FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/19UM/PHC/2017/0002
Property	:	Pitch 43 Morn Gate Park, Bridport Road Dorchester DT2 9DS
Applicant	:	John Romans Parks Homes Limited
Representative	:	Stephens Scown Solicitors LLP
Respondent	:	Michael and Julie Hancock
Representative	:	Laceys solicitors
Type of Application	:	Determination of a question from the Court section 231B Housing Act 2004
Tribunal Member(s)	:	Judge Tildesley OBE Judge M Davey
Date and Venue of Hearing	:	31 July & 1 August 2017 Weymouth Law Courts Westway Road, Weymouth.
Date of Decision	:	27 September 2017

DECISION

Summary of the Decision

(I) The Tribunal determines that the provisions of the Mobile Homes Act 1983 apply to the agreement made between A & M Properties (Dorset) Limited on the one part and Michael Frederick Hancock and Julie Hancock of the other part and dated 29 November 2003.

The Proceedings

1. These proceedings concern Mr Michael and Mrs Julie Hancock's occupation of their mobile home on Morn Gate Caravan Park (The Park).

2. On 18 October 2016 Deputy District Judge Chedgy sitting at Weymouth County Court transferred a Claim for Possession (claim Number C00WY133) to the Tribunal for determination of a question under section 4 of the Mobiles Homes Act 1983 (1983 Act).

3. On 16 January 2017 His Honour Judge Iain Hughes QC refused the Respondents' application for permission to appeal the order for transfer to the Tribunal.

4. On 23 February 2017 the Tribunal issued directions to progress the proceedings.

5. The Tribunal heard the case on 31 July and 1 August 2017. Ms Heather Sargent, Counsel, represented the Applicant. Ms Kirsty Apps of Stephens Scown was the instructing solicitor. Mr John Romans, the sole director, of the Applicant company gave evidence for the Applicant.

6. The Applicants supplied witness statements from a Mr Graham Rowley and a Mr Ron Kingman. They were not called at the hearing because their evidence was not relevant to the disputed issue. Close to the hearing the Applicant supplied a witness statement of Andrew Jackson dated 21 September 2016 but he was not called to give evidence. Mr Jackson was the owner of A & M Properties (Dorset) Limited who sold the Park to the Applicant.

7. The Respondents, Mr and Mrs Hancock, were represented by Mr Peter Johnson of Laceys solicitors. Mrs Hancock gave evidence for the Respondents.

8. The Applicant prepared a hearing bundle. References to documents in the bundle in the decision are in [ ].

9. The Tribunal inspected the site immediately prior to the hearing on 31 July 2017.

The Dispute

10. In August 2003 Mr and Mrs Hancock sold their bungalow in Stone Staffordshire and moved to Dorset where they purchased their present home on Plot 43 at Morn Gate Park Bridport Road, Dorchester from a Debbie Barton for £45,000. They have lived there since 2003 and have no other residence.

11. Their home is a chalet comprising two living rooms, two bedrooms, kitchen and bathroom with a well stocked garden with its own boundary fence. The law regards their home as a mobile home which was not disputed by the Applicant.

12. John Romans Limited purchased the Park in May 2015 from A & M Properties (Dorset) Limited. The Park is licensed as a caravan park under the Caravan Sites and Control of Development Act 1960 (the 1960 Act).

13. John Romans Limited owned eight caravan parks in Dorset, Hampshire and Somerset. One of these parks, the Lookout Park, at Wareham, Dorset, operated as a mixed holiday and residential park.

14. Mr and Mrs Hancock are permitted to station their mobile home on Morn Gate Caravan Park by virtue of a licence agreement dated 29 November 2003 made between themselves and the previous owners of the site A & M Properties (Dorset) Limited [27-30]. The agreement was for a period of 15 years from 9 February 2001.

15. The issue for the Tribunal is whether the agreement made by Mr and Mrs Hancock with A & M Properties (Dorset) Limited was one to which the 1983 Act applied. If the 1983 Act applied Mr and Mrs Hancock's occupation of their home would attract the protections offered by the 1983 Act, which include security of tenure. If the 1983 Act did not apply John Romans Limited would be entitled in all likelihood to possession of the pitch by virtue of the licence agreement coming to an end on 8 February 2016.

16. The question whether the 1983 Act applied to the agreement is determined by assessing the facts against the provisions of section 1(1) of the 1983 Act. The parties' intentions, as ascertained by the principles of contractual interpretation, when entering the agreement dated 29 November 2003, although relevant, are not decisive in respect of the disputed question.

17. Section 1(1) states that the 1983 Act will apply to any agreement under which a person (the occupier) is entitled (a) to station a mobile home on land forming part of a protected site; and (b) to occupy the mobile home as his only or main residence.

18. Here the Applicant accepts that the agreement permitted Mr and Mrs Hancock to station their mobile home on land. The dispute centred on

whether the land formed part of a protected site, and whether the agreement allowed Mr and Mrs Hancock to occupy the mobile home as their only or main residence. In order for the agreement to come under the auspices of the 1983 Act it must satisfy both limbs: "protected site" and "only or main residence".

19. Further, the Court of Appeal in *Murphy v Wyatt* [2011] 1 WLR 2129 established that an occupier of a mobile home would only have the benefit of the 1983 Act if the requirements of section 1(1) were met at the inception of the agreement. Thus in Mr and Mrs Hancock's case, the Tribunal would have to find that the limbs of "protected site" and "only or main residence" were applicable at the time they made the agreement on 29 November 2003.

20. The Tribunal will deal with each of the two limbs: "protected site" and "only or main residence" in turn.

Protected Site

21. Before considering the legal definition of "protected site" the Tribunal intends to give a brief description of the Park, and its planning and site licensing history.

22. Historically the Park has always operated as a mixed use site of residential and holiday caravans. The Applicant now has the benefit of a Certificate of Lawful Use or Development dated 30 January 2015 [264] which would enable the Applicant to run the site as a residential park. Mr Romans required Mr Jackson to obtain the Certificate of Lawful Use before his company purchased the Park.

23. The entrance to the Park is off the A35 trunk road. On entering the site visitors encounter a sign which directs them to holiday sites on the left and to residential sites on the right. The access to the holiday side of the Park ends abruptly at what used to be the resident warden's caravan. Looking south on the left hand side of the Park there are 27 caravans and chalets which are arranged, at the northern end closest to the A35, in a crescent shape, transforming into rows towards the southern end of the site.

24. A recreation area subject to a section 52 agreement under the Town and County Planning Act 1971 dated 14 July 1977 is located at the south east side of the Park. Mr Romans applied for a discharge of this section 52 agreement on 16 June 2016 which application was subsequently refused by the Council [152-156]. There are two further caravans/lodges at the centre of the Park, one of which the Tribunal understands to have been occupied by the previous warden of the site.

25. On the right hand side of the Park at the top end, there are three chalets identified as Plots 45, 2 and 43 Morn Gate Park. Mr and Mrs Hancock occupy Plot 43, which is at the side closest to the access way on the western edge of the Park. Plot 43 has an enclosed garden which

distinguishes it from the other caravans and chalets in this part of the Park.

26. The access way on the western boundary leads to a row of garages on the right further down from Mr and Mrs Hancock's home. After the garages the access way turns east with an enclosure of nine mobile home pitches to the south of the access way and three mobile home pitches to the north, one of which has been abandoned. The access way finishes at a metal gate, which marks the boundary with the holiday part of the site.

27. The Applicant maintained that the enclosure of 12 mobile home pitches at the south-west corner of the Park represented the residential part of the site. According to the Applicant, the rest of the site had been reserved for seasonal and holiday use. The Applicant produced a plan of the site which had delineated the boundary of the "residential area" in red, and the boundary of the remaining area in blue [61]. The Applicant accepted that its solicitors had been responsible for the marking of the boundaries for illustration purposes only.

28. The Applicant, also accepted that Plot 45 which was in the top right corner of the site and close to the subject property of Plot 43 had the benefit of a written statement under the 1983 Act. The statement was signed on 14 January 2014. Mr Romans said that Mr and Mrs Williams, the occupiers of Plot 45, had paid Mr Jackson a considerable sum of money, in the region of £150,000, for the new mobile home which was why they received the benefit of a written statement under the 1983 Act. Mrs Hancock said the amount paid by Mr and Mrs Williams to Mr Jackson was a lot lower. The Tribunal considers the reasons given for why Plot 45 had the benefit of a statement under the 1983 Act are speculation in the absence of evidence from the parties to the agreement. The Tribunal, however, places weight on the fact that a pitch with the benefit of a 1983 Act statement was located outside the purported residential area relied upon by the Applicant.

29. Mr Romans produced a list of "holiday units" which he said had been given to him by Mr Jackson as part of the due diligence associated with the purchase of the Park by his company. The list identified 31 "holiday units" which included Plot 43, Plot 45 and the keeper's lodge [63]. Mr Romans also supplied a "Schedule of Residential Mobile Homes" at the Park [93] which identified the 12 plots in the South West corner, and Mr Williams' Plot. The "Schedule" identified Plot 2 as vacant and described Plot 9 as a "rental". Mr Romans was unable to give the provenance for this document, although he believed it may have been supplied by the former Park warden.

30. The planning history of the site started with a planning permission dated 27 October 1961 [146]. The permission allowed the continuation of a caravan site at Morngate Farm. Condition (1) to the permission provided that not more than 20 caravans should be sited on the land at any one time. Condition (3) provided that during the period 31st

October to 31st March, not more than 12 caravans should remain occupied. The permission also said that all caravans should be sited in accordance with the approved layout in the southern half of O.S. Field 11. Mr Romans said that his solicitor was unable to obtain a copy of the approved layout, which had not been retained by the Planning Authority.

31. On 21 July 1977 planning permission was granted to increase the number of static holiday caravans from 8 to 30, to improve access and generally improve the site including an additional septic tank [147]. Condition 7 stated that all the static holiday caravans should be painted in colours to be agreed with the Planning Authority.

32. Condition 4 to the planning permission, which related to landscaping, referred to a plan [149]. The plan showed an access road through the centre of the site. On the left hand side looking south there were two separate enclosures. The first enclosure had 12 pitches, whilst the second enclosure had nine pitches. On the right hand side, again looking south, a car parking area was located at the top of the Park. There was another enclosure to the south of the car park containing nine pitches. This was the area where Plots 43 and 45 were now located, although Plot 43 would appear to have been on the high grassed bank referred to in condition 4. Beyond this enclosure, to the South there appeared to be another area with six or possibly seven pitches marked. Finally there appeared to be 10 pitches in the South West corner of the site. The Tribunal formed the view that this plan was primarily drawn to identify the proposed improvements to the landscaping of the site in accordance with condition 4, many of which appeared not to have been carried out.

33. As part of the planning permission granted in July 1977 the owner of the Park entered into a section 52 agreement which required the land edged blue on the plan to be used as an amenity/recreational area with a prohibition on the siting of any caravan or structure in this area. [152-155].

34. On 2 October 1989 the Planning Authority refused an application for change of use of the site from holiday caravans to a mobile home park [140].

35. On 13 January 1992 permission was granted for development described as "Use land to site caravan for use as permanent residence for site warden" [144]. This permission had an attached plan which showed 27 pitches on the left hand side of the park and six pitches on the top right hand side, including the warden's caravan. The plan identified twelve pitches in the south west corner described as existing mobile homes [145].

36. On 30 January 2015 a Certificate of Lawful Use or Development was granted in respect of *"The unrestricted residential occupation of 30 mobile homes granted consent under planning reference*

1/E/77/000197" (21 July 1977 planning permission) [264]. The certificate recorded that no occupation restriction was placed on the planning permission granted on 21 July 1977.

37. The first site licence included in the bundle was dated 2 September 1978 [103]. The licence was granted to a Mr J W Jackson and Mrs D M Jackson, who the Tribunal believes were the parents of Mr Andrew Jackson. The licence imposed three conditions. Condition (c) provided that "*Not more than thirty Seasonal and twelve Residential caravans should be stationed on the land at any one time*".

38. The licence agreement between Mr and Mrs Hancock and A & M Properties Limited referred to a site licence dated 3 May 1983 which had not been located by the Applicant.

39. The next site licence in the bundle was the one granted on 2 September 1978 which was endorsed with a notice that the licence was transferred to A & M Properties (Dorset) Limited with effect from 9 May 1985 [104].

40. On 21 September 1989 the Council amended the conditions to the site licence to the effect that the thirty seasonal caravans might be occupied from the 16 March to 14 January in the following year [106]. The previous condition was that caravans might only be occupied from 16 March to 31 October in each year [211].

41. On 12 June 2012 A & M Properties Ltd applied for a variation of the condition governing the occupation of the seasonal caravans. On 25 October 2012 the Council granted the application and varied the condition so as to permit the 30 seasonal caravans to be occupied all year round [105].

42. Turning now to the law under section 5(1) of the 1983 Act, *protected site* has the same meaning as in Part I of the Caravan Sites Act 1968 ("the 1968 Act").

43. Section 1(2) of the 1968 Act defines "*protected site*" as follows:

> "For the purposes of this Part of this Act a protected site is any land in respect of which a site licence is required under Part I of the Caravan Sites and Control of Development Act 1960 or would be so required if paragraph 11 or 11A of Schedule 1 to that Act (exemption of gypsy and other local authority sites) were omitted, not being land in respect of which the relevant planning permission or site licence -
>
> (a) is expressed to be granted for holiday use only; or
> (b) is otherwise so expressed or subject to such conditions that there are times of the year when no caravan may be stationed on the land for human habitation".

44. Ms Sargent for the Applicant contended that as at the 29 November 2003, when the licence agreement was made, the planning permission and the site licence in respect of Plot 43 were expressed to be granted for holiday use only. According to Ms Sargent this meant that Plot 43 was not land forming part of a protected site and that the 1983 Act did not apply to the licence agreement between A & M Properties Limited and Mr and Mrs Hancock.

45. In support of her contention, Ms Sargent relied on the wording of the planning permission granted on 21 July 1977 and the site licence for 21 September 1989 which were in force when the licence agreement was entered into on 29 November 2003. In respect of the planning permission, Ms Sargent submitted it was clear that the development related to holiday caravans by its reference to increasing the number of static holiday caravans from 8 to 30. Ms Sargent accepted that the 1977 permission, unlike the 1961 permission, had no temporal condition restricting the occupation of the holiday caravans to specific times of the year. Ms Sargent, however, suggested this did not matter because the permission with its reference to holiday caravans met the requirements of section 1(2). That is to say, the permission was expressed to be for holiday use only or otherwise so expressed.

46. Ms Sargent stated that if the Tribunal was not with her on the construction of the planning permission, the terms of the site licence were clear in that they contained an express condition restricting the occupation of the seasonal caravans from 16 March until 14 January in the following year. This condition met the requirement of section 1(2)(b), namely, there were times of the year when no caravan could be stationed on the land for human habitation (see *Brightlingsea Haven Limited, Hamerton Leisure Limited v Jacqueline Morris* [2008] EWHC 1928 (QB) [13] for construction of this condition).

47. The soundness of Ms Sargent's submissions depends upon whether the relevant planning permission and site licence identified a separate and distinct part of the Park for the location of holiday caravans from that for the siting of residential caravans. Ms Sargent relied on the decision in *Berkeley Leisure Group Limited v Hampton* [2001] EWCA Civ 1474 for her proposition that it was permissible to treat the Park as divided into two or more parts for the purposes of identifying any protected site. Ms Sargent insisted that the Park had two distinct parts: holiday and residential, and that Plot 43 was located in the holiday part.

48. Ms Sargent argued that the Certificate of Lawful Use dated 30 January 2015, which permitted the unrestricted occupation of the 30 static holiday caravans, had no bearing on this case. According to Ms Sargent, the Certificate only had a prospective effect from when it was granted even though the Certificate was based on the construction of the 1977 permission. The Certificate recorded that *"no occupation restriction was placed on the planning permission reference 1/E/77/000197*

which gave consent to increase the number of static caravans from 8 to 30".

49. Ms Sargent stated that the Planning Authority, when granting the Certificate, would have been bound by the decision of the High Court in *I'm Your Man! Ltd v Secretary of State for the Environment* [1999] 77 P & CR 251 which made it clear that a restriction on use in a planning permission must be imposed by way of condition. The 1977 permission had no condition restricting occupational use of the static holiday caravans.

50. Ms Sargent said it was not appropriate to apply case law to the interpretation of a planning permission which had been granted some 20 years before the decision in *I'm Your Man* clarified the law.

51. Mr Johnson argued that the Park was clearly a protected site because the planning permission and the site licence expressly provided for residential use *and* holiday use. According to Mr Johnson Section 1(2) of the 1968 Act was only engaged when the permission and licence were restricted to holiday use only.

52. Mr Johnson considered the material facts in *Berkeley* were distinguishable from those in this case. In his view the dicta in *Berkeley* were derived from an exceptional set of circumstances, which had no bearing to the facts on this case.

53. Mr Johnson contended that the Certificate of Lawful Use was relevant because it related to the 1977 planning permission, which meant that Mr and Mrs Hancock's occupation of their home all year round was lawful. Mr Johnson also suggested that the site licence was parasitic on the terms of the planning permission.

54. The Tribunal starts with its analysis of section 1(2) of the 1968 Act. The Tribunal prefers Mr Johnson's construction of section 1(2). The Tribunal observes that the opening part of section 1(2) provides the overarching definition of a protected site, which is any land in respect of which a site licence is required under the 1960 Act. Section 1(2) then provides a qualification to the overarching definition of a protected site, by stating that it does not apply to land to which the relevant planning permission or site licence is expressed to be for holiday use only or otherwise so expressed or subject to conditions preventing occupation of caravans during specific parts of the year. The Tribunal takes the view that the qualification needs to be looked at as a whole (the "ors" are conjunctive rather than disjunctive) with the result that the last two limbs of the qualification "otherwise so expressed", and "conditions" are variants of the first limb "holiday use only". The Tribunal is satisfied that the operative word in the first limb is "only". Thus the qualification is engaged when the relevant permission and or licence restricts the use of the caravans on the site exclusively to holiday or seasonal use.

55. The Tribunal's preliminary position which agrees with Mr Johnson's position was that a site with planning permission and or licence for a mixed residential and holiday use is not caught by the qualification and is a protected site.

56. The Tribunal does not consider this interpretation of section 1(2) in relation to mixed use sites puts the site owner in jeopardy of enforcement action for breach of a planning or licence condition restricting the use of seasonal caravans on mixed sites. In such circumstances a prudent site owner would ensure that the agreement with the occupier of the seasonal caravan incorporates the restrictions on occupation. If the site owner fails to do this, any ensuing enforcement action would be a consequence of the site owner's lack of care and has nothing to do with the treatment of a mixed use site as a protected site. Also the protections under the 1983 Act only apply if both requirements of 1(1): "protected site" and "only or main residence" are met.

57. The Tribunal now turns to the decision in *Berkeley*. In order to understand the decision it is necessary to recite the facts of the case in some detail which are taken verbatim from the case report:

> "[2] This is an appeal by the Berkeley Leisure Group Ltd ("Berkeley") from an order of His Honour Judge Rice made in the Southend County Court on 4 May 2001. The judge's order dismissed Berkeley's claim against Mr Frederick Roy Hampton for possession of a caravan pitch and its immediately surrounding area known as 64 Halcyon Park, Pooles Lane, Hullbridge, Essex. Berkeley appeals to this court with the permission of the judge.
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> [3] Halcyon Park is a fairly substantial caravan park, about four hectares in extent, on the south side of the inland end of the estuary of the River Crouch. Planning permission for its use as a caravan park was first given in the 1950s, and since then there have been fairly frequent changes in the terms of the relevant grants of planning permission which it will be necessary to look at in a little detail. Berkeley purchased the park in 1997 from the previous owner, Mr Bill Caton.
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> [4] Mr Hampton used to work for Mr Caton as a general handyman, doing maintenance work (including plumbing and gardening) at the caravan park. From about 1987 he was allowed to live rent-free in a caravan on plot 34. In 1993 he began living with a partner, Mrs Helena Last, and Mr Caton allowed Mr Hampton and Mrs Last to move to a larger caravan on plot 64, which is in the extreme north-east corner of the park. In 1995 Mr Hampton bought his own mobile home and installed it on plot 64.
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> [15] The first planning permission which was unlimited in time was granted by Essex County Council on 5 November 1963. It was for use

of the land as a holiday caravan park, subject to seven conditions. Condition 1 was:

> "Caravans on the site shall only be occupied during the period 1 March to 31 October in each year."

[16] The reason for this condition was:

> "The site is not considered suitable as a permanent residential caravan site."

[17] Then on 18 January 1993 the local planning authority (which was by then not the County Council but Rochford District Council) granted planning permission for 12 specified caravan pitches and caravans to be used for permanent residential use by their then occupiers, all of whom are specifically named in the permission. They did not include Mr Hampton. At the end of occupation by any of these named individuals the prohibition on permanent residential use was to arise again, with a restriction to occupation from 1 February to 30 November. The reasons stated for the conditions were that the permission had been granted as an exception to the general restrictive policies in the green belt in view of the personal circumstances of the various occupants concerned. The change in the "close season" from four months (that is from November to February inclusive) to two months (December and January) had apparently been made on appeal in 1982, although the documents relevant to that are not in evidence.

[18] The changes made by the planning permission granted on 18 January 1993 were reinforced by a s 106 agreement (see s 106 of the Town and Country Planning Act 1990) entered into on the same date between Mr Caton, the 12 permanent occupiers, and Rochford District Council.

[19] Finally (so far as planning permission is concerned) on 31 October 1996 Rochford District Council gave permission for 36 caravans on specified sites to be occupied on a permanent basis and without regard to the "close season" in December and January. These 36 caravan pitches are shown on an approved plan (designated 1140-96) and are all within a defined area to the centre and west of the Halcyon Caravan Park. They include some but not all of the 12 which had transitory individual permissions. There was a condition reiterating the prohibition on permanent unrestricted residential occupation throughout the rest of the park. The stated reason for the condition was:

> "To ensure that caravans to be used for permanent unrestricted residential occupation lie within the [defined] area; as presently only those within that area will have sufficient height above ground level, without remedial levelling works, to minimise the potential for loss of life, or property, from flooding."

[20] I can deal much more shortly with the position of site licences under the 1960 Act. A licence was first issued to the park on 26

January 1966. Its terms were subsequently amended several times in order to keep in step with the changing planning situation. The site licence was on 5 January 1998 transferred to Berkeley. In its latest amended form (dated 19 October 1998) it contains (among numerous other conditions) the following condition (numbered 18):

> "Caravans stationed on the land shall only be used for occupation during the period from 1 February to 30 November in any year with the proviso that the caravans specified under planning consents [then it specifies the two consents] may be occupied between 1 December and 31 January in the following year subject to the conditions attached to those consents."

[21] The caravans covered by those two planning permissions are of course the overlapping groups of 12 and 36 caravans already mentioned, and they do not include the caravan on plot 64"

58. The Tribunal notes that Halycon Park started off as a site for holiday/seasonal caravans where occupation was limited to the period 1 March to 31 October. In 1993 the Planning Authority gave permission for 12 specified caravan pitches and caravans to be used for permanent residential use by their then occupiers who were named on the planning permission. In 1996 the Authority granted permission for 36 caravans on specified sites to be occupied on a permanent basis. Again the Authority designated the residential sites in the permission and on the approved plan, which were all within a defined area to the centre and west of Halycon Park. The Authority also imposed a condition prohibiting permanent unrestricted residential occupation throughout the rest of the Park. The reason given for the condition was to ensure that unrestricted residential occupation was confined to those areas with no risk of flooding. Plot 64, which was occupied by Mr Hampton, was not designated in the two permissions as one of the residential sites.

59. In the Court of Appeal, Counsel for the parties adopted diametrically opposed interpretations of the statutory definition of a protected site. Mr Lewison QC, for the site owner, argued that the correct approach was to focus on Plot 64 on its own and treat it as not being part of the same caravan site as the defined central enclave of Halycon Park. Mr Weekes in contrast considered Mr Lewison's multi-site analysis as bizarre and impermissible requiring words to be read into the statute. Instead Mr Weekes submitted that the relevant caravan site was undoubtedly the entire Halycon Park site, which was recognised by the fact that the whole of Park was covered by a single site licence.

60. The Court of Appeal decided that Plot 64 was not on land forming part of a protected site. The Court's rationale was set out at paragraph 35:

> "Mr Weekes' step-by-step argument has its attractions. However, his first step is in my view by no means as clear as he has submitted. It is

> true that under s 6 of the Interpretation Act 1978 "a caravan" in s 1(4) of the 1960 Act can "unless the contrary intention appears" include caravans (in the plural), and in some places (for instance s 5 of the 1960 Act) it is clear that it must have that extended meaning. However, if the terms of a planning permission and a site licence distinguish between different parts of a caravan park as regards the permitted user, it may be both natural and necessary to treat the area as divided into two or more parts for the purposes of identifying any "protected site". Indeed Mr Lewison, in his very short but very effective reply, insisted that the court should concentrate on plot 64 alone. Whether one concentrates simply on plot 64 or on the different planning status of the two parts of the site, the fact is that in this case there is apparently a physical basis - that is, susceptibility to flooding - which does effect a division between two parts of the site".

61. The Tribunal does not consider the Court of Appeal's ratio undermines the general proposition that mixed use sites are protected sites within the meaning of section 1(2) of the 1968 Act.

62. Ms Sargent relied on *Berkeley* for her contention that the Tribunal should focus on Plot 43 and its relationship with the rest of the Park. The Tribunal notes that the Court of Appeal saw merits in both Counsels' arguments. In the Tribunal's view, the ratio of the Court of Appeal's decision is found in the middle of paragraph 38, namely,

> "However, if the terms of a planning permission and a site licence distinguish between different parts of a caravan park as regards the permitted user, it may be both natural and necessary to treat the area as divided into two or more parts for the purposes of identifying any "protected site".

63. The Tribunal decides that the correct approach in law, when determining the question of what amounts to a protected site, is to start with section 1(2) of the 1968 Act, which excludes holiday only sites from the definition of protected site. The next step is then to consider the test in *Berkeley* which requires the Tribunal to examine whether the terms of the planning permission and site licence distinguish between different parts of the Park and if so whether it is both natural and necessary to treat the Park as divided into two or more parts for the purposes of identifying a protected site.

64. Ms Sargent's submissions for Applicant were predicated on the basis that it was possible to divide the Park into two parts: residential and holiday. Ms Sargent argued that the residential part was restricted to the south-west corner of the Park, and the rest represented the holiday part. According to Ms Sargent, Mr and Mrs Hancock's home, Plot 43, was located in the holiday part and on land that did not form part of a protected site.

65. The Tribunal decided that the facts did not support Ms Sargent's submissions.

66. The Applicant's characterisation of the site, with the residential part in the south-west corner, was undermined by the fact that Plot 45, which had the benefit of a 1983 Mobile Homes Act statement, was located outside the residential part identified by the Applicant.

67. The critical issue for the test in *Berkeley* is whether the relevant planning permissions and site licences distinguish between different parts of the Park. Although the 1977 permission when read with the 1961 permission and the site licence in force as at November 2003 authorised the siting of 12 residential caravans and 30 static holiday caravans on the Park, the permissions and the licence did not specify which of the 42 Plots were reserved for residential use. The 1977 permission and the relevant site licence did not designate separate areas in the Park for residential and holiday use respectively. The 1977 permission required all the static holiday caravans to be painted in colours to be agreed with the Planning Authority. This, however, did not assist the Applicant's case in respect of Plot 43 because as Mr Johnson pointed out Mr and Mrs Hancock's home shared none of the characteristics of the static holiday caravans sited on the Park.

68. The Applicant adduced no evidence of distinguishing physical features which required parts of the Park to be used in a particular manner. For example, there was no suggestion that parts of the Park were more susceptible to flooding.

69. The final part of the factual matrix as at November 2003 was the risk of enforcement action being taken against the site owner for breaching the requirement of having more than 12 caravans occupied throughout the year. Mr Lewison QC advanced this as the major reason in *Berkeley* for considering the disputed Plot on its own. It is important to note that the Park Owner in *Berkeley* conceded that the home was the only or main residence, so the option of ensuring compliance with planning conditions through the terms of the occupational agreement for plot 64 was not available[1]. In the present case the Applicant accepted that the 1977 planning permission did not contain a specific condition preventing the occupation of the caravans throughout the year. The decision in *I'm Your Man,* which clarified planning law by making it clear that a restriction on use in a planning permission must be imposed by way of condition, was published in 1999, and should have been known at the time the licence agreement was made in November 2003. In those circumstances the Tribunal considers that in this case the risk of enforcement action against the site owner would have been remote.

70. The Tribunal finds that

    (i) The planning permission and the site licence for the Park were not restricted to holiday use or otherwise so expressed or subject to a condition to the like effect.

    (ii) The relevant planning permission and site licence did not designate the Park into separate holiday and residential sectors.

    (iii) It was not natural and necessary to divide the Park into two or more parts to identify a protected site.

[1] See paragraph 56.

The Tribunal, therefore, concludes that the Park in its entirety was a protected site, and that Plot 43 was land forming part of a protected site.

Only or Main Residence

71. The second issue which has to be considered by the Tribunal, is whether Mr and Mrs Hancock occupied their home at Plot 43 as their only or main residence.

72. Mrs Hancock stated that they have lived at their home on Plot 43 continuously since they purchased it in November 2003. They have no other property.

73. Mrs Hancock said that in August 2003 they were looking to move from their home in Stone, Staffordshire to Dorset. According to Mrs Hancock they saw the park home on Plot 43 advertised by an estate agent in Dorchester. Mr and Mrs Hancock viewed the home and offered a Debbie Barton, the then occupier, £46,000 for the home, which was accepted. Apparently Mr and Mrs Hancock paid Ms Barton a deposit to enable her to purchase a wine bar in Spain.

74. Mr and Mrs Hancock had not instructed solicitors on the purchase of the home on Plot 43. Mr Hancock told the Tribunal, that Mr Andrew Jackson, the director of A & Properties (Dorset) Limited (the site owner) had contacted her by telephone asking her whether the purchase was still proceeding. Mrs Hancock advised Mr Jackson that it was, and agreed with him to meet at Plot 43 to finalise the purchase. Mrs Hancock was of the view that as Mr Jackson was a solicitor he was acting as broker between Mr and Mrs Hancock and Ms Barton.

75. Mr and Mrs Hancock met Ms Barton at the Park Home to hand-over the balance of the purchase monies. Mr Jackson was present at the meeting, and he negotiated a discount on the price of £1,000 because Ms Barton had not carried out certain works that she had promised to do. At that meeting Mr Jackson gave Mr and Mrs Hancock a new agreement to sign in respect of their occupation of the park home, which was the one exhibited at [35 -39].

76. Mrs Hancock stated that Mr Jackson told her at the meeting that the agreement was for 15 years. Mrs Hancock now accepts that the 15 years started from 9 February 2001 rather than 29 November 2003 when the agreement was entered into. Mrs Hancock also said that Mr Jackson told her that the agreement would be automatically renewed after the expiry of the 15 year term. Mrs Hancock acknowledged that she had not mentioned the automatic renewal in her witness statement.

77. Mrs Hancock asserted that she and her husband were never shown a copy of the site licence referred to at clause 4 (9) of the agreement. The Tribunal notes that the Applicant has been unable to locate the site licence dated 3 May 1983 referred to in the recitals of the agreement.

78. Mrs Hancock accepted that she was provided with a copy of the Park Rules which were attached to the agreement [40-42]. Mrs Hancock

denied that the reference to a letting season (ending 31 October) in paragraph 2 of the Park Rules applied to them. Mrs Hancock insisted that Mr Jackson had told them from the outset that they could occupy their park home permanently without moving out for two months. Mrs Hancock said that they were employed by Mr Jackson to carry out various jobs on the site during the close season of two months. According to Mrs Hancock, Mr Jackson agreed they could do the work in lieu of some of the pitch fee. Mr Hancock accepted that this arrangement was not in writing.

79. Mrs Hancock stated that Mr Jackson told her that they were covered neither by the residential use licence initially nor the caravan park licence.

80. Mrs Hancock stated that about two years after they moved into their home they met with Mr Banfield of the Valuation Office who advised them that as they were permanent residents they should be paying council tax on the park home. Mr and Mrs Hancock were also required to pay the council tax arrears from the date they moved in. In this regard Mr and Mrs Hancock produced a letter 14 April 2005 from Mrs Bradford, Revenues Officer of the Council, stating that their property was a Band A [223], and a letter from Mr Jackson dated 2 September 2005 stating that he had a conversation with Mr Banfield who had confirmed that Mr and Mrs Hancock's chalet did not form part of the rateable value for which non-domestic rates were payable by Mr Jackson's company.

81. Mrs Hancock produced correspondence from Mr Jackson dated 9 February 2013 and 10 December 2014 [229 & 250] confirming that HMRC had informed him that owners of accommodation on the holiday part of the Park which they used as their principal private residence did not have to pay VAT on the pitch fee and service charge. Mr Jackson included Mr and Mrs Hancock as one of the owners who did not have to pay VAT. It was Mr Hancock who had made the initial contact with HMRC which prompted the correspondence with Mr Jackson.

82. Mrs Hancock said that they paid for their TV licence, which would not have been necessary if their home was a holiday caravan.

83. Mr Romans stated that he was very familiar with the Parks industry in general. Mr Romans had been a member of the British Holiday and Home Parks Association for a number of years, and was fully aware of the differences in law as it applied to owner occupied caravans on residential parks and owner occupied caravans on holiday parks.

84. Mr Romans said that the agreement of Mr and Mrs Hancock with A&M Properties Ltd shared many features in common with agreements associated with holiday/seasonal lets of caravans.

85. Mr Romans pointed out that Mr Jackson had charged commission of 15 per cent when Mr and Mrs Hancock purchased their home. Mr Romans said this rate of 15 per cent was higher than the 10 per cent commission allowed for by law on transactions with caravans with the benefit of 1983 Act agreements. Mr Romans also said that 15 per cent plus VAT

was the industry standard as publicised by the National Caravan Council for commission payable on the sale of holiday caravans on a pitch.

86. Mr Romans stated that the pitch fee payable by Mr and Mrs Hancock for Plot 43 was much higher than the general pitch fee payable on a caravan with a Mobile Homes Act agreement. Mr Romans also pointed out that Mr Jackson increased the pitch fee for plot 43 significantly more than RPI which would not have been allowed if the agreement was one subject to the 1983 Act.

87. Mr Romans stated that Mr and Mrs Hancock's agreement was not in the same form as the agreements for the residential mobile homes on the Park. In this respect Mr Romans exhibited the agreement for Plot 45, which was a written statement under the 1983 Act [64-91]. Mr Romans said that the holiday caravans and the residential homes on the Park were subject to different sets of Park Rules. The one applicable to Mr and Mrs Hancock's home is that relevant to the holiday caravans on the Park.

88. Mr Romans testified that the price of £45,000 paid for Plot 43 by Mr and Mrs Hancock was considerably below the market price of a caravan with the benefit of a 1983 Act agreement. Mr Romans referred to a letter from Mr Simon Dixon of Dixon Kelly Estate Agents based in Ferndown, north of Bournemouth, who said that a mobile home similar in design to that occupied by Mr and Mrs Hancock would have sold for around £150-£160K in 2003 with the benefit of a 1983 Act agreement [187].

89. Mr Romans said that during his enquiries into the purchase of the Park Mr Jackson supplied him with a document headed "HOLIDAY UNITS" [63]. The list of 31 plots showed 17 units owned by Mr Jackson's company, 2 vacant pitches and and 12 units owned by individuals. Mr and Mr Hancock's home was one of the 12 with an agreement expiry date of 1 January 2016. Another of the 12, the unit on Plot 45, was subject to a 1983 Act Statement. Mr Romans said that his company had either purchased the caravans belonging to seven of the remaining ten owner-occupiers or re-located them. Two of the 10 occupiers, Mr and Mrs Hancock and Mrs Newey, were contending that the 1983 Act applied to their agreements to occupy their homes on the Park. The remaining occupier was content with the present arrangements and used the caravan for holidays. Mr Romans produced a deed dated 8 May 2015 which assigned A & M Properties' interest in the 12 licences granted to the owner occupiers of the caravans, to the Applicant [96-98].

90. Mr Romans stated that Mr Jackson provided his company with a complete set of agreements relating to those homes on the Park which had the benefit of 1983 Act statements. Plot 43 was not included in this category of homes on the Park.

91. Mr Romans did not consider that the payment of council tax by Mr and Mrs Hancock for Plot 43 indicated that their home was for residential

purposes only. Mr Romans said that many Park Owners require the occupiers of holiday caravans to pay council tax.

92. Mr Romans stated that he found Mr Jackson very straightforward to deal with and that Mr Jackson was a man of his word. Mr Romans said he was attracted to the Park because of the opportunity it presented for redevelopment. Mr Romans accepted that the number of holiday units on the site enhanced the sale price for the Park.

93. The original hearing bundle did not include a statement from Mr Jackson. On 25 June 2017 the Applicant's solicitors applied to admit Mr Jackson's witness statement, which was dated 21 September 2016. The solicitors' reason for not producing the witness statement earlier was because Mrs Hancock's witness statement included no allegations about an understanding with Mr Jackson that Mr and Mrs Hancock would be permanent occupiers of the site. According to the solicitors, they first learned about this allegation was when Mr Johnson provided the skeleton argument for the Respondents in June 2017.

94. Mr Johnson disagreed, saying that it was blatantly obvious from Mrs Hancock's witness statement that they entered a mobile home agreement with Mr Jackson, not a holiday let agreement.

95. The Tribunal gave the Applicant permission to adduce the witness statement of Mr Jackson dated 21 September 2016. The Tribunal, however, advised that the weight given to the contents of the statement may depend upon whether Mr Jackson was called in person to substantiate his statement.

96. The Tribunal understands that the Applicant's solicitors did not request Mr Jackson to attend the hearing. The solicitors advised that Mr Jackson spent a good deal of his time in Spain.

97. In his witness statement Mr Jackson said that Mr and Mrs Hancock bought the lodge and took over the benefit of a holiday licence agreement. Mr Jackson stated that at that time, the area upon which their lodge was stationed was open ten months of the year from 16 March to 12 January in each year. Mr Jackson also recalled Mr and Mrs Hancock asking him to extend the duration of the agreement during the time before he sold the Park. Mr Jackson said he told Mr and Mrs Hancock that he could not make any decision about an extension until he had decided what to do with the Park. Mr Jackson said he had always had it in mind that the agreement would expire in January 2016 which would have coincided with the end of the season.

98. Mr Johnson cross examined Mr Romans on Mr Jackson's statement. Mr Romans could not speak to potential inaccuracies in the statement. Mr Romans said he knew that Mr Jackson had made a statement but could not give an answer on why Mr Jackson was not at the hearing. Mr Romans stated that he wished Mr Jackson was present. Mr Romans could not comment on whether Mr Jackson's statement was part of the Applicant's case.

99. The question for the Tribunal is whether Mr and Mrs Hancock are entitled under the agreement of 29 November 2003 to occupy the mobile home as their only or main residence.

100. The Tribunal's starting point is the agreement itself. The agreement permitted Mr and Mrs Hancock to station one chalet on pitch number L1 or such other pitch as may be available at the commencement of the licence as the Park Owner may from time to time during the continuance of the licence require Mr and Mrs Hancock to occupy. The agreement was for 15 years from 9 February 2001. Under the terms of the agreement Mr and Mrs Hancock were required to pay an annual payment in advance, which at the time of the agreement was £3,234 plus VAT reviewed on 1 January in each year.

101. Clause 4(4) of the agreement sets out the terms of the use of the chalet which is for private occupation only and or the occupation of the licencee and his family and no others. Clause 4(4) prohibited the carrying on of any trade or business without the prior express written consent of the Park Owner. Clause 4(4) placed no other limitations on the occupation of the lodge.

102. The Tribunal observes that the agreement had no express provision which said that the chalet must be used for holiday purposes only or could only be occupied during specific periods in the year. The agreement did not prohibit use of the chalet as their only or main residence.

103. The Applicant relied on clauses 4(2) and 4(9) of the agreement to establish that Mr and Mrs Hancock were not entitled to occupy the chalet as their only or main residence.

104. Clause 4(2) required Mr and Mrs Hancock to observe and comply with the Park Rules, which were attached to the agreement. The Applicant relied on references in rules 1 and 2 to the opening of the season (15 March), the end of the letting season (31 October), and the winter storage charge, and on rule 9 which recommended that caravans, lodges and chalets were drained of water at the end of the season.

105. Mr and Mrs Hancock accepted that they were given a copy of the Park Rules when they signed the agreement. Mrs Hancock did not agree that the Rules restricted their occupation of the chalet to the letting season.

106. Clause 4(9) obliged Mr and Mrs Hancock at all times to observe and perform the terms of the site licence. Ms Sargent insisted that the site licence limited occupation of Plot 43 to the period 16 March to 14 January the following year. Mrs Hancock said that Mr Jackson did not supply them with a copy of the site licence.

107. The Applicant also relied on Mr Romans' evidence about the agreement having features of a holiday let rather than a Mobile Homes Act agreement in support of its assertion as to the lack of Mr and Mrs Hancock's entitlement. Mr Romans emphasised that the high pitch fee, the ability to increase the pitch fee without reference to RPI and the rate of commission charged by Mr Jackson on sales were more characteristic of a holiday let. Mr Romans also believed that the price

paid by Mr and Mrs Hancock did not represent the market rate for the purchase of a residential mobile home in 2003. In this regard Mr Romans referred to the letter written by Mr Simon Dixon who suggested a price for a residential mobile home in the region of £150-£160K.

108. Mrs Hancock said she and her husband accepted the terms of the agreement as presented to them by Mr Jackson. They were not aware of the different regimes affecting holiday caravans and residential mobile homes. They did not take legal advice because they believed that Mr Jackson who was a solicitor was acting for them. Mr Johnson questioned the weight to be attached to Mr Dixon's letter. Mr Johnson pointed out that the Applicant should have requested permission to call him as an expert witness if it wished to rely on his evidence.

109. The Tribunal finds that the agreement allowed Mr and Mrs Hancock to station their mobile home on Plot 43 and to enjoy exclusive possession of the home as a private residence for them and their family. The Tribunal places weight on the fact that the agreement did not impose any limitation on Mr and Mrs Hancock's occupation of the home except they could not use it for business purposes except with the written consent of the Park Owner.

110. The Tribunal is not persuaded by the Applicant's submissions on clauses 4(2) and 4(9). The Park Rules (clause 4.2) contained no specific rule stating that occupiers could only live in their chalet/caravan during the season and had to vacate it for a specific period. The references in the Rules to the opening and closing of the season were tangential, and did not relate directly to the mode of occupation. The reference to "opening" related to the payment of the annual fee. The reference to "closing" was to cover the situation if the occupiers decided not to renew their licence. The Tribunal also considers it significant that the date given in the Park Rules for the end of the letting season did not correspond with the date given in the site licence amended on 21 September 1989. This indicated that Mr Jackson did not update the Park Rules, which suggested that he did not attach significance to them.

111. The Tribunal considers the Applicant's submission on clause 4(9) that the site licence restricted Plot 43 to seasonal occupation was not correct. The licence did not identify which Plots were restricted to seasonal occupation. The Tribunal accepts Mrs Hancock's evidence that Mr Jackson did not give her a copy of the site licence when they signed the licence agreement. The Tribunal notes that the site licence dated 3 May 1983 and cited in the agreement had not been traced.

112. The Tribunal is not convinced by Mr Romans' evidence on the terms of the agreement. The Tribunal questions the relevance of that evidence to the issue of only or main residence. The Tribunal considers that Mr Romans appeared to be dealing with a different issue, which was whether the licence agreement had the hallmarks of a written statement under the 1983 Act. In the Tribunal's view, it does not follow that an agreement without the hallmarks of a 1983 Act statement must

be a seasonal agreement. Further, the Tribunal considers it plausible for the parties to agree for occupation of the home as the occupiers' only or main residence without a 1983 Act statement and without realising the potential implications that such an agreement might fall within the auspices of the 1983 Act.

113. The Tribunal is not satisfied that the price paid by Mr and Mrs Hancock had any bearing upon the question of only or main residence. The Applicant suggested that the price paid was low if the agreement allowed permanent residence. The Applicant relied on Mr Dixon's letter in which he suggested that an average selling price for a mobile home with a 1983 Act statement in 2003 would be in the region of £150K to £160K. The Tribunal shares Mr Johnson's reservations about relying on expert testimony without going through the correct procedures and not being subject to cross examination.

114. The Tribunal's next step is to examine the factual matrix at the time the agreement was made. The Applicant relied on the July 1977 planning permission which it said restricted the occupation of Plot 43 to the holiday season. The Tribunal considers that the reasonable man would have noted that the planning permission contained no express condition prohibiting occupation of the mobile home during specific periods of the year. The Tribunal also believes the law as stated in *I'm Your Man* that a restriction on use in a planning permission must be by way of condition would have been available to the reasonable man when interpreting the agreement in 2001.

115. Mrs Hancock was adamant that Mr Jackson told them that they could live in the chalet all the year round and they did not have to move out for two months in the year. The Applicant contended that this was hearsay, and asked for Mr Jackson's witness statement to be admitted. The Tribunal considers the Applicant's protestations on hearsay hollow, particularly as they had the opportunity to call Mr Jackson as a witness. Although the Tribunal places no weight on Mr Jackson's statement, the Tribunal notes that at paragraph 5 of his witness statement he did not state specifically that Mr and Mrs Hancock could only live in their home during the season. The Tribunal finds Mrs Hancock to be a credible witness.

116. As part of the background the Tribunal considers it relevant that Mr and Mrs Hancock sold their home in Staffordshire in order to move into the chalet at the Park, and that Mr Jackson was a solicitor apparently dealing in property. The Tribunal considers that Mr Jackson would have known the pitfalls of not making the parties' intentions explicit in the document. The Tribunal places weight on the fact that Mr Jackson could have avoided uncertainty by describing the agreement as a holiday let and spelling out in the document that Mr and Mrs Hancock's occupation of their home was restricted to ten months in the year.

117. In summary the Tribunal finds that the agreement permitted Mr and Mrs Hancock to station their mobile home on Plot 43 for occupation as a private residence for them and their family. Further the Tribunal

finds that the agreement did not restrict Mr and Mrs Hancock's occupation of their home on Plot 43 to a specific period during the year, and that if Mr Jackson had intended to place such a restriction he would have ensured that the agreement had a explicit statement to that effect. The Tribunal accepts Mrs Hancock's evidence that they were entitled to live in their home all the year round.

118. The Tribunal's conclusion on the meaning of the licence agreement is supported by what has actually happened in practice. Mr and Mrs Hancock have lived in their home on the Park continuously since 2003. This was not disputed by the Applicant. During the close season they remained in their home whilst carrying out jobs on the Park for Mr Jackson. They were assessed for Council Tax on their home in 2005 for which they were required to pay arrears from the date they took up occupation. In 2013 they were not required to pay VAT on the pitch fee and service charges because HMRC regarded the chalet as their principal private residence.

119. The Tribunal is satisfied that Mr and Mrs Hancock are entitled under the agreement of 29 November 2003 to occupy the mobile home on Plot 43 as their only or main residence.

Decision

120. The Tribunal finds that the licence agreement of 29 November 2003 entitled Mr and Mrs Hancock to station their mobile home on Plot 43 which was land forming part of a protected site; and to occupy the mobile home as their only or main residence.

121. The Tribunal determines that the provisions of the Mobile Homes Act 1983 apply to the agreement made between A & M Properties (Dorset) Limited on the one part and Michael Frederick Hancock and Julie Hancock of the other part and dated 29 November 2003.

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 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.