



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

Case Reference : **BIR/00CQ/PHC/2021/0001**

Property : **67 New Green Park, Wyken Croft
Coventry, CV2 1HS**

Applicant : **Tingdene Estates Limited**

Respondent : **Mrs L Burgham**

Type of Application : **Application under section 4 of the
Mobile Homes Act 1983 for a
determination of any question arising
under the Act or agreement to which it
applies**

Tribunal Members : **Judge M K Gandham
Mrs S Hopkins FRICS**

**Date and venue of
Hearing** : **Paper Determination**

Date of Decision : **23 August 2021**

DECISION

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Decision

1. The Tribunal determines that in erecting the Fence the Respondent has neither contravened the conditions on the Site Licence for New Green Park nor has she breached the Park Rules.

Reasons for Decision

Introduction

2. By an Application received by the Tribunal on 13 April 2021, Mr Chris Gibbard, a director of Tingdene Estates Limited ('the Applicant'), applied to the First-tier Tribunal, Property Chamber under section 4 of the Mobile Homes Act 1983 (as amended) ('the Act') for an order to require Mrs Lorraine Burgham ('the Respondent') to lower the size of a fence she had erected at 67 New Green Park, Wyken Croft ('the Property'). The Applicant also requested an order for costs.
3. The Applicant is the site owner of New Green Park, Wyken Croft, Coventry ('the Site'). The Respondent is the assignee and occupier of the Property, by way of an assignment dated 29 August 2014.
4. Upon receipt of the Application under section 4 of the Act, the Tribunal issued a directions order dated 14 April 2021 and, in accordance with that order, a Statement of Case and bundle of documents were received from the Applicant and a Statement in Reply was received from the Respondent. Following receipt of the documentation, the Tribunal considered that an external inspection of the Property was required and a second directions order was issued on 14 June 2021 requesting further information and informing the parties of the proposed inspection.
5. As neither party requested an oral hearing, the Tribunal determined the matter in issue on the papers submitted.

The Law

6. The Mobile Homes Act 1983 provides at section 4:
 - (1) *In relation to a protected site in England [or in Wales], 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).

Inspection

7. The Property was inspected on 26 July 2021 in the presence of the Respondent and Mrs Fletcher, the site manager, who attended on behalf of the Applicant. The inspection was carried out by Judge Gandham alone in accordance with the Amended General Pilot Practice Direction – Contingency Arrangements. Both parties permitted the taking of photographs of the Property for use by the Tribunal in making its determination.
8. New Green Park is a residential mobile home situated off Wyken Croft, on the outskirts of Coventry. The entrance to the Site leads to two main site roads, one which leads to the northern section of the Site ('the northern site road') and the other which leads to the southern section of the Site. The Property is a corner plot located between the northern site road and a smaller road leading from it, fronting numbers 63 to 72 New Green Park.
9. The subject of the application was a six-foot-high, close board fence ('the Fence'), which runs along the boundary of the Property with the northern site road. The Fence ends just as the smaller road fronting the Property branches off the northern site road. The stumps of the conifer trees, which had sometime previously formed the boundary to the Property, are still visible along the inside boundary of the Fence and protrude slightly beyond where the last fence post is situated. The part of the Property adjoining the smaller road is open plan with a lowered kerb and parking area next to the Fence.
10. The Fence, being fairly new, was in good condition.

The Applicant's submissions

11. Mr Gibbard, on behalf of the Applicant confirmed that the Respondent had owned the Property since it was assigned to her on 29 August 2014. The Applicant provided a copy of the assignment together with the original written statement relating to the Property which commenced on 1 August 1988 ('the Written Statement').
12. Mr Gibbard confirmed that that the Property was subject to the Act, to a Site Licence dated 3 July 2012 ('the Site Licence') and to the Park Rules for New Green Park, which were issued on 4 October 2014 ('the Park Rules'). Copies of both the Site Licence and the Park Rules were provided.
13. Mr Gibbard stated that condition 3 of the Site Licence confirmed that fences between adjacent caravans should be a maximum of 1m in height. In addition, he stated that rule 2 of the Park Rules confirmed that fences should comply with the Site Licence conditions and that homeowners required the written approval of the Applicant for the installation of fences.

14. He stated that around late September/early October 2020, the Respondent installed a fence which was approximately 1.8m in height, in breach of the Site Licence, and that, in addition, she did not seek written approval of the Applicant. Mr Gibbard stated that, had the Applicant been advised of the proposed height of the fence prior to its erection, the Applicant would have informed the Respondent that, in its opinion, the proposed height would have breached the conditions of the Site Licence.
15. Mr Gibbard stated that the Applicant wrote to the Respondent a number of times to try to rectify the matter but were given a number of reasons as to why the Respondent was unable to rectify the breach, including the lockdown restrictions and lack of funds, this being despite the Respondent installing a new kitchen at the Property in March 2021. Mr Gibbard also stated that, during this correspondence, the Respondent had admitted that she was aware that the Fence was “*in breach*”. Mr Gibbard submitted that other occupiers had complained about the Fence and that the Applicant had received a petition signed by 11 occupiers. A copy of the correspondence and petition were appended to the Statement of Case.
16. Finally, Mr Gibbard stated that the Fence, by its very nature and location, was not within the keeping of the Site as it was site policy to keep front gardens open plan. He stated that, although he appreciated Mrs Burgham’s concern regarding the privacy of her bathroom (the window of which was located on the northern side of the Property), she could have installed curtains or blinds and that the installation of the Fence along the whole length of the Property was “*overkill*”.
17. Mr Gibbard confirmed that, despite writing to the Respondent and giving her several deadlines to rectify the breach, the Applicant had not heard from Respondent or any representative since 24 February 2021.
18. The various items of correspondence appended to the Applicant’s Statement of Case detailed that the Applicant had informed the Respondent that the Fence was in breach of the conditions in the Site Licence and Park Rules and that this would need to be corrected by her reducing the height of the Fence to 1m. In addition, a letter dated 5 October 2021 referred to the fact that the Fence appeared to extend into the front garden, although the letter noted that this was subjective as the Property was located on a corner plot.

The Respondent’s submissions

19. Mrs Burgham confirmed that when she first purchased the Property she had six-foot conifer bushes along her northern boundary. She stated that she had these removed and installed a four-foot fence alongside where the conifers had been, the roots of which could still be seen in the garden.
20. She stated that it was only when she began to have trouble with her neighbour, regarding privacy in relation to her bathroom window (which faced towards the northern site road), that she decided to erect a high

fence on that boundary. She stated that she left a telephone message for the Applicant informing the Applicant of her intentions but confirmed that, when she did not hear back from the Applicant, she presumed that she was able to change the fence.

21. Mrs Burgham stated that other occupiers on the Site did have fences or green borders that were six-foot high, and pointed to the fence of her rear neighbour whose six-foot rear fence adjoined the Fence. She provided photographs of the same. Mrs Burgham further stated that the Fence formed her side border and did not extend into her front garden.
22. She provided a plan on which she indicated that the six-foot fence was erected in the same position as where the previous four-foot fence had been.

The Tribunal's Deliberations

23. The Tribunal considered all the evidence submitted and briefly summarised above.
24. In relation to the Site Licence, the Tribunal noted that the only condition relating to fences was in a sub-paragraph of condition 3, which stated as follows:

“Fences and hedges forming the boundary between adjacent caravans, should be a maximum of 1 metre high.”

25. The Tribunal noted that the Fence was not a fence forming a boundary between adjacent caravans, rather it was a fence forming a boundary between the Property and a site road. As such, the Tribunal considered that the paragraph in condition 3 of the Site Licence was irrelevant to the matter in dispute and that the erection of the Fence did not breach any of the conditions in the Site Licence.
26. With regard to the Park Rules, the Tribunal noted that condition 2 of the rules stated as follows:

“Fences or other means of enclosure are not allowed unless they comply with the current Site Licence conditions that were applicable on the date of installation and homeowners also have the approval in writing from the park owner (which will not be unreasonably withheld or delayed). No fences are permitted in the front gardens.”

27. As previously stated, the Tribunal was satisfied that the Fence did not breach any of the Site Licence conditions. The Tribunal did find that, based on the evidence, the Respondent had not obtained any written consent for the erection of the Fence, however, it noted that the Respondent had erected the Fence to replace the existing four-foot fence.

28. The Tribunal noted that, in their letter of 5 October 2020, the Applicant had stated to the Respondent that the previous fence was of the correct height but that by replacing it with a six-foot fence it was in breach of the Site Licence conditions. Although this was clearly incorrect, as the Fence was not in breach of the Site Licence conditions, the letter did clarify that the Applicant was aware of the previous fence.
29. The Tribunal also noted that, although the Park Rules require approval for the installation of fences, neither they nor the Written Statement detail any restrictions regarding the height of any fences.
30. As the Fence was erected in the same position as the previous fence, and with there being no restrictions as to the height of fences in either the Park Rules or the Written Agreement, the Tribunal considers the erection of the Fence (albeit higher) was a replacement of an existing fence and, as such, does not consider that it would have required the written approval of the Applicant under the Park Rules.
31. With regard to whether the Fence extends into the front garden, the Tribunal agrees with the Applicant's comments in their letter of 5 October 2020, that this question is subjective, the Property being located on a corner plot.
32. The Tribunal noted that the Fence ended on the corner of the northern site road and did not protrude into any part of the smaller road which the Property fronted.
33. In addition, there was no evidence to indicate that the Fence was any longer or protruded any further to the front of the plot than the previous fence. Considering the position of the stumps of the conifers (which predated either fence), the last tree stump protruded further forward than the last fence post, so presumably the Fence was, in fact, shorter in length than the original conifer boundary had been. The Tribunal noted that there was no evidence to suggest that any objections had been made with regard to the siting of the previous fence or conifers and, as such, the Tribunal considered that the Applicant had accepted that these were located on the side boundary and not in the front garden.
34. Accordingly, the Tribunal considers that the Respondent did not breach any of the Park Rules, as the Tribunal does not consider that the replacement of a fence requires the written approval of the Applicant and the Tribunal finds that the Fence is sited along the side boundary of the Property and not in the front garden.
35. As the Tribunal determines that the Respondent is neither in breach of the Site Licence nor the Park Rules, the Applicant's application for costs are dismissed.

Appeal

36. If either party is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties (rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

M. K. GANDHAM

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Judge M. K. Gandham