



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

Case Reference : CHI/00HE/PHC/2014/0010

Property : 5 Tremorvah Park Swanpool Road Falmouth
TR11 5BE

Applicant : Alfred John Parr

Respondent : The Trustees of the Tremorvah Trust and
Steven Paul Bishop

Type of Application : Section 4 of the Mobile Homes Act 1983 (as
amended) (the Act) for a determination of any
question arising under the Act or an
agreement to which it applies

Tribunal Members : Judge Cindy A Rai (Chairman)
Michael Woodrow MRICS Chartered Surveyor

Date of Decision : 31 July 2015

DECISION

1. The Tribunal determines that the Applicant is entitled to rely upon the implied term in his agreement for “quiet enjoyment” of his home. Although it finds that the Respondent Steven Bishop has breached that term it declines to make any of the orders sought by the Applicant.
2. It directs the Respondent Steven Bishop pays compensation of Five Hundred Pounds (£500) to the Applicant and refunds any application fee paid by the Applicant to the Tribunal.
3. It orders that the compensation and any refund of fee due to the Applicant shall be paid within 30 days after the date of this decision.
4. The reasons for its decision are set out below.

Background

5. An application was made under Section 4 of the Act, to the Tribunal by the Applicant, Alfred John Parr, (sometimes referred to in papers within the Tribunal bundle as Jack Parr), on 3 December 2014, (the Application).
6. The Applicant sought orders that:-
 - a. Steven Bishop (named as second Respondent) identified the owner of the Site at Tremorvah Park in which the Property is situate;
 - b. His legal position of being entitled to quiet enjoyment of his home and plot be reinforced.
7. In addition the Applicant asked for an award of compensation for the inconvenience and distress caused to him by Steven Bishop's actions in breaching the Applicant's rights.
8. For reasons which are set out later in this decision it has been accepted that although two parties are named as Respondent in the Application and Directions, Steven Bishop has accepted and explained why he is the appropriate and sole respondent to the Application and therefore when referring to the Respondent in its reasons for its decision the Tribunal is referring solely to Steven Bishop.
9. Three sets of Directions were issued by the Tribunal on 23 December 2014, 8 January 2015 and 17 April 2015. In its first Directions the Tribunal required a Case Management Hearing. Following that Hearing it formed the view that the parties had made some progress in reconciling their differences and issued Further Directions in which it stayed the proceedings until 5 February 2015.
10. When the parties acknowledged to the Tribunal that they had been unable to settle the Application, it directed in further Directions dated 17 April 2015 that the Application be determined without a hearing unless either party objected or unless the Tribunal decided following disclosure of the parties cases that a hearing was required. Neither party subsequently objected to this proposal.
11. An agreed bundle of documents and statements was submitted to the Tribunal by the Respondent.

The Inspection.

12. The Tribunal carried out an inspection of the external parts of the Property on 26 June 2015. The Applicant was present and the Respondent was represented by his solicitor Paul Kelly from Tozers with Mark Anthony Stoddern in attendance. Mr Stoddern had made a statement in support of the Respondent's case which is included in the bundle. In that he stated that he is a self employed building and property

13. From the inspection the Tribunal concluded that:-
- Neither party disputed that the adjoining pitch (No. 6) formerly occupied by Mr Breaker, was left in a very poor condition when it was vacated;
 - The rear boundary of the Property was not disputed;
 - The left hand boundary between the Property and adjoining pitch, as seen when looking from the road, is the disputed boundary;
 - Part of the new wall on the disputed boundary has been built on top of what was the existing wall save for that part over which the overhanging window of the new home constructed on No. 6 overhangs. [See photograph on page 29 part 1 of the bundle which also shows the new telegraph pole].
14. The Tribunal suspects that the new telegraph pole could not have been put into place without some demolition of the original wall between the Property and No. 6. The letter from the Respondent to the Applicant dated 14 April 2015, [page 42 of part 2 of the bundle], notified the Applicant that the work would be carried out, so implies that access was required.
- The Applicant's case**
- The written statement supplied to the Applicant when he moved on to the Park in 2005, a copy of which is in the bundle, is made between the Respondent and the Applicant.
 - Enquiries subsequently made by the Applicant after he had moved into the Property led him to investigate the ownership of the Park as he was keen to establish who held the site licence.
 - His enquiries of and correspondence with the Respondent and the Respondent's lawyers (Tozers), clarified that the freehold was owned by the Respondent's parents and that a notional lease had been granted by them to the Respondent. Apparently there is an agreement to grant the Respondent a lease but for reasons which have no bearing on the Decision, that lease has not been granted. For all legal purposes the Respondent may be treated as lessee and owner of the Park. This is the **Ownership Issue.**
 - The Applicant is satisfied that the Ownership Issue has been resolved but raised other issues in his statement of case and sought orders that:-
 - The freeholders are bound by the written statement although not party to it;
 - The existing site licence be transferred to the Respondent;
 - The Tribunal orders that the Respondent is the site owner.

19. The second issue referred to in the Application is the aggravation caused to him by breach of his right to quiet enjoyment of his Property. This is the **Aggravation Issue**. He suggested that on the pretext of addressing a flooding issue, which he believed to have been caused by the silting up of the stream at the rear of Nos. 5 & 6, the Respondent entered the Property without notice or consent, in reliance on actual knowledge that he was unlikely to be at home, and cleared the area at the rear of the Property. He does not accept that this was necessary.
20. The Applicant confirmed that he is usually absent from the Property during the day but stated that he always returns at night and therefore the Respondent could easily have contacted him or left him a note.
21. He had previously attempted to agree a plan with dimensions setting out the exact boundaries of the Property but his version of the plan was returned by the Respondent with the metric measurements converted to imperial measurements in what he described, in his statement, as an attempt to "hoodwink" him.
22. He believes that some part or parts of the disputed boundary have been moved and that one of the windows of the new home on No. 6 overhangs his boundary.
23. For all of these reasons he made the Application and seeks compensation, although in paragraph 42 of his statement, [page 51 of part 1 of the bundle], he states "although the "agreed plan" has been broken by the second Respondent, his transgressions can remain so long as there is no repetition."
- The Respondent's Case**
24. Steven Bishop confirmed that he should be treated as the sole Respondent and no orders made should be made against the freeholder of the Park.
25. The Respondent accepts that a plan, referred to as the "agreed plan", shows the correct boundaries of the Property. He also accepts that the Applicant is entitled to quiet enjoyment of the Property.
26. He has supplied both a statement in response to the Application and a witness statement.
27. It is his case that he has the right to enter the Property in certain circumstances and in particular, in an emergency, without prior notice. In other circumstances he must give notice. He asks that the Tribunal find that if he has breached the implied obligations in the Act, his breach was inadvertent and states that having now taken specialist legal advice he is committed, in the future, to not breaching his obligations in, or implied by the Act.
28. He stated that the plots of neither No. 6 nor the Property were kept in a tidy condition, although the condition of No 6 was exceptionally poor.

4 Jurisdiction of the court [4 Jurisdiction of a tribunal or the court: England and Wales]
The court shall have jurisdiction to determine any question arising under this Act or any agreement to which it applies, and to entertain any proceedings brought under this Act or any such agreement.
 [(1) In relation to a protected site in England [or in Wales], 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 subsections (2) to (6).

36. An extract of section 4 of the Act is set out below
- The Law**
29. He contends that he had and still has an obligation to maintain the stream (at the rear of both plots) and its banks.
30. In carrying out works to No. 6, including the replacement of a boundary fence, additional essential works were identified which, he stated, required immediate action at a time when the Applicant was away from the Park and therefore no notice could be given to him.
31. If his statement is not accepted by the Tribunal he claimed that any omission, (to give notice), was minimal and furthermore the Applicant has now accepted the status quo.
32. Although the Applicant has asked for compensation for distress, in his statement he said: - "He has expressed that anger frankly & I would say inappropriately in the correspondence. I think this should be relevant to any compensation the Tribunal decides it is just to award him, in part because that would feel fair but also because by venting at me in this way Mr Parr is likely to have reduced any feelings of distress".
33. His witness statement explains the Respondent's version of how and why the works were undertaken and that the boundary wall belongs to him. He also stated that the works carried out were an improvement to the Applicant's pitch and that it has never been suggested that any of the costs he has incurred would be passed on to the Applicant.
34. A statement made by Mark Anthony Stodden simply confirms that he carried out the works on No. 6 for the Respondent and that he considered that the Applicant has been quite awkward.
35. In summary, it is his case that he only accessed the Property, without notice, to carry out essential works which he was entitled to do anyway. If the Tribunal decides that his actions were a breach of the Applicant's rights under the written statement he is sorry and also apologised for any distress inadvertently caused to the Applicant. Nevertheless the Applicant now has accepted the status quo and has already alleviated the distress by expressing his anger in correspondence.

41. The bundle contains other evidence including references to a visit to the Park by the police. The Tribunal has read all the papers contained in the Bundle but has only referred to evidence it considers relevant to the Application and its determination.
42. The **Ownership Issue** was effectively resolved by disclosures made by or on behalf of the Respondent prior to this determination. The Tribunal accepts that, for the purpose of its decision, the only Respondent is Steven Paul Bishop.

Reasons for the Decision

Additional Powers of First-tier Tribunal and Upper Tribunal

(1) The First-tier Tribunal and Upper Tribunal exercising any jurisdiction conferred by or under the Caravan Sites and Control of Development Act 1960, the Mobile Homes Act 1983, the Housing Act 1985 or this Act has, in addition to any specific powers exercisable by them in exercising that jurisdiction, the general power mentioned in subsection (2).

(2) 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.

(3) When exercising jurisdiction under this Act, the directions which may be given by the tribunal under its general power include (where appropriate) —

(a) directions requiring a licence to be granted under Part 2 or 3 of this Act;

(b) directions requiring any licence so granted to contain such terms as are specified in the directions;

(c) directions requiring any order made under Part 4 of this Act to contain such terms as are so specified;

(d) directions that any building or part of a building so specified is to be treated as if an HMO declaration had been served in respect of it on such date as is so specified (and such a direction is to be an excluded decision for the purposes of section 11(1) and 13(1) of the Tribunals, Courts and Enforcement Act 2007);

(e) directions requiring the payment of money by one party to the proceedings to another by way of compensation, damages or otherwise

37. In this case the Tribunal is satisfied that it has jurisdiction to determine the application under section 4(1)(a) and 4(1)(b) and that subsections (2) to (6), (which have not been reproduced), are not relevant to the Application.
38. It is also satisfied taking into account the notes at the beginning of the application form that the Applicant could not have used another specific application form or made the Application under another provision of the Act.
39. Under the provisions of Section 321A of the Housing Act it has jurisdiction to award a payment by one party to another when exercising any jurisdiction conferred on under the Act.
40. Relevant extracts from Section 231A of the Housing Act 2004 are set out below:-

43. It cannot make the orders sought by the Applicant in his statement of case. It is an accepted fact, at law, that an agreement for lease is as good as a lease and therefore it makes no order in relation to this issue, being entirely satisfied that it has already been resolved.
44. The **Aggravation Issue** is two fold. Firstly there is a suggestion of an alteration of the agreed boundary dividing the Property from No. 6. Secondly there is a suggestion that the Respondent breached the Applicant's right to quiet enjoyment by entering the Property without notice and carrying out what the Applicant terms unnecessary works to the rear of the Property abutting the stream. There is no indication that the rear boundary was altered but that the boundary between the Property and No. 6 has either been moved or unnecessarily rebuilt to accommodate works undertaken on No. 6 and that an attempt made, (not pursued), to create a walkway. It is also suggested that a part of the new home (a window) overhangs the Property.
45. The agreed plan prepared by the Applicant and exchanged between the parties was diagrammatic. It may have been agreed but it was inaccurate in that it did not demonstrate the shape of the pitch which the new plan [page 31 in part 1 of bundle] with imperial measurements prepared by the Respondent does. The Tribunal is not qualified to make any definitive findings regarding the accuracy of the measurements. If the parties want a definitive plan with measurements either or both must instruct and bear the cost of a chartered surveyor, experienced in Party Wall Act disputes to prepare it.
46. However both parties appear to accept the location of the boundary separating the Property from No 6, as rebuilt.
47. The Tribunal finds that the Respondent accepted, having taken specialist legal advice, that he has not dealt with his need to gain access to the Property in the best and most appropriate way.
48. The Tribunal has insufficient evidence to decide if the works to the rear of the Property carried out by or on behalf of the Respondent were necessary to repair the bank of the stream. What is apparent is that these works were probably undertaken without sufficient prior notice being given to the Applicant and were carried out against his wishes.
49. A new telegraph pole has been erected and other works carried out by the Respondent which the Tribunal concludes must have required that the Respondent gain access over the Property.
50. Whether any of the works carried out by the Respondent have improved the Property is not relevant to its decision. Neither is it relevant to any determination by the Tribunal that, by making the Application and expressing his anger in writing, the Applicant may have alleviated any distress experienced as a result of the actions undertaken or sanctioned by the Respondent. In the Tribunal's view he should not have been exposed to such distress by the actions of the Respondent.

51. The Tribunal concludes that, being aware of the Applicant's regular habits, the Respondent deliberately undertook works during periods when he anticipated the Applicant would be absent from his Property, to minimise any reaction from him to those works. However it has taken account of the fact that the Respondent has apologised and agreed not to repeat such actions.
52. The Tribunal finds that the Respondent interfered with the Applicant's right to quiet enjoyment of his Property in the course of the works carried out to No 6. That breach is not a continuing breach. The Respondent has stated that it will not be repeated which statement the Tribunal accepts.
53. The Tribunal finds that one of the windows of No. 6 overhangs the boundary of Property. The Applicant accepted that this encroachment has occurred. He does not seek redress, simply an undertaking that no further or additional encroachment will occur.
54. The correspondence in the bundle reveals past disagreement between the parties. It is hoped that all of the issues which gave rise to this have now been resolved but taking into account all of the circumstances and evidence of the parties the Tribunal directs that the Respondent pay Five Hundred Pounds (£500) as compensation for:-
- a.** Breach of his obligation to provide reasonable prior notice of his intention to gain access to the Property in breach of the covenant of quiet enjoyment implied in the Applicants written statement; and
- b.** Distress caused to the Applicant.
55. No part of the compensation awarded relates to encroachment on to the Property by the overhanging window.
56. In addition the Tribunal directs that the Respondent reimburse the Applicant in respect of any fee paid to the Tribunal in making this Application.
57. The compensation and reimbursement of fees (if any) must be paid within the 30 days following the date of this decision, (two extra days having been included within this time limit to take account of the imminent August Bank Holiday).
- Judge Cindy A Rai
(Chairman)
- Appeals
1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application 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.