FIRST TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CAM/00MF/PHC/2017/0014**
Site	**:**	**Loddon Court Farm, Beech Hill Road, Spencers Wood Reading, Berkshire RG7 1HU**
Park Home Address	**:**	**23 Loddon Court Farm**
Applicants	**:**	**Mrs Linda Malden**
Respondent	**:**	**Tingdene Parks Ltd**
Representative	**:**	**Ryan & Frost, Solicitors**
Date of Application	**:**	**2nd October 2017**
Type of Application	**:**	**To determine a question arising under the Mobile Homes Act 1983 or an agreement to which it applies – section 4 Mobile Homes Act 1983 as amended ("the Act")** **Application for Costs under Rule 13 of the Tribunals Procedure (First Tier Tribunal) Property Chamber) Rules 2013**
Tribunal Members	**:**	**Judge John Morris** **David S Brown FRICS** **Adarsh Kapur**
Date of Hearing	**:**	**16th January 2018**
Date of Decision	**:**	**22nd January 2018**

DECISION

Decision

1. The site owner is responsible for maintaining the strip of land behind pitches numbered 23-26 in clean and tidy condition.

2. **UPON HEARING the parties BY CONSENT IT IS ORDERED that** the Respondent shall make the necessary arrangements to ensure that the parcel of land in its ownership at the rear of pitches numbers 23 to 26 Loddon Court Farm Park shall be kept and maintained in a clean and tidy condition by being included in its gardener's schedule of work as follows:
Commencing from March 2018: -
1.March – First Visit
2.May – One visit
3. July – One visit
4. September – Last Visit

3. The Tribunal makes no order for costs under Part 2, rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

4. The Tribunal orders the Respondent to reimburse the Applicant £150.00 (£50.00 towards the Application Fee and £100.00 towards the Hearing Fee) under Part 2 Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 within 30 days of receipt of this Decision.

Reasons

Application

5. This is an application by a Park Home Owner for a determination of a question arising under the Mobile Homes Act 1983 or an agreement to which it relates under section 4 of the Mobile Homes Act 1983 as amended. The question to be determined is whether the Site Owner is in breach of the term implied in the Written Agreement by paragraph 22(d) of Schedule 1 Part 1 of Chapter 2 the Mobile Homes Act 1983 as amended. This term requires the Site Owner to maintain and keep in a clean and tidy condition those parts of the Site which are not the responsibility of any occupier of a mobile home.

The Law

6. Section 4 of the Mobile Homes Act 1983 (as amended)

(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 subsection (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.

(3) In relation to a protected site in England, the court has jurisdiction—
(a) to determine any question arising by virtue of paragraph 4, 5 or 5A(2)(b) of Chapter 2, or paragraph 4, 5 or 6(1)(b) of Chapter 4, of Part 1 of Schedule 1 (termination by owner) under this Act or any agreement to which it applies; and

(b) to entertain any proceedings so arising brought under this Act or any such agreement,

subject to subsections (4) to (6).

(4) Subsection (5) applies if the owner and occupier have entered into an arbitration agreement before the question mentioned in subsection (3)(a) arises and the agreement applies to that question.

(5) A tribunal has jurisdiction to determine the question and entertain any proceedings arising instead of the court.

(6) Subsection (5) applies irrespective of anything contained in the arbitration agreement mentioned in subsection (4).

7. Relevant term implied in the Written Agreement by paragraph 22(d) of Schedule 1 Part 1 of Chapter 2 the Mobile Homes Act 1983 as amended

22 *The owner shall –*

(d) maintain and keep in a clean and tidy condition those parts of the protected site, including accessways, site boundary fences and trees, which are not the responsibility of any occupier of a mobile home stationed on the protected site

8. Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 states:

(1) The Tribunal may make an order in respect of costs only-

(b) if a person has acted unreasonably in bringing, defending or conducting proceedings in-

(ii) a residential property case

(2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.

The Inspection

9. The Tribunal inspected the Site in the presence of the Applicant. It was noted that the site is in two parts with approximately half the pitches either side of a private road. Pitches numbered 1 to 53 are on one side of the road and are the subject of this Application. Pitches numbered 101 to 152 are on the other side of the road.

10. The Tribunal found that the Homes and the Site were in good to fair condition.

11. The issue relates to the maintenance of a tract of land which is situated to the North East of the Site. The land is between a farm building belonging to the neighbouring farm (the Farm) and the boundary fence of the Site to the rear of pitches numbered 21 to 26. Ownership is divided lengthways between the Site Owner, who owns the part adjacent the boundary fence, and the Farm, which

owns the part adjacent the farm building. The Site Owner only has right of access to its part of the land from the northern end between a row of three garages, which are part of the Site, and the north end of the farm building. The Farm has access to its part from the southern end.

12. Generally, the whole area is covered in grass, which is in tussocks, nettles, and other weeds and brambles.

13. The Tribunal found the area for which the Site Owner is responsible behind pitches 23 and 24 to have long grass when compared with the verges or green on the main part of the Park but there were no brambles. The area behind pitches 25 and 26 also had long grass when compared with the verges or green on the main part of the Park. In addition, there was overgrown ivy and creepers tumbling over the fence from the gardens of these pitches and covering the fence.

14. The Tribunal noted that there was a clear differentiation between the standard of maintenance of the area behind pitches 21 to 26 for which the Site Owner is responsible and that of the verges and green on the rest of the Site.

Attendance at the Hearing

15. The hearing was attended by the Applicant, Mrs Linda Malden, and, Mr Keith Ryan of Ryan and Frost, solicitors for the Respondent and Mr Jeremy Pearson representing the Respondent.

Evidence

Applicant's Case

16. In her Application, the Applicant stated her reasons for the Application which were confirmed at the hearing as follows:

17. Tingdene Parks Ltd purchased the Park Home Site of Loddon Court Farm from the previous owner, Mr H Crocker, in January 2014. An area of land at the rear of the Applicant's pitch (Number 23) and the adjoining pitches (Numbers 23 to 27) was overgrown with brambles, nettles and other weeds with clumps of long grass.

18. The Applicant requested that the land be maintained however the Tingdene Parks Ltd initially stated that the land was not included in the Park. The Applicant applied on 16th May 2017 to the tribunal for a determination on (CAM/00MF/PHC/2017/0006). In the Site Owner's statement of case it was acknowledged that the land was part of the Park and they agreed that it was their responsibility to maintain it in a clean and tidy condition and stated that the gardener employed to maintain the other green areas of the Site would have this area added to his work schedule.

19. The Applicant provided a copy of the Respondent's Statement of Case dated 17th July 2017, in respect of the Previous Application, which, at paragraph 2 stated:

20. *The Respondent acknowledges that it is the owner of the strip of land at the rear of pitches 23 to 27 Loddon Court and as such is responsible for maintaining it in a clean and tidy condition. The gardener employed by the Respondent to maintain other green areas of the Loddon Court for which the Respondent is responsible has been instructed to henceforth add this land in question to his schedule.*

21. The Applicant said that she relied on this assurance and withdrew the application. The letter dated 25th July 2017 requesting to withdraw the Previous Application together with the Notice of Withdrawal was provided.

22. However, since that time only very basic work has been carried out and she has been informed that the gardener will not mow the area every time he comes onto the site but only when required. In addition, she said that it has been mentioned that there is a risk of fire from the vegetation which may spread to the adjoining fences which she says is alarming and all the more reasons to maintain the area for ease of access and safe passage.

23. The Applicant referred to a letter dated 9th August 2017 she had written to the Respondent's Solicitors which referred to a telephone conversation of 2nd August 2017 in which the Applicant said that it had been reported to her that the gardeners had attended the Site on that day and had cut all the green areas except the strip of land at the rear of her pitch. She said she had contacted the Respondent who was to contact the gardener. However, the gardener has not returned to rectify the situation.

24. The Applicant acknowledged that the gardener had made a one-off visit at some point in the week beginning the 17th July 2017 whereby the overgrowth was roughly strimmed back which she though was in preparation for a more thorough and regular maintenance but this has proven not to be the case.

25. The Respondent replied by a letter dated 30th August 2017 in which it stated that the area adjacent to the rear boundary fences of 23 to 27 was cut in the week commencing 17th July 2017 and again at the Applicant's request in August. The Respondent said that this area will not be cut every time the contractor visits, just as and when required.

26. In addition, it was stated that on a recent visit to the Park it was noted that there were a number of bushes and shrubs growing up and over the fence [presumably from the pitches] which was deemed a fire hazard and should be cut back.

27. The Applicant responded by a letter dated 15th September 2017 in which she said that the Respondent's letter and actions were not in accordance with the Statement of Case dated 17th July 2017 by reason of which she had withdrawn her Previous Application. She added that the only vegetation growing across the fence from the pitches was a vigorous growing and invasive Virginia creeper which originated from pitches 24 to 26 and which she had removed from her fence. She also stated that the identified risk of fire made it

imperative that the area should be kept clear. A photograph of the area was provided.

28. In the light of the failure to maintain the area since the previous application the Applicant considered that a determination was the only way forward to ensuring the area was properly maintained in the future.

Respondent's Case

29. The Respondent submitted a Statement of Case in response in which it provided a plan of the Site (the Plan). The Respondent's ownership of the park is registered at the Land Registry under title number BK459833 including the Land Registry plan. The Respondent identified the area in issue by shading in red and green on the Plan. The area shaded red on the Plan runs along a line adjacent to the rear fences of pitch numbers 23 to 26 and is owned by the Respondent. The area shaded green on the plan is not owned by the Respondent but forms part of the land known as Loddon Court Farm and is registered at the Land Registry under title number BK354360, the registered proprietors being Harvey Lance Crocker, Oscar Lance Crocker and Charlotte June Crocker.

30. The Respondent said that it accepted responsibility for the area of land behind pitches 21 to 26 which is part of the Site and has not gone back on its word as its contractor cut back the vegetation in July and August. A photograph was provided of the area which was taken in late Autumn by Mr Jeremy Pearson of the Respondent. It was submitted that this showed the area to be clean and tidy.

Discussion

31. At the hearing it was noted that the Respondent had believed that the area behind pitches 21 and 26 entirely belonged to the Farm and it was not until the Applicant's Previous Application that a closer examination was made of the Land Registry documentation when it was found that only part of that tract of land was included in the Site purchased by the Respondent.

32. The Respondent then accepted responsibility for this area and agreed to maintain it in a clean and tidy condition pursuant to paragraph 22(d) by adding its maintenance to the gardening contractor's work schedule. The Respondent reimbursed the Applicant's fee and the Applicant withdrew her Previous Application.

33. It subsequently became apparent that the Respondent considered that its obligations would be met by cutting back the vegetation in July 2017 and then visiting the area as and when required, including occasions when the Applicant or her neighbours contacted the Respondent to alert it to the need for further work. The Respondent was of the opinion that the area did not warrant the same standard of maintenance as the verges or green.

34. The Applicant had been under the impression that the adding of the area's maintenance to the gardening contractor's work schedule would mean it

would be cut each time the contractor visited the site and be maintained to a similar standard as the verges and green.

35. In the course of discussion, the following was noted:

36. Firstly, it was common ground that as a part of the Site, which is not the responsibility of any occupier of a mobile home stationed on the site the Site Owner was obliged under paragraph 22(d) to maintain and keep the area behind pitches 21 and 26 in a clean and tidy condition. It was therefore not necessary for the Applicant to submit reasons as why she needed occasional access to the area behind her pitch e.g. to ensure her fence was secure.

37. Secondly, it was discussed what amounted to "clean and tidy" and in determining this could there be a differentiation between the maintenance of one part of the site compared with another.

38. The Tribunal was of the view that some differentiation was appropriate between the standard of maintenance for the area behind pitches 21 and 26 and that expected for the verges and green for the following combination of reasons:

- It appears that the area behind pitches 21 and 26 has never been regularly maintained and the half of the area owned by the Farm appears not to have been cut back for some considerable time. The weeds and brambles are likely to spread from the Farm half to the Site Owner's half. Therefore, to bring the half owned by the Site Owner up to the standard of a lawn and maintain it as such, would be difficult and expensive.
- From the inspection, it appeared that the Farm's vehicles could infringe the border between the two halves which is not marked by any fence. To effectively monitor such infringements by the Site Owner seemed to be impractical. The crossing of the strip by a farm vehicle would vitiate against keeping the half owned by the Site Owner up to the standard of the verges or green.
- Unlike the verges and green, the area behind pitches 21 and 26 is not looked out on and for the homes on pitches 21 to 26 it is screened by the boundary fence. In addition, it is not a path or right of way and only serves as an access to the rear of pitches 21 to 26 for maintenance of the fence.

39. Thirdly, it was considered whether an agreement could be reached between the parties as to how often the contractor might be required to cut back the vegetation to the rear of pitches 21 to 26 to maintain and keep this area in a clean and tidy condition taking into account its position on the Site and as compared with the verges and green.

40. The Tribunal found at its inspection that the area, for which the Site Owner is responsible behind pitches 21 and 26, to be clean in that there was no litter or debris but due to the length of grass and the presence of some weeds it could not be reasonably described as tidy. The area behind pitches 25 and 26 was

more overgrown, admittedly exacerbated by the creeper growing over the fence from the pitches.

41. The Tribunal expressed the view that an additional cut should have been made after August and that either the Home Owners of pitches 25 and 26 should be required to cut back the plants growing over the fence or the Site Owner's contractor would be entitled to cut them back to the fence as they were outside the pitch.

42. The Respondent's Solicitor suggested that an adjournment might be given during which the parties might agree a schedule of work to maintain and keep this area in an appropriately clean and tidy condition.

43. An adjournment was granted and the parties reached an agreement which is adopted in its Decision above.

Applications under Paragraph 13 of the 2013 Rules

44. The Applicant applied for costs under rule 13(1) of the Tribunals Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 and produced a schedule of the costs she said she had incurred.

45. She submitted that the Respondent had acted unreasonably and vexatiously with regard to the proceedings. She referred to the Previous Application which she said she had withdrawn because the Respondent seemed to acknowledge responsibility for maintaining the area at the rear of pitches 23 to 26 in a "neat and tidy condition" and that the gardener would be instructed to henceforth add the land in question to his schedule of work.

46. Subsequently the Respondent made it clear that it was not their intention to maintain that part of the Site as frequently as the other green areas and that the gardener would not be cutting this area every visit, just as and when required. The Applicant submitted this was unreasonable as it only took the contractor 10 minutes to mow the area.

47. The Applicant submitted that the issue was further confused when in a letter from the Respondent's Solicitor it was said that it was the gardener's responsibility to "build the necessary maintenance of this area into his work" and "if once we are into next Spring's growing season, you consider the maintenance is becoming an issue or if you would like access to the area, please in the first instance contact our client's administration manager". She felt the onus should not be on her to monitor the area and that it should be maintained in the same way as the other areas of the site.

48. She said it was important for her that the area should be maintained in a clean and tidy condition as she had arthritis which often made walking difficult without the additional problem of having to navigate the uneven ground and overgrown grass and nettles should she need to inspect her fence. She added that she felt the mention of the fire risk was intended to worry her. Particularly since no mention of such risk had been made to her neighbours whose had vegetation growing over their fences while she did not.

49. The Respondent's Solicitor said that the starting point for these proceedings was the 2nd October 2017 and therefore the conduct of the Respondent prior to that date could not be taken into account. In any event with regard to the Previous proceedings the Respondent had reimbursed the Applicant the Application Fee and had added the area to the rear of pitches 23 to 26 to the gardener's schedule of work. None of the points raised by the Applicant relate to these proceedings and no allegation of unreasonableness has been made in respect of these proceedings.

50. The Applicant also made an application for reimbursement of the application and hearing fees under rule 13(2). She said that the present application could have been avoided if the Respondent had added the maintenance of the land to the rear of 23 to 26 to the contractor's schedule. After the initial visit it would only have taken 10 minutes if done each time the gardener visited. In addition, she iterated her point that she felt she had been misled by the statements of the Respondent when it said the area of land would be incorporated into the contractor's schedule of work. The work was only done when necessary in the opinion of the Respondent and not at every visit as was implied in the Agreement entered into at the time. This had precipitated the Application.

51. The Respondent's Solicitor said that after the Previous Application the Respondent had accepted responsibility for the maintenance of the area to the rear of pitches 23 to 26 and had cleared the vegetation in July and August. He referred the Tribunal to the photograph Exhibit CL2 in the Bundle which had been taken in the early Autumn and shows that part of the Site cleared. Therefore, the Respondent is not in breach of paragraph 22(d) of the Agreement and the Application is unnecessary or least pre-emptive.

52. Following the hearing the Tribunal considered the representations of the parties with regard to the application under Rule 13 of the Tribunals Procedure (First Tier Tribunal) (Property Chamber) Rules 2013.

53. The Tribunal has a 'no costs' jurisdiction. This means that the general principle is that each party pays its own costs and the Tribunal cannot make an order for one party to pay the costs of another irrespective of whether a determination is made in favour of either party. The exception to this is under Rule 13(1) *"if a person has acted unreasonably in bringing, defending or conducting proceedings*."

54. The Tribunal applied the three-stage test in *Willow Court Management Company (1985) Limited v Mrs Ratna Alexander; Ms Shelley Sinclair v 231 Sussex Gardens Right to Manage Limited; Mr Raymond Henry Stone v 54 Hogarth Road, London SW5 Management Limited* [2016] UKUT 290 (LC), LRX/90/2015, LRX/99/2015, LRX/88/2015 considering:
    (i) Whether the Applicant had acted unreasonably in defending the proceedings, applying an objective standard;
    (ii) If unreasonable conduct is found, whether an order for costs should be made or not;
    (iii) If so, what should the terms of the order be?

55. The Tribunal also took into account the meaning of "unreasonable" in *Ridehalgh v Horsefield* [1994] Ch. 205 which dealt with a wasted costs order, the principles of which we consider apply in this case:

> *"Unreasonable" means what it has been understood to mean in this context for at least half a century. The expression aptly describes conduct which is vexatious, designed to harass the other side rather than advance the resolution of the case, and it makes no difference that the conduct is the product of excessive zeal and not improper motive. But conduct cannot be described as unreasonable simply because it leads in the event to an unsuccessful result or because other more cautious legal representatives would have acted differently. The acid test is whether the conduct permits of a reasonable explanation. If so, the course adopted may be regarded as optimistic and as reflecting on a practitioner's judgement, but it is not unreasonable.*

56. In considering whether there had been unreasonable conduct the Tribunal considered whether the Respondent had acted unreasonably in defending or conducting the proceedings. None of the points raised by the Applicant related to these proceedings and no allegation of unreasonableness has been made in respect of these proceedings. The Tribunal found there to be no evidence that the Respondent had acted unreasonably and therefore makes no order under paragraph 13 in respect of costs.

57. The Tribunal then considered the application for the reimbursement of fees and referred to *Cannon & Another v 38 Lambs Conduit LLP* [2016] UKUT 371 (LC) which held that such reimbursement was not subject to the unreasonableness of a party.

58. The Tribunal accepted that arrangements for the maintenance of the area to the rear of pitches 23 to 26 lacked clarity in its implementation following the Previous Application. The Applicant and the Respondent had differing perceptions of what was clean and tidy in respect of this particular part of the Site.

59. There were issues for both parties which have hopefully been settled by these proceedings and therefore the Tribunal was of the opinion that the Fees should be shared equally. The Applicant having already paid, the Tribunal makes an order with regard to the share to be paid by the Respondent.

60. Therefore, the Tribunal determines that the Fees should be shared and in accordance with Rule 13(2) order the Respondent to reimburse the Applicant £150.00 (£50.00 towards the Application Fee and £100.00 towards the Hearing Fee).

Judge JR Morris

Annex – Right of Appeal

1. 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.

2. 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.

3. 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.

4. 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.