



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

Case Reference : **MAN/00EW/PHC/2016/0001**

Property : **25 The Oaks, Orchard Park, Elton,
Chester CH2 4NQ**

Applicant : **Mrs K Kinsey**
Representative : **Mr A Holland**

Respondent : **Wyldecrest Parks (Management) Ltd**
Representative : **Mr D Sunderland**

Type of Application : **Mobile Homes Act 1983 – section 4**

Tribunal Members : **Judge J Holbrook
Mr I James**

**Date and venue of
Hearing** : **6 May 2016 at the
Civil & Family Court Centre in Liverpool**

Date of Decision : **15 June 2016**

DECISION

DECISION

- A. Within 42 days of the date on which this decision is sent to the parties, the Site Owner must remove those parts of the structures associated with the new mobile home which encroach upon the Pitch. It must also reinstate the Pitch boundary in the manner described in paragraphs 38 and 39 below.**
- B. Within 28 days of receipt of a written request to do so from the Site Owner, Mrs Kinsey must remove the wooden decking presently on the Pitch.**

REASONS

Background

1. On 18 February 2016 the Tribunal received an application under section 4 of the Mobile Homes Act 1983 (“the MHA”). The application was made by Mrs Ketsuda Kinsey, the occupier of a mobile home stationed on a pitch known as 25 The Oaks, Orchard Park, Elton, Chester CH2 4NQ (“the Pitch”), and sought a determination of a number of questions arising from the stationing of a new mobile home adjacent to the Pitch.
2. The Respondent to the application is Wyldecrest Parks (Management) Limited (“the Site Owner”). The Site Owner is the owner of the caravan site which includes the Pitch (“Orchard Park”).
3. There is no dispute that Orchard Park is a “protected site” for the purposes of the MHA, or that the MHA applies to the agreement under which Mrs Kinsey is entitled to occupy the mobile home in question.
4. A hearing was held on 6 May 2016 at the Civil & Family Court Centre in Liverpool. Mrs Kinsey was represented at the hearing by Mr A Holland (chairman of the Orchard Park residents’ association). The Site Owner was represented by its director, Mr D Sunderland, and the Tribunal also heard evidence from Mrs A Raywood (resident park manager). Both parties had presented written submissions and documentary evidence in support of their respective arguments. In particular, the Tribunal had before it a copy of the agreement relating to the stationing and occupation of Mrs Kinsey’s mobile home (“the Pitch Agreement”); a copy of the site rules for Orchard Park; and photographic evidence showing the works from which the dispute arises as well as aspects of the Pitch before and after those works were carried out.

Inspection

5. The Tribunal made a site inspection in the presence of the parties prior to the hearing. With their agreement, Mr James (the valuer member of the Tribunal) made some basic measurements of the Pitch. Reference was made to these measurements at the hearing and Mr James subsequently produced the site plan which is annexed hereto (“the Plan”). The Plan is not drawn to scale. However, it shows the relative positions of various features of the Pitch and the adjacent new mobile home. We shall make further reference to the Plan in order to provide greater clarity in these reasons.
6. Viewed from the site access road, Mrs Kinsey’s mobile home occupies the right-hand side of the Pitch: the left-hand side comprises a garden and an area of wooden decking. It is agreed that, until recently, the Pitch was entirely enclosed by wood panel fencing supported by concrete posts. However, the section of fencing along the left-hand boundary of the Pitch was removed by the Site Owner in February 2016 and has not been replaced. The position of the fence which remains in place along the front and rear boundaries of the Pitch is shown by broken lines on the Plan and ends at concrete support posts the positions of which are marked “A” and “C” on the Plan. A number of fence panels (presumably the ones which were taken out) were observed to be lying in a pile in Mrs Kinsey’s garden.
7. It is also agreed that, prior to the removal of the section of fencing, the Pitch had abutted an open grassed area along its left-hand boundary. However, following removal of the fence, a new mobile home has been stationed on that area. A concrete base has been constructed to facilitate this, and a paving slab footpath has been laid which abuts the new base on the side facing the Pitch. A number of wooden marker pegs were noted to have been pushed into the ground immediately adjacent to this footpath (again, on the side facing the Pitch).

Issues

8. At the outset of the hearing it was agreed that the issues for determination by the Tribunal were as follows:
 - Has the size of the Pitch been reduced by virtue of encroachment by the new mobile home or its associated works? If so, was the Site Owner entitled to reduce the size of the Pitch in this way?
 - Was the Site Owner entitled to remove a section of Mrs Kinsey’s fence?
 - Has the Site Owner breached the Pitch Agreement by stationing the new mobile home in its current position?
 - Is Mrs Kinsey entitled to retain the wooden decking on the Pitch? If not, is the Site Owner entitled to remove it?

Law

9. The rights and obligations of the parties in relation to the occupation of the mobile home and the Pitch are primarily a matter of contract. The starting point, therefore, must be the express terms of the Pitch Agreement.
10. Nevertheless, section 2(1) of the MHA also requires certain terms to be implied into the agreement. In the present circumstances, those implied terms (as amended from time to time) are set out in Chapter 2 of Part 1 of Schedule 1 to the MHA. If an express term of the agreement is incompatible with one of the implied terms, the implied term takes precedence.
11. Subject to qualifications which do not apply in this case, section 4(1) of the MHA confers jurisdiction on the Tribunal to determine any question arising under the MHA or any agreement to which it applies, and to entertain any proceedings brought under the MHA or any such agreement.
12. Section 231A of the Housing Act 2004 provides that, in exercising its jurisdiction under the MHA, the Tribunal has power to give such directions as it considers necessary or desirable for securing the just, expeditious and economical disposal of the proceedings or any issue in or in connection with them. This includes (by virtue of subsection (4)(a) and (c) of section 231A) the power to give directions requiring:

... the payment of money by one party to the proceedings to another by way of compensation, damages or otherwise;

... 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.

Findings and conclusions

Pitch Agreement and site rules

13. The Pitch Agreement is dated 11 November 1978 and was originally made between W D Harrington & Co Ltd (1) and Kenneth and Olive Mort (2). Clause 1(f) sets out the following definition:

““the Pitch” shall mean that area situate upon the Park upon which the Mobile Home is now stationed known as NUMBER [left blank] together with a storage shed provided by the owner and for the purpose of identification shown on the plan (prominently situated in the site office) ...”

14. We noted that, although a plan of Orchard Park was displayed in the site office showing the locations of pitches on the site, it was insufficiently detailed to show the boundaries of any particular pitch.
15. The Pitch Agreement also contains the following relevant provisions in clause 3 (which sets out the obligations of the occupier):
 - “(7) Not to carry out any building works or to erect any sheds garages outbuildings fences or other structures on the Pitch
 - (8) Not to do or cause to be done anything upon any part of the Park which could constitute a breach of any of the conditions of any Site Licence applicable from time to time to the Park and to comply with any enactments orders regulations bye-laws which relate to the Park the Pitch or the Mobile Home whether national local or any other competent authority.
 - (9) To comply with the Park Rules from time to time in force ... so far as they are not inconsistent with the terms of this Agreement.”
16. Clause 4 of the Pitch Agreement contains various undertakings which bind the Site Owner, including:
 - “(5) The occupier shall and may peaceably and quietly occupy and enjoy the Pitch and Park during the continuance of this Agreement”
17. The current site rules for Orchard Park (which appear to have been made in conformity with relevant statutory requirements) include the following:
 - “No external alteration of or addition to the Mobile Home or pitch is permitted without the prior approval of the Owner.” (Rule 1.2)
 - “Storage sheds, fuel bunkers or other structures are only permitted with the approval of the Owner.” (Rule 9)
 - “Everyone using the Park is required to comply with the regulations of the Site Licence, Water Authority or any other Statutory Authority.” (Rule 17)
18. We note that, so far as the above rules are concerned, the current site rules closely mirror the rules which appear to have been in force when the Pitch Agreement was entered into.

Reduction in size of the Pitch

19. The Pitch Agreement does not define the size of the Pitch or describe the position of its boundaries. However, it was clear from the evidence we heard that the Pitch has been physically enclosed for a lengthy period (first by a hedge and latterly by the wood panel fence) without apparent dispute. We therefore conclude that “the Pitch” is the area which had been enclosed by the fence until a section of it was removed in February.
20. However, there is a dispute of fact about the former position of the now defunct section of fence and thus about whether the new mobile home encroaches upon the Pitch and thereby reduces its size. Mrs Kinsey says that it does, but the Site Owner denies this.
21. Mrs Kinsey asserts that, before a section of her fence was removed, it extended along the boundary adjoining the site access road by one additional fence panel from the support post currently at position “A” on the Plan to a corner support post (the approximate position of which is marked “B” on the Plan). She says that the fence made a 90 degree turn at this point and then continued in a straight line to the corner post at point “C” in the rear corner of the Pitch.
22. The Site Owner denies that there was ever a corner support post at point “B”. It asserts that the post currently at point “A” was the original corner post, and that the fence followed an irregular line from this point to point “C” along a line which is now indicated by the wooden marker pegs referred to in paragraph 7 above.
23. If Mrs Kinsey is correct, then the paving slab footpath which abuts the base of the new mobile home (but not the new mobile home itself) encroaches upon the Pitch. However, if the Site Owner is correct, there is no encroachment – albeit that the footpath abuts the boundary of the Pitch.
24. We prefer Mrs Kinsey’s evidence in this regard and we therefore find that the size of the Pitch has been reduced by encroachment. In coming to this conclusion we have had particular regard to the following factors:
 - Mrs Kinsey’s recollection of how the fence was positioned seems inherently more likely than that of the Site Owner: having inspected the site, we could see no apparent reason why the left-hand boundary of the Pitch would originally have taken the irregular course suggested by the Site Owner rather than the direct one which Mrs Kinsey recalls.
 - Mrs Kinsey’s recollection was supported by photographic evidence showing the garden side of the relevant section of the fence prior to its removal.

- Unlike the Site Owner’s suggestion, Mrs Kinsey’s recollection was also consistent with the number and size of the dismantled fence panels which were observed on the Pitch during our inspection. In addition, we noted that the concrete support post at point “A” has two ‘receiver’ slots – one on its right hand side (to facilitate the fence panel that is still in place), and another on its left-hand side (which would be suitable to receive an additional fence panel to continue the line of the fence to point “B”). Had the original fence changed direction at point “A” in the manner suggested by the Site Owner, we would have expected to find a different style of support post utilised at that point, with receiver slots configured to facilitate the change in the direction of the fence.
 - In contrast, we found the Site Owner’s evidence on this issue to be unreliable. Mrs Raywood relied largely on the wooden marker pegs as an indication of the former position of the fence. She said that these had been inserted by contractors at the time the section of fence was removed. However, there was no independent confirmation of this, nor could Mrs Raywood vouch for the accuracy of these markers. In addition photographic evidence showing the new mobile home before the paving slab footpath was laid suggests that the markers were missing at this time. This casts further doubt on the reliability of the evidence presented concerning the markers observed during the inspection.
25. The Pitch Agreement does not give the Site Owner any right to reduce the size of the Pitch. Nor has Mrs Kinsey consented to the reduction. The encroachment is therefore unlawful. It also amounts to a contravention of the undertaking for quiet enjoyment to which the Site Owner is subject by virtue of clause 4(5) of the Pitch Agreement.

Position of the new mobile home

26. To the extent that the structures associated with the new mobile home (notably, the paving slab footpath adjacent to it) encroach upon the Pitch, then remedial action is now required as discussed below.
27. However, Mrs Kinsey objects to the stationing of the new mobile home in its present position – even to the extent that it does not encroach upon the Pitch. She points out (and it is undeniably the case) that the stationing of the new mobile home in an elevated position which overlooks the Pitch infringes her privacy and detracts from the amenity of the Pitch. The question, though, is whether Mrs Kinsey has any legal basis for her objection.
28. We conclude that she does not. Subject to the undertaking for quiet enjoyment, neither the express nor the implied terms of the Pitch Agreement restrict the Site Owner’s ability to develop or deal with the remainder of Orchard Park. This includes the stationing of additional mobile homes on parts of the site which do not encroach upon the Pitch

or restrict its use. There is no general right to “privacy” (in the sense of not being overlooked by neighbours) and, whilst Mrs Kinsey’s dissatisfaction about the arrival of the new mobile home is understandable, its positioning does not (save as already mentioned) amount to a breach of the undertaking for quiet enjoyment.

Removal of the section of fencing

29. There is an ancillary dispute about the lawfulness of the Site Owner’s action in removing the relevant section of fencing – and, indeed, about Mrs Kinsey’s entitlement to have the fence in the first place.
30. As already noted, it appears that the Pitch has been physically enclosed for many years, either by a hedge or by a fence, and that this has not previously given rise to any dispute. Mrs Kinsey is thus entitled to maintain a boundary structure of some kind. However, it is also apparent that both the Pitch Agreement and the site rules require the Site Owner’s consent to be obtained before a fence is put up. It is not clear when the original hedge was replaced by fencing but it appears that this occurred no later than 2010. Mrs Kinsey believes that her late husband had obtained consent for the erection of the fence, but the Site Owner made the valid point that she has produced no evidence of such consent having been granted.
31. As far as the removal of a section of the fence is concerned, it appears that construction of the base for the new mobile home began on or around 3 February 2016, and that the section of fencing was removed at this time. Mrs Kinsey had been notified on the previous day by a representative of the Site Owner that this was going to happen. She does not appear to have been asked for (or to have given) her consent.
32. Regardless of any potential objection which the Site Owner might have had in mind by reason of the fence allegedly having been erected without consent (and it has to be said that the Site Owner does not seem to have voiced any such concern to Mrs Kinsey previously), its action in removing a section of the fence at very short notice was, in our view, remarkably heavy-handed and a clear breach of the statutorily implied term which (save in circumstances which do not apply here) prohibits the Site Owner from entering the Pitch unless it has first given Mrs Kinsey at least 14 days’ written notice of the date, time and reason for the visit.

Wooden decking

33. The wooden decking adjacent to Mrs Kinsey’s mobile home was installed by her late husband in 2002. The approximate position of the decking is shown by an area of hatching on the Plan. At the time of the Tribunal’s inspection, the decking – together with its handrail and supports – was noted to be showing distinct signs of ageing / weathering and appeared to be in a generally poor condition.

34. The Site Owner wants the decking removed, and has previously offered to carry out the necessary work itself. It is alleged that the decking was installed without consent, in breach of the Pitch Agreement and site rules, and that it now also gives rise to a breach of the conditions of the local authority's site licence for Orchard Park.
35. Mrs Kinsey maintains that her late husband had been granted verbal consent to install the decking by a previous owner of Orchard Park. However, the burden of proof is upon Mrs Kinsey to show that such consent had indeed been granted and, unfortunately, she was unable to provide evidence to corroborate this assertion. She was thus unable to discharge the burden of proof. We therefore find that the decking was installed without consent.
36. We are also satisfied that the decking gives rise to a breach of the conditions of the site licence and thus to a separate breach of the Pitch Agreement. We accept Mr Sunderland's evidence that the site licence conditions include a prohibition on the presence of combustible structures within the minimum separation distance between mobile homes. The wooden decking is clearly a combustible structure and, given the position of the new mobile home, it lies within the separation space.
37. It follows that the Site Owner may require Mrs Kinsey to remove the decking. However, it has no right to enter the Pitch to remove the decking itself – unless, of course, Mrs Kinsey consents to this.

Remedies

38. The Site Owner must now take steps to remove those parts of the structures associated with the new mobile home which encroach upon the Pitch. It must also take steps to reinstate the Pitch boundary so that it continues from point "A" on the Plan to point "B", and thereafter in a straight line to point "C". If the Site Owner fails to take the necessary steps within six weeks, Mrs Kinsey may apply to the Tribunal for further orders (which may include an order for the payment of compensation or damages).
39. The steps which the Site Owner must take include the erection of a fence or other structure along the line of the Pitch boundary. The form of this fence or structure is to be agreed between the parties (but may be determined by the Tribunal if such agreement cannot be reached).
40. Within 28 days of receipt of a written request to do so from the Site Owner, Mrs Kinsey must remove the wooden decking presently on the Pitch.