



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

Case Reference : **BIR/17UK/PHC/2017/0006**

Property : **Pitch 22, Weston Hill Chalet Park,
Weston on Trent,
DE72 2BU**

Applicants : **Mr M T White & Mr M M White**

Representative : **Mr G Gunstone, KCH Garden Square
Barristers**

First Respondent : **Mrs M Buttery & Mrs P Rayworth**

Second Respondent : **Mr A E Thompson**

Type of Application : **Application under section 4 of the Mobile
Homes Act 1983 for a determination of
any question arising under the Act or
agreement to which it applies**

Tribunal Members : **Judge M K Gandham
Mr R P Cammidge FRICS**

**Date and venue of
Hearing** : **28th November 2017
The Court House,
St Mary's Gate, Derby,
Derbyshire, DE1 3JR**

Date of Decision : **22 January 2018**

DECISION

© CROWN COPYRIGHT 2018

Decision

1. The Tribunal determines that:
 - a) Mrs M Buttery and Mrs P Rayworth (the ‘First Respondents’), as beneficiaries under the estate of the late Reginald Bloor, were successors in title to the pitch and mobile home known as Pitch 22, Weston Hill Chalet Park, Weston on Trent, DE72 2BU (the ‘Property’) under section 3 of the Mobile Homes Act 1983 (as amended) (the ‘Act’). Further, that on 15th October 2017, the Property was assigned to Mr E Thompson (the ‘Second Respondent’);
 - b) that the benefit of an agreement implied by section 2 of the Act applies;
 - c) that the Second Respondent is in breach of his requirement to keep the Property in a sound state of repair and to maintain the outside of the mobile home and pitch; and
 - d) that the Second Respondent must, within six months of the date of this decision, complete the works detailed in Appendix 1.

Reasons for Decision

Introduction

2. By an Application received by the Tribunal on 13th September 2017, Mr Michael Thomas White and Mr Michael Mark White (the ‘Applicants’), applied to the First-tier Tribunal, Property Chamber under section 4 of the Act for a determination of the following questions:
 - a) Should Mrs M Buttery and Mrs P Rayworth be regarded as successors to the late Mr Reginald Bloor in relation to pitch 22 of Weston Hill Chalet Park (“the Pitch”)?
 - b) What are the terms of the Mobile Home Agreement relating to the Pitch?
 - c) Have the Respondents complied with their obligations with regard to the maintenance of the Pitch and the mobile home stationed upon it?
 - d) What work must be undertaken to restore the Pitch and the mobile home to proper repair?

The Applicants provided with the Application a proposed Schedule of Works (see Appendix 2) which they submitted were required to be undertaken in order to restore the Property into proper repair.

3. The Applicants are the site owner of Weston Hill Chalet Park (the ‘Site’), having purchased the Site in 2007.

4. The First Respondents are the beneficiaries of the late Mr Reginald Bloor, who had owned the Property since July 1991. Mr Bloor died in July 2016 and the First Respondents, on 15th October 2017, sold the Property to the Second Respondent, who on 6th November 2017 was added by the Tribunal as a party to the proceedings.
5. According to the submissions of the parties, in 1991 Mr Bloor purchased the Property and it appears a new mobile home was sited by him on the pitch, together with a garage. A conservatory was added to the mobile home in approximately 1992. A wooden shed was erected in approximately 1994 and in 1998, a back bedroom was added.
6. After Mr Bloor's death, the First Respondents offered to sell the Property to the Applicants. DCB Professional Service Limited prepared a condition survey of the Property on 6th April 2017 (the 'Condition Survey').
7. On 18th May 2017, the Applicant's solicitors at the time, Tozers LLP, wrote to the First Respondents and confirmed to them that the Applicants did not agree with the First Respondents' asking price. They, within this correspondence, gave formal notice to the First Respondents that the Applicants considered them to be in breach of:
 - (i) the covenant to obtain consent for any extensions, under the express terms of the written agreement;
 - (ii) the express term in the written agreement - not to do anything to constitute a breach of any of the conditions of any site licence - as the site licence only allowed the Site to be used as a caravan site and the mobile home could no longer be described as a caravan (due to the extensions) for the purposes section 13(1) of the Caravan Sites Act 1968; and
 - (iii) the covenants for repair of the Property under the implied covenants in paragraph 21 of the Act.
8. Upon receipt of the Application under section 4 of the Act, the Tribunal issued a Directions Order dated 18th September 2017 and, in accordance with that Order, a Statement and bundle documents were received from the First Respondents on 4th October 2017. On 3rd November 2017, the Second Respondent confirmed he was happy to be made a party to the proceeding and was familiar with the proceedings to date. The Respondents confirmed that Mrs Buttery and Mrs Stevens (Mrs Buttery's daughter) would represent them at the Hearing, which was scheduled to take place on 28th November 2017 at The Court House, St Mary's Gate, Derby.
9. On the day of the Hearing, the Applicants confirmed that they had appointed Mr Gunstone from, KCH Garden Square Barristers, to represent them at the Hearing.

The Law

10. The Mobile Homes Act 1983 provides at section 4:

(1) In relation to a protected site in England [or in Wales], 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).

The Tribunal has also considered sections 1 and 3 of the Act and the implied terms set out in Chapter 2, Part 1 of Schedule 1 to the Mobile Homes Act 1983, in particular paragraph 21 (c) and (d) set out below:

21

The occupier shall—

...

(c) keep the mobile home in a sound state of repair;

(d) maintain—

(i) the outside of the mobile home, and

(ii) the pitch, including all fences and outbuildings belonging to, or enjoyed with, it and the mobile home,

in a clean and tidy condition; and

...

Inspection

11. The Tribunal inspected the Site and Property on the morning of 28th November 2017. Mr M T White and Mr Gunstone attended on behalf of the Applicants and Mrs Stevens accompanied the Respondents.

12. Weston Hill Chalet Park is a mobile home site located off Swarkestone Road, approximately one mile from Weston on Trent in Derbyshire. The Site comprises a number of mobile homes of a mixed age and nature.

13. The Property itself is a mobile home comprising a twin unit, probably constructed and installed on the plot - as suggested in the submissions - around 1991. The twin unit appears to be of a typical construction for park homes of this era. The roof has been replaced with a Metrotile roofing system. The sun room / porch which, according to the submissions, was added in around 1992/3 is a UPVC and glazed structure with a mono-pitched polycarbonate roof. The bedroom

extension, added around 1998, has UPVC external cladding to the walls, with a mono-pitched profiled roof.

14. The mobile home is set on a good sized plot which is mainly fenced and also includes a detached concrete panelled garage with profiled asbestos based roof and wooden shed.

Hearing

15. Following the inspection, a public hearing was held at The Court House and was attended by those parties who had attended the Inspection, together with their representatives.
16. Mr Gunstone had produced a bundle, on behalf of the Applicants, which included documents in addition to those previously submitted to the Tribunal. These included: correspondence and a standard written statement in relation to the Applicants' purchase of the Site from the late owner, Mrs Hill; a planning permission in respect of plot 22 to replace an existing holiday chalet and erect a new garage; a Statement dated 29th of February 2012 made by the late Mr Bloor in separate court proceedings with the Applicants ('Mr Bloor's Statement'); the Notice 5 Schedule provided by the Second Respondent; correspondence from UK Fire Prevention and correspondence with Mr Summers, a Senior Environmental Officer with South Derbyshire District Council.
17. As the bundle had neither being provided to the Tribunal nor the Respondents prior to the hearing, the Tribunal adjourned for a short period to consider the same. The Respondents confirmed that they were happy for the bundle to be included as part of the Applicants' submissions.

The Applicants' submissions

18. Mr Gunstone confirmed that the Applicants had originally faced difficulties in ascertaining the successors of Mr Bloor, together with confirmation as to who occupied the Property. They confirmed that they were now satisfied that the First Respondents were the successors of the late Mr Bloor, and that the Second Respondent had purchased the Property from the First Respondents.
19. Concerning the terms of any written agreement, Mr Gunstone stated that although they did not have a copy of any written agreement with the late Mr Bloor, the previous owner, Mrs Hill, had informed the Applicants on their purchase that she had provided a written statement to all of the occupants of Site in a standard form. He stated that if the Tribunal considered that such an agreement was not in place, then generally the implied terms, under statute, would apply.
20. He submitted that Mr Bloor originally occupied the site as a holiday home and referred to the planning permission obtained by Mr Bloor, which defined the Property as a "holiday chalet". In addition, he referred to Mr Bloor's Statement in which he had confirmed that he had been

granted planning permission with a condition that the Property should not be occupied for a period of more than nine months in any year.

21. He stated that in order for the Property to be governed by the Act, the property should have been used for full-time occupancy, not as a holiday let and therefore there was a question as to what type of tenancy was in place.
22. Mr Gunstone also referred to paragraph 20 of Mr Bloor's statement, in which he detailed the extensions that had been made to the Property. Mr Gunstone referred to the Condition Survey and the comments in the survey as to the definition of a 'caravan' under the Caravan Sites Act 1968. He stated that the extensions clearly meant that the Property was no longer 'mobile'. As such, in order to have the benefit of the Act, any extensions needed to be removed - in particular the extension to the rear that caused the Property to be in breach of the size limit for caravans.
23. Mr Gunstone went through the schedule of works proposed by the Applicants. He noted that, although the pitch no longer appeared to be overgrown, new fences had been erected, and the UPVC skirt and guttering appeared to be in a satisfactory condition; the other works were still required. He stated that there were some cracks to the walls of the mobile home and a loose wire under the mobile home. He also stated that there was evidence of damage caused by damp under the windows and to the walls. He confirmed that the Applicants' main concern was the removal of the rear extension.
24. Mr White confirmed that the Applicants had taken over ownership of the Site in 2007. He confirmed that there had been questions regarding the status of the Site, but that South Derbyshire District Council (the 'Local Authority') issued a Certificate of Lawful Use in approximately 2009. He confirmed that the Court of Appeal confirmed that the site licence was valid in 2011.
25. He stated that the licence conditions confirmed that properties on the Site must be mobile homes and, where there were any breaches of the same, he should work towards compliance at the earliest opportunity.
26. He referred the Tribunal to the email from Mr Summers which stated that, although the Local Authority acknowledged that a number of homes on the Site were non-compliant, that Caravan Site Licence Conditions should be achieved as soon as reasonably practical without undue prejudice to "an existing occupier". As such, he stated that, after the Property had become vacant following Mr Bloor's death, it was an ideal time to amend the mobile home to comply with the statutory definition.
27. In addition, he referred to the email from UK Fire Prevention, which stated that, if the extensions were removed, the gap between the Property and the boundaries would become wider and the area would be much safer.

28. He stated he was made aware that the Second Respondent had purchased the Property and had tried to agree a schedule of works with him, to no avail.

The Respondents' submissions

29. Mrs Stevens, on behalf of the Respondents, confirmed that the First Respondents were the beneficiaries of the Property under Mr Bloor's will and that they had informed the Second Respondent of the proceedings prior to this sale of the Property to him.
30. She stated that Mr Bloor had not used the Property as a holiday home for some years, although this may have been the original purpose when he first purchased the same. She confirmed that it had been used as his permanent home for well over 10 years and that when he purchased the Property he sold his existing home.
31. She stated that the Condition Survey was carried out by the Applicants with a view to them buying the Property, not in relation to any breach of the repairing conditions. She believed that the contents were exaggerated to condemn the Property, so that the Applicants could obtain the Property at a reduced price. She referred the Tribunal to the letter from the Applicants' solicitors dated 21st of April 2017.
32. She confirmed that she had contacted the Local Authority recently regarding the extensions and referred the Tribunal to the email received from Mr Summers dated 9th June 2017. Mr Summers had confirmed that the Local Authority were aware that the extension breached the site licence, but had stated that as the "appendage may well pre-date the issuing of the site licence (2001)...the authority has elected not to enforce this breach for the period of its occupation". She confirmed that Mr Summers was aware that the Property was unoccupied at that time, therefore believed he was referring to *any* proposed occupancy of the Property in its existing state.
33. She referred the Tribunal to the Mobile Homes Act 2013 – A Best Practice Guide for Local Authorities on Enforcement of the New Site Licensing Regime (the 'Best Practice Guide'). Paragraph 3.1 confirmed that local authorities should not rush to serve compliance notices on site operators for breaches of site conditions where there was "not a significant risk of harm" particularly where the "breach has existed many years". She also referred to paragraph 3.2, which states that "the interests of homeowners, as well as the site operator, should be considered" and that "this may mean drawing a line under existing site licence condition breaches, where there is no risk of significant harm to persons or property".
34. In relation to the report by UK Fire Prevention, she pointed to the fact that the report did not state that the Property was not currently safe. She referred the Tribunal to paragraphs 4.16 and 4.17 of the Best Practice Guide, relating to spacing issues which advises local authorities that "in deciding the best way forward, a balance needs be made between the

need to upgrade conditions and the extent of any negative impact that enforcement may have on existing homeowners in terms of disturbance or possible adverse effect on the resale value of their home”. She confirmed that paragraph 4.18 stated “a sensible approach” was to “draw a line in the sand; accept existing contraventions and then put site conditions in place that, going forward, are clear and can be enforced.”

35. She submitted that the Best Practice Guide clearly noted that many homes would be in breach of the conditions and that any enforcement action should not have an impact on homeowners or on the resale value of the home. She confirmed that the removal of the extension would have a serious impact on the resale value.
36. She confirmed that the First Respondents had never received a schedule of works prior to the Tribunal proceedings and believed that the sole intention of the Tribunal proceedings were to try to prevent them being able to sell the Property or to reduce the market value. She stated that the Property had never been in an untidy state or condition.
37. She confirmed that there was a 30 year guarantee in place for the roofing sheets, that the asbestos sheeting to the garage was perfectly safe as long as it was not handled and that there were no gas appliances in the Property. She confirmed that the Second Respondent proposed to refurbish the Property in any event.
38. In relation to the Schedule 5 Notice of Assignment Form given by the Second Respondent, she confirmed that she was not aware of any written statement that was provided to Mr Bloor nor of any site rules, and the boxes ticked on the form were in error.
39. On questioning by Mr Gunstone, Mrs Summers confirmed that she was not a surveyor and therefore her comments on the Condition Survey were simply her opinion.

The Tribunal’s Deliberations

40. The Tribunal considered all the written and oral evidence submitted and summarised above.
41. In relation to the issue of successors, it appears that the parties now agree on this point.
42. Regarding whether the Property constitutes a caravan; although it is clear from an inspection that the Property does not currently comply with the definition of a ‘caravan’ under section 13 (1) of Caravan Sites Act 1968, it is clear from the guidance to the legislation, that Parliament envisaged that many homes might have such breaches, but that they should not be penalised for such historic situations and the legislation would still apply them.

43. In relation to whether the Property is in fact a holiday home and therefore outside the scope of the legislation, although this may have been the case when the Property was first purchased, it appears to have been used as a permanent home without challenge for in excess of ten years. In addition, the Applicants themselves obtained a Certificate of Lawful Use of the Site as a caravan site and appear to have accepted Mr Bloor's use of the same as a permanent home during his occupation.
44. Regarding whether there is a written agreement for the Property, the Respondents do not have a copy of any written agreement and are not aware of one being in place. The Applicants state that the previous owner informed them that a copy was forwarded to all tenants; however, they have been unable to provide a copy of the same. In addition, in Mr Bloor's Statement, he states that no written agreement was forwarded to him. The Tribunal therefore considers that, based on the balance of probabilities on the evidence before it, that there was no written agreement in place.
45. In the absence of any written agreement, the Tribunal finds that, however informal, there was an agreement between Mr Bloor and the previous owner that Mr Bloor was entitled "to station a mobile home on land forming part of a protected site" and "to occupy the site as his only or main residence" under section 1(1) of the Act, at some time prior to the purchase of the Site by the Applicants. It follows that the Act applies to the Agreement.
46. As such, the occupiers are bound by the implied terms relating to an occupier's obligations under paragraph 21 of Chapter 2, Part 1 of Schedule 1 to the Act ('Paragraph 21') relating to the maintenance of the the home and pitch.
47. The Applicants are of the view that the Property is in need of extensive repairs and improvement. The Respondents hold a differing view in that they believe that, whilst some modernisation work would be beneficial, many of the repairing points raised by the Applicants are not soundly based.
48. The role of the Tribunal under this head is to decide if the Respondents have complied with their obligations under the implied terms under an assumed pitch agreement. This is matter of judgement for the Tribunal and in reaching a judgement the Tribunal needs to reflect upon the standard of maintenance and repair which would be appropriate.
49. It is the Tribunal's view that this is a standard commensurate with the age and nature of the structure reflecting the quality of the construction and the standards applicable at that time. It is not the case where the standard is one applicable to new units, which may benefit from a higher standard of construction. Further, although ongoing and regular maintenance is important to ensure the life expectancy of structures of this type are preserved, it is a repairing obligation only and not an obligation to refurbish to a higher standard with a view to trying to achieve the standard of a new or more recent unit.

50. The Tribunal have reviewed the Condition Survey, which is described as a “condition survey- prior to purchase”, upon which the Applicants’ case is fundamentally based. The Condition Survey makes a series of observations and recommendations but it is not the role of the Tribunal to comment on the report but review the points raised in the Applicants’ proposed Schedule of works, which the Tribunal, based on its own experience and expertise (and using the same numbering as the Applicants) comments on as follows:

Point 1 The Tribunal is of the view that the garage does show signs of ageing but this is not untypical for this type of structure at this point in its life cycle. During the inspection, the Tribunal was not shown any evidence to indicate that the same had reached the end of its useful life and needed to be removed. The timber shed immediately adjacent to the home was in poor condition and poorly supported. Accordingly, the shed should be demolished and removed from the pitch.

Point 2 Whilst the skirt to the base of the unit may not be a propriety product, the obligation is to keep in good repair. The standard of maintenance appeared adequate.

Point 3 The main pitched roof has been replaced and, during the inspection, the Tribunal was not shown any evidence to indicate that major works were required.

Point 4 The UPVC rainwater goods were of a mixed nature and type, but during the Inspection the Tribunal was not shown any evidence to indicate that the same had reached the end of its useful life and needed to be replaced.

Point 5 There was evidence of damage to the roof covering over the bedroom extension, as well as poor detailing at the junction of this structure to the main twin unit. The roof covering should be replaced and the detailing improved.

Point 6 The Tribunal did note some areas of rot to the bedroom extension around window openings and to the rear corner of the structure. Accordingly, works are required to remedy these matters. Very limited cracking was observed which should be repaired as necessary.

Point 7 The Tribunal was not shown any evidence to indicate that the window units/seals had reached the end of their useful life and needed to be replaced.

Point 8 Significant rust marks were not noted by the Tribunal during the inspection.

Point 9 During the inspection, the Tribunal noted some loose wiring under the home and inadequate modifications to the system in other areas. The Tribunal does not consider these sufficient to find that the Property is not in a “sound state of repair” under Paragraph 21 (c), nor does it consider it to be a breach of the obligations to maintain under

Paragraph 21 (d). The Tribunal would suggest, however, that the Second Respondent take the advice of an electrician on the current state of the cabling.

Point 10 The Tribunal refers the parties to paragraph 42 above. In light of the legislation and guidance to it, together with the response received by the Respondents from the Local Authority, the Tribunal does not consider that the extension needs to be removed and does not consider that it is a breach of the occupier's obligations under Paragraph 21.

Point 11 The point raised by the Applicants relates to a proposal to relocate and install a new bathroom. This is a future internal proposal and cannot, in any event, be viewed as falling under the heading of complying with "repair" obligations.

Point 12 This point refers to the removal of polystyrene tiles to the ceilings and whilst this may be advisable it is a matter outside the scope of the occupier's obligations under Paragraph 21.

Point 13 The Respondents advised the Tribunal that there is no gas supply to the home. In any event, this would relate to a matter outside the scope of the occupier's obligations under Paragraph 21.

Point 14 The pitch was reasonably maintained at the time of the inspection.

51. The Tribunal considers that there are breaches of the repair and maintenance obligations under Paragraph 21 and has detailed the works required in Appendix 1. The Tribunal is of the view that such works could be completed with a six month period from the date of this decision.

Appeal

52. If either party is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties (rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

M. K. GANDHAM
.....
Judge M. K. Gandham

Appendix 1

Works to be Undertaken

1. Take down and remove timber shed;
2. Replace roof covering to the bedroom extension and improve detailing between the same and the roof covering to the main double unit;
3. Repair areas of rot to the bedroom extension; and
4. Make good cracking to the main unit walls.

Appendix 2