



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

Case Reference : BIR/17UG/PHC/2021/0005

HMCTS : P:PAPERREMOTE

Property : 6 Mayfield Mobile Home Park, Draycott Road, Breaston,
Derbyshire DE72 3DA

Applicants : Mr JD Ray and Mrs G Ray

Representative : IBB Law LLP (Mr J Clement)

Respondents : Mr R Faulkner and Mrs I Faulkner

Type of Application : An application under section 4 of the Mobile Homes Act 1983
(as amended) seeking a determination of any question arising
under this Act or any agreement to which it relates

Tribunal Members : Judge David R. Salter (Chairman)
Ian Humphries BSc (Est.Man.) FRICS

Date of Hearing : None. Decision based on written submissions.

Date of Decision : 22 December 2021

DECISION

© CROWN COPYRIGHT 2021

Background

- 1 By an application dated 9 July 2021 to the First-tier Tribunal (Property Chamber) (Residential Property) the Applicants applied for a determination under section 4 of the Mobile Homes Act 1983 (as amended) (“the Act”) by the Tribunal of the matter set out in that application.
- 2 The Applicants are the current owners of Mayfield Mobile Home Park, Draycott Road, Breaston, Derbyshire DE72 3DA (“the Site”). This is a residential mobile home park. It is a protected site within the meaning of the Act.
- 3 Mr Faulkner is the owner of a mobile home, which occupies the pitch on the Site known as 6 Mayfield Mobile Home Park, Draycott Road, Breaston, Derbyshire DE72 3DA (“6 *Mayfield*”) in which he has resided with his wife since 2015 under the terms of a written agreement (including a Written Statement under the Act) made between the Applicants and one of Mr Faulkner’s predecessors in title and that came into effect on 1 June 1998.
- 4 In the application, the Applicants identified the matter upon which they sought a determination by the Tribunal, namely the re-cladding of 6 *Mayfield* by the Respondents that was stated to be in breach of paragraph 3(g), Part IV (express terms of the agreement) of the written statement (“paragraph 3(g)”) and Rule 2 of the Mayfield Mobile Home Park Site Rules (“the Site Rules”). In this respect, the Applicants sought orders to remedy these breaches that required the Respondents to (i) cease, immediately, all further works to the exterior of 6 *Mayfield*, and (ii) to arrange for the removal of the PVC exterior cladding affixed to 6 *Mayfield* by the Applicants within such period as the Tribunal may direct.
- 5 Directions were issued by the Regional Judge on 10 August 2021. In those Directions, the Regional Judge specified, initially, that the application should stand as the Applicants’ Statement of Case. Thereafter, the Directions directed that, no later than 1 September 2021, the Respondents should serve on the Applicants and the Tribunal (3 copies) a Statement of Case setting out all matters of fact and law upon which they placed reliance and exhibiting all relevant documents, and, further, that no later than 15 September 2021, the Applicants should serve on the Respondents and the Tribunal (3 copies) a Statement in Reply.
- 6 In addition, the Directions recorded that the Applicants were content with a paper determination with which the Tribunal agreed. Nevertheless, should the Respondents require an oral hearing they were invited to notify the Tribunal of this on the lodging of their Statement of Case. No such request for an oral hearing was received by the Tribunal.
- 7 The parties were also informed in the Directions that the Tribunal would not carry out an inspection of 6 *Mayfield*, but the Tribunal would rely on any photographs and plans served with the Respondents’ Statement of Case and Applicants’ Statement in Reply respectively.
- 8 In furtherance of the Directions, the Respondents submitted a Statement of Case (received by the Tribunal on 31 August 2021) together with a number of exhibits, including several photographs of 6 *Mayfield* and other mobile homes on the Site to which exterior cladding had been affixed. In turn and following the grant of an extension until 30 September 2021, Mr Clement filed, on behalf of the Applicants, a Statement in Reply dated 28 September

2021. Similarly, this was accompanied by a number of photographs of 6 *Mayfield* and other mobile homes on the Site with exterior cladding.

- 9 In light of the above, the Tribunal proceeds to determine the application under section 4 of the Act taking due account of the written and pictorial evidence submitted by the parties, without an inspection of 6 *Mayfield* and the surrounding environs of Mayfield Mobile Home Park, through the medium of telephonic communication.

Relevant Law

- 10 Section 1(1) of the Act provides:

Particulars of agreements

‘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...’

- 11 Section 3(1) of the Act provides:

Successors in title

‘An agreement to which this Act applies shall be binding on and enure for the benefit of any successor in title of the owner and any person claiming through or under the owner or any successor.’

‘owner”, in relation to a protected site, means the person who, by virtue of an estate or interest held by him, is entitled to possession of the site or would be so entitled but for the rights of any persons to station mobile homes on land forming part of the site (see, section 5(1) of the Act).

- 12 Section 4(1) of the Act provides:

Jurisdiction of a tribunal...

‘In relation to a protected site...a [residential property] tribunal has jurisdiction...

- (a) to determine any question arising under the Act or any agreement to which it applies; and
- (b) to entertain any proceedings brought under this Act or any such agreement...’

- 13 Section 231A of the Housing Act 2004 gives the Tribunal a general power when exercising any jurisdiction conferred on it by the Act which is in addition to any specific powers exercisable by it under the Act. Section 231A(2) describes this general power as follows:

‘The tribunal’s general power is a power to give such directions as the tribunal considers necessary or desirable for securing the just, expeditious and economical disposal of the proceedings or any issue in or in connection with them.’

To the extent that section 231A is material to this application, section 231A(4) states:

‘When exercising jurisdiction under the Mobile Homes Act 1983, the directions which may be given by the tribunal under its general power include (where appropriate) –

- (a)....

(b)...

(c) directions requiring cleaning, repairs, restoration, re-positioning or other works to be carried out in connection with a mobile home, pitch or protected site in such manner as may be specified in the directions; and

(d)...

Submissions

The Applicants

14 In the application, the Applicants stated that the Respondents had carried out works to *6 Mayfield* that involved 're-cladding the exterior...with what appeared to be PVC or plastic boarding stuck over the stucco rendering of the original exterior walls' without obtaining their prior consent for such work as required by paragraph 3(g) of the Written Statement and in accordance with Rule 2 of the Site Rules.

15 Paragraph 3(g) provides as follows:

'Occupier's undertakings

3. THE occupier undertakes with the owner as follows:-

(g) Not without the written consent of the owner to carry out any building works or erect any porches sheds garages outbuildings fences or other structures on the pitch.'

16 The salient wording of Rule 2 provides:

'...The Management must be consulted prior to any improvements. This will include wheels being removed, the Mobile Home re-positioned and no external alterations or additions without the prior approval of the Park Owner...'

17 In their Statement in Reply, the Applicants re-iterated that the Respondents did not at any stage seek or obtain their consent to add the exterior cladding to *6 Mayfield* nor had they explained why they had failed to do so. In the Applicants' opinion, such consent was required because the re-cladding constituted 'building works' within the meaning of paragraph 3(g). The Applicants did not regard the note/letter submitted in evidence by the Respondents (see below, paragraph 23) as a request for consent to carry out the works but rather as an indication of works, albeit unspecified, that the Applicants were planning to undertake. The Applicants added that, in any event, the note/letter was received after the work started.

18 The Applicants informed the Tribunal that the Respondents started the work in February/March 2021. Thereafter, they wrote to the Applicants on 8 March 2021 pointing out that the Respondents had failed to comply with the requirements of paragraph 3(g) and Rule 2 in respect of the works that they had initiated and that the materials used, which appeared to be sub-standard and not 'class A fire retardant material', should be removed. The Applicants added that if the Respondents wished to overboard *6 Mayfield* they would have to seek permission from the Applicants in furtherance of paragraph 3(g) and in accordance with Rule 2.

In a subsequent letter dated 22 April 2021 IBB Law wrote, on behalf of the Applicants, to the Respondents. In that letter, IBB Law revisited the alleged breaches of paragraph 3(g)

and Rule 2, which had been drawn to the attention of the Respondents by the Applicants in their letter of 8 March 2021, and called upon the Respondents to remedy those breaches by ceasing, immediately, all further work on the exterior of *6 Mayfield* and by arranging for the removal of the PVC exterior cladding, which they had affixed to *6 Mayfield*, within 14 days of the date of the letter. IBB Law indicated that, in the absence of compliance by the Respondents with these requests, the Applicants would make an application to the First-tier Tribunal.

A further letter written by IBB Law to the Respondents dated 24 May 2021 acknowledged that whilst the Respondents had ceased work on the re-cladding of *6 Mayfield* the PVC exterior cladding that they had affixed to *6 Mayfield* had not been removed. IBB Law stipulated a further 7 days from 24 May 2021 within which this should be done and indicated that, in the event of a failure to comply with this request, an application would be made to the Tribunal by the Applicants.

Each of these letters was adduced in evidence by the Applicants.

The Respondents did not remove the aforementioned PVC exterior cladding. Accordingly, the application was made by the Applicants to the Tribunal.

- 19 In the application, the Applicants also expressed the view that if the Respondents had sought consent for the works they had undertaken it would not have been forthcoming for either or both of the following reasons, namely (i) the materials used do not appear to be suitable for external use on park homes and do not meet Class A fire-retardant standards and/or (ii) the materials used are not in keeping with the appearance of other park homes on the site which have stucco-rendered external walls.

In the former respect, the Applicants dismissed in their Statement in Reply the evidence adduced by the Respondents in their Statement of Case (see below, paragraph 25) through which they had sought to establish the fire retardant properties of the PVC-U exterior cladding that in their Statement of Case they had admitted to using on *6 Mayfield*. Hence, in the first instance (a statement by Geoplas Profiles Limited), the Applicants regarded the information given in that letter as dated, generic and not involving any inspection of the PVC-U exterior cladding on *6 Mayfield* and, in the latter instance (a communication from BTTG Fire Technology Services), the Applicants described the information conveyed as ‘equally unhelpful’, because ‘it is incomplete, was produced in 2009, and does not identify what materials are being tested or whether this is the same as, or similar to, the cladding used by Mr Faulkner.’

As to the perceived incongruity of the PVC-U exterior cladding used by Mr Faulkner on *6 Mayfield* with the appearance of other mobile homes on the Site, the Applicants observed:

‘Whilst it is correct that some of the new homes on the Park do have some external cladding, the amount of cladding is very small overall and does not affect the overall appearance of the external walls of these homes, which is predominantly stucco rendering, which is in keeping with the other homes on the Park. The Respondents’ home, by contrast, is the only one which is now entirely finished in plastic cladding.’

In support of this statement, the Applicants presented in evidence photographs that showed, first, *6 Mayfield* before and after the PVC-U exterior cladding was affixed by the Respondents, and, secondly, some of the new homes on the Site with exterior cladding which the Applicants described as minimal. Further, the Applicants stated that the cladding used on the new homes is made from CanExel, a specialist prefinished cladding, which, in their opinion, ‘is far superior to the hollow PVC-U cladding used by Mr Faulkner and gives a better external appearance, as well as better damp proofing and insulation.’

- 20 In concluding the Statement in Reply, the Applicants indicated that once *6 Mayfield* was restored to its pre-existing condition through the removal by the Respondents of the PVC-U exterior cladding, which was the subject matter of this application, they would be willing to consider any proposals put forward by the Respondents in relation to the re-cladding of *6 Mayfield* with more suitable materials.

The Respondents

- 21 The Respondents explained to the Tribunal that the exterior re-cladding work that they had undertaken on *6 Mayfield* was prompted by concerns about Mr Faulkner's ill-health, and, in particular, his susceptibility to symptoms exacerbated by living in damp conditions; a predicament confirmed in an open letter dated 18 August 2021, adduced in evidence by the Respondents, and written by a specialist nurse practitioner with the Nottingham University Hospital NHS Trust who is familiar with Mr Faulkner's diagnosis and medical conditions.

- 22 Mr Faulkner informed the Tribunal that he discovered evidence of damp in a wardrobe in a bedroom of *6 Mayfield* in February 2021, and, in view of his ill-health, he looked into how this might be eradicated as soon as possible. Mr Faulkner described the subsequent events in the following words:

'I was advised to use PVC-U cladding. I started to prepare the home ready for working on. My wife Irene hand delivered the letter requesting permission to do the work, a friend wrote this out for us and I signed it and have included copies of this. My wife was witnessed by 2 neighbours delivering the letter and she put it in Mrs Ray's hand at her front door. As I heard nothing from them, I continued with the work.'

- 23 As intimated above, Mr Faulkner included a copy of the signed letter, which is undated, with the Respondents' Statement of Case. It reads as follows:

' To

MR.D.Ray

In compliance to your request to put in writing my intention to start to undertake work on my property, I do hereby do so. My intention is to make my mobile home (outer) a nicer and more modern look.'

- 24 As further exhibits, the Respondents presented in evidence photographs which showed *6 Mayfield* after the PVC-U exterior cladding was affixed together with photographs of other mobile homes on the Site with exterior cladding. Mr Faulkner believed that the Applicants were now using the same cladding materials as himself and that these were provided by the same supplier.

Mr Faulkner informed the Tribunal that the exterior cladding on *6 Mayfield* 'has resolved all the problems with damp in the wardrobe.'

- 25 The Respondents also indicated that they were satisfied that the PVC-U exterior cladding that they used on *6 Mayfield* met requisite fire safety standards. In this respect, the Respondents relied in evidence upon two documents generated from within the PAL Group plc by Geoplas Profiles Limited and BTTG Fire Technology Services respectively which they believed to be supportive of their assertion in their Statement of Case that the PVC-U exterior cladding used on *6 Mayfield* is rated Class 1 for fire rating purposes. The first of these documents is a statement on the flammability of rigid PVC dated 20 April 2005 made by Geoplas Profiles Limited. It states:

'PVC-U is self extinguishing and can afford a level of protection against the surface spread of flames. The material carbonises without burning and does not produce droplets.

Whilst PVC-U compounds will generally meet a fire rating of VO when tested to UL94, this is dependent upon the formulation of the material and the wall thickness of the product.

The Geoplas range of products, which have been designed for the building and construction industries, are extruded in PVC-U. Product tests based upon the design geometry of each profile have not been specifically undertaken to establish fire rating figures for each individual product. This statement does not therefore constitute a specific warranty or guarantee.'

The second document comprises the results of a series of tests relating to the surface spread of flame of products conducted by BTTG Technology Services on a sample on 22 April 2009.

Decision

- 26 The Tribunal reaches its decision on the basis of the written and photographic evidence submitted by the parties, the relevant law and its knowledge and experience as an expert Tribunal.
- 27 The jurisdiction of the Tribunal under section 4 of the Act lies in considering and determining such question(s) posed by the matter specified in the application and arising under the Act or the agreement between the parties to which it relates.
- 28 This is a limited jurisdiction that is supplemented by the discretion granted to the Tribunal by section 231A(4)(c) to issue directions that it considers necessary or desirable for securing the just, expeditious and economical disposal of the proceedings or any issue relating to them. In any event, the Tribunal is not invested with the power to make orders that are concerned with the enforcement of its findings in relation to the question(s) raised; matters of enforcement lie with the County Court.
- 29 In this instance, the matter specified in the application, namely the re-cladding of the exterior of *6 Mayfield* with PVC-U by the Respondents, gives rise to the sole question, the answer to which will determine the outcome of this application, of whether the Respondents obtained the Applicants' consent/approval to the carrying out of this work within the meaning of paragraph 3(g) ('Not without the written consent of the owner to carry out any building works...') and/or Rule 2 ('...The Management must be consulted prior to any improvements. This will include...no external alterations or additions without the prior approval of the Park Owner.').
- 30 Whilst the wording of these provisions differs, the obligation imposed is clear in respect of the carrying out of the variously described 'building works' and 'external alterations or additions' in that the Applicants' consent/approval is a necessary prerequisite. The Respondents have not argued that the re-cladding of the exterior of *6 Mayfield* falls outside what might be regarded as 'qualifying' work for the purpose of either or both of these sets of wording. In this regard, the Tribunal accepts that the affixing of such exterior re-cladding constitutes 'qualifying' work for the purposes of paragraph 3(g) and Rule 2, and that, consequently, the prior consent/approval of Applicants was required before this work was undertaken by the Respondents.
- 31 The Respondents submitted that they had sought consent/approval from the Applicants for the exterior re-cladding work through the medium of the note/letter signed by Mr Faulkner (see above, paragraph 23) and delivered by Mrs Faulkner to Mrs Ray, and that,

in the absence of any response to the note/letter from the Respondents, they believed that they were entitled to carry on with the exterior re-cladding.

- 32 In the light of this submission, the Tribunal must consider whether this letter amounts to a request by the Respondents to the Applicants for consent/approval to carry out the exterior re-cladding work in furtherance of the requirements of paragraph 3(g) and/or Rule 2.

In this respect, the principal determinant is the meaning to be attributed to the words used in that letter and whether they can bear the meaning contended for by the Respondents. Here, the Tribunal finds that the words used, in particular a reference by Faulkner to ‘my intention to start to undertake work on my property’, are couched in terms that are indicative of a notification by the Respondents to the Applicants of an intention to commence works rather than a request for permission to undertake those works with a view to securing the consent/approval of the Applicants in accordance with either paragraph 3(g) or Rule 2. This is an interpretation of the letter that was proffered by the Applicants in their submissions and it may be surmised that this is germane to why they did not respond to it. Be that as it may, there is no evidence to suggest that this lack of response by the Applicants could be construed as an implicit consent to or approval of the carrying out by the Respondents of the re-cladding work. In fact and to the contrary, the contents of the letters dated 8 March 2021, 22 April 2021 and 24 May 2021 written to the Respondents, initially by the Applicants and latterly by Mr Clement on their behalf, exhibit the Applicants’ assertion throughout that the exterior re-cladding work was undertaken by the Respondents without their consent/approval.

In passing, it might be added that, even if a benign interpretation of the note/letter had been adopted by the Tribunal, the evidential weight to be attached to the note/letter is limited, because the fact that it is undated and the absence of any evidence as to the date upon which it was delivered by hand by Mrs Faulkner to Mrs Ray means it is not possible to ascertain with certainty whether or not it was brought to the Applicants’ attention prior to the commencement of the exterior re-cladding work.

- 33 In light of the above, it is apparent that the Applicants did not give either written consent under paragraph 3(g) or prior approval under Rule 2 for the re-cladding work undertaken by the Respondents. Further, there is no merit in the Respondents’ contention that the Applicants through their conduct, that is, not responding to the note/letter gave implicit consent/approval for such exterior re-cladding work.

- 34 Accordingly and in furtherance of the determination of the application, the Tribunal declares that the re-cladding work was undertaken by the Respondents in breach of paragraph 3(g) and Rule 2, that is, without, respectively, the written consent and prior approval of the Applicants for which, on the facts, no request had been made. It follows that any further exterior re-cladding work on *6 Mayfield* conducted by the Respondents without the Applicants’ consent/approval will, similarly, be in breach.

In light of this declaration, the Tribunal thought, very carefully, about whether or not to issue, in exercise of its discretion under section 231A(4)(c), directions requiring the Respondents to restore *6 Mayfield* to its condition prior to the affixing of the PVC exterior cladding by directing the Respondents to remove that cladding. In the event, the Tribunal decided against the issue of directions framed in this way for two reasons. First, the Tribunal is not in a position to monitor or oversee the work involved in carrying out such a removal, and, secondly, if such removal were to be undertaken, the photographic evidence, which is neither sufficiently definitive or compelling in its portrayal of the pre-existing condition of *6 Mayfield*, and the description in the evidence of the affixing of the cladding as re-cladding, means that the Tribunal would not be able to establish, conclusively, when it could be said that restoration of *6 Mayfield* to its former condition

had been achieved. Nevertheless, and suffice it to say, it is evident that, in view of the Tribunal's declaration, it is incumbent on the Respondents to remove cladding that they have affixed to *6 Mayfield*.

- 35 Finally and in the light of this determination, it is evident that it is not necessary for the purposes of this application for the Tribunal to dwell on the evidence submitted by the parties relating to matters that may have been in issue *if* the Respondents had sought the Applicants' consent/approval in accordance with paragraph 3(g) and Rule 2. In particular, the factors that the Applicants indicated that they may have taken into account in assessing such a request if it had been made. In this regard, the Applicants referred, specifically, in their evidence to factors that would have militated against the grant of their consent/approval, namely their doubts about the fire retardant properties of the PVC-U cladding (upon which the Respondents also commented, albeit positively, with supporting evidence) and the appearance of such cladding which, in their opinion, was not in keeping with that of other mobile homes on the site, a matter also contested by the Respondents; in each instance with the aid of photographs. Nevertheless, the submission of such evidence is not necessarily without provenance because, whilst not essential for the determination of this application, it provides, notably, some insight into how any subsequent request for consent/approval to carry out works by the Respondents might be entertained by the Applicants.

Judge David R. Salter

Appeal Provisions

- 36 If any party is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such appeal 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).
- 37 If the party wishing to appeal does not comply with the 28-day time limit, the party shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
- 38 The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.