



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

**Case Reference** : CAM/26UC/PHE/2013/0005

**Property** : 11, Scatterdells Park, Scatterdells Lane,  
Chipperfield, Hertfordshire WD4 9ET

**Applicant** : Wyldecrest parks (Management) Ltd

**Respondents** : Mr & Mrs Peddle  
**Representative** : Crosse & Crosse Solicitors (Mr Tim Selley)

**Interested Person** : Mr A D North

**Date of Application** : 14<sup>th</sup> October 2013

**Date of Decision** : 17<sup>th</sup> December 2013

**Type of Application** : Application by Owner of a Park Home site  
for a refusal order preventing the occupier  
from selling the park home and assigning  
the agreement to the proposed occupier  
(Paragraph 7B, Chapter 2 part 1 Schedule 1,  
Mobile Homes Act 1983 (as amended))

**Tribunal** : Judge JR Morris  
Mr David S Brown FRICS, MCI Arb

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**DECISION**

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**Decision**

The Tribunal determines that the Respondents are entitled to sell the mobile home and assign the agreement.

## **Reasons**

### **Application**

1. An Application was received from the Applicant on the 14<sup>th</sup> October 2013 for a refusal order preventing the occupier from selling the park home and assigning the agreement to the proposed occupier (Paragraph 7B, Chapter 2 part 1 Schedule 1, Mobile Homes Act 1983 (as amended))
2. The Tribunal considered the case suitable for a determination on the basis of the papers (the application, statements of case and representations) lodged or to be lodged without the need for a hearing, pursuant to Rule 31 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. The parties were informed that a determination would be made on or after the 9<sup>th</sup> December 2013 following receipt of the documents in compliance with the Directions is Order issued on 30<sup>th</sup> October 2013. However it was said that a hearing would be arranged if either party requested a one before that date. No request was received
3. The Respondents' Representative requested Mr North, the prospective occupier of the Property, to be made an interested person. The Tribunal noted that paragraph 7B referred to the "prospective occupier" and therefore it was considered appropriate that he should be named as an interested person.

### **Documents Received**

4. Documents received are:
  - Application Form received 14<sup>th</sup> October 2013
  - Copy of the Park Rules
  - Copy of a Schedule 2 Notice of Proposed Sale Form pursuant to the Mobile Homes (Selling and Gifting)(England) Regulations 2013 (SI 2013/981) received 23<sup>rd</sup>/24<sup>th</sup> September 2013
  - Copy of Notice of Application for a Refusal Order dated 10<sup>th</sup> October 2013
  - Copy of Confirmation of Opposition to Application received 23<sup>rd</sup> October 2013
  - Correspondence

### **Grounds for Refusal**

5. The grounds for requesting a refusal order preventing the occupier from selling the park home and assigning the agreement to the proposed occupier were:
  - a. The person intending to reside would be in breach of a site rule, namely by keeping animals that are of a description specified in the rule.
  - c. Schedule 2 Notice of Proposed Sale Form Section 2 states that the proposed occupier intends to keep the following animals on the site:

2 4 year old Labradors (siblings)

d. Park Rule 19 states:

*No pets, poultry or other animals allowed to be kept on the Park. Pets will be allowed at the Park at the owner's discretion. Dogs must be kept on a lead at all times on the Park, and must not be allowed to foul the Park.*

## The Law

6. Paragraph 7B of Chapter 2 of part 1 Schedule 1, Mobile Homes Act 1983 (as amended by the Mobile Homes Act 2013)  
Implied terms: removal of requirement for site owner consent to sale or gift

- 7B(1) *Where the agreement is not a new agreement, the occupier is entitled to sell the mobile home and assign the agreement without the approval of the owner if—*
- (a) *the occupier serves on the owner a notice (a “notice of proposed sale”) that the occupier proposes to sell the mobile home, and assign the agreement, to the person named in the notice (the “proposed occupier”), and*
  - (b) *the first or second condition is satisfied.*
- (2) *The first condition is that, within the period of 21 days beginning with the date on which the owner received the notice of proposed sale (“the 21-day period”), the occupier does not receive a notice from the owner that the owner has applied to a tribunal for an order preventing the occupier from selling the mobile home, and assigning the agreement, to the proposed occupier (a “refusal order”).*
- (3) *The second condition is that—*
- (a) *within the 21-day period—*
    - (i) *the owner applies to a tribunal for a refusal order, and*
    - (ii) *the occupier receives a notice of the application from the owner, and*
  - (b) *the tribunal rejects the application.*
- (4) *If the owner applies to a tribunal for a refusal order within the 21-day period but the occupier does not receive notice of the application from the owner within that period—*
- (a) *the application is to be treated as not having been made, and*
  - (b) *the first condition is accordingly to be treated as satisfied.*
- (5) *A notice of proposed sale must include such information as may be prescribed in regulations made by the Secretary of State.*
- (6) *A notice of proposed sale or notice of an application for a refusal order—*
- (a) *must be in writing, and*
  - (b) *may be served by post.*

- (7) *An application for a refusal order may be made only on one or more of the grounds prescribed in regulations made by the Secretary of State; and a notice of an application for a refusal order must specify the ground or grounds on which the application is made.*
- (8) *The person to whom the mobile home is sold ("the new occupier") is required to pay the owner a commission on the sale of the mobile home at a rate not exceeding such rate as may be prescribed by regulations made by the Secretary of State.*
- (9) *Except to the extent mentioned in sub-paragraph (8), the owner may not require any payment to be made (whether to the owner or otherwise) in connection with the sale of the mobile home and the assignment of the agreement.*
- (10) *The Secretary of State may by regulations prescribe procedural requirements to be complied with by the owner, the occupier, a proposed occupier or the new occupier in connection with—*
  - (a) *the sale of the mobile home and assignment of the agreement;*
  - (b) *the payment of commission by virtue of sub-paragraph (8).*

### **Preliminary Legal Issue**

#### ***Respondent's Case***

- 7. The Respondents Representative raised a preliminary legal that the Application for the Refusal Order was defective and out of time. It was stated firstly that this was not a new agreement and therefore Paragraph 7B of Chapter 2 of part 1 Schedule 1, Mobile Homes Act 1983 (as amended by the Mobile Homes Act 2013) applied. Secondly it was stated that the Respondents were entitled to sell their home and assign the agreement without the approval of the Applicant if:
  - a) The occupier serves on the owner a Notice of Proposed Sale and
  - b) two conditions are satisfied.
- 8. The first condition was set out with emphasis added to make the point as follows:
 

*The first condition is that, within the period of 21 days beginning with the date on which the owner received the notice of proposed sale ("the 21-day period"), the occupier does not receive a notice from the owner that the owner has applied to a tribunal for an order preventing the occupier from selling the mobile home, and assigning the agreement, to the proposed occupier (a "refusal order")*
- 9. It was argued that the Applicant did not comply with the first condition because the Applicant's purported Notice of Application for a Refusal Order dated 10<sup>th</sup> October 2013 was defective. The condition requires the Applicant to make the Application to the Tribunal and then serve the Notice on the Respondent. In this instance Application was not made to the Tribunal until



the 14<sup>th</sup> October 2013 whereas the Applicant's Notice dated 10<sup>th</sup> October 2013 and states that the Applicants "are making" an Application. The legislation requires the Applicant to have made an application prior to serving the Notice on the Respondent. Both the tense used in and the date of the Notice show that the Application was made after the Notice.

10. The second condition was then referred to as follows:

*The second condition is that—*

- (a) *within the 21-day period—*
  - (i) *the owner applies to a tribunal for a refusal order, and*
  - (ii) *the occupier receives a notice of the application from the owner, and*
- (b) *the tribunal rejects the application.*

11. It was stated that the 21 day period commenced when the Respondents' Schedule 2 Notice of Proposed Sale Form pursuant to the Mobile Homes (Selling and Gifting)(England) Regulations 2013 (SI 2013/981) is received. It was submitted that this occurred on the 23<sup>rd</sup> September 2013 when the email version of the Notice was received and therefore this was the first day of the 21 day period. The Applicant contended that the period commenced on the 24<sup>th</sup> September 2013 when the posted version was received.
12. It was said that the argument centred on whether the email version or the postal version was effective service. It was stated that service by email was appropriate because it was sent to the Applicant's email address which had been habitually used at 15.21 on the 23<sup>rd</sup> September 2013. It was further submitted that the emailed Notice had been received because when despatching the email the Respondents' Representative had requested delivery and read receipts. The Respondents' Representative received the 'relayed' receipt at 15.21. The received notification was logged at 17.17.
13. If it is accepted that email version is good service then, irrespective of the notice being defective, the Application is out of time as the 21<sup>st</sup> day after the 23<sup>rd</sup> September 2013 is the 13<sup>th</sup> October 2013.
14. The Respondent's Representative went on to state that although there is provision for indulgence regarding time limits under rules 15(2) and 26 of the the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 these do not apply by virtue of Rules 15(1) and 27(1) respectively in respect of time limits prescribed by another enactment. The time limits in this particular instance are prescribed by Paragraph 7B of Chapter 2 of part 1 Schedule 1, Mobile Homes Act 1983 (as amended by the Mobile Homes Act 2013).

### **Applicant's Case**

15. The Applicant replied to the preliminary legal point raised by the Respondent as follows:

16. The Notice of Proposed Sale was received by post on 24<sup>th</sup> September 2013 and that therefore the last day for the Application to be made was the 15<sup>th</sup> October 2013 to be within the 21 days. It was not accepted that service of email was appropriate or agreed. It was further stated that the email was sent to the address of an individual and not the company. The individual was not in the office and therefore could not receive it. In any event the email was not logged as being received until 5.17 p.m. which is out of office hours.
17. If the Notice is deemed to have been served on 23<sup>rd</sup> September then the 21<sup>st</sup> day is the 14<sup>th</sup> October in which case the Application was on time. If the 21<sup>st</sup> day is said to be the 13<sup>th</sup> October then this is a Sunday and not a working day and therefore the Application was on the next working day which is the 14<sup>th</sup> October and therefore was on time.
18. Although the Application was not received by the Tribunal until the 14<sup>th</sup> October 2013 it was signed and posted on 11<sup>th</sup> October 2013 and therefore the Applicant applied in time.
19. The Applicant added that it did not accept service by email only by post. It was also said that the point regarding the wording of have applied and are applying was pedantic since it was abundantly clear that an application was being made to the tribunal.

### **Decision**

20. The Tribunal has carefully considered the points raised by the parties in relation to the preliminary legal issue.
21. The second condition under paragraph 7B(3) requires a two stage process – within 21 days beginning with the date in which the owner received the notice of proposed sale (i) the owner applies to the tribunal for a refusal order and (ii) the occupier receives a notice of the application from the owner. The words “*a notice of the application*” must be read in conjunction with paragraph 7B(2) which provides that it is a notice “*that the owner has applied to a tribunal*” for a refusal order. The Tribunal takes the view that the chronology is important because the amendment in the Mobile Homes Act 2013 was intended to expedite the process by ensuring that an application has actually been made by the owner before the occupier is informed. The occupier will then know with certainty within 21 days of notifying the owner of the proposed sale whether the sale can proceed or whether an application for a refusal order has been made. If the notice of the application under paragraph 7B(3)(a)(ii) could refer to an application that had not yet been made, there is no other time limit which would apply under paragraph 7B(3) and the owner could delay making an application to the tribunal.
22. With regard to the Notice of Proposed Sale, the Tribunal finds that service by email was not effective and so it was served on the 24<sup>th</sup> September 2013 by post. It noted the Respondent’s point that paragraph 7B(6)(b) states that notice of the sale may be served by post and so envisages other forms of service. However it does not expressly say the notice can be served by email only that it must be in writing. The Tribunal decided that service by email is



not included, unless the recipient has specifically indicated that notices served by email are acceptable. It is confirmed in this view by the provisions of the Practice Direction supplements CPR Part 6 rule 4 which states that:

*...where a document is to be served by fax or other electronic means –*

- (1) *the party who is to be served or the solicitor acting for that party must previously have indicated in writing to the party serving –*
  - (a) *that the party to be served or the solicitor is willing to accept service by fax or other electronic means; and*
  - (b) *the fax number, e-mail address or other electronic identification to which it must be sent;*

23. The application for a refusal order must therefore have been made on or before 14<sup>th</sup> October. It was received by the Tribunal office on that date and so was “made” on 14<sup>th</sup> October, as held in *R (on the application of Lester) v London Rent Assessment Committee* [2003] EWCA Civ 319. The application was therefore received in time.
24. However, the Tribunal determines that the Applicant’s notice of the application to the Respondents under sub-paragraph (3)(a)(ii) dated 10<sup>th</sup> October 2013 was defective. As stated above, sub-paragraph (3) requires the owner to make the application to the Tribunal and then serve notice on the occupier that it has been made. The application was not made to the Tribunal until the 14<sup>th</sup> October 2013. For it to comply with the Act, a notice to the occupier that the application “has been made” could not be validly sent until after the 14<sup>th</sup> October 2013 (or on that date, but after the application had been received by the Tribunal). The notice is dated 10<sup>th</sup> October 2013 and the Application is dated the 11<sup>th</sup> October 2013 and the Applicant indicates that these documents were dispatched on these dates. The notice of application could not therefore have stated that application “has been made”; the use of the words “are making” was an accurate statement of what was being done but what was being done did not comply with the statutory requirements. The notice of the application was therefore defective.
25. It therefore follows that paragraph 7B(3) does not apply. Because the notice of the application was not valid, paragraph 7(4) applies and the first condition under paragraph 7B(1)(b) is accordingly to be treated as satisfied and so the Respondents are entitled to sell the mobile home and assign the agreement without the approval of the Applicant.
26. In view of this decision, the Tribunal has not made any determination in respect of the enforceability of Park Rule 19.

Judge JR Morris

Date: 17<sup>th</sup> December 2013