



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

**Case Reference:**                    **MAN/30UN/PHC/2016/0010**

**Property**                                **31 Oakland Glen, Walton Le Dale, Preston,  
PR5 4LS**

**Applicant**                                **: Mr Gerald Marlow**

**Respondent**                                **: Mr Andrew Thornley, Mrs Gina Thornley and  
Miss Victoria Thornley Trading as Carrwood  
Park**

**Type of Applica-  
tion**                                        **: Section 4 Mobile Homes Act 1983**

**Tribunal Members**                        **: Judge John Murray LLB  
Mr Ian James MRICS (Valuer Member)**

**Date of Decision**                        **: 27 February 2017**

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**REASONS FOR DECISION**

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## DETERMINATION

The Tribunal determines that the Applicant has a right of way over the driveway that leads 31 Oakwood Glen.

## INTRODUCTION

1. The Applicant made an application for a determination as to his right to use a driveway providing vehicular access to his mobile home at 31 Oakwood Glen.

## THE PROCEEDINGS

2. Directions were made by a Procedural Judge for the parties to exchange statements of case with supporting documents.
3. No provision was made for a hearing, and neither party requested one. The Tribunal carried out an inspection of the Property on the 10 February 2017 and thereafter met for deliberations.

## THE PROPERTY

4. Both parties attended the inspection along with the site manager, and Respondent's son in law Mr Darren Jones.
5. 31 Oakwood Glen is approximately ten feet higher than the adjacent access road. There are two parking spaces for vehicles between the road and the home, and steps between the parking spaces provide pedestrian access to the home, which were the subject of a Tribunal ruling in 2014 ("the 2014 Case").
6. The driveway, which is the subject matter of the present application leads for approximately 75 yards from the access road to the home, and there is a car port at the top of the driveway. It has tarmac and is edged, and has a small turning bay. The tarmac was in good condition. The driveway gave the appearance of having been constructed, used, and maintained for a number of years. Other homes in the vicinity did not have driveways, being generally closer to the access road and with less space between them and their adjacent properties.

## THE CONTRACT

7. The contract is dated 31 May 1995 and made between preceding parties. It is subject also to the implied terms introduced by the Mobile Homes Act 1983.
- 8 The express terms of the contract define the pitch as being the hard standing on which the mobile home has been erected, extending three feet from the mobile home on all sides.

## THE LEGISLATION

9. The relevant legislation is contained in s4 of the Mobile Homes Act 1983 which gives the Tribunal jurisdiction to determine any question arising under the Act or any agreement to which it applies, and to entertain any proceedings brought under the Act or any such agreement.
10. The jurisdiction of the court was conferred to the Tribunal by s231A Housing Act 2004, inserted by the Transfer of Tribunal Functions Order 2013.

## THE APPLICANT'S CASE

11. The Applicant in his submissions attached a letter from Mr. Thornley seeking to deny the Applicant using the driveway to his home. The letter, dated 28 October 2016 states "It has been noted that you have started to use the driveway which leads to your home".
12. By his letter to the Tribunal of 10 November 2016 the Applicant asserted that he now believed the driveway to be part of the pitch, as this had been confirmed by the Respondent in a drawing of the pitch he prepared for the 2014 Case, and supplying "photographs showing the driveway and car port Mr. Marlow usually uses..."
- 13 The Applicant stated that the letter, and drawing were the only documents in existence which outlined the boundaries of the pitch. Consequently he believed that the driveway formed part of the pitch.
- 14 He stated that the previous owner got permission from the previous site owner to use the drive for vehicular access and had it tarmacked. He said he had had it re tarmacked himself at a cost of £1500.
15. He stated that the driveway had been in constant and daily use for twenty two years, fourteen years by himself, and eight years by the previous owner. He supplied letters from other residents, Mr and Mrs Crane, and Mrs. Heap reiterating these assertions.

## THE RESPONDENT'S CASE

- 16 In his submissions the Respondent stated that he did not accept the driveway to be part of the Applicant's pitch because it is not included in the express terms as being part of the pitch. He stated that the documentation he had provided to the Tribunal during the 2014 Case was a rough sketch without details such as the size of the pitch or the mobile home, and measurements between identifiable fixed points on the site, the pitch and the base. He submitted that it could not be considered a true and accurate reflection of the pitch, and did not comply with the requirements of the statutorily implied terms.
- 17 He referred to a letter from the Applicant to the Tribunal dated 10 September 2014 when the Applicant stated "as regards the drive, so far as I know this is not part of the pitch. It was a pathway used for workmen who laid the original base and built the retaining walls. It is steep and inaccessible in winter, and was never meant to be access to the property. If it was, why are the steps there."

## THE DETERMINATION

18. The Tribunal reviewed the submissions filed by the parties in the light of its inspection.
19. In his letter to the Tribunal dated 18 September 2014 the Applicant stated that the driveway was the property of the Respondent. The Applicant indicates that he now believes that the pitch to be as set out by the Respondent in the 2014 Case - which included the steps and the driveway. In his application, he stated that is the only document which defines the pitch.
20. The 2014 Case identified the size of the pitch so as to ascribe responsibility for repair. Both parties took the diametrically opposite view that they now take, as repairing obligations (for the steps and the driveway) are determined by ownership of the pitch .
21. The Tribunal in the 2014 Case determined that the steps were not part of the pitch, and consequently the Respondent was liable to repair them.
22. Whilst we are not bound by that decision, we find it to be in accordance with the express terms of the agreement. The Applicant has stated in his submissions that he is now relying upon the Respondent's drawing of the pitch as being definitive; had this been so, he would have been obliged to repair the steps in 2014. We find therefore the driveway does not form part of the pitch, which is defined, as the Respondent states, in the express terms as found in the 2014 Case.

- 23 That the driveway is not included in the pitch does not of course prevent the Applicant having a right of way over it to the pitch. It is clear on the evidence provided by both parties in this case and the 2014 Case, the condition of the driveway, the existence of the car port, that the Applicant (and his predecessor in title) have used the driveway to gain vehicular access to the door of the mobile home.
- 24 In his letter to the Applicant, the Respondent states, disingenuously, that the Applicant has “started” to use the driveway. The carport had clearly been in existence for a number of years (whether consent was given or not), witnesses confirmed that the Applicant and his predecessor had used the driveway. In his sketch plan he prepared in 2014, (whether to scale or not) the Respondent believed the driveway was part of the pitch, and marked the car port. In his letter to the Tribunal in the 2014 case he referred to the Applicant “usually” using the driveway and car port. To suggest in his letter two years later that the Applicant has just started to use the driveway directly contradicts his own evidence to the 2014 Tribunal.
- 25 The fact that the steps, or the driveway, are not part of the pitch does not prevent the Applicant having the right to use them, as he does the steps and the parking bays. To withdraw that right would be a derogation of grant by the Respondent.
- 26 The Tribunal consequently determines that the Applicant has a right to use the driveway to his home.