



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

**Case Reference** : **CAM/11UE/PHC/2014/0002**

**Property** : **24 Odds Farm Estate, Woodburn Common  
Road, Wooburn Common, High Wycombe,  
Buckinghamshire HP10 0JY**

**Applicant** : **Jeff Wilson (Occupier)**  
**Representative** : **Mr O'Connell**

**Respondent** : **Odds Farm Estate Ltd**  
**Representatives** : **Steve Vinden & Neil Scott (Directors)**

**Date of Application** : **16<sup>th</sup> January 2014**

**Date of Hearing** : **6<sup>th</sup> May 2014**

**Type of Application** : **Determination pursuant to section 4 of the  
Mobile Homes Act 1983 (as amended) of  
any question arising under the Mobile  
Homes Act 1983 (as amended)**

**Tribunal** : **Judge JR Morris  
Stephen Moll FRICS  
David Reeve MVO MBE**

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**DECISION**

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**Decision**

The Tribunal decided it was not unreasonable to withhold consent under paragraph 3(e) of Part 3 Express Terms of the Written Agreement for the erection of a car port.

## **Reasons**

### **Application**

1. An Application was received from the Applicant on the 16<sup>th</sup> January 2014 to determine a question arising under an agreement to which the Mobile Homes Act 1983 applies. The question to determine is whether consent to erect a car port by the Occupier has been unreasonably withheld by the Site Owner. (Paragraph 3 (e) of Part 3 Express Terms of the Written Agreement)

### **The Law**

2. Section 4 of the Mobile Homes Act 1983 (as amended)
  - (1) *In relation to a protected site in England, 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 subsection (2) to (6).*
  - (2) *Subsection (1) applies in relation to a question irrespective of anything contained in an arbitration agreement which has been entered into before that question arose.*
  - (3) *In relation to a protected site in England, the court has jurisdiction—*
    - (a) *to determine any question arising by virtue of paragraph 4, 5 or 5A(2)(b) of Chapter 2, or paragraph 4, 5 or 6(1)(b) of Chapter 4, of Part 1 of Schedule 1 (termination by owner) under this Act or any agreement to which it applies; and*
    - (b) *to entertain any proceedings so arising brought under this Act or any such agreement, subject to subsections (4) to (6).*
  - (4) *Subsection (5) applies if the owner and occupier have entered into an arbitration agreement before the question mentioned in subsection (3)(a) arises and the agreement applies to that question.*
  - (5) *A tribunal has jurisdiction to determine the question and entertain any proceedings arising instead of the court.*
  - (6) *Subsection (5) applies irrespective of anything contained in the arbitration agreement mentioned in subsection (4).*

### **Inspection**

3. The Tribunal inspected the Site in the presence of the Applicant and the Respondents. The Site is rectangular with an elongated horseshoe shaped running around it to serve the 50 pitches. The road is one way. The homes on each pitch are similar. Most are placed end on although four are double pitches with the homes placed lengthways. The Site appeared to be well maintained.

4. The Property is situated in the top right hand corner of the Site and has a double home placed lengthways. It was apparent from the Tribunal's inspection that most of the homes had a single garage behind the building line in front of which was an area of hard standing for a vehicle. No 8 was an exception to this in that the garage was situated at the side of the road in front of the building line. The Property is one of two pitches that have a double garage with hard standing in front of it.
5. A car port had been constructed at the Property in front of the garage over the hard standing to the side of the Home. It was accepted by all parties that this would have to be removed in any event as it was not compliant with planning permission. If it was replaced the proposed car port would be much the same in size and height, roofing material and rainwater drainage although the supports and sides of the car port would have to be replaced by non-combustible materials. The Tribunal was therefore able to obtain a very clear idea as to the visual impact of the proposed car port and the way it would be supported, from an inspection of the current car port. It was also able to appreciate the effect of the non-combustible materials that would be used.
6. Currently the roof is supported by wooden rafters, which are held by timber joist hangers, which are supported on one side by a timber plate attached to the side of the Home. On the other side the joists are supported by wooden posts adjacent to which is the boundary fence. It is intended that for the proposed car port the wooden joists would be replaced by steel joists which will be held by metal joist hangers attached to the Home on one side and by steel posts on the other. The fence will be replaced or clad by a non-combustible material. The side of the Home under the new car port will also have to be clad in non-combustible material. It was noted that the existing and proposed car port obscured and prevented the opening of a window. The window was to a room which had two further windows to the front of the Home.
7. The arrangements for surface water runoff are that the roof is split approximately two thirds to the front with a pitch down towards a gutter and at the rear this is pitched down from the front of the garage to the same gutter which form a valley between the two roofs. The water then runs to a drain pipe which discharges into a gulley at the rear corner of the Home. The Applicant stated that it was intended the drainage arrangements for the proposed car post would be the same.

### **The Agreement**

8. The Written Agreement was entered into in November 1999 between the original Site Owners, AJ and D House, and the Applicant.
9. The Express Terms of the agreement between the site owner and the Occupier in addition to the implied terms are set out in Part 3 of the Written Agreement. Paragraph 3 of the Express Terms contains the Occupier's Obligations in particular sub paragraph (e) states:

*You must not without the prior written consent of the site owner (which must not be unreasonably withheld) carry out any of the following:*

- (i) building works to the mobile home or the base or the pitch except any repairs or maintenance carried out by you in accordance with clause 21(c) and/or 21(d) of the Implied Terms set out in the Annex to Part 2 of this agreement;*
- (ii) the erection of any porches, sheds, garages, outbuildings, fences or other structures;*
- (iii) paving or hard landscaping, including the formation of a pond;*
- (iv) planting, felling, lopping, topping or pruning of any trees; or*
- (v) the erection of any pole, mast, wire, dish or communications receiving equipment.*

*In considering any request for consent to carry out such works, the site owner shall have regard to all the circumstances, including the weight of any proposed works or the likely effect (if any) on the mobile home, the pitch, the base on which the mobile home is stationed, and the amenity of the site.*

## **Hearing**

10. The Tribunal identified its jurisdiction. It said that the following stages were required for approval to be given for the proposed car port:
  1. Permission to erect the car port had to be obtained under the terms of the Written Agreement. If it was felt that this had been unreasonably refused as in this case then application could be made to the Tribunal. The Tribunal would then consider and determine whether it was to grant or refuse permission taking into account all the circumstances as stated in the provisions of Paragraph 3(e) of the Express Terms.
  2. If the Tribunal decided it was reasonable to grant permission then following the Tribunal's order the Applicant would apply for planning permission. In determining whether not to grant planning permission the Local Planning Authority would consider a number of issues such as appearance, amenity and compliance with the Site Licence. It would also take into account and include in its decision conditions which would normally be a matter for Building Control such as the use of non-combustible materials.
11. At the Hearing the written representations made by the Applicant were noted and confirmed as set out below.
12. In a letter annexed to the Application the Applicant stated that he had constructed a car port over a year ago between the existing Home wall and the boundary fence of the pitch. He said the car port has a steel roof and is not in front of the building line nor is it sighted or overlooked by anyone. He said that he did not apply for consent because he was not aware that he needed to and nothing had been mentioned to him over that period by anyone on the park or the parks management. He was first aware of a problem when he was contacted by Claire Bradley, Licensing Officer for South Bucks District Council who raised concerns regarding the material used.

13. The Site Owner and Site Manager attended a meeting with the Applicant after which a letter dated 7<sup>th</sup> August 2013 (Letter 1) was received by the Applicant from the Site Owner quoting a letter the Site Owner had received from Clare Bradley as follows:

*The very large wooden garage/car port that has been erected to the side of number 24 certainly contravenes the requirements of your site licence and compromises site safety. I understand that this is a recent addition to the unit which has been erected without consultation with you and without your consent and therefore ought to be removed as soon as possible. As you will be aware a garage or car port may only be permitted within the separation space if it is of non-combustible construction.*

14. Three weeks later a further letter dated 27<sup>th</sup> August 2013 (Letter 2) was received by the Applicant from the Site Owner stating that:

*...following requests from other home owners to build similar car ports, we have been backed into a corner where we must make a decision.*

*It is important that we maintain the ambience of the park and in our opinion the erection of car ports around the Estate would be detrimental to the look and also the value of other homes.*

*We therefore have to now ask you to remove the car port structure as it has been built without permission. We are happy to give you 3 months to do this but ask you to accept and carry out this request in good faith.*

15. In September 2013 the Applicant stated that Claire Bradley and Mohammed Nadeem, Planning Officer, the Site Owner and the Site Manager and the Applicant had a meeting at the Applicant's pitch at which the South Bucks District Council Officers took measurements and informed the Applicant that he had the right to submit a planning application for retrospective permission for the car port. The Officers also discussed the correct materials to use in the construction. The roof of the car port was compliant but the boundary fence was not.

16. On 22<sup>nd</sup> October 2013 the Site Owner sent a letter to the Applicant stating that the car port was in breach of planning and of the site licence and that consent had not been obtained under Part 3 paragraph 3 (e) of the Express Terms of the Written Agreement. The Site Owner confirmed that if the Applicant had made a written request for the car port it would have been denied for the reasons stated in Letter 2, namely that car ports around the Estate would be detrimental to the look of the Estate and value of the homes.

17. The Applicant states in his letter annexed to the Application that forty out of the fifty homes have brick built garages with doors in exactly the same position as his car port (pictures of two examples were enclosed). He submitted that he was in a uniquely secluded position and that had he been located on one of the arterial road he would have obtained permission for a garage. As it is he believes permission is unreasonably being withheld by the

Site Owner for the construction of the car port and so applies to the Tribunal for a determination prior to submitting planning permission.

18. The Applicant provided a copy of the plan of the Estate with his Home identified and a copy of the planning permission he proposes to submit if consent is granted. The car port is to be 2 metres high by 4 metres wide by 5 metres long (the width of the Home).

19. At the Hearing Mr O'Connell on behalf of the Applicant stated that the Applicant had believed that permission had been granted by the Respondent in Letter 1 because after quoting Ms Bradley's letter to him the Respondent had added:

*We appreciate your understanding of this unwelcome news and hope you get a positive reply from Clare Bradley.*

20. In addition Mr O'Connell said that Mr Vinden had discussed the matter with the Applicant and led the Applicant to believe that he was happy for there to be a car port on the Property. He said that the Applicant understood that all he needed to do was to ensure the structure was made of non-combustible material and then it would be compliant with all the regulations.

21. In response the Respondent's Representatives said that they had added this because they were under the impression that the contravention of the site licence referred to in the Clare Bradley's letter meant that the matter was beyond the granting of permission under the Agreement and it was out of the Respondent's hands. Only after a further discussion between Mr Vinden, a Director of the Respondent, and Clare Bradley was it appreciated that a formal decision whether or not to allow the development in principle would have to be made by the Respondent under the terms of the Agreement. It would then be for the Applicant to apply for planning permission which would only be granted if it complied with the Site Licence and any statutory provisions e.g. fire regulations.

22. Mr Vinden said that he was not a confrontational person and took a 'live and let live' approach. If the matter was in the hands of the local authority, as he believed at the time, he did not see any point disputing the matter with the Applicant when he met him on the Site. However, since his meeting with the Applicant he had received a verbal complaint about the car port from an occupier and when he discussed the matter with Clare Bradley after Letter 1 she informed him that she had received a formal written complaint from another occupier. In response to the complaints and being made aware that he had to formally grant or refuse permission he wrote Letter 2 and 3.

23. Mr Vinden went on to say that he had received two applications for car ports which he refused because they adversely affected the appearance of the Site. He could not refuse them and allow the Applicants' car port. It was after he had received these applications that he confirmed the rejection of permission to construct a car port in Letter 3.

24. Mr Vinden said that the Applicant had received a copy of the Written Agreement and reminders, which were sent to all occupier on the 20<sup>th</sup> January 2010, 21<sup>st</sup> July 2011 and 5<sup>th</sup> July 2013, of the importance of obtaining permission before building any structures. Contrary to what the Applicant believes he said the structure was visible to all who drive through the Site due to the one way system. He said that he was concerned about the structure because the Respondent is technically in breach of the licence. He added that there was a general tightening up of the controls on sites and he had been liaising with the Council on a number of matters and therefore wanted to be sure he was in compliance.
25. The Applicant stated that his car port had been there for the past 20 months and many people do not know it is there. No one from the Respondent had asked him to remove it nor had any one complained as far as he was aware. His neighbour had not objected to the car port. He said his Home was in a unique position; it was one of only four that were positioned across the pitch and one of only two that had a double garage. He said that no one could construct a car port in the same way as they would have to come in front of the home. He submitted that the car port did not affect the ambience or amenity as it could not be seen. He said that each request under Paragraph 3(e) of the Express Terms should be considered on its merits.
26. The Applicant was under the impression that the proposed car port would receive planning permission provided it was made from non-combustible material. He did not consider there was a risk in relation to the storage of materials under a car port provided the items stored were not combustible.

## **Decision**

27. The Tribunal found that Letter 1 did not amount to permission under paragraph 3(e) of Part 3 Express Terms of the Written Agreement for the erection of a car port.
28. The Tribunal considered all the evidence and took into account all the circumstances as required by paragraph 3(e) of Part 3 Express Terms of the Written Agreement. The Tribunal found that no other occupier of the Site had a car port. The Site owner allowed a garage as an alternative to a car port
29. Based upon the inspection of the existing car port the Tribunal found that the proposed car port would have an adverse effect on the appearance of the Home and hence amenity of the Site as a whole for the following reasons:
  - The proposed car port partially obscured a window of the Home.
  - The proposed materials of profiled sheet metal roof and steel joists, posts and hangers were not in keeping with the Home.
  - The car port was not inconspicuous and could be seen clearly when walking towards it on the right hand road.
  - The structure was intrusive to the neighbours property in appearance and by being affixed or adjacent to the boundary fence.
  - No specification was given for the non-combustible cladding.

30. The Tribunal were concerned that the proposed car port lacked structural integrity. The Tribunal considered that a satisfactory engineer's report approving the affixing of the steel roof joists to the side of the Home was required before permission by the Site Owner could be given.
31. The Tribunal did not agree that it was reasonable for the Respondent to allow the proposed car port but not others. Car ports were a type of structure and occupiers may make similar arguments to those put forward by the Applicant for their respective applications. The Tribunal agreed with the Respondent that to allow car ports would adversely affect the appearance of the site not least by enabling the storing of materials in the car port.
32. Therefore the Tribunal decided it was not unreasonable to withhold consent under paragraph 3(e) of Part 3 Express Terms of the Written Agreement for the erection of a car port.

Judge JR Morris

Date: 22<sup>nd</sup> May 2014