



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

Case Reference : **BIR/00GG/PHC/2021/0002**

Property : **12 Knowle Sands Caravan Park,
Highley Road, Bridgnorth, WV16 5JL**

Applicant : **Mr Anthony Dickens and Mrs Patricia Dickens**

Respondent : **Knowle Sands Caravan Tenants' Association
("the Association")**

Representative : **Mr David Whitehead (Secretary of the
Association)**

Application : **Application for an order under s4 Mobile Homes
Act 1983 ("the 1983 Act")**

Tribunal : **Judge D. Barlow
Mr R P Cammidge FRICS**

**Date and mode of
Hearing** : **18 August 2021
CVP Hearing (Video Hearing)**

Date Decision issued : **14 September 2021**

DECISION

DECISION

- (1) The Tribunal determines that decisions concerning the use of the Association's income, including pitch fees, is not a question arising under the 1983 Act or any agreement to which it applies, and is not therefore a question that is within the jurisdiction of the tribunal to determine under section 4 of the 1983 Act.
- (2) The Tribunal determines that the Respondent failed to comply with a direction under s231A of the Housing Act 2004, made by the tribunal under case number BIR/00GG/PHC/2018/0004, that the Respondent must upgrade the top section of the 'southerly path' to an appropriate standard and in compliance with relevant legislation and regulations including Building Regulations and Health and Safety Guidance.
- (3) The Tribunal determines that the Respondent was not entitled to remove the 'southerly path' and directs, under s231A of the Housing Act 2004, that the Respondent reinstates the southerly path in accordance with the terms set out in the Appendix, which the parties have agreed.

REASONS

APPLICATION

1. On 16 April 2021, the Applicant pitch occupiers Mr and Mrs Dickens, made an application to the tribunal for determination of three questions, namely:
 - a. Whether their pitch fees can be used to pay solicitors fees;
 - b. Whether the Respondent had failed to comply with an earlier direction of the tribunal under s231A of the Housing Act 2004, that within 6 months of a decision dated 24 August 2018, under case number BIR/00GG/PHC/2018/0004, the Respondent must upgrade the top section of the 'southerly path' to an appropriate standard and in compliance with relevant legislation and regulations including Building Regulations and Health and Safety Guidance;
 - c. Whether the Respondent was entitled to discontinue an amenity used by them for over 20 years, by removal of the 'southerly path', which directly connected their mobile home to the carpark, forcing them to use a less convenient alternative path.

THE LAW

2. The law is contained primarily in Mobile Homes Act 1983. Under Section 4, a Tribunal has jurisdiction to determine any question arising under the Act or any agreement to which it applies.
3. The relevant law is set out below:

Mobile Homes Act 1983, as amended

Section 2(1): In any agreement to which this Act applies there shall be implied the terms set out in Part 1 Schedule 1 to this Act; and this subsection shall have effect notwithstanding any express term of the agreement.

Section 4:

4. (1) In relation to a protected site in England, 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).
- (2) Subsection (1) applies in relation to a question irrespective of anything contained in an arbitration agreement which has been entered into before that question arose.

Housing Act 2004

Section 231A 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) A 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) [Directions under the Housing Act 2004]

(4) When exercising jurisdiction under the Mobile Homes Act 1983, the directions which may be given by the tribunal under its general power include (where appropriate –

- (a) directions requiring the payment of money by one party to the proceedings to another by way of compensation, damages or otherwise;
- (b) directions requiring the arrears of pitch fees or the recovery of overpayments of pitch fees to be paid in such manner and by such date as may be specified in the directions;
- (c) directions requiring cleaning, repairs, restoration, re-positioning or other works to be carried out in connection with a mobile home, pitch or protected site in such manner as may be specified in the directions;
- (d) directions requiring the establishment, provision or maintenance of any service or amenity in connection with a mobile home, pitch or protected site in such manner as may be specified in the directions

Implied terms – Chapter 2 of Part 1 of Schedule 1 to Mobile Homes Act 1983

Owner’s obligations

22. The owner shall—

(c) be responsible for repairing the base on which the mobile home is stationed and for maintaining any gas, electricity, water, sewerage or other services supplied by the owner to the pitch or to the mobile home;

5. In **Elleray v Bourne** [2018] UKUT0003 (LC), the Upper Tribunal advised:

“Despite the apparent breadth of section 4, a power to determine questions or entertain proceedings is not the same as a power to grant specific remedies. The FTT has no inherent jurisdiction and may only make such orders or grant such remedies as Parliament has given it specific powers to make or grant. Although it is rather strangely described as part of a “general power” to “give directions”, in section 231A(4)(a) of the Housing Act 2004 Parliament has given the FTT a specific power to require the payment of money by one party to the proceedings to another. Such “directions” may be given where the FTT considers it necessary or desirable for securing “the just, expeditious and economical disposal of the proceeding.” The use of the word “directions” in this context might give the impression that section 231A(2) is concerned only with procedural matters. It is clear from section 231A(4), however, that the power to give directions is a power to make substantive orders, including for the payment of money, the carrying out of works, and the provision of services.”

6. In **Away Resorts Limited v Morgan** (2018) UKUT 0123 (LC), the Upper Tribunal said this: *“The power to grant additional remedies is exactly what section 231A, Housing Act 2004 provides.”*

BACKGROUND

7. The tribunal considered a copy of the earlier Decision of the tribunal dated 24 August 2018 (“the earlier Decision”). The tribunal takes paragraphs 41 to 44 of the earlier Decision as its starting point in relation to the direction under s231A, but does not repeat all the helpful detail of the earlier Decision save where relevant to the Respondent’s submissions and the determinations it makes.

8. Knowle Sands Caravan Park (“the Park”) is located just outside of Bridgnorth. It is licenced under the Caravan Sites and Control of Development Act 1960 for 36 caravans by Shropshire Council, although no copy of the site licence was provided to the tribunal.

9. The freehold of the Site is owned by the Respondent Association, an unincorporated association whose membership comprises all the mobile home owners.

10. Mr and Mrs Dickens, the Applicants, are the occupiers of pitch 12. They purchased their pitch more than 20 years ago. In recent years they have had

concerns about the operation of the Park and the provision of services, some of which came before the tribunal in July 2018 leading to the earlier Decision.

11. Two of the issues raised by the Applicants in 2018, concerned the Respondent's failure to put the top section of the southerly path in repair and the quality of the repair work on the central path. In relation to the allegation of poor quality work to the central path, although the tribunal observed some gapping between the slabs and a notice placed by the Association warning that a number of the steps had shifted and should not be used, the tribunal did not feel able to make any determination because it had insufficient evidence to determine the possible reasons for the concerns.
12. However, the tribunal noted from its inspection that the southerly path was in poor condition and that "*the top section of this path uses steps that are in less good condition than the other paths on the site*" (paragraph 7). The tribunal also referred to a letter from the Council dated 6 June 2017, which having expressed concerns about the condition of the footpaths on the Park, requested that the Respondent implement a scheme of general improvement for all footpaths and steps on the Park.
13. The earlier Decision confirms that improvements were implemented to the northern path and the central path but not to the southerly path. The Decision did not address conflicting evidence about the reason for this failure, concluding that there was little value in engaging in the debate because the fact remained that the work must be done and that Mr Smallwood, the then Chair of the Association told the tribunal that the Association intended that the work would be carried out within six months.
14. Therefore, when issuing its Decision at paragraph 44 the tribunal ordered, pursuant to its powers under s231A, that the top section of the southerly path be upgraded within six months.
15. Unfortunately, this determination did not resolve matters and Mr and Mrs Dickens have returned to the tribunal to seek further determinations.

INSPECTION

16. Prior to the hearing, on 17 August 2021, the tribunal inspected the Park. The site is situated on the western side of the B4555 leading out of Bridgnorth. Double gates lead to an upper tarmacked area with car parking facilities and access to the most northerly pitches. A road leads down to some of the lower level pitches. The remainder of the pitches are accessed via footpaths.
17. The footpaths that concern this application are the central spine footpath (referred to in the earlier Decision as "the central path") which was upgraded prior to the earlier Decision and provides access from the upper tarmacked area to pitches 9-19 and 20, and the 'southerly path' which was removed by the Association in January 2021.

18. The central path comprises a long flight of steps formed of concrete slabs over a brick base. Immediately adjacent to the path is a concrete ramp running parallel to the steps with a metal hand-rail in between. There are signs warning that the ramp should only be used for maintenance work. The central path can be accessed from the upper tarmacked car park at two places, however the access nearest to Mr and Mrs Dickens parking space is via a very steep concrete ramp that might prove unsafe in wet or icy conditions. The further away access to the central path is stepped, but would involve a longer walk for them.
19. Between the upper tarmacked area and the Applicants' pitch is a steep grassy bank. Within the bank there is evidence of a more direct route south for pitches 9-12 and 20, in the form of stepped earth, leading from the upper carpark to the bottom section of the central path. The stepped and disturbed earth marks the location of the path referred to in the earlier Decision as "*the southerly path*". The tribunal also had the benefit of seeing photographs provided by the Applicant showing the position and style of the southerly path prior to its removal. Mrs Dickens can be seen using the path which was comprised predominantly of concrete slab steps and would have provided a more convenient access from the car park to pitch 12 than the central path.
20. There were a number of other paths on the site but as they are not germane to this decision, were not considered by the tribunal.
21. The tribunal were met by Mrs Dickins and Mr Whitehead who showed them the relevant parts of the Park. Mr Whitehead confirmed that he would be representing the Association at the hearing in place of the Association solicitors. He said that at a recent meeting of the Association the entire committee had changed. Following a conversation with the Association solicitor, the new committee had decided that the southerly path should be reinstated and that Mr Whitehead should represent the Association at the hearing. Mr Whitehead and Mrs Dickens confirmed that discussions had taken place between them concerning the reinstatement of the southerly path. The tribunal indicated that it would assist them if the parties could arrive at an agreed position on this overnight, which the tribunal could consider at the hearing.

THE HEARING

22. The hearing took place on the 18 August 2021 by remote video conferencing. The form of hearing was: CVPREMOTE. The Applicants' represented themselves. The Association was represented by its Secretary, Mr David Whitehead who was joined on the call by Mr T Yale, a member of the Association.
23. Several members of the Association joined the hearing as observers, including Mrs Cooper, Ms K Furber and Mr Arnold. Mr Whitehead objected to this but did not pursue his objection once the clerk explained that as it was a public hearing, members of the public were entitled join.
24. Mr Whitehead was asked to confirm that he was the Secretary to the Association, which he did, and also that he was authorised by the Association to represent the Association of the hearing. Mr Whitehead confirmed that the committee had

unanimously voted for him to represent the Association at a meeting that had taken place on 16 August 2021.

25. Mr Whitehead said that the current committee did not agree with the actions taken by the previous committee in relation to the southerly path. He said that all the other access paths on the site had been upgraded for the benefit of the residents with the exception of the southerly path. In this respect Mr and Mrs Dickens had been treated unfairly and it was Mr Whitehead's personal view that some of the earlier decisions concerning the southerly path were motivated by personal animosity.
26. The current committee had therefore decided that the southerly path should be reinstated as soon as is reasonably practicable. Mr Whitehead confirmed to the tribunal that the association had sufficient funds for the necessary work to be carried out. Some discussion had taken place with the Applicants concerning the timescale for this. The committee had also discussed the issue of compensation for the Applicants' losses to date, should the tribunal make an award. Despite the overnight discussions, the parties were not in a position to provide an agreed statement of terms but wanted the tribunal to record the principle terms agreed within its decision.
27. Mrs Dickens confirmed that Mr Whitehead's evidence reflected discussions that had taken place between the parties overnight and that the parties were anxious to put all that had happened behind them and move forward.
28. A discussion then took place on the timetable and method of instructing and approving the work required for the reinstatement of the southerly path. The terms agreed by the parties are set out in the Appendix.
29. However, although the parties had reached an agreement concerning the reinstatement of the southerly path, the parties confirmed that they continued to seek a written determination of the issues before the tribunal, based on all the evidence before it.

Consideration and determination

Pitch Agreement

30. There is a Written Statement of Terms for pitch 12 in a modern printed form, dated 1 April 2017, which supersedes any previous agreement or written statement under the 1983 Act ("the Agreement"). The plan attached to the Agreement shows the extent of the plot and the small pathway that connects the pitch to the central path.
31. In addition to the terms implied under Part 1 of Schedule 1 to the 1983 Act and the supplementary terms in Part 4 of Schedule 1 (which are set out in full in the Agreement) the Agreement contains express terms one of which refers to the Association Rules as being binding on all pitch owners. A copy of the Association Rules is attached to the Agreement.

Issues

Issue 1: Use of Pitch fees

The Applicant's case

32. This question has arisen from the Association incurring substantial legal fees for advice and representation on a number of issues and disputes with individual pitch owners. The Applicant's bundle includes a copy of the Association accounts for the year ending 28 February 2019 which shows five entries for expenditure on legal fees totalling £23,688.24, incurred in connection with disputes. Legal fees of £2,460.24, for representation before the FTT on the earlier Decision are included. However, the three entries which account for the bulk of the fees appear to relate to a dispute with Mr K Hanks, a former resident, concerning non-payment of fees.
33. Minutes of the Association EGM, held on the 15 December 2018, indicate that Mr Hanks had filed a defence and counterclaim which had led to an escalation of legal costs and that settlement of the dispute was proving very difficult. The combined legal costs had depleted the Association's reserves leaving it in a perilous financial position and members of the Association were asked to consider a voluntary additional subscription of £350.00 each, to allow essential services to be paid for.
34. Minutes of the Association AGM dated 13 April 2019 indicate that the proceedings with Mr K Hanks had been determined at a hearing in January 2019. An additional one-off subscription of £500.00 from each member was proposed to assist with the burden of financing the ongoing disputes, including proceedings issued by 5 members for determination of their pitch fees from 2012. The resolution was passed by a majority vote with 5 against. The minutes indicate that strong views were expressed by some members about the parties to the disputes, the handling of the disputes and the appropriateness of using site funds for legal costs.
35. Other than providing copies of the Association accounts for 2018/19, the minutes of the EGM on 15 December 2018 and the AGM on 13 April 2019, the Applicants did not provide any legal argument or submissions to support their suggestion that pitch fees should not be used for legal advice and representation incurred by the Association in relation to proceedings under the 1983 Act.
36. The Applicants were asked at the hearing if they wanted to add anything to their Statement, or the written evidence provided with it. Both confirmed that they had nothing to add other than to say that the legal costs incurred by the Association and themselves to date, exceeded the cost of putting the southerly path in good repair and this was not in their view a good or proper use of Association money

The Respondent's case

37. The Respondent's statement of case makes the following submissions concerning use of the pitch fees:
- a. Section 29 of the 1983 act defines 'pitch fee' as "*the amount which the occupier is required by the agreement to pay to the owner for the right to station the mobile home on the pitch and for use of the common areas of the protected site and their maintenance, but does not include amounts due in respect of gas, electricity, water and sewerage or other services, unless the agreement expressly provides that the pitch fee includes such amounts.*"
 - b. The Act does not define what the pitch fee must be used for. For many park owners the pitch fee represents the main income from running the Park. From this the owner must pay expenses for the maintenance of the common areas, but the balance of the pitch fee after essential expenditure represents the site owner's profit. How a site owner spends its profit is a matter for the site owner.
 - c. The cost of operating the site is borne by the site owner which in this case means the members of the Association. The Association is entitled to seek contributions from its members to pay for the operation of the site, which can include fees incurred through seeking legal advice and representation. The additional subscriptions voted on by members of the Association to cover site expenditure are not payments under the pitch agreement, they are payments by members of the Association who were jointly liable for the expenses incurred by the Association.

Discussion

38. The 1983 Act defines what is meant by the term pitch fee for the purposes of the protections afforded by the Act. The main protections are at paragraph 16 and 17 of the 1983 Act which concern changes to the pitch fee. Broadly speaking, the pitch fee can only be changed at an annual review – and then, only if the change is either agreed by the occupier, or determined by a court as reasonable, following an application by the owner or the occupier.
39. The 1983 Act does not specify how the pitch fee can be used by the owner, which is unsurprising given that the occupier is paying a fixed sum for his or her right to occupy the pitch and use the amenities. How the owner chooses to allocate the pitch fee to the various heads of expenditure it incurs in managing the Park, is a matter for the owner.
40. The question illustrates a general level of misunderstanding about the difference between the bundle of rights and liabilities that attach to members of the Association as site owners, as opposed to the very different rights and liabilities they have as pitch occupiers under the pitch agreement. The Applicants' may, and probably do have a right to challenge the expenditure decisions of the Association under the rules of the Association or under the laws relating to unincorporated associations, but these are not issues the tribunal has jurisdiction to determine under the 1983 Act.

Issue 2: Whether the Respondent failed comply with the direction of the tribunal to upgrade the top section of the southerly path.

The Respondent's case

41. At paragraph 22 of its written statement of case the Respondent argued that the Respondent had complied with the direction at paragraph 44 of the earlier decision by completing the work required by 29 April 2019. An invoice for works dated 24 January 2019 from TR Wheeler Construction Ltd was produced as evidence of this. It refers to 3 items of work, the first of which is the “*extension of the existing steps with a new slabbed pathway to the road*”. It is not clear which pathway or road is referred to. The other two items appear to relate the central pathway, but it is not entirely clear. The total cost for all three items of work is shown as £820.00.
42. Paragraph 29 of the statement clarifies that in the Respondents view reference in the earlier Decision to the ‘top section’ of the southerly path, was limited to a small and relatively flat section between the tarmac car park and the very top of the stepped part of the path. Having interpreted the decision in that way, the works taken to comply with the direction were limited to laying six concrete slabs within the grassed area connecting the top of the stepped part of the part to the car park. A photograph of the completed work was produced showing the six slabs and what appears to be a wooden handrail adjacent to them. The work in the photograph is consistent with the first item of work described in the TR Wheeler Construction Ltd invoice. On completion of the work shown in the photograph the Respondents considered that the direction of the tribunal was met.
43. The Respondent also refers to an exchange of correspondence with the tribunal on 4 January 2019. Mr K Davies, the previous Secretary to the Association wrote to the FTT with reference to the direction under section 231A. The letter states:
- “Our understanding on this issue is that at the moment the pathway and handrail falls short of the hardstanding roadway by approximately 8 foot, this 8 foot being only of grass.*
- Our intention is to replace the grass with slabs and provided continuous handrail to the roadway.*
- Would this replacement be sufficient to satisfy the tribunal, as any further more extensive work would have to be postponed until the AGM of all members and funds made available.”*
44. The tribunal responded as follows:
- “the tribunal issued a final decision on 24 August 2018 and cannot add to or amplify that decision. Neither can the tribunal give advice to either party.”*
45. At the hearing Mr Whitehead confirmed that the Respondent had identified what it believed was an ambiguity in the wording of the earlier Decision and interpreted the wording in a way that justified the limited extent of the remedial

work carried out. Mr Whitehead said that he, personally, did not think the Order was limited to the flat bit of grass between the carpark and the top of the southerly pathway/steps.

The Applicant's case

46. The Applicants say that the previous decision recognised that the southerly path was the route they used daily because it was the shortest route from the car park to their home. Judge Goodall had ordered that the steps were to be upgraded to building regulations and health and safety standards, but the Association committee deliberately chose to misinterpret the Order and cause ambiguity as to what was required. This they say it was a malign decision which totally ignored the local authority's letter of 6 June 2017, specifically referred to by Judge Goodall, which stated that "all footpaths and steps should be upgraded".
47. The route from the car park to the lower part of the site using the central steps is well over 50 meters. The Applicant's stated that the part of the decision which required the upgrade of the southerly path recognised that it had been used by them and other occupiers for the last 22 years, because it is the shortest route to their pitch from where they park our vehicle.
48. The Applicants' solicitor wrote to the Association on the 10 April 2019 to complain that the replacement of the slabs at the top of the path did not comply with the Order or the Council's letter of 6 June 2017. The letter expressed a wish to resolve the issue amicably but warned that the Applicants would otherwise have no option but to refer the matter back to the court.
49. Mr Davies, the then Association Secretary, responded on 30 April 2019, to confirm that the Association's interpretation of the Order was to continue the pathway and handrail to the hardstanding roadway, over the part of the path that was formerly gravel. The letter goes on to say that far from ignore the letter from the Council the Association had paid for an independent building inspector to inspect all steps on site. The inspection was carried out on 3 April 2019 and the inspector's findings reported to the members of the Association at the AGM on 13 April 2019, which Mr and Mrs Dickens did not attend. The letter goes on to confirm that the inspector found the central path steps were compliant with building regulations but that the southerly path was unsafe and should not be used. A proposal was therefore put to the meeting that as Mr and Mrs Dickens could access their pitch using the central path steps, the southerly path should be removed. The proposal was carried with 26 in favour and one against.

Discussion

50. The tribunal first considered the meaning of the order at paragraph 44 of the earlier Decision which was as follows:

"the Tribunal therefore orders, pursuant to its powers in section 231A to direct the maintenance of any amenity, that within six months of the date of this determination, the top section of the southerly path must be upgraded to an appropriate standard and in compliance with relevant legislation and

regulations including the Building Regulations and Health and Safety Guidance”.

51. Under the heading *Inspection*, at paragraph 7 of the earlier Decision, the tribunal describes the southerly path as follows:

“For pitches 9 - 12 and 20 there is a slightly quicker, more direct southerly path from the top of the site leading to the bottom section of the central path. The top section of this path uses steps that are in less good condition than the other parts on the site (“the top-section of the southerly path”).”

52. Under the heading *What is use has the tribunal been asked to determine?* paragraph 10(d) reads as follows:

“The Applicants also want the Association to repair the top section of the southerly path as it is in poor condition.”

53. Under the heading *Repair of the top section of the southerly path*, paragraphs 41 – 43 of the earlier decision (with underlining added) read as follows:

“41. At the inspection, the Tribunal observed that this section of path was in poor condition. Distortion was noted to some of the steps not all of which were well spaced. Evidence of weathering and deterioration were also noted which gives rise to health and safety concerns.

42. As is recorded in the Council’s letter of 6 June 2017 referred to above, the Council were also concerned about the condition of the footpaths. They requested that the site implements a scheme of general improvement for all footpaths and steps on the Park.

43. Improvements were implemented to the northern path and the central path, but not the southerly path. There are arguments about the motivation for this state of affairs between the various pitch owners, but there is no value in considering whether failure to maintain the southerly path is a malign decision (as alleged by the Applicants), or the result of practical factors (as argued by the Respondent). The work must be done, and Mr Smallwood the chair of the Association, told the Tribunal at the hearing that it was intended that it be carried out within six months.”

54. The decision refers specifically to steps in paragraphs 7, 41 and 42. Any ambiguity concerning the extent of the top section of the southerly path could not reasonably have been resolved by an interpretation that excluded the entire stepped section of the path. Furthermore it is clear from paragraph 41 that in interpreting the order the Association should have considered which part of the southern path was in poor condition with distorted steps, steps that were not evenly spaced and contained steps and/or slabs that were weathered and deteriorated.

55. Mr Smallwood confirmed to the tribunal at the hearing that the Association intended to continue and complete the improvements required to the southerly path within six months of the hearing. Instead the Association appear to have

scrutinised the order with a view to limiting the extent of the improvements to laying a few concrete slabs over a short section of gravelled path at the very top of the site, which did not include the replacement, re-siting or realignment of any steps.

56. The then Secretary attempted to secure confirmation from the tribunal that these quite limited works were adequate to meet the terms of the order but was told by the tribunal that it was unable to add to, or amplify, the Decision. It was however open to the Association to make a further application under section 4 of the 1983 Act, if there was genuine ambiguity about the extent of works required to comply with the order. Rather than seek clarification, the Association proceeded on the basis of its interpretation, despite the written representations it received from the Applicants' and their solicitor that as the order referred to the poor condition of the steps it couldn't possibly be interpreted in this way.
57. The tribunal is therefore satisfied that while the term 'top section of the southerly path' may be open to some interpretation, it could not, given the numerous references to 'steps' reasonably have been interpreted to mean just the very short and relatively flat section that was selected by the Association for improvement. The tribunal finds therefore that the Association has not complied with the order in paragraph 44 of the earlier Decision.

Issue 3 Was the Respondent entitled to remove the southerly path

The Applicant's case

58. The Applicants' argue that the effect of the earlier Decision is to confirm that the southerly path is an access amenity that affords the Applicants the most convenient route from the car park at the top of the site to their pitch. That, they say, is the reason Judge Goodall ordered the Association to put the path in good repair.
59. The distance from the lower part of the site to the car park using the central steps as well over 50 m. The removal of the southern path has made their lives more difficult on a daily basis. They have, to date, spent some £8000 attempting to obtain justice.
60. The minutes of the AGM held on 13 April 2019 attached to the Applicant's statement show under paragraph 10, that the Council had inspected the steps and paths on the site. The Council's written report had not been received but the verbal findings were reported to the AGM. Point 6, referring to the southerly path states: *"the steps from 5 down to 13 do NOT comply with building regulations and should not be used."*
61. The minutes confirm that Mr Cooper addressed the meeting and said that although a sign had been placed on the steps, members would still be liable if they were used because the steps have been deemed to be Association property. He therefore proposed that the steps should be removed. The meeting voted 26 in favour with 1 against. Mr and Mrs Dickens did not attend the AGM.

62. The exchange of correspondence referred to in paragraphs 48 and 49 above, between the Applicants' solicitor and the Association then followed.
63. On the 3 September 2020, Mr Smallwood (the then chairman of the Association) wrote to the Applicants to ask if they were prepared to take over responsibility for the repair maintenance of the southerly path failing which the Association would comply with the motion passed at the AGM for the removal of the path. Mrs Dickens responded, reminding the committee of the terms of tribunal order.
64. On 30th of October 2020, M. Cooper (the then acting Secretary) wrote to all members to confirm that as the steps contravened health and safety and building regulations, and in order to comply with the Written Statement/Mobile Home Act the committee were giving all members 28 days notice that the steps in question would be removed at the end of the notice period.
65. The Applicants' acknowledge that on the day the steps were removed (12 January 2021), there was an altercation with some members of the committee which led to the police being called to attend. The Applicants believe that the consequence of their efforts to ensure the Park is managed correctly and fairly, is that they have been ostracised and discriminated against.

The Respondents case

66. The Respondent's written Statement addresses this issue but puts the question differently. It asks first if the Respondent was entitled to remove an amenity access used by the Applicants for over 20 years, and secondly whether the central path provided a satisfactory alternative access.
67. The Respondent asserts that the southerly path was constructed by a number of individual residents some 20 years ago on common land belonging to the members of the Association. Previous site layout plans are attached to the Statement, one dated 1994, which do not show the existence of the southerly path.
68. The Respondent states that where improvements to the site are proposed, the Written Statement under the 1983 Act requires the site owner to consult with the occupiers of the site, but does not prescribe a process for the consultation exercise. However, the Written Statement is silent as to any procedure relating to the removal or rationalisation of the facilities or general development of the site. In the absence of a prescribed process for consultation the Respondent conducted a consultation exercise about the southerly path through the forum of meetings of the Association. The Respondent states that the culmination of the consultation was a vote put to the Association at the AGM on 13 April 2019, where the members voted 26 : 1 to remove the steps which comprise southerly path.
69. The Respondent states that the democratic nature of management and ownership of the site was recognised by the tribunal within the earlier Decision, and that costs were a relevant factor in decisions concerning management of the site. In this case the decision took account of the cost of maintaining the southerly pathway for the benefit of a small number of residents when a suitable alternative route existed. The Respondent took the view that the cost of retaining the

southerly path was not proportionate to the small benefit accruing to the Applicants.

70. The Respondent states that a consultant was engaged to assess the site and had estimated that it would cost £11,575.00 to upgrade the southerly path. This represented a major expense for the Respondent that was not affordable, particularly as the Respondent's reserves had been depleted by expenditure of £15,000 on the upgrading of other paths on the Park. The Respondent asserts that the southerly path only reduced the distance travelled by the Applicants from their allocated parking space, by some 1.3 m and it was abundantly clear that the cost was disproportionate to the benefit of this reduction.
71. An additional consideration was apparently allegations of malicious damage to the paths although the evidence provided is inconclusive as to by who, how or why such damage had occurred.
72. The Respondent suggests that as a matter of principle it is for the landowner to determine how to use and arrange its land within the constraints of the law and the contractual arrangements that may be in place. It is also for the site owner to determine how to operate the site in a safe and suitable way, provided this is within the terms of the Written Statement. Sometimes this means making improvements, on other occasions changing the layout of the site or the infrastructure within it. This, the Respondent states is what it has done by creating an alternative route and to the extent that there is any loss of amenity, that is a matter that could be raised by the Applicants at the pitch review.
73. The Respondent also states that the Association did not have the funds to carry out the repairs needed to the full section of southerly path and having already been the recipient of one personal injury claim, faced a difficult decision. Accordingly, the Respondent made a decision that having already invested in improvements to the alternative central path, it would remove the southerly path which was unsafe to use.
74. The Respondent states that the central path provides a satisfactory alternative access. The path was recently upgraded to meet current standards. The ramp which runs alongside the steps was however considered too steep for everyday use and it was agreed therefore that its use should be limited to maintenance. The Respondent therefore believes that the steps along the central path are satisfactory. The ramp adjacent to the steps is not satisfactory for everyday use but is satisfactory to be used for maintenance.
75. In summary the Respondent's position, as set out in its written Statement, is that the Association was entitled to remove the southerly path because the cost of the necessary improvements outweighed the benefit to the Applicants. Furthermore, due to recent improvements, the central path provided a satisfactory alternative path that was barely less convenient for the Applicants.

Discussion

76. The Respondents position prior to the change of committee is summarised in paragraphs 59-68 above. It is a little confused. The Respondent identifies correctly that the 1983 Act does not directly address the removal of amenities. The Respondent therefore asserts it has a right to alter the layout of the Park as it sees fit, provided it does not contravene the provisions of the Agreement or the 1983 Act.
77. The Respondent also appears to suggest that a consultation exercise was carried out as required by paragraph 22(e) of the Agreement, mainly through the forum of meetings of the Association. However, the removal of an amenity that is used by residents, is not an improvement to the site and it is therefore difficult to see the relevance of any consultation exercise under paragraph 22(e).
78. The main thrust of the Respondent's argument appears to be that the estimated costs of the works required to upgrade the southerly path would put a financial strain on the Association that was disproportionate to the benefit to the users of the path. That argument was put to the members of the Association who unsurprisingly voted not to fund the work. However, the southerly path had been deemed unfit for use by the Council and the Association's inspector, which exposed the Association to a degree of risk should anyone injure themselves using it. Something they had recent experience of with regard to another path.
79. It was therefore put to the Association at the AGM held on 13 April 2019 (which the Applicants did not attend) that to limit the members exposure to the risk of a further claim the southerly path should be removed. Once again, the motion was unsurprisingly carried.
80. Whether the Respondent was entitled to remove the southerly path is predominantly a contractual issue but may also be governed by the terms of the site licence (which was not provided).
81. The earlier Decision does not indicate that the Applicants' right to use the southerly path was disputed by the Respondent or that it disputed its liability as owner, to maintain the path. The Respondent did not suggest to the previous tribunal that the removal of the southerly path was a satisfactory alternative to upgrading it. On the contrary, the then Chair of the Association assured the tribunal that the Association was proposing to upgrade the path within six months of the date of the earlier Decision.
82. Furthermore, although the tribunal has not seen a copy of the site licence it is evident from the many references to the Council's letter of 6 June 2017 that the Council regarded the maintenance of all the steps and paths on the site, including the southerly path to be the responsibility of the site owner.
83. The tribunal is satisfied that the Agreement dated 17 April 2017 granted to the Applicants the right to station a mobile home on pitch 12 in return for the pitch fee, which included the services set out in paragraph 7.3. One of the services specified in paragraph 7.3 is the maintenance of communal areas. The paths and accessways on the Park form part of the communal areas that the Applicants are

entitled to use, and which the Association has contractually agreed to maintain. This includes the southerly path.

84. The owner's obligations under the implied terms in part 3 of the Agreement are set out in paragraph 22. Sub paragraph 22(c) and (d) confirm that the owner is responsible for maintaining the services and keeping accessways in a clean and tidy condition.

85. The owner's obligations under the express terms in part 5 of the Agreement include:

“(d) The site owner must do everything they can reasonably do to provide and keep the services available to pitch. However the site owner will not be responsible for any temporary failure or lack of facilities and services if this is caused by something outside their control.”

86. It is implicit from the implied and express obligations of the owner that there is no mechanism within the Agreement for the owner to unilaterally remove services and amenities that are included in the pitch fee.

87. Reference in the original Decision to the Association being entitled to take account of the relationship between the costs of an improvement and the proportionate benefit of the improvement to the members, may have been relevant in the context of a the construction of a new road, a significant engineering project that would involve significant costs. However, the maintenance of the southerly path is not a new improvement. It is an existing amenity that the Association as owner of the Park is contractually obliged to maintain.

88. In its statement the Respondent does state that the cost of the necessary upgrade to the southerly path was a major expense, that was not affordable. If the Association was unable to finance the work, this might have justified a temporary closure of the path until funds could be raised. However, no evidence was provided in support of the estimate of £11,575.00, allegedly provided by the independent consultant. Nor did the Respondent provide any evidence to show that it was unable to raise further funds from the members to meet the Association's obligation to upgrade the path. Instead it was suggested to the members that maintenance of the southerly path was a contractual obligation they could set aside by a majority vote.

89. The Association cannot vary the terms of the Agreement by a majority vote of its members. The contractual terms can only be varied with the agreement of the other parties who in this case quite clearly did not agree.

90. The tribunal finds therefore that the Respondent was not entitled to remove the southerly path. It was obliged under the Agreement to maintain the southerly path to an acceptable standard which it failed to do. Having made that determination, the tribunal did not find it necessary to go on and consider whether the central path was an acceptable alternative to the southerly path.

Compensation

91. Although some discussion took place between Mr Whitehead and the Applicants prior to the hearing concerning the issue of compensation, as the Applicants had not made a formal request for the tribunal to determine whether to exercise its power under section 231A of the Housing act 2004 to direct payment of compensation or damages, the tribunal did not feel able to make any determination under these powers. Not least because the Applicants had not filed any evidence substantiating their losses, or made any legal or other submissions in support of their claim for any such direction.
92. That does not of course preclude the Respondent from reaching some accommodation with the Applicants concerning their losses if that remains the Respondent's intention. It is not however a matter which the tribunal had been asked to consider prior to the hearing, or one on which it had sufficient evidence to make a fair and just decision.

Name: Deputy Regional Judge Barlow

Date: 14 September 2021

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

The Appendix

The parties have mutually agreed the following terms in relation to the reinstatement of the southerly path:

The Respondent is to carry out the following:

- (1) To instruct a competent company to design and build a new pathway/ steps to replicate the original southerly pathway to a good specification that will be fit for purpose.
- (2) To utilise a contractor with the appropriate skills for both the design and construction elements.
- (3) Involve the Applicants in the consultations with the contractor before the specification is agreed and will take account of any reasonable concerns that the Applicants raise.
- (4) To ensure adequate handrails / grab rails are included in the design and construction.
- (5) To ensure adequate lighting is installed and that the system is certified by a competent person
- (6) To ensure the design and construction complies with all appropriate Building Regulations and Health and Safety standards together with any requirements of the local authority
- (7) The Respondent to use best endeavours to complete the works required to reinstate the southerly path by the end of October 2021.
- (8) On completion of the works the Respondent will arrange for the path to be inspected by a competent independent inspector to either sign off the works or identify any issues. Any issues will be attended to by the Respondent within a reasonable timescale.