



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

Case Reference : **CHI/43UF/PHC/2021/0010**

Property : 2 Fifth Avenue, Holly Lodge Park, Lower Kingswood, Tadworth, Surrey, KT20 6SL

Applicant : Holly Lodge (Kingswood) Limited

Representative : IBB Law LLP

Respondent : Mr Craig Venes

Representative :

Type of Application : Determination of any question arising under the Mobile Homes Act 1983

Tribunal Member(s) : Judge D. R. Whitney

Date of Determination : 13th July 2021

DECISION

Background

1. The Applicant is the site owner. The Respondent is the owner of the park home known as 2 Fifth Avenue, Holly Lodge Park. He occupies pursuant to an agreement dated 22nd October 2033 which was assigned to him on 28th April 2017.
2. It is alleged that the Applicant has erected a fence without consent. It is said that such fence is in breach of the terms of the occupation agreement and the site rules. The Applicant seeks a determination that such fence is in breach and that it should be removed.
3. Directions were issued on 9th April 2021. These directions have been substantially complied with and the Applicant's solicitor has provided a hearing bundle. References in [] are to pages within that bundle.
4. The Respondent also invited the Tribunal to inspect the site. The Applicant did not object. The Tribunal did inspect the site, unaccompanied on the morning of 13th July 2021.

Inspection

5. I inspected the site on my own. The Respondent had provided a note of matters he wished me to have regard to. The site owner did come out of the site office and introduced himself and confirmed I was free to walk around and inspect the site. No other communication was had with him.
6. The site is located off the A217 in Tadworth, Surrey. It has a private roadway with pavements. There are streetlights along the main roadway and fire safety points. The general impression on entering the site is that it is well maintained.
7. Many of the pitches have various shrubs and ornaments. I did note that on certain pitches there were ornamental archways. Many of the shrubs are substantial in size. I also noted that a number of hedges were around various pitches. A number of the hedges were taller than 2 metres in height. Save for the subject property I did not note that any of the other pitches had fences separating them from their neighbours save for boundary fences.
8. The subject Property is on Fifth Avenue. This is a roadway off the main road towards the far end of the site from the main road entrance. It has 6 pitches off the road, three on each side. The subject pitch is the middle pitch, on the left hand side if looking from the main access road. Numbers 3 and 4 are adjacent to the wooden close boarded boundary fence.

9. I observed the fence which is the subject of this dispute. It separates Number 2 from Number 1. A picture is included at [98]. The fence is as can be seen in this picture being a low fence which appears to have been professionally erected. I observed that the front door of Number 1 opens looking towards Number 2.
10. I also observed that the mobile homes on numbers 5 and 6 Fifth Avenue appeared to be undergoing renovation. I also noted there were other homes within the site that appeared to require some repairs and that new homes were being installed on certain pitches.

Decision

11. In making this decision I have had regard to all the documents filed and my inspection of the site.
12. I have considered whether or not the matter remains suitable for determination on the papers. I am satisfied that it is. Both sides have set out their arguments in a clear and succinct manner. The basic facts are not in dispute.
13. In particular I have had regard to the written agreement [18-29], the site rules [30-33], the statement of Mr Sargeant [14-17] and that of Mr Venes [54-61].
14. The Respondent admits that he installed the fence and when he did so he had not requested consent. In his statement he sets out his reasons for so doing and the steps he has subsequently undertaken including requesting consent.
15. The Respondent raises various other issues including allegations of breaches by other pitch holders. These are not matters which are strictly relevant to this application. As a result without intending any discourtesy to Mr Venes I do not further mention the same in any detail.
16. Mr Sargeant, the director of the Applicant, explains that he believes erecting a fence without permission of the local authority is a breach of the site licence. Further he states he has had verbal complaints and generally does not like fences to be erected. He states that it is the Applicants intention to ensure the site remains open plan.
17. The Applicant relies on Part IV 3(g) of the Agreement [24] that states:

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 fence

18. Rule 1 of the site rules provides:
- “...You must obtain our written approval (which will not be unreasonably withheld) before erecting any trees fences hedges or other boundary structures. In order to maintain the open plan appearance of the Park, no fences or hedges may be positioned at the front of your pitch....”*
19. Mr Venes does not dispute erecting a fence without consent. He suggests he has retrospectively requested consent which has been refused. He suggests this refusal is unreasonable. His reasoning is that he refers to various hedges and the like together with other breaches of the site agreement and park rules which he says the Applicant has done nothing about.
20. It may be the case that other pitch owners have breached their agreements or site rules. Certainly on my inspection I noted a number of hedges which exceeded 2 metres in height. Other pitches had hedges and structures in place but whether or not there is any consent or the Applicant is taking proceedings is not relevant to this application which focuses on the actions of the Respondent.
21. What does trouble me is whether the Applicant is entitled to refuse consent to the fence? It appears to be accepted that the fence is of good quality and installed to a good standard. Certainly, that is my observation from my inspection.
22. Mr Sargeant states that he does not give consent for fences as he wishes to maintain the characteristic of the park being open plan without boundary fences. On my inspection I did not observe any other plots with boundary fences. Many had hedges and shrubs but fencing was noticeable by its absence save for the boundaries of the site.
23. Mr Sargeant refers to the site licence requiring consent from the local authority. He refers to provisions in the licence which require the local authorities consent to erection of “other structures”. Mr Venes suggests he has made enquiries and has been told the local authority would not concern itself with a fence such as his.
24. In my judgment the fence erected is in breach of Part IV 3(g) of the Agreement, the benefit of which was assigned to the Respondent. Further the erection of the fence without prior consent is a breach of Rule 1 of the site rules.
25. It was for the Respondent to seek consent prior to erection of the fence. The Respondent admits he erected the fence without any prior consent being requested or granted.
26. I have considered whether or not the Applicant should have granted retrospective consent but on balance I am not persuaded

that the Applicant was required to consider a retrospective application. The wording of the agreement and site rules plainly envisage an application will be made prior to any works. Further Mr Sargeant has given his reasons as to why a fence would not be granted permission and in my judgment he is entitled to refuse consent on this basis.

27. I determine that Mr Venes should arrange for the removal and making good of the area within 56 days of the date of this determination. The Applicant invited me to require removal within 7 days. In my judgment a longer period should be allowed so that Mr Venes can instruct contractors (if he so wishes) and the Tribunal takes account of the current pandemic which is leading to delays. Further nothing in the application suggests any urgency requiring sooner removal.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person 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.
4. 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.