FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CAM/22UN/PHC/2019/0008**
Property	**:**	149 Meadowview Park, St Osyth Road, Little Clacton, Essex CO16 9NT
Applicant	**:**	Wickland (Holdings) Ltd
Representative	**:**	Stephen Goodfellow (counsel) instructed by Steed & Steed
Respondent	**:**	John Henry Russell (in person)
Type of Application	**:**	by a Park Home site owner for determination of any question arising under the Mobile Homes Act 1983 or agreement to which it applies
Tribunal Members	**:**	G K Sinclair, S Moll FRICS & C Gowman BSc MCIEH MCMI
Date and venue of Hearing	**:**	Wednesday 11th September 2019 at Colchester Magistrates Court
Date of decision	**:**	19th September 2019

DECISION

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1. The issue in this case is whether or not the respondent occupier is in breach of his written agreement by parking a plated private hire car overnight on the park. A subsidiary issue is whether the applicant site owner is entitled under the terms of the applicable written statement and/or the current park rules to levy a £10 per night parking charge for vehicles that should not be there.

2. For the reasons which follow the tribunal determines that :

a. The fact that the vehicle in question is a plated private hire car used from time to time by the respondent for business purposes in the course of his employment as a bus driver taking disabled children to school under a local authority contract makes it a "commercial" vehicle rather than a private one

b. The respondent is not in breach of rule 12 of the park rules, as the parking of a vehicle overnight and removal of it from the site during the day is not "the storage of the stock, plant or equipment used or last used for any business purpose"

c. The respondent is in breach of rule 25 by parking or allowing parking overnight of commercial vehicles of any sort on the park

d. As many cars used for private or domestic purposes are kept by the user under a private contract plan or hire purchase whereby the owner is a third party, or are loaned as courtesy cars by motor garages, or provided by an employer as part of a salary package, the fact that a vehicle is owned by a third party company is irrelevant

e. Neither the written statement nor the current park rules provide for the payment of any parking charge, so the applicant is not entitled to levy a charge of £10 per vehicle per night and the invoices raised against the respondent are therefore void and unenforceable

f. Further, the tribunal does not consider parking in a permitted or allotted space to be "other services" within the meaning of Part IV, paragraph 3(b) of the written statement.

Agreement and Background

3. The respondent occupies pitch 149 at the applicant's Meadowview Park site at St Osyth Road, Little Clacton under an agreement dated 1st November 1987 made between the applicant as site owner and himself and Mrs Ethel Violet Russell as occupier. As Mrs Russell has been off the scene for many years she has not been joined as a party to these proceedings.

4. The express terms of the agreement appear in Part IV of the written statement. The occupier's undertakings to the site owner appear in paragraph 3. The applicant drew to the tribunal's attention, and relies upon, paragraph 3(b) and (j), namely :

(b) To pay and discharge all general and/or water rates which may from time to time be assessed charged or payable in respect of the mobile home or the pitch (and/or a proportionate part thereof where the same are assessed in respect of the residential part of the park) and charges in respect of electricity gas water telephone **and other services**

[emphasis added]

(j) To comply with the park rules from time to time in force...

5. Annexed to the written statement is a copy of the then current (1987) park rules, but these have been overtaken by events and legislation, and the current rules (deposited with the local authority) appear at pages C13–17 of the bundle. Those relied upon by the applicant are rules 12 and 25. They read as follows :

Business activities

12. You must not use the park home, the pitch or the park (or any part of the park) for business purposes, and you must not use the park home or that pitch for the storage of the stock, plant, machinery or equipment used or

last used for any business purpose. However you are at liberty to work individually from home by carrying out any office work of a type which does not create a nuisance to other occupiers and does not involve other staff, other workers, customers or members of the public calling at the park home or the park.

Vehicles and parking

21 – 24 ...

25. Other than for delivering goods and services, you must not park or allow parking overnight of commercial vehicles of any sort on the park, including :
    - Light commercial or light goods vehicles exceeding 1.7 metres in height and 4.7 metres in length as described in the vehicle taxation legislation and
    - Vehicles intended for domestic use but derived from or adapted from a commercial vehicle
    - Motor homes, touring caravans or trailers and boats

6. The respondent, who is aged 82, keeps himself occupied by driving a bus owned by a private hire contractor based near Stansted airport. He collects disabled children from the Clacton and Colchester area, delivers them to their school near Witham, and in the afternoon takes them home again. He cannot park the bus on or near the park and so uses one of his employer's plated private hire cars to get to and from where he parks the bus. It is the parking of this private hire car, and others identified only by registration numbers, which encouraged the site owner to believe that the respondent has breached his written statement and the park rules. The respondent denied this, saying that a plated private hire car is not a "commercial vehicle", and he has refused to pay the charges for which he has been invoiced by the applicant.

Applicable law

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

8. 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...

(6)–(9)*[not relevant]*

9. 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" as defined in section 5.

Hearing and evidence

10. The tribunal had before it a hearing bundle in which the applicant's case could be found in the application and its more detailed statement of case, the written statement and park rules, witness statements by Tracey Ling, park manager, and Leonard Collins, director, correspondence between the parties and also with an officer of Tendring District Council, and a series of invoices rendered by the applicant to the respondent.

11. Both Ms Ling and Mr Collins gave oral evidence. Ms Ling's witness statement was remarkably brief and exhibited two short emails (one heavily redacted) which were of no real assistance and failed to touch on matters which, in his statement, Mr Collins said she either had drawn to his attention or which she could confirm. These matters, and also the nature of and times when vehicles bearing registration marks listed on various invoices were present on the park, were outwith his personal knowledge.

12. Asked to clarify the precise questions which the tribunal should determine, Mr Goodfellow (appearing for the applicant) referred to paragraph 8 of the more detailed statement of case, at page A15, viz :

> Declaration as to whether the respondent is in breach of his agreement and/or the park rules by (a) utilising the mobile home park's car parking facilities for the parking of commercial or otherwise private hire vehicles owned by third party companies and/or (b) parking more than one vehicle on the mobile home park and/or (c) carrying on a business from the mobile home park and/or (d) failing to settle parking charges.

13. Mr Goodfellow was anxious to stress that it was not the applicant's desire to evict the respondent from the park; merely to obtain a definitive interpretation of the relevant park rules and a decision whether the respondent's activities put him in breach. Points (b) and (c) were swiftly abandoned as the evidence progressed.

14. Surprisingly, the respondent filed no witness statement by himself. Instead he

relied upon two others – more in letter form – from fellow park occupiers the Rev Dr William Lock DD and Mrs Rene Rinkens. Mrs Rinkens challenged Ms Ling's account of an alleged discussion in the site office about a car that the respondent had used to take her to the shops, hospital appointments, etc free of charge. She said it was impossible for her to have walked as far as the office, and that she had only rarely spoken with Ms Ling. The car had been registered with the park in her name; not that of her late husband.

15. Unfortunately Dr Lock was too ill to attend, so the question arose as to the admissibility and/or weight of his evidence. In fact the oral evidence of the respondent himself rendered the point made in his statement largely irrelevant.

16. The case that the tribunal thought the respondent was advancing was that the plated car provided by his employer was used only to take him to and from where he stored the bus used for work purposes. On enquiry by the tribunal as to why his employer would go to the expense of licensing a vehicle used only to take him to and from work, instead of just an ordinary car, the truth emerged. Although the car was largely parked up while Mr Russell was driving the bus to school in the morning and back in the afternoon, occasionally he would be asked by his employer to collect a prospective passenger assistant and drive him or her to the company's office near Stansted airport for interview. On other occasions he might have to use the car to take a passenger home if his (or any other) bus had broken down, or sometimes in the evenings to take youngsters to a function. On those latter occasions he could be contacted on his mobile number and set off from home.

17. On the list of vehicle registration marks recorded on the invoices sent to him, he admitted that the car in the photograph produced by Mr Collins was a private hire car. So were some others, so he would leave in the morning in one car but return that evening in another (as he had to notify his employer after running up a mileage of 4 000 miles). Others, eg NJ 05 KUD, were courtesy cars supplied by his garage when a car was in for repair. Registration mark EA68 EVT was a bus he used for carrying disabled children. After collecting the bus in the morning he would drive on to the park for about 10 minutes so that he could go home and use the toilet before setting off on a long journey. This would be at about 10:30 in the morning, not overnight, so he would not be in breach of the park rules and (if the site owner was entitled to charge for overnight parking) the amounts levied were wrong and unjustified.

18. While Mr Russell had produced photographs of another private hire vehicle and a white van used by other residents, and questioned Mr Collins about them, the alleged double standards employed by the applicant were and are not relevant to the question before the tribunal, concerning breach. This affects the question of reasonableness of terminating the respondent's agreement, a matter that (should it ever arise) is a matter for the court on another day.

Discussion and findings

19. With evidence of the respondent's actual but perhaps occasional business use of the private hire car parked on the site the tribunal was spared having to consider whether a plated private hire vehicle used solely to travel to and from, but not at, work could be placed in the same category as a courtesy car bearing the lending

garage's name, address and logo. Or what of an unmarked company car supplied by the user's employer, or one acquired from a motor industry-related finance house under a private contract plan and used both for business and domestic purposes?

20. In the tribunal's determination a plated private hire vehicle bearing the taxi firm's business logo and contact details falls within the ordinary definition of a commercial vehicle. So too would a van, whether marked or unmarked. That a vehicle used by the respondent is from time to time used not only to take him to and from where his bus is parked but also for his employer's business purposes (regardless of whether a fare is charged) only confirms its "commercial" nature. The respondent is therefore in breach of rule 25 when he parks such a vehicle overnight on the park.

21. The tribunal considers that ownership of the commercial vehicle by a third party company is irrelevant. If otherwise, then any vehicle acquired under a personal contract plan or other consumer credit arrangement where title remains with the provider until payment is complete could lead to a breach. Further, what is the difference between a car used for business by someone who is self-employed and one supplied by (for example) a sales representative's employer?

22. However, the tribunal considers that overnight parking stretches the definition of "storage of the stock, plant, machinery or equipment used or last used for any business purpose" too far. "Storage" implies a more long-term arrangement than moving a car on and off the site on a daily basis, and only an accountant might regard a vehicle used for business purposes as stock (which implies something to be sold in the ordinary course of the business), plant, machinery or equipment. The tribunal is not satisfied that there has been a breach of rule 12.

23. Neither the written statement nor the current park rules provide for the payment of any parking charge, so the applicant is not entitled to levy a charge of £10 per vehicle per night. Even if, which on the available evidence it cannot, the applicant site owner could prove that vehicles bearing the registration marks listed are commercial in nature and parked on site overnight (rather than briefly during the day), the invoices raised against the respondent are thus void and unenforceable.

24. Further, the tribunal does not consider parking in a permitted or allotted space to be "other services" within the meaning of Part IV, paragraph 3(b) of the written statement. Applying the *eusdem generis* rule of construction, the other items listed in that paragraph are services for which the utility provider imposes a charge either payable by the occupier directly or passed on by the site owner, seeking reimbursement. Parking a commercial vehicle in a parking space which the occupier can lawfully use for a private car at no additional charge is not the provision of a "service" by the site owner.

Dated 19th September 2019

Graham Sinclair
First-tier Tribunal Judge