



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

Case Reference : CHI/21UF/PHD/2020/0001

Property : 15 The Drive, Downland Park, Court Farm
Road, Newhaven BN9 9DJ

Applicant : Mrs A. Barney

Representative :

Respondent : Mr R. Patrick

Representative :

Type of Application : Application for determination of a question
under The Mobile Homes Act 1983 (as
amended)

Tribunal Member(s) : Judge D. R. Whitney

Date of Decision : 12th January 2021

DETERMINATION

Background

1. The Applicant is the owner of a Mobile Home site known as Downland Park. The Respondent is the owner of 15 The Drive, Downland Park (“the Property”).
2. By an application dated 7th October 2020 the Applicant, as site owner, requested the Tribunal to determine various breaches of the Park Homes agreement under which the Respondent occupied the Property. Directions were issued on 15th October 2020.
3. The parties have substantially complied with the directions and an electronic bundle was supplied. References in [] are to pages within that bundle.

The Law

4. The relevant legislation is contained in section 4 of the Mobile Homes Act 1983 Act 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.
5. The First-tier Tribunal was granted further powers by s231A of the Housing Act 2004 which provides as follows:

s231A. Additional Powers of First-tier Tribunal and Upper Tribunal

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

(2) The Tribunal’s general power is a power to give such directions as the Tribunal considers necessary or desirable for securing the just, expeditious and economical disposal of the proceedings or any issue in or in connection with them.

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

- (a) directions requiring a licence to be granted under Part 2 or 3 of this Act;
- (b) directions requiring any licence so granted to contain such terms as are specified in the directions;
- (c) directions requiring any order made under Part 4 of this Act to contain such terms as are so specified;

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

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

(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.

Discussion and Determination

6. The directions provided that the matter would be dealt with upon the papers. Neither party has objected. The Tribunal has reviewed the bundle and notes that both parties have exhibited and attached various photographs. The Tribunal is satisfied that the case remains suitable for resolution on the papers.
7. The original application [2-7] sets out the matters complained of by the site owner. In short these were:
 - that the Respondent had installed decking which was in breach of the site licence and despite being asked to remove the same had failed to do so;
 - that the Respondent had installed or caused to be installed a gas pipe which was unsafe;
 - that the Respondent had caused damage to a retaining wall;
8. The Applicant no longer seeks any determination in respect of the retaining wall [222].

9. The Tribunal has considered carefully the totality of the bundle. The Applicant filed an initial witness statement dated 29th October 2020 [13-26] and a reply dated 26th November 2020 [210-222] both with various exhibits. The Respondent has filed a witness statement dated 11th November 2020 [126-134] with exhibits. These three documents set out the cases advanced by the two parties.
10. It is clear that there is a degree of animosity between the parties and each make various allegations and assertions about the other. The Tribunal does not comment upon these but limits itself to determining the questions posed. To be clear the Tribunal makes no findings as to any of the other matters.
11. The Respondent purchased the Property in or about December 2012. A copy of an assignment is within the bundle [43 & 44]. A copy of the original written statement dated 20th August 2004 between the Applicant and a Mr and Mrs Page is within the bundle [28-42]. It is this document which records the terms under which the Respondent occupies.

Decking

12. Both parties exhibit various correspondence and explanations within their statement. Fundamentally there is not any dispute as to the facts. The Respondent requested permission to install decking adjacent to his mobile home. After various communications the Applicant gave permission, see [55]. The terms of the consent were:

“Regarding the decking if you wish to put the decking to the side of your home as per the terms of your letter, without a full planning application and if the council do object to it being built, then you will take it down at your expense, then I will agree to it being built under these terms.”
13. The Applicant contends that it has been brought to her attention that the decking constructed is in breach of the terms of her site licence in that it is constructed within 3 m of the boundary. What is said to be the site licence is at [82 & 83]. She also relies upon a letter dated 7th October 2020 from Debbie Kitson of Lewes District Council [79] which refers to this being a breach and also that a Fire Risk Assessment identifies this as a risk. Ms Kitson suggests the Applicant should ask the Respondent to remove the decking.
14. The Applicant states (and exhibits various correspondence) in which she has revoked any consent and requested the removal of the decking. She says such revocation is in line with the consent given. The Respondent has not removed the decking.

15. The Respondent points out that when he first requested consent the local authority advised him planning was not required. He refers to other infringements at the site of the 3m rule. He also suggests it may be possible for him to “cut” back the decking so that it would not encroach.
16. Pursuant to Part IV clause 3(h) of the agreement [34] the Respondent covenants not to do anything which may breach the terms of the site licence. Whilst plainly the Applicant had originally consented to the decking such consent was conditional. That consent has been withdrawn and the Local Authority in the letter from Ms Kitson makes clear they consider this a breach of the site licence.
17. I have considered carefully the consent given. I have also looked at the other correspondence produced by both parties. Whilst it is clear that the Respondent approached the local authority over planning I am not satisfied that the Applicant was simply seeking to limit references to the “council” to matters of planning. The Applicant granted a conditional consent, effectively as requested by the Respondent and she has now withdrawn the same.
18. I determine that the decking is currently in breach of the terms of the agreement on the basis the Applicant has withdrawn any consent given. Taking account of the time of year and the current pandemic I consider that a period of 12 weeks from the date of this decision to be a reasonable period of time for the Respondent to remove the decking.
19. Whilst I note the Respondent suggests that he could retain some parts of the decking this is not a matter for this Tribunal. He will need to approach the Applicant in connection with. It may be that an agreement may be possible and certainly the Tribunal would encourage the parties to try and reach agreement. A starting point may be for the Respondent to provide detailed plans and specifications to the Applicant so that she may properly understand what is proposed.

Gas Pipe

20. In 2013 a gas supply between the Gas Meter and the mobile home was changed following a leak. A pipe was laid from the meter on top of a path. The respondent suggests as originally constructed it was covered but currently there is no such covering or protection of this pipe which crosses a pathway.
21. The Respondent suggests that he notified the Applicant that works were to be undertaken. The Applicant contends she was not aware until more recently when certain items were removed. The Respondent suggests that the works were undertaken by competent contractors and to a proper standard and the gas pipe being laid on

the path is not a hazard. More recently a Gas Safe engineer instructed by the Applicant has inspected and has capped the supply on the basis that the pipework is unsafe. The Applicant has indicated she will require a full specification of works which she will need to approve [125] before any works are undertaken.

22. The Respondent suggests that pursuant to Mobile Homes Act 22(b)(iii)(c) [182] that the Applicant is responsible for any repair that is required. This section states:

“(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;”

23. The Applicant contends that this does not apply as she does not supply any services to the mobile home. The Respondent contracts directly with the utility suppliers and so the pipework is something for which he has responsibility. She suggests that the gas pipework amounts to a breach of Part IV clause 3 (k) in her witness statement and sets out the terms of the agreement [14].

24. On balance I prefer the Applicants case. I am satisfied that as she does not provide any services to the mobile home she is not liable for repairing the same. I am satisfied having reviewed the bundle and in particular the report of R J Sheppard BEng(Hons) CEng MICE dated 26th November 2020[275-279] that the pipework is potentially dangerous. The Respondent accepts that he had installed the current pipework. I am satisfied that the pipework amounts to a breach of Part IV clause 3 (k) (i) & (ii).

25. It is for the Respondent to determine whether or not he wishes to have a gas supply. If so the Applicants requirements as to requiring a specification and plan of works is in my determination reasonable. If the Respondent does not wish to have gas to his home any longer the current pipework should be properly decommissioned by an appropriately qualified Gas Safe engineer.

26. I consider a period of 12 weeks from the date of this decision to be sufficient for the Respondent to remove the current pipework. Whilst clearly a resolution is required and the pipework if “live” would be a hazard I understand the supply has been capped off and so no immediate hazard exists.

Conclusion

27. I determine that the Respondent is in breach of the terms of his agreement. I find that he is in breach of Part IV of the agreement and in particular clauses 3 (h) and (k) of the same as set out above.

28. The Tribunal reminds the Respondent that if he does not remedy the breaches then the Applicant may be entitled to determine the Agreement, that is to remove the Respondent and his Park Home from the site.

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 rpsouthern@justice.gov.uk being 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