



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

Case Reference : **CAM/33UD/PHC/2017/0008**

Property : 108 Blue Sky Close, Bradwell, Great Yarmouth NR31 9ED

Applicant : Timewell Properties Ltd t/a Blue Sky Leisure

Representative : Jane Hodgson, counsel, instructed by Tozers

Respondent : Ms Deirdre Downing

Representative : in person

Type of Application : for determination of any question arising under the Mobile Homes Act 1983 or agreement to which it relates [MHA 1983, s.4]

Tribunal Members : G K Sinclair & G F Smith MRICS FAAV REV

Date and venue of Hearing : Wednesday 11th October 2017 at Comfort Hotel, Great Yarmouth

Date of Decision : 18th October 2017

DECISION

1. For the reasons which follow the tribunal determines that the respondent is in breach of :
 - a. Express term 3(e) – by failing to keep the mobile home in a sound state of repair and condition and to keep the exterior thereof clean and tidy
 - b. Express term 3(f) – by failing to keep the pitch and all fences sheds outbuildings and gardens thereon in a neat and tidy condition
 - c. Express term 3(j) – by failing to comply with park rules, namely rule 33, by not maintaining the outside of her park home in a clean and tidy condition, and when repainting the exterior by failing to use reasonable endeavours not to depart from the original exterior colour scheme.
2. Pursuant to rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 the tribunal also orders that the respondent reimburse the application fee (but not the hearing fee) paid by the applicant.

Introduction

2. This case concerns some quite straightforward allegations that Ms Downing as the owner of a mobile home and occupier of pitch 108 :
 - a. Has let the pitch become overgrown, especially bushes encroaching on to the site roadway
 - b. Has let the condition of her home, a shed and small summerhouse fall into disrepair, and
 - c. Has, in a poor attempt at repainting the exterior of the mobile home, not complied with the original exterior painting scheme; with one wall being a stronger shade of green than the others, with the paint poorly applied, in breach not only of her site agreement but also of the park rules, as currently in force.
3. Notice of breach was served upon her by letter dated 15th March 2017. Save for providing to the tribunal days before the hearing a 3-page handwritten letter accompanied by a short letter/medical report from her general practitioner Ms Downing had not complied with the tribunal's directions for filing of statements of case, etc. She did however attend the hearing which had been requested by the applicant. The question put before the tribunal is whether the respondent is in breach of the above-mentioned terms in her written statement

Legal background

4. The applicant is the relevant site owner of Blue Sky Close, Market Road, Bradwell, Great Yarmouth NR31 9JF, a protected site within the meaning of the Mobile Homes Act 1983 (as amended). The respondent has since 12th September 1992 been the lawful owner by assignment of a mobile home with the benefit of rights under that Act to occupy pitch 108 on the site.
5. Section 1 of the Act sets out some fundamental provisions :
 - (1) This Act applies to any agreement under which a person ("the occupier") is entitled –
 - (a) to station a mobile home on land forming part of a protected site; and
 - (b) to occupy the mobile home as his only or main residence.
 - (2) Before making an agreement to which this Act applies, the owner of the protected site ("the owner") shall give to the proposed occupier under the

agreement a written statement which –

- (a) specifies the names and addresses of the parties;
- (b) includes particulars of the land on which the proposed occupier is to be entitled to station the mobile home that are sufficient to identify that land;
- (c) sets out the express terms to be contained in the agreement (including any site rules (see section 2C));
- (d) sets out the terms to be implied by section 2(1) below; and
- (e) complies with such other requirements as may be prescribed by regulations made by the appropriate national authority.

6. Section 2C, as introduced by the Mobile Homes Act 2013, provides that :
- (1) In the case of a protected site in England (other than a gypsy and traveller site) for which there are site rules, each of the rules is to be an express term of each agreement to which this Act applies that relates to a pitch on the site (including an agreement made before commencement or one made before the making of the rules).
 - (2) The “site rules” for a protected site are rules made by the owner in accordance with such procedure as may be prescribed which relate to –
 - (a) the management and conduct of the site, or
 - (b) such other matters as may be prescribed.
 - (3) Any rules made by the owner before commencement which relate to a matter mentioned in subsection (2) cease to have effect at the end of such period beginning with commencement as may be prescribed.

The reference to “commencement” is to the commencement of the 2013 Act.

7. In relation to a protected site in England section 4(1) of the Act, as amended, confers jurisdiction on this tribunal :
- 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).

The written statement

8. Part IV of the written statement sets out various express terms. The applicant relies upon the following undertakings by the occupier in clause 3, which can be found at pages 14 & 15 in the bundle :
- 3(e) To keep the mobile home in a sound state of repair and condition and to keep the exterior thereof clean and tidy PROVIDED ALWAYS that if the occupier fails to comply with the terms of this clause then the owner may give 28 days notice in writing requiring the occupier to comply with such terms and if the occupier has not taken all reasonable steps to comply with this clause within such period then upon the expiry thereof the owner may enter upon the pitch and carry out such work as may be necessary and the costs of such work shall be payable by the occupier forthwith
 - 3(f) To keep the pitch and all fences sheds outbuildings and gardens thereon in a neat and tidy condition PROVIDED ALWAYS that if the occupier fails to comply with the terms of this clause then the owner may give 28 days

notice in writing requiring the occupier to comply with such terms and if the occupier has not taken all reasonable steps to comply with this clause within such period then upon the expiry thereof the owner may enter upon the pitch and carry out such work as may be necessary and the costs of such work shall be payable by the occupier forthwith

3(j) To comply with the park rules from time to time in force a copy of the current park rules being annexed hereto.

9. The current park rule 33, at page 28 in the bundle, reads :
Homeowners must maintain the outside of their park home in a clean and tidy condition. Where the exterior is repainted or recovered homeowners must use reasonable endeavours not to depart from the original exterior colour scheme.

Inspection and hearing

10. The tribunal inspected the pitch briefly in the presence of the applicant's director and counsel. At the time the weather was dry. Although present within her mobile home and acknowledging the tribunal's arrival Ms Dowding chose not to come outside or otherwise participate in the inspection.
11. As appears from the photographs in the hearing bundle, the northern side wall of the home is painted a stronger green than the other three, which are a very pale grey-green. Further, coverage was not uniform, with lighter patches both within the repainted area and towards the top and western edges. Three used paint pots were left on the ground below. On the southern side wall of the home the skirting was partially detached, allowing rainwater to drip down the wall and then the inside of the skirting, which the tribunal presumes is of painted plywood construction. At the hearing the applicant suggested that there were also some soft patches in the side wall of the home. It is unfortunate that no attempt was made at the inspection to draw these to the tribunal's attention. The same can be said of complaints later made about some boundary fence panels, about which the photographs were equivocal.
12. To the rear of the pitch were a shed, in the southeastern corner, and a small summerhouse in the northeastern. The ridge of the summerhouse roof was broken backed, leaving the structure exposed to the elements. The shed was also in poor order. While the shed might be capable of repair the summerhouse seemed beyond that.
13. So far as the garden was concerned the grass had not been cut recently, with large clumps visible. A number of large shrubs on the eastern, road side of the home had very obviously been cut back recently. These included two large shrubs on either side of the entrance path – a feature not visible in the photos which showed these shrubs obscuring the path and also spilling out over the site roadway. On some other pitches similar-sized shrubs were visible, even in front of homes, but they appeared to be features in rather better maintained gardens.
14. At the hearing the tribunal had before it a small 103 page bundle comprising the application, written statement, tribunal directions, applicant's statement of case and witness statement, various photographs and some correspondence. In

addition the respondent sent the tribunal a handwritten letter dated 5th October 2017 plus a GP's short report explaining the injuries she sustained in a road accident in Egypt in August 2016 and the difficulties she experienced during her recovery. The handwritten letter explained that she had managed to get someone to assist her with gardening over the summer but concentrated rather more on her inability to obtain help. It seemed more a plea in mitigation than a defence.

15. At the hearing her observations added little.

Findings

16. The tribunal is satisfied, from the evidence produced by the applicant site owner (in particular the various sets of photographs) and from its own inspection that the external condition of the mobile home is poor, and that Ms Dowding's efforts at painting the exterior until, as she said, she ran out of paint were unsatisfactory. Her attempts to obtain the services of tradesmen seemed half-hearted at best, with those approached seemingly unreliable. The tribunal mentioned to her the "trusted trader" scheme managed by many local authorities through the trading standards department, whereby those able to satisfy minimum requirements and able to supply recommendations from customers are recorded on a list. She was completely unaware of this scheme, complaining that some she had approached had wanted £100 to trim a single bush.
17. The shed is in poor condition, and the summerhouse is little more than firewood. The tribunal is satisfied that the trimming of the large bushes encroaching on the roadway in front was in fact carried out, at its own expense, by members of the applicant site owner's own staff. Gardening tasks seem to have been carried out on several occasions in the past by the site staff, yet under the express terms it was perfectly possible for the site owner to step in after giving 28 days notice and charge the respondent for so doing.
18. This is one unusual feature of this case. The site owner had a contractual remedy but chose not to use it. Another aspect is the lack of direct evidence of complaints by other pitch occupiers. There may have been, but none were adduced in evidence. So too, the tribunal is not satisfied that the ownership and/or responsibility for repair and maintenance of the particular fences complained about is at all clear, or was drawn to pitch occupiers' attention. Damage to such fences was not pointed out to the tribunal on site, nor is it at all clear from the photographs. The tribunal declines to find that there is any breach with regard to fences.
19. The tribunal takes note of the serious injuries sustained by Ms Dowding while on holiday last year, but this problem predates such events by many years. Evidence was given of complaints by the site owner as far back as 2010. The tribunal is not asked to make findings about such historic complaints, but the tribunal is more than satisfied that the respondent is in breach of the express terms of her written agreement and she has failed to take adequate steps to engage adequate external assistance to restore both her home and the pitch to the required condition.
20. The applicant invites the tribunal to make an order in the form appearing at page 31a in the bundle, requiring Ms Downing to tidy up the garden including repair of the fence and shed, to cut back overgrown grass and other vegetation, and to

carry out works to the exterior of the home so that it is brought up to a reasonable state of repair and decoration – and all this within two months.

21. The tribunal's task is to determine any question under the agreement. It has done so by finding the respondent to be in breach. The next step is in the hands of the site owner. The breaches found proved are eminently remediable with some prompt action on Ms Downing's part, and she should note the timescale that the applicant has in mind before it considers approaching the court with a view to it terminating her licence. To adopt a phrase currently popular in political circles, the ball is in her court. A judge is unlikely to terminate her licence if the work has been wholly, or perhaps even mostly, completed.
22. On the subject of reimbursement of fees the tribunal is satisfied that had Ms Downing responded to repeated correspondence and offers by the site owner to put her in touch with a gardener then these proceedings would not have been necessary. She must reimburse the application fee. However, the tribunal is of the view that little if anything was learnt at the hearing that could not have been grasped from reading the papers and studying the photos, or even by the tribunal inspecting and then reviewing the file. The applicant insisted upon having a hearing. The tribunal sees no reason why the respondent should have to pay for this.

Dated 18th October 2017

Graham Sinclair

Graham Sinclair
Tribunal Judge