create a nuisance) and as a result Mr Ribbans was entitled to abate the nuisance by removing both the new 3 foot high panels and also the rotten ones and replacing them with a new fence that restored the pre-existing levels of privacy and security. As Mr Ribbans says on the final page [page 17 in the bundle] of his statement of case :

> This restoration of the site boundary was a positive and justifiable attempt by the occupiers to be able to continue living at the pitch without the constant fear of assault or break-ins that the site operator's replacement policy decision had engendered.

45. On behalf of the site owner Mr Wood confirmed that the cost was reasonable. One issue that arises, however, is that the only document provided in the bundle that mentions cost (and it was only handed in by Mr Wood at the start of the hearing) is an email headed "Fence quote" from Hardman Oakley Fencing. The price stated is £1 325. While it refers to a deposit and provides bank details there is absolutely no mention of VAT, unlike on the second page [page 60] of Mr Ribbans' letter to the site owner dated 10th March 2018. Without a VAT invoice the court can only safely award the figure stated in the quote.

46. Judgment will therefore be entered for the claimants, Mr & Mrs Ribbans, in the accompanying County Court order for the sum of £1 325 plus fixed costs and issue fee.

Dated 20th December 2018

*Graham Sinclair*

Graham Sinclair
First-tier Tribunal Judge, also sitting as a judge of the County Court under section 5(2)(u) of the County Courts Act 1984

[7] Clerk & Lindsell, at 30-28