



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

**Case Reference** : **BIR/44UE/PHC/2019/0008**

**Property** : **Oversley Mill Park, Mill Lane,  
Oversley Green, Alcester,  
Warwickshire B49 6LL**

**Applicants** : **Mr Andrew Glenn (Pitch 38)  
Mrs Barbara Tacy (Pitch 66)**

**Joining Applicant** : **Stuart Sanderson (Flat 2)**

**Representative** : **Oversley Mill Park Residents'  
Association**

**Respondents** : **Ivy Loveridge and Lesa Marina  
Loveridge**

**Type of Application** : **An application under Section 4(1)(a)  
of the Mobile Homes Act 1983 (as  
amended) ("the 1983 Act") for the  
Tribunal to determine any question  
arising under the 1983 Act or any  
agreement to which it applies**

**Tribunal Judge** : **Dr Anthony Verduyn**

**Tribunal Valuer** : **Mrs Sarah Hopkins FRICS**

**Date of Site Inspection** : **23<sup>rd</sup> September 2019**

**Date of Decision** : **2<sup>nd</sup> October 2019**

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**DECISION**

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1. The Applicants each occupy pitches at Oversley Mill Park. By an application dated 7<sup>th</sup> June 2019 and received by this Tribunal on 10<sup>th</sup> June 2019, they sought a determination of questions under the provisions of the Mobile Homes Act 1983 or an agreement to which it applies. Initially and in error, Oversley Mill Park Residents' Association was given as the Applicant, but this was corrected, and directions were issued for the exchange of documents and respective contentions. The parties were content for determination to be by way of paper and without a hearing. The Tribunal, nevertheless, inspected the site on 23<sup>rd</sup> September 2019.
2. The questions raised by the Applications recorded in the directions were as follows:
  - a) (i) The removal of a double unit on pitch number 36 as it contravenes the separation distance of 6 metres to number 38 and (ii) further that site licence condition 2(iv) has been breached by the installation of a window within the separation distance.
  - b) Whether the home on number 36 should be clad as per site licence condition number 2(iii).
  - c) An order for the Park Owner to undertake and pay for the removal of ivy and pollard a tree in the rear garden of number 39 as the branches from the same are affecting the roof of number 66.
3. Question (a)(ii) above, was not pursued before the Tribunal.
4. The jurisdiction of the Tribunal is conferred by Section 4(1) of the 1983 Act (as amended):

4.— Jurisdiction of a tribunal or the court

(1) In relation to a protected site, 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)

[Subsections (2) to (6) are not relevant].
5. Questions (a) and (b) can be taken together: They relate to whether there should be removal of a new double park home from pitch number 36 on the basis that it contravenes the separation distance of 6 metres to the unit at pitch number 38 and/or whether the park home at Pitch 36 is required to be cladded retrospectively.
6. At inspection the Tribunal saw a new double unit had been installed at Pitch 36. There is no dispute between the parties that it is less than 6 metres from the park home at Pitch 38, and there was nothing to contradict the measurement provided by the Respondent of 5.486 metres separating the base of each park home (i.e. the habitable part of each structure). Although the new double unit was in situ, the brick skirting to its base were unfinished and we were told that completion of works was awaiting the Tribunal decision. This decision has been expedited in response.

7. The Applicants submit that the Site Licence at Condition 2(iii) permits the separation distance to be reduced to 5.25 metres, but only if the park home at Pitch 38 is cladded retrospectively with Class 1 Fire Rated material, which no-one contends has been done. The Site Licence dated 17<sup>th</sup> August 2011 makes this clear when it states: “Where a caravan has retrospectively been fitted with cladding from Class 1 fire rates materials to its facing walls, then the separation distance between it and an adjacent caravan may be reduced to a minimum of 5.25 metres”.
8. The Respondent initially answered this point by asserting that the new double unit does not contravene the Site Licence because it has the required Class 1 Fire Rated materials incorporated in it (and the technical data sheet with technical specification was provided to that effect).
9. The Respondent subsequently wrote to the Tribunal on 17<sup>th</sup> September 2019, in letter received the next day, asserting that questions arising under the Site Licence are not within the terms of Section 4 of the 1983 Act. The Tribunal notes that the directions required the Respondent to “address the questions and requests made by the Applicants” by 12<sup>th</sup> July 2019, so this jurisdiction point was taken very late. Indeed, the point was taken so late that it deprived the Applicants of the opportunity for addressing it in their materials, directed to be submitted by 2<sup>nd</sup> August 2019. In order to avoid delay in a case where the completion of installation of the new double unit is awaiting a decision, and having regard to the centrality of jurisdiction to the role of the Tribunal, the Tribunal has decided to answer the question put to it and to address the question of jurisdiction.
10. The Tribunal notes Condition 2(i) of the Site Licence, which reads (so far as relevant): “Except in the case mentioned in sub paragraph (iii) ... every caravan must where practicable be spaced as a distance of no less than 6 metres (the separation distance) from any other caravan which is occupied as a separate residence.”
11. The Tribunal considers that, taking Condition 2 as a whole (which one must for the purposes of interpreting it), the objective is that at least one of the caravans to each side of the reduced separation distance must be clad or made of fire resistant material. Hence, the licence is complied with if two caravans are between 5.25 and 6 metres apart so long as “a caravan” (meaning one of them, as made clear by the later reference to “it and an adjacent caravan”) is so clad. The reference to retrospective fitting must relate to the licencing of the arrangements present when the licence was issued. Logically, therefore, the installation of a new unit, so long as it has the fire resistant qualities equal to (or better than) the retrospective cladding referred to, should not be a breach of the Site Licence.
12. Whereas the Tribunal has come to a conclusion in relation to the question posed, it nevertheless has to consider whether this decision is binding upon the parties i.e. whether or not the Tribunal has jurisdiction to make such a determination. There does not appear to be an agreement between the parties, save for that contained in the “Written Statement under Mobile Homes Act 1983”, which duplicates the provisions under Chapter 2 of Part 1 of Schedule 1

to the 1983 Act (“the Schedule”). Compliance with the Site Licence is not an express term of anything in that written statement. Nor is it addressed in terms in the Schedule. Those statutory implied terms, however, are not stated to be exhaustive of the terms to be implied into an agreement, and it is general principle of property law that a party (the Respondent in this case) may not derogate from its grant; in other words, give with one hand and take with another. Furthermore, there is at Paragraph 11 of the Schedule a closely related protection: “The occupier [i.e. the Applicants] shall be entitled to the quiet enjoyment of the mobile home together with the pitch during the continuance of the agreement ...”

13. The Tribunal finds that the question of whether an action by the Respondent is in breach of the Site Licence can be answered by the Tribunal under its jurisdiction in the 1983 Act because compliance with the Site Licence is an implied term of the agreement, and because it is a question of whether the Respondent is derogating from the agreement by breach of the Site Licence, and because breach of the Site Licence constitutes interference with the Applicants quiet enjoyment of their mobile home together with its pitch.
14. Consequently, the Tribunal has jurisdiction to answer the question, but finds that the Respondent is not in breach of the Site Licence and accordingly has not broken any agreement with the Applicants.
15. Whilst this determination is binding upon the parties (subject to any appeal), it is not binding on the Licensing Authority, which is not a party to the application.
16. Question (c): An order for the Park Owner to undertake and pay for the removal of ivy and pollard a tree in the rear garden of pitch number 39 as the branches from the same are affecting the roof of pitch number 66.
17. The Applicants again refer to the Site Licence, this time at Paragraph 7(iv): “Trees within the site shall (subject to the necessary consents) be maintained.” Reference is also made to a decision of the Tribunal that tree removal within the boundaries of a site are a matter for the owner and not the occupiers, although a full reference for the case was not provided. The Model Standards 2008 for Caravan Sites in England are also cited, where it is stated at paragraph 49 that “Trees on the Site will normally be the responsibility of the Site Owner.”, although the Tribunal notes that this document does not relate to the 1983 Act. Finally, we were referred to Paragraph 22 of the Schedule: “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”
18. The Respondent also refers to the Schedule, but at Paragraph 21: “The occupier shall ... (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”. The tree, it is asserted, is within the pitch and the responsibility of the occupier. It is not a boundary tree.
19. The Tribunal inspected the tree in question. It is to the line of a fence between pitches, but located within Pitch 39. The tree is a very substantial willow tree

and its branches extend over and touch the roof of the park home at Pitch 66. The Tribunal considers that it is of considerable age, predating the current occupation of Pitch 38 (which the Tribunal was informed was subject to new occupation 8 years ago) and probably of an age in the order of 30 years or more. The trunk of the tree is wreathed in ivy, which the Tribunal considers will threaten the viability of the tree in the medium or long term. The tree is too big for its location and contrast with the otherwise well-maintained garden comprised within Pitch 39.

20. The Tribunal finds that the maintenance of the tree is properly the responsibility of the owner (i.e. the Respondent), and not the occupier of Pitch 39. Paragraph 22 properly construed does not relate to “boundary trees” (whatever they may be) but, separately, boundary fences and trees. This tree is therefore within the meaning of that term. Further, the Respondent has not demonstrated that there is anything taking responsibility for this tree out of the norm and burdening the occupier of the pitch. The tree was not planted by the current occupier and there is no evidence it was planted by a previous occupier. It is not an ornamental tree forming part of the garden on the pitch, and its maintenance would be of such a nature as to be appropriately the responsibility of an owner, rather than any occupier from time to time. The sort of works required periodically to a substantial tree, is not the sort of “maintenance” required of pitch occupiers.
21. Furthermore, the Tribunal finds that the tree and the ivy growing upon it, both require attention: the ivy threatens the viability of the tree and the tree is now touching the roof of a park home, which must cease to prevent noise and damage. The Tribunal does not consider it necessary to specify the nature of the works required (i.e. whether pruning is sufficient or pollarding or removal), such matters are properly in the discretion of the owner so long as the tree is removed from contact with any park home and the ivy is removed or controlled so as not to threaten the viability of the tree. These steps should be taken at the owner’s expense.
22. It follows that in respect of questions (a) and (b), the Respondents position is vindicated and nothing need be done in respect of the location of the new double unit. In respect of question (c) the Applicants are vindicated and responsibility for the tree reposes with the Respondent and action is required as set out above.

Tribunal Judge Dr Anthony Verduyn

Dated 2<sup>nd</sup> October 2019