FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference:	CHI/24UC/PHH/2020/0001
Premises:	36 Redhouse Mobile Home Park, Hogmoor Road, Whitehill, Bordon, Hampshire GU35 9HP
Applicant:	Mr David Blake
Representative:	Ms T Kumala
Respondent:	Royale Bordon Parks Limited
Representative:	Mr B Channer of counsel for Pinder Reaux Solicitors
Type of Application:	Mobile Homes Act 1983, Section 4– Determination of Questions arising under the Act or Agreement to which it applies Paragraph 10(2) of Chapter 2 Part 1 Schedule 1 Application for Temporarily Re-sited Home to be Returned to Original Pitch
Tribunal Members:	Judge A Cresswell Ms C Barton BSc MRICS
Date and venue of Hearing:	17 February 2021 by Video
Date of Decision:	22 February 2021

DECISION

The Application

1. On 10 November 2020, the Applicant pitch occupier made an application to the Tribunal for a temporarily re-sited home to be returned to its original pitch.

Summary Decision

2. The Tribunal has determined that the application be dismissed. The Respondent's application for costs is also dismissed.

Directions

3. Directions were initially issued on 11 December 2020.

4. The Tribunal directed that the parties should submit specified documentation to the Tribunal for consideration.

5. This determination is made in the light of the documentation submitted in response to those directions and the evidence and submissions made by the parties at the hearing. The Tribunal heard evidence from Ms Kumala, the Applicant's daughter, and from the Applicant.

6. The parties confirmed at the end of the hearing that they had been able to say all that they wished to say to the Tribunal.

The Law

7. The law is contained primarily in the Mobile Homes Act 1983.

8. Under Section 4, a Tribunal has jurisdiction to determine any question arising under the Act or any agreement to which it applies.

9. 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.

10. Under paragraph 10(2) of Chapter 2 Part 1 of Schedule 1, the occupier is entitled to require the owner to return the mobile home to the original pitch where the owner has required the re-siting of the mobile home on another pitch either on the order of a court or to carry out essential repair or emergency works.

11. The relevant law is set out below:

Mobile Homes Act 1983, as amended

Section 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.

Part 1 of Schedule 1

Chapter 2

Relating to Pitches . . . Except Pitches . . . on Local Authority Gypsy and Traveller Sites and County Council Gypsy and Traveller Sites

10(1) The owner shall be entitled to require that the occupier's right to station the mobile home is exercisable for any period in relation to another pitch forming part of the protected site ("the other pitch") if (and only if)—

(a) on the application of the owner, the [appropriate judicial body] is satisfied that the other pitch is broadly comparable to the occupier's original pitch and that it is reasonable for the mobile home to be stationed on the other pitch for that period; or

(b) the owner needs to carry out essential repair or emergency works that can only be carried out if the mobile home is moved to the other pitch for that period, and the other pitch is broadly comparable to the occupier's original pitch.

(2) If the owner requires the occupier to station the mobile home on the other pitch so that he can replace, or carry out repairs to, the base on which the mobile home is stationed, he must if the occupier so requires, or the [appropriate judicial body] on the application of the occupier so orders, secure that the mobile home is returned to the original pitch on the completion of the replacement or repairs.

(3) The owner shall pay all the costs and expenses incurred by the occupier in connection with his mobile home being moved to and from the other pitch.

(4) In this paragraph and in paragraph 13 below, "essential repair or emergency works" means—

(a) repairs to the base on which the mobile home is stationed;

(b) works or repairs needed to comply with any relevant legal requirements; or

(c) works or repairs in connection with restoration following flood, landslide or other natural disaster.

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."

12. 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 section231A(2)is concerned only with procedural matters. It is clear from section231A(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."

13. 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.

14. In **Wyldecrest Parks (Management) Ltd v Santer** *(2018) UKUT 0030 (LC),* the Upper *Tribunal suggested that the policy of the legislation was that most mobile homes disputes should be dealt with in tribunals rather than courts because of their greater expertise and accessibility and lower cost. The enhanced powers conferred by section 231A, Housing Act 2004 were consistent with that policy since they reduced the risk that proceedings to resolve disputes may be required to be commenced in more than one forum.*

"The language of section 4 of the 1983 Act is very broad, and the powers conferred by section 231A of the 2004 Act are extensive and expressed in general terms. It should therefore be taken that (with the exception of disputes over termination) the proper forum for the resolution of contractual disputes between park home owners and the owners of protected sites in England is the FTT."

The Agreed Background

15. The Tribunal here sets out matters agreed or not challenged.

16. Applicant was gifted his home by his daughter, Ms Kumala, on 1 February 2013.

17. The Applicant received notification, via a letter to his daughter of 27 April 2011, of the then site owner's intention to seek a court order under paragraph 10(2) of Chapter 2 Part 1 of Schedule 1 of the 1983 Act, requiring that his and other occupiers' mobile homes be re-sited on alternative pitches on the site.

18. The then site owner commenced proceedings in the County Court, which were settled between the then site owner and the Applicant by a Consent Order at Aldershot and Farnham County Court on 5 March 2013.

19. Essentially, the Consent Order was to the effect that the site owner would construct a new base and move onto that base a twin unit mobile home which was at that time stationed on another base (not the Applicant's then current mobile home or then current mobile home base).

20. Ownership of the twin unit mobile home was to be transferred to the Applicant at a cost of £1.

21. Ownership of the Applicant's current mobile home was to be transferred to the then site owner, again for £1.

22. The Applicant was, according to the terms of the Consent Order, to "*Move into the Replacement Home on Pitch E and thereafter occupy it as his only or main residence.*"

23. The Applicant moved into the twin unit mobile home on Pitch E on 11 June 2014.

24. The Applicant had, since his move to the new pitch and home, enquired each month of the previous park owner and representatives of that and the current owner, when he was to return to his original pitch. He wrote 3 letters to the Respondent in 2020 before receiving any form of response.

Paragraph 10(2) of Chapter 2 Part 1 of Schedule 1

The Applicant

25. The Applicant asserted that he was entitled to be returned to his previous pitch under paragraph 10(2).

The Respondent

26. The Respondent contended that paragraph 10(2) does not apply here.

The Tribunal

27. The Tribunal finds that paragraph 10(2) of Chapter 2 Part 1 of Schedule 1 of the 1983 Act is not applicable here.

28. The application does not meet the circumstances of paragraph 10(2)(a).

29. Whilst it is correct to say that the then site owner asked the County Court to make an order under the paragraph, no such order was ever made. Rather, the Applicant came to an agreement with the then site owner to sell his mobile home to the then site owner and to purchase a "new" mobile home on another base, which he was to treat as his only or main residence.

30. The Applicant's position was settled by his agreement to the Consent Order.

31. The application does not meet the circumstances of paragraph 10(2)(b). Whilst the Applicant may have moved to another comparable pitch to enable the owner to carry out essential repairs, his mobile home did not move there.

32. Paragraph 10(2) requires the site owner to secure that the mobile home is returned to the original pitch if the owner required the occupier to station the mobile home on the other pitch. However, here the mobile home was not moved to the other pitch but, rather, sold to the site owner and the Applicant is now requesting the site owner to move a different mobile home to the original pitch, a circumstance not included within the paragraph.

33. Further, the paragraph uses the word "period" to detail the time that the mobile home is to be re-sited; there is no mention in the paragraph of permanence. The agreement reached, however, by the Consent Order does involve permanence. Whilst the Tribunal agreed with Ms Kumala that building a shed and brick steps and a skirt at the new pitch pointed more towards compatibility with the original pitch than the permanence applied to those features by Mr Channer, the wording used in the Consent Order led the Tribunal to conclude that the agreement reached was one of permanence. The words used were: "*Move into the Replacement Home on Pitch E and thereafter occupy it as his only or main residence.*"

34. Those words run clearly, the Tribunal finds, counter to any assertion that this was to be a temporary state of affairs.

35. The Tribunal has considerable sympathy with the Applicant who laboured under the mistake that he would be moved back with his new home to his original pitch, particularly given the apparent reluctance by the Respondent and its predecessor to engage with him meaningfully as he raised the topic with them each month and then only responded after he had written 3 letters in 2020.

36. The simple fact remains, however, that the Applicant's situation does not come within the rule created by paragraph 10(2) and no amount of sympathy on the part of the Tribunal can properly lead to it concluding otherwise.

Costs

The Respondent

37. The Respondent wished the Tribunal to make an order for costs specifically in accordance with Rule 3(s)(i) of the Applicant's Written Statement under the Mobile Homes Act 1983.

The Applicant

38. The Applicant was against such an order being made.

The Tribunal

39. The Tribunal examined Rule 3(s)(i), which reads as follows:

To pay costs

to pay to the owner all costs…….properly and reasonably incurred by the Owner in relation to or incidental to:-

every application made by the Occupier for a consent or licence required by the provisions of this agreement whether such consent or licence is granted or refused or proffered subject to any lawful qualification or condition or whether the application is withdrawn;

40. The Tribunal invited Mr Channer to identify which consent or licence required by the provisions of the agreement were the subject of an application by the Applicant occupier. Mr Channer was unable to do so, but invited the Tribunal to consider the situation here as analogous to the Rule, which the Tribunal is unwilling to do. What is sauce for the goose is sauce for the gander; here was a party arguing that the Tribunal should stretch the wording of a Rule in its favour immediately after arguing that the wording of another Rule was the reason for refusing the Applicant's application.

41. It was clear to the Tribunal that the Respondent could not recover its costs under this Rule for the simple reason that the application made by the Applicant is not covered by the Rule.

42. The Respondent's case had indicated that its costs amounted to some £7,820. Mr Channer said that the Respondent may not seek a costs order under the Tribunal's jurisdiction in any event. It may be helpful for the Respondent to consider when making that decision the following. The Tribunal has great sympathy with the Applicant, who clearly felt the need to make his application after a considerable effort on his part to get straight answers from the Respondent and its predecessor. It can see how he might have been confused about his legal position.

43. The Respondent has argued against the Applicant's position by using the clear words of the Rule and then sought to argue its own case by asking the Tribunal to find a "work around" to the costs Rule.

44. The Respondent has engaged a solicitor and barrister to plead its case, where there were no real issues of complex law, but rather the requirement of the application of the circumstances to the clear law.

45. The Tribunal could also see no value added by a representative of the solicitor observing a hearing where no evidence was called by the Respondent.

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 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. Where possible you should send your application for permission to appeal by email to rpsouthern@justice.gov.uk as this will enable the First-tier Tribunal Regional Office to deal with it more efficiently.

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.