FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/24UJ/PHC/2021/0002
Property	**:**	64 Church Farm Close Park Dibden Southampton Hants SO45 5TF
Applicant	**:**	The Berkeley Leisure Group Limited
Representative	**:**	Mrs A Musson (Tozers Solicitors LLP)
Respondent	**:**	Mr Albert Allmark
Representative	**:**	Mr T Selley (Cross & Crosse Solicitors LLP)
Type of Application	**:**	Determination of question arising under Agreement: section 4 Mobile Homes Act 1983 (as amended) (the Act)
Tribunal Members	**:**	Judge C A Rai (Chairman) Mr M Woodrow MRICS (Chartered Surveyor) Mr T Sennett MA FCIEH
Date type and venue of Hearing	**:**	20 April 2021 CVP Hearing (Video Hearing)
Date of Decision	**:**	4 May 2021

DECISION

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1. The Tribunal finds that the Respondent is not in breach of his agreement by keeping two vehicles on the Park.

2. As the Tribunal has not found any breach, it is unnecessary for it to consider whether it has jurisdiction to make an order to remedy.

3. The reasons for its decision are set out below.

Background

4. The Berkeley Leisure Group Limited, applied to the Tribunal for a determination of a question under Section 4 of the Act. it is alleged that Albert Allmark, the Respondent, is in breach of his occupation Agreement. The Application was dated 28 January 2021. The Applicant also asked the Tribunal, if it found the Respondent is in breach of his agreement, to make an Order to remedy the breach.

5. The Tribunal issued two sets of Directions dated 8 February 2021 and 10 March 2021 respectively. In the earlier Directions Judge E Morrison directed that the Tribunal would hold an oral hearing because the parties disputed some of the facts. She referred the parties to Paragraph 4 of Schedule 5 of The Mobile Homes (Site Rules) Regulations 2014. She also stated that the Applicant would need to satisfy the Tribunal that it had jurisdiction to make such an order [Page 131, paragraph 3].

6. This Hearing was a remote hearing which was consented to by all parties. The form of hearing was **V** video fully remote. A face to face hearing was not practical as the hearing took place during a period of Government "lock down" during the Covid-19 pandemic. The documents that the Tribunal was referred were contained in a single agreed Hearing Bundle comprising 214 pages. In this decision references to pages in that bundle are shown within square brackets. One of the witnesses, Mrs Julie Lloyd, Operations Manager for the Applicant was unable to join by video link and attended the Hearing by using a telephone link.

The Hearing

7. Church Farm Close Park is located within the New Forest. It is one of many Park Home sites owned by the Applicant and this site comprises 81 Park Homes.

8. The dispute which has given rise to these proceedings is about the Respondent's rights to park vehicles within the Park under his occupation agreement which permits him to occupy the pitch on which his home, 64 Church Farm Close Park is located.

9. The Respondent purchased his home in 2006. His occupation agreement is dated 10 June 2006 [page 113]. That agreement, which is signed by the Respondent, contains various obligations including undertakings by the Respondent:-

    a. to comply with the Park Rules (Clause 3(i)) [page 120]; and
    b. that he, and those persons listed in the agreement, will occupy the Mobile Home from the date of the agreement; and
    c. that he will give notice of any change or addition to or reduction of any person occupying the home within seven days of such change (clause 8(12) [Page 122].

    The only occupant listed in the agreement is Mr A J F Allmark (the Respondent).

10. The parties agree that the only convenient available parking for visitors or residents of the Park is within it. Linda Polidano, the Respondent's partner, stated that there is no alternative off-site parking within one and half miles of the Park. [Page 110]. The Applicant did not challenge her statement.

11. The Park Rules referred to in the occupation agreement are in the Third Schedule of the agreement titled "Park Rules Retirement Parks" [page 127] on which it is stated that the rules form part of the agreement.

12. Rule 13 headed "Vehicle Parking" states "Vehicles must keep to authorised parking spaces and the Company is only obliged to provide one car parking space per household. Occupiers with more than one vehicle and visitors may be obliged to park their vehicle off the Park." (13(b)). "In certain circumstances, at the discretion of the Company and the Council, vehicles may be parked within the confines of the Occupier's plot in designated positions." (13(d)).

13. The penultimate sentence of Rule 17 states "The Park is intended for retired and semi-retired persons, and the Park owner will not normally accept persons under the age of 50 as residents".

14. The Mobile Homes Act 2013 (2013 Act) inserted a new clause 2C into the Act which required the deposit of new site rules for protected sites (including the Park). Following consultation between the occupiers of the Park and the Park Owners, new park rules were deposited with the local authority. The "New Rules" came into force on 30 October 2014 [page 17]. From that day the New Rules replaced the old rules which until then had been part of the occupation agreement. The New Rules state (amongst other things) that none of these rules is to have retrospective effect, that they only apply from 30 October 2014 and that "no occupier who is in occupation on that date will be treated as being in breach due to **circumstances which were in existence on that date** (Tribunal's emphasis) and which would not have been a breach of the rules in existence before that date." [Page 18].

15. It is common ground between the parties that one of the purposes of the 2013 Act was to remove any element of discretion on the part of a Park owner from the interpretation and application of park rules.

16. It was established by Mr Selley when he questioned Mrs Julie Lloyd, Operations Manager of the Applicant, that the draft rules used by the Applicant as a template for the New Rules are an industry standard set of rules which the Applicant amended to apply to the Park. A draft copy of these rules was circulated to occupiers as part of the required consultation with them, following which the rules were finalised and deposited with the local authority.

17. The Respondent's written statement confirmed that he was aware he had been consulted but that he made no comment about the New Rules to the Applicant and he confirmed this again when questioned by Mrs Musson during the Hearing.

18. The bundle included a single page document titled "Parking Spaces Available" prepared and signed by the Respondent dated 14 February 2021. The accuracy of that summary was not challenged by the Applicant prior to or during the Hearing.

19. Prior to signing his occupation agreement and purchasing his home in 2006, the Respondent met with Judith Higgins, the previous park manager during which meeting she completed a Park Interview Form [page 96]. The form was pre-printed with gaps which have been completed in manuscript, presumably by Mrs Higgins. The copy of that form in the bundle has been signed by the Respondent but not by Mrs Higgins and is undated [page 97].

20. The form does not contain a paragraph which either refers to or records the age of the prospective purchaser. Paragraph 12 states "CAR PARKING EXPLAIN PARK RULE 13(a) to (i)" under which "EXPLAINED" has been handwritten.

21. Mrs Higgins told the Tribunal that she would have sent the original form to the head office of the Applicant, although when questioned, she admitted she did not remember the meeting with the Respondent. The bundle contains a copy of a typed memorandum dated 27 May 2006 sending the form to Paul Tarr, signed "Judy" [page 95].

22. The Respondent has stated that he raised two issues with Mrs Higgins when he met her, which were "important to him". Firstly, he said he had asked about additional parking and secondly, he disclosed that he was 46 years of age (under 50). Neither of these facts are recorded on the Park Interview Form.

23. The Respondent said he had been told by Mrs Higgins that there would be "no problem" with his parking a second car on the Park. He understood he would not be allocated a specific space. He confirmed that in fact he had never had a second vehicle associated with his home on a permanent basis but because he had been told it was "not a problem", he had assumed that when the New Rules came into force, Rule 21 of the New Rules which states "Parking is only permitted for one vehicle per park home" did not apply to him because he relied upon having been told that parking a second car within the Park would "not be a problem". For that reason, he said he had not questioned the introduction of the new Rule 21 in reliance on the statement that none of the New Rules would have retrospective effect.

24. The Respondent does not claim that he ever parked or needed to park a second vehicle prior to the deposit of the New Rules. What he claimed is that the concession, either negotiated, promised or granted prior to his signing his occupation agreement, was a circumstance which gave him a continuing benefit which was not removed or overridden by the New Rules. This interpretation is disputed by the Applicant. Furthermore, the Applicant denies that any discussion about parking or the Respondent's age ever took place between Mrs Higgins and the Respondent. Mrs Musson suggested to the Tribunal

that the Respondent had made up his own version of what he now claimed had been discussed and "agreed" with Mrs Higgins.

25. Mr Selley disputed the Applicant's submissions. In so doing he relied upon the witness statements of two other occupiers, Mr Stewart who was unable to give oral evidence at the Hearing and Mr Jarvis who did.

26. Mr Selley suggested that if three occupiers have provided written statements suggesting that the Applicant had agreed to disregard the Park Rules about age in respect of all of them and parking in the cases of Mr Jarvis and the Respondent, it was unlikely that any reliance could be placed upon the suggestion put forward by Mrs Musson. He said that the Tribunal should prefer the Respondent's recollection of what was agreed regarding the Respondent being given a right to park a second vehicle in the Park. He suggested that the fact that three residents had each separately and independently recalled similar discussions with the Applicant was a record of something more than coincidental recollections.

27. At the Hearing Mrs Higgins admitted that she could not remember the meeting with the Respondent. She said that she had attended many similar meetings and it had taken place a considerable time ago. However, she said that she could not have promised the Respondent any relaxation or compromise of the Park Rules. She would have had to refer any proposed requirements or concessions about parking or age to Head Office. The Applicant has no written record that questions about either issue were raised before the Respondent moved on to the Park.

28. In response to questions from the Tribunal, Mrs Lloyd suggested that although the archived records at Head Office contained some files from which she had retrieved a copy of the Interview Form and memorandum relating to the Respondent's interview, its records may not be complete. Historical files or records are not retained in the Park office.

29. According to the Respondent, his partner Mrs Linda Polidano moved permanently on to the Park in 2018. Until then she had visited intermittently and during those visits had parked her car on the Park.

30. The Respondent has stated that he verbally notified the park managers that Mrs Polidano would be living on the Park permanently and that he also consulted them about where she should park her car. Until then she had parked in the visitor spaces. This was disputed by the Park Manager Mrs Hull. Both she and Mrs Lloyd stated that they had not received any notification from the Respondent that Mrs Polidano had permanently moved on to the Park.

31. There is no dispute that Mrs Polidano parked within the available visitor spaces whenever she visited the Respondent before she moved on to the Park.

32. Sometime after she became a permanent resident, a written complaint was received by the site office. Mr and Mrs Hull are the Park managers but the Tribunal were told that Mrs Hull deals with the paperwork and office matters. She confirmed that she had received the complaint letter.

33. The Respondent claimed that she had shown him the letter which was from a relatively new resident. Mrs Hull denied that she had shown him the letter.

34. The date of the "complaint letter" has not been disclosed by the Applicant. David Curzon, Managing Director of the Applicant, sent a letter dated 9 January 2020 to the Respondent which stated that "Concerns have been raised by other homeowners on the park that you may have two vehicles associated with your home as there is a fairly permanent guest staying with you. We would like to clarify that we have no objection to guests and their vehicles parking on the park, but we do need to clarify that this could only be a temporary arrangement and longer term we will only be able to permit one vehicle per home" [Page 23].

35. Following receipt of that letter the Respondent must have spoken to Mr Curzon on the telephone since he refers to a conversation between them in his subsequent letter to the Respondent dated 15 January 2020 which addressed the fact that some other residents were also parking two cars within the Park.

36. A third letter dated 8 July 2020 sent by Mr Curzon to the Respondent, was more formal and stated that he understood that the Respondent still had two vehicles at the Park. It gave him 28 days-notice to remove the second vehicle.

37. Subsequently Mrs Lloyd sent the Respondent formal notice of breach of the occupation agreement dated 18 August 2020 by "signed for" post which stated that to remedy the breach "Alternative parking arrangement are sought off the Park for the second vehicle associated with your home". The Applicant required that the Respondent remedy the breach within a reasonable time and suggested that this should be by 1 September 2020.

38. The Respondent spoke to Mrs Lloyd by telephone on 19 August 2020 and subsequently emailed her on 21 August 2020 requesting a meeting. He said that he had been seeking legal advice and requested other information too.

39. Mrs Lloyd replied to the Respondent by letter dated 4 September 2020 and met with him on the Park on 6 October 2020 to discuss the complaint and the Applicants requirement that he should remove the second car associated with his household from the Park.

40. The dispute between the parties remained unresolved and Mrs Lloyd sent the Respondent another letter dated 8 December 2020 which she stated was a further notice of breach of the Park Rules. She asked that he find alternative parking off the Park for one of the two vehicles associated with his home by 5 January 2021. She also stated that if he did not remedy the breach the Applicant would make an application to the First-Tier Tribunal for a declaration that he was in breach of his agreement and for an order that he must remedy the breach [pages 40-41].

41. Mrs Lloyd's oral evidence relating to discussions about age and parking was consistent with her written statement. She said that "the Applicant had no record of the Respondent's request for permission to park two vehicles or for either of the other points. The Applicant therefore takes the view that the questions were not raised" [Page 46]. (The other points were age and a suggestion made by the Respondent at the time that his son may wish to live with him on the Park).

42. The Tribunal heard evidence from the current joint Park managers, Mr and Mrs Hull. They both confirmed what was recorded in their written statements and disputed the same parts of the Respondent's witness statement.

43. In particular, they both deny that the Respondent informed them that Linda Polidano had moved on to the Park permanently or that they had suggested where she might park her car. Both stated that they had asked the Respondent to remove the second vehicle from the Park, which he failed to do. Mrs Hull disputed that she had shown the Respondent the complaint letter. Later during the Hearing, she answered questions from Mr Selley about the letter having at his request, retrieved a copy of it from the office.

44. Mr Colin Jarvis is the occupier of 14 Church Farm Close Park. He supplied a witness statement which was in the bundle. He told the Tribunal that all parking spaces within the main carpark are numbered although the numbers are very faint. He said that when he moved on to the Park during the late summer of 2010, he kept a second vehicle and was given verbal consent to retain it although he replaced it with a smaller vehicle which was sold in April of the following year. He stated that he told the Park Manager at that time (Mrs Higgins) that he had two cars and was advised it would not "be a barrier to the purchase of the property". He reiterated the fact regarding two vehicles before signing and paying for his home. He said he had been "verbally assured that this posed no problem" and he completed the purchase in good faith. He said he was "instructed to park the second vehicle in any vacant visitor space of which there were, and still are, ample surplus spaces. The arrangement continued until the then Manager retired…."

45. He said that the current manager, Mr Hull, allowed the arrangement to continue until repeated complaints were made by a former resident at which time, he said, he had "realised that the situation was becoming untenable for both parties to the arrangement" and thereafter he sold the vehicle [page 108].

46. Mr Jarvis suggested that his statement might assist the Tribunal "in highlighting the pitfalls, hazards and anomalies encountered with the unofficial verbal crossover of permissions involved with this type of written contract, which may possibly be allowed by the local management to facilitate a Sale/Purchase of a Park Home, so as to enable the Site Owner to garner their ten percent transaction commission."

47. Linda Polidano, in her written statement, stated that she moved on to the Park at the end of November 2018 when she said "the Site Managers were informed verbally that I would be doing so. We made it official also informing the local council and such like". She said she had a conversation with the site managers during which she had said she was seeking employment and asked that they let her know if they should hear of anything suitable. Later in the statement she said that the on site manages told her to ignore the letter from the Applicant regarding the resident's complaint about the second car and to park her car in one of the visitor spaces.

48. Paragraph 8 of her statement stated that "in the coming months the letters became more threatening from Berkeley Parks stating in effect if we did not comply they would take us to court which could in effect terminate my partners agreement hence eviction from his home".

49. The facts upon which the parties do not agree and which they, dispute are:-
    a. Whether the Respondent asked for permission to keep a second car on the Park before he signed the occupation agreement and whether any promises were made by the Applicant which induced him to buy his home.
    b. Whether, before his purchase, his age was ever discussed.
    c. Whether the Applicant or its Park Managers received formal notification that Mrs Polidano had moved on to the Park permanently from November 2018.
    d. Whether the Applicant or its Park Managers made any arrangements or accommodation for parking Mrs Polidano's car in the visitor spaces, or elsewhere in the Park.
    e. Whether Mrs Hull had shown the Respondent the complaint letter referred to in Mr Curzon's letter dated January 2020.
    f. Whether the evidence of Mr Jarvis and Mr Stewart, who both suggested that promises had been made to them regarding parking and age, suggested that the Applicant has habitually made verbal concessions to purchasers to facilitate sales of homes within the Park.

50. A further development which is relevant is that another Park homeowner, Dr Hamer-Morton, has offered her unused car parking space for use by the Respondent. Whilst Mrs Lloyd acknowledged that this was a "reasonable enough solution", when the Tribunal suggested to her that the Applicant wanted to prevent this happening, she said it would be unfair to other owners who might wish to park a second vehicle. She suggested it was a use of discretion and that it was irrelevant that the offer was made by a third party who has the benefit of exclusive use of that parking space. Mrs Lloyd said that the pitches belong to the Applicant. She expressed concern that when Dr Hamer-Morton left the Park, the problem relating to parking the second car would re-occur.

51. In response to general questions from the Tribunal, Mrs Lloyd said that there are no other relevant documents in the Applicant's archives which date back to the Respondent's purchase. She said car parking spaces are not allocated, named or numbered and occupiers do different things in relation to parking. Some have constructed hard standings for parking within their pitches. The Applicant does not allocate particular spaces to residents within the parking areas to prevent arguments about proximity to the pitches. She thinks that only the Respondent and pitch 108 keep two cars. Another owner has a "SORN" vehicle which will shortly be removed. There is no alternative "off-site" parking which is what makes the Park so attractive. It is unsuitable for households with two cars. She said parking for visitor cars was never an issue when the Park was first occupied but she accepted that things have changed. She said there is insufficient space to offer each owner parking for two cars.

52. She confirmed that she has personal knowledge of the Park and has been employed by the Applicant since 2009. The Applicant is not allowed to control or check vehicles entering and leaving the Park. When residents move on to the Park, they give details of the make and model of their car to the site office which is sent to Head Office. She said that the Applicant never received notification of the Respondent's second car. She suggested that, until January 2020, Mrs Polidano was classed as a visitor. The Applicant was never formally notified that she had become a resident. In the past it had been the Applicant's practice to ask for the occupation agreement to be assigned but now the occupiers are asked merely to notify the Applicant.

53. In her summing up, Mrs Musson said that the Application has been made because the Respondent is in breach of the Park Rules. The Applicant has no discretion with regard to the application and interpretation of the rules. However, it is her case that discretion was never exercised and no promises were made to the Respondent. Had that been the case there would have been a record at Head Office.

54. She also disputed that there had been any continuing benefit during the period between the Respondent moving on to the Park and the deposit of the New Rules. She accepted that if a concession had existed, the New Rules would not have retrospective application. She referred to Paragraph 4 of Schedule 5 of **The Mobile Homes (Site Rules) (England) Regulations 2014 [5]** (the "Regulations").

55. She said the Regulations required an occupier of a pitch to enjoy the claimed benefit prior to the deposit of the New Rules. If the New Rules coming into force of the would result in an occupier being in breach by continuing to enjoy the benefit that will not be treated as a breach for the period during which that benefit continues to exist.

56. In the absence of written evidence to support the existence of the Respondent's "alleged benefit" and any written record of the Respondent's questions regarding age and parking, she believed he has "made it up".

57. She submitted that the Applicant cannot make a special case on account of Mrs Polidano's employment or make any allowances and ignore the breach because it can no longer exercise discretion and must treat all occupiers in the same way.

58. Furthermore, because the second car is "associated with the Respondent's home", parking it within Dr Hamer-Morton's space would still be a breach of the Park rules. Should the Tribunal disagree with her, she wants guidance on the interpretation of the words "circumstances which were in existence on that date" (these are the words in the preamble to the New Rules) [page 18].

59. She also stated that, notwithstanding it is of no relevance to this application, the Applicant is dealing with all other persons in breach of this rule. The rules have not changed and the only difference between the old rule and the New Rule is the removal of any discretion on the part of the Park owner.

60. Finally, she stated that with regard to the Order sought by the Applicant, other Tribunals have made similar orders exercising the power contained in section 231A of the Housing Act 2004. She has included copies of the decisions in Rickwood Estates Limited v Fisher LON/00AF/PHC/2015/0001, The Berkeley Leisure Group v Denison CHI/00LC/PHC/2016/0001, The Berkeley Leisure Group Limited v Farmer RPT/0017/11/17 and the Upper Tribunal case of Away Resorts Limited v Morgan [2018] UKUT 0123 (LC) in the bundle.

61. In response Mr Selley said that the Respondent has lived on the Park for many years without any controversy. Resolution of the dispute about this alleged breach has been delayed because of the Covid-19 pandemic. The evidence of the parties is conflicting. The dispute has caused ill feeling between the parties. The New Rules took effect on 30 October 2014. He suggested that in fact nothing has really changed save that the element of discretion no longer exists. He enquired (rhetorically) what circumstances were in existence which would not have breached the old rules but do breach the New Rules. What he suggested is that the Respondent's situation has not changed and therefore, as this did not breach the old rules, it cannot be a breach of the New Rules.

62. The Respondent claimed that he discussed his requirements before he purchased his home when it was agreed that he could park a second car and occupy the home even though he was "too young". Mrs Higgins had many interviews. The interview between them was unique to the Respondent so his memory of it is more likely to be accurate. He suggested that the statements made by Mr Jarvis and Mr Stewart support the evidence that the Applicant made concessions with regard to age and parking if it enabled the sale of a home. The Respondent has claimed that he consistently and repeatedly raised questions about parking and his age with Mrs Higgins.

63. Given the suggestion made by the Applicant that age is significant, he questioned why is it not referred to in printed interview form? Mrs Higgins cannot remember the interview but said she would have sent a written request or question to Head Office. Mrs Lloyd has admitted that after such a long period of time has elapsed, the archived information held at Head Office may not be complete. It is his considered view that the evidence suggests that the Applicant would have promised anything to secure a sale and Mr Jarvis's statement, which was not challenged, bears this out.

64. He asked that the Tribunal determine that there is no breach of the rules due to "circumstances existing". Furthermore, he said that to address any lingering resentment the following facts are pertinent:-

    a. There is no shortage of parking spaces. The Applicant has not disputed the Respondent's summary of available parking spaces.
    b. There is no possibility of the "floodgates" argument applying. The New Rules do not enable any discretion and only a few residents purchased homes before these came into force. The Respondent has had the use of Dr Hamer-Morton's space since January 2020. It is not suggested that the agreement with her is anything other than a permissive personal agreement. The Applicant is not and could not be party to it.
    c. The current rule, as drafted, is ambiguous and if the Tribunal agree it must apply the maxim of "contra proferentem" and construe the rule against the Applicant.
    d. The rules do not specifically prohibit the sharing of parking spaces.
    e. The mischief the rules seek to address is to prevent the overloading of the available parking spaces.

65. He said that the Tribunal cannot have jurisdiction to order Dr Hamer-Morton not to "let out" or share her parking space. She is not party to the proceedings. Neither is Linda Polidano. A welter of awkward issues relate to the application for an order to remedy the breach. In his view that element of the application is flawed.

The Law

66. The Tribunal's jurisdiction to determine whether the Respondent is in breach of his agreement is contained in section 4 of the Act which enables it "to determine any question arising under this Act or any agreement to which it applies".

67. It is pertinent to also mention paragraph 4 of Chapter 2 of schedule 1 of the Act, because Mrs Musson referred to it. It provides that the owner shall be entitled to terminate the agreement forthwith if on the application of the owner the appropriate judicial body.
    a. Is satisfied that the occupier has breached a term of the agreement and, after service of a notice to remedy the breach, has not complied with the notice within a reasonable time; and
    b. Considers it reasonable for the agreement to be terminated.

68. There is no application before the Tribunal for termination of the agreement but Mrs Musson has suggested that this would be a possible remedy and the Applicant has already served two notices of breach on the Respondent. Mrs Polidano mentioned in her statement that the Applicant had threatened eviction so whatever the actual intention of the correspondence, it has already been interpreted as potentially threatening eviction.

69. Mrs Musson has also asked that if the Tribunal make a determination of breach, it orders a remedy of that breach. Mrs Musson referred to section 231A of the Housing Act 2004 titled **Additional Powers of First-tier Tribunal and Upper Tribunal.** The relevant parts of that section are set out below.

70. Section 231A(1) "The First-tier Tribunal and Upper Tribunal exercising any jurisdiction conferred by or under the Mobile Homes Act" and two other acts "has, in addition to any specific powers exercisable by them in exercising that jurisdiction the general power mentioned in subsection (2).

71. 231A(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".

72. 231A(4) "When exercising jurisdiction under the Mobile Homes Act 1983, the direction 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 matter;
(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.

Reasons for the Decision

73. The Applicant denied that any promise was made to the Respondent giving him the right to keep two vehicles on the Park. The only written evidence of the meeting which took place between the Applicant and Judith Higgins, the Park Manger at that time, is an Interview Form. That form makes no reference to the Parking save for a printed paragraph under which has been hand-written "EXPLAINED". The form is undated and signed only by the Respondent.

74. It was not disputed that the Applicant's records dating back to 2006 when the Respondent purchased his home may not be complete.

75. The Respondent stated that he discussed parking and disclosed that he was at that time too young to comply with the park rule regarding age of occupiers. Notwithstanding that the Park Rules, at that time, referred to the Park as a Retirement Park and referred to a minimum age of 50, there is no question about age on the printed Interview Form.

76. Two other residents of the Park have submitted evidence, which was not disputed, that one disclosed that he was too young to comply with the Park Rules and was told that his age was not a barrier to purchase. Another resident stated that he had been told that parking a second vehicle would not be a problem and that it had not been until another resident had complained, that he disposed of his second vehicle, which until then he had kept on the Park, apparently with the actual knowledge of and help from then Park Manager.

77. The Respondent alleges that the current Park managers, Mr and Mrs Hull, were both made aware by him that his partner Mrs Polidano had moved in with him permanently and that they had advised him where she might park her vehicle, effectively a second car associated with his home. Mr and Mrs Hull deny that they were told that Mrs Polidano had moved on to the Park or that they offered her, or the Respondent, any advice regarding parking.

78. Having considered the witness statements, submissions and oral evidence provided by both parties, the Tribunal finds it likely that the Applicant may have offered selected purchasers concessions as an inducement to buy its Park Homes. It does not accept it is a coincidence that two residents have stated that they were both told that age would not be a problem and two residents have stated that they were both told keeping a second car on the Park would not be a problem. Clearly age was not a long term problem as inevitably a purchaser would in time attain the minimum age.

79. The Tribunal therefore considers it appropriate in relation to this determination for the Tribunal to ignore evidence in relation to age save only to the extent that it has assisted it in weighing up which of the parties evidence it prefers.

80. The issues arising from residents in a household parking more than one vehicle in the Park is more problematical. It appears that if prompted by a complaint from a resident the Applicant will take some action. Mrs Lloyd told the Tribunal that the Applicant was examining other alleged breaches although she also suggested that the existence of, and its handling of other alleged breaches, are not relevant to this Application. The Tribunal finds this submission naïve. It has formed the view, based on submissions made by Mrs Musson, that the Applicant has made this application seeking a determination of breach to enable it to enforce the Park Rules relating to parking.

81. The first notice of the Breach, dated 18 August 2020, served on the Respondent stated that a failure to remedy may result in the company being forced to take further action under paragraph 4 of chapter 2 of the Act (see paragraph 67 above). That section was reproduced and the letter stated "This may mean making an application to the County Court to bring the Agreement to an end" [page 27]. The Tribunal has concluded that, because of the specific reference to application being made to the County Court, it is likely that the Applicant had taken legal advice before it sent that notice.

82. The second notice of breach contained in a letter dated 8 December 2020 simply stated that failure to remedy the breach by removing the second vehicle from the Park would leave the Applicant with no alternative other than to apply to this Tribunal "for a declaration that you are in breach and order that you must remedy the breach" [page 41]. This Tribunal finds it unlikely that Mrs Lloyd would have referred to an order being made if she had not discussed possible remedies with the Applicant's lawyer.

83. The Tribunal believes the Respondent's evidence that he raised the issue of parking a second vehicle on the Park accepting that he had no need to take advantage of the concession until his partner moved in with him in November 2018.

84. The two witness statements signed by Mr and Mrs Hull appear to have been prepared by the Applicant's solicitor and are in very similar form. The Tribunal has concluded that neither statement can be accepted as a full and accurate record of all that occurred.

85. By way of contrast, Mrs Polidano's statement appears to have been written by her recording her interpretation of what happened for which reason the Tribunal accepts it is more likely to be accurate.

86. Both Mrs Higgins and Mrs Lloyd's statements related what they recollected. Whilst accepting their evidence at face value, the Tribunal do not find it particularly helpful regarding the settlement of the dispute. There is no reason why Mrs Higgins would remember interviewing the Respondent. However, Mr Jarvis's statement and evidence at the hearing, suggested that, notwithstanding what she said about the interview procedure, Mrs Higgins may well have promised him something different without recording that promise on any correspondence sent to Head Office.

87. In the absence of any written record, the Tribunal accepts that the Respondent honestly believed that if he wanted to park a second car, it could be accommodated informally albeit he accepted that the arrangement would be fluid.

88. Furthermore, which was not denied by the Applicant, there is no shortage of parking space within the Park and there is no possible alternative place to park a vehicle within reasonable proximity outside the Park.

89. Notwithstanding a written complaint made by one un-named resident another resident, Dr Hamer-Morton, offered the Respondent the use of her parking space. The Applicant claimed that this would still be a breach of the Park Rules because a second vehicle associated with the Respondent's home would be parked within the Park. The Applicant has admitted that if the second vehicle belonged to a visitor that would not be a breach of the Park Rules and suggested that is why it had never objected to Mrs Polidano parking her car on the Park previously. It also suggested that it had treated her as a visitor until January 2020.

90. The Respondent denied that he is breach of the Park Rules because of his prior agreement. Mr Selley stated that there is no difference between the old and New Rules for the purpose of the application. Under the old rules there was discretion regarding second vehicles. The Applicant exercised this discretion and the Respondent relied on this, albeit he had no need permanently to park a second vehicle until November 2018 when Mrs Polidano moved on to the Park. The Tribunal accept this submission. The circumstances in existence were the alleged promise made to the Respondent which induced him to purchase his home. He told the Tribunal that parking was important to him. He raised it and there must have been a discussion about parking because the word "explained" is handwritten on the form.

91. The Respondent remembers the discussion but, unsurprisingly, Mrs Higgins did not. She will have had many similar discussions and it is several years since she retired from her job as Park Manager. The Respondent only had a single discussion with Mrs Higgins and he said he remembered those facts which were important, although at the hearing he accepted that he should have obtained something in writing.

92. For those reasons he considered that there was no need to do anything when he was consulted about the New Rules. The effect of the New Rules is that the Applicant cannot exercise any discretion. It cannot accommodate any occupier on the Park with two cars. However, it cannot treat any occupier with an existing agreement as being in breach either. The Tribunal accept that the Respondent cannot be treated as being in breach of the New Rules since he believed at the date that the Rules came into force (30 October 2014) he was entitled to park a second car on the Park. That was the circumstance which was in existence. Therefore, for as long as the Respondent occupies his pitch, he can keep two cars on the Park but that undocumented concession, should be treated as being personal to him.

93. Although not a part of the reason for its decision, the Tribunal finds that Dr Hamer-Morton is entitled to allow anyone she permits to use her parking space. Her agreement entitles her to park one car and it is irrelevant to whom that car belongs. The rules do not require that she own the vehicle. Her situation is tantamount to "letting" out her space although the parties all agree that the arrangement would be permissive.

94. Whilst unnecessary to consider the second part of the application the Tribunal agrees with Mr Selley that, even if it was persuaded to order a remedy, it would have no jurisdiction under section 231A of the Housing Act 2004 to make directions or an order affecting someone who is not a party to the proceedings.

Judge C A Rai (Chairman)

Appeals

1. A person wishing to appeal this decision to the Upper 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 further application for permission to appeal by email to **rpsouthern@justice.gov.uk** as this will enable the First-tier Tribunal 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.