



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

Case Reference : **BIR/41UF/PHC/2020/0002**

Property : **5 Silver Poplars Park, Holyhead Road,
Kingswood, Albrighton, WV7 3AP**

Applicant : **Christopher Stephen Nedic and Julie Nedic**

Representative : **IBB Solicitors**

Respondent : **Ronald Joyce**

Application : **Application under s10 Mobile Homes Act 1983 for
relocation of a mobile home**

Tribunal : **Judge D. Barlow
Ms S. Hopkins FRICS**

**Date and mode of
Hearing** : **22 October 2020
Video Hearing on Cloud Video Platform**

DECISION

DECISION

- 1) The Tribunal determines that the Applicants' proposed works to the foul drainage system are not essential repairs needed to comply with any relevant legal requirement.
- 2) The Tribunal determines that Pitch 22 is broadly comparable to Pitch 5 but that it is not reasonable for the mobile home situated on Pitch 5 to be stationed on Pitch 22 for any period.

REASONS

APPLICATION

- 3) This is an application for a determination that the Applicants' need to carry out 'essential repairs' to a foul drainage pipes laid under the Respondent, Mr Joyce's pitch ("Pitch 5"), that can only be carried out by permanently relocating Mr Joyce's mobile home onto a new pitch ("Pitch 22"), which they say is broadly comparable to Pitch 5.
- 4) Alternatively, the Applicants' seek a determination that Pitch 22 is broadly comparable to Pitch 5 and that the Applicants' can permanently relocate Mr Joyce's mobile home to Pitch 22, because it is reasonable to do so, to enable the Applicants' to reconfigure the north-eastern section of Silver Poplars Park ("the Park").

THE LAW

- 5) **Mobile Homes Act 1983:**
SCHEDULE 1; Part I; CHAPTER 2
Section 10 - Re-siting of mobile home:

- 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 Park ("the other pitch") if (**and only if**) —
 - (a) on the application of the owner, the Tribunal 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.

- 10(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 Tribunal 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.

10(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.

10(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;
- (c) works or repairs in connection with restoration following flood, landslide or other natural disaster.

BACKGROUND

- 6) The Applicants’ purchased Silver Poplars Park (“the Park”) in 1999. It is licensed by South Staffordshire Council (“the Council”) for use as a permanent residential mobile home park under a park licence issued to the Applicants on 13 September 2019, for a maximum number of 29 homes (“the Park Licence”). The Park Licence replaced an earlier licence granted in 2010.
- 7) Since their purchase the Applicants’ have carried out an extensive programme of upgrading to improve internal access and services, and to reconfigure the Park to improve its general amenity. Silver Poplars Park is now a very attractive site. The internal access roads have been widened and re-laid to most of the Park and new services have been installed. There is a marked difference between the main part of the Park, which has been upgraded to modern standards of mobile home parks, and the north-eastern corner, which has not. Mr Joyce’s Pitch 5, is within the north-eastern corner that is due to be upgraded to achieve uniformity with the remainder of the Park.
- 8) Mr Joyce is the owner/occupier of pitch 5 where he lives with his daughter. He purchased the home in 1987 from the previous owner and it has, since then, been his permanent residence. Mr Joyce’s occupation is regulated by the statutory terms implied by the 1983 Act. He has not agreed any written terms with the Applicants. Mr Joyce believes that he took over a written statement from the previous owner of Pitch 5 but has not been able to provide a copy of the agreement.
- 9) Over the years, Mr Joyce made a number of improvements and additions to his home. These include replacing and insulating the outer skin, coating the new skin with a textured plastic coating, adding a pitched tiled effect roof, replacing all windows and doors with new double-glazed units, adding a new kitchen and bathroom and other general improvements. In 1998/99 Mr Joyce built a side extension to his home. All, he says, with the consent of the previous Park owner Miss Sheila Lambah and in compliance with the terms of his written agreement with her.
- 10) The Applicants’ wish to move on to the next phase of their programmed upgrade which includes a complete reconfiguration of the north-eastern corner of the Park. The existing layout will be replaced with a revised layout that allows for an additional 8 permanent mobile homes on that part of the Park (subject to licensing by the Council). The revised layout shows 11 new pitches (including pitch 22) laid either side of a new internal access road, in place of the 4 remaining old-style pitches (including Pitch 5) which will be removed. New services will be laid in a services

strip to the side of the new access road. Pitch 5 sits across the line of the new access road and partly over two of the proposed new pitches, hence this application.

The Parties submissions

Both parties provided written submissions which the Applicants' representative collated into a single Bundle for the hearing. References to pages within the Bundle below, are to the relevant pages within the Applicants' Bundle.

Applicants' submissions

- 11) The Applicants' statement of case [pages 10-154 of the Bundle] submits that they are unable to commence the next phase of the upgrade until Mr Joyce's mobile home has been permanently relocated to pitch 22. Correspondence concerning the terms of such a move, took place between the Applicants' solicitor and Mr Joyce during 2017-2020. A copy letter dated 2 November 2018 from IBB Solicitors to Mr Joyce is exhibited to the Applicants' statement. The Applicants' through their solicitor, offered to pay the costs of relocating Mr Joyce to pitch 22, a larger pitch with new services. The Applicants' also offered to re-instate Mr Joyce's garden, including a fishpond, on the new pitch and provide a new metal shed to replace his brick built shed. (Mr Joyce had rejected earlier offers because he did not trust the Applicants' to deliver on what they'd promised, but he had made a counter offer to relinquish his pitch on payment of a sum sufficient to allow him to buy a permanent house off-site. (he put a figure of £180,000.00 on this)). The letter of 2 November 2018 rejected Mr Joyce's offer and explained that the Applicants' were entitled to apply to the Tribunal for an order under s10 of the 1983 Act permitting them to relocate Mr Joyce to an alternative pitch, which they would do if their offer was rejected.
- 12) On 23 November 2018, by letter, Mr Joyce rejected the offer, which he regarded as a threat, because he had no confidence in the Applicants' method of moving homes. He did not believe they would move his old-style home to a location among the new very expensive homes and Mr Joyce disputed the grounds put forward justifying the relocation. He repeated his lack of trust, which he said was based on past experience over many years. The exchange of correspondence does make any reference to issues with the foul drainage system.
- 13) In February 2019, the Applicants' solicitor instructed Nicholas Bird BSc (Hons) MSc of Scanlans Consultant Surveyors LLP, to prepare an expert report on "infrastructure upgrade works and relocation of a park home". A full copy of Mr Bird's report dated January 2020, is annexed to the Applicants' Statement of Case at pages 47-117 of the Bundle ("the Scanlon Report"). Mr Bird was provided with a copy of the current and proposed site layout plans (showing Mr Joyce's current and proposed pitch), the Park Licence and the two letters referred to above. Mr Bird was asked to review the documentation and prepare a report confirming the following:
 - (i) What infrastructure works need to be carried out to the north-eastern corner of the Park to complete refurbishment of the site?
 - (ii) The specification for each of the proposed works (i.e. electricity, water, sewerage and communication services).
 - (iii) Whether it is necessary for these works to be carried out, and in particular (i) what legislation or other legal documents (including Park Licence conditions) would the proposed works enable our clients to comply with, and (ii) what legislation or other legal requirements (including Park Licence conditions) would our client risk breaching if the works were not carried out?
 - (iv) How long are the infrastructure works likely to take?

- (v) Should Mr Joyce's home be relocated elsewhere on the Park prior to the works starting and if so, why?
 - (vi) Why will it not be possible to move the home back to its pitch following completion of the works.
- 14) Mr Bird inspected the Park on 18 March 2019 and re-visited on 11 April 2019 to take photographs which were exhibited to his report. He was later provided with a copy of a CCTV Inspection Report of the foul drainage system between manhole MH01 and manhole MH13, dated 10 October 2019, procured from OnSite Central Limited. It is not clear looking at Mr Bird's report who commissioned the OnSite report, or its purpose, but in evidence Mr Bird acknowledged that he initiated the OnSite report having worked with them on a previous job.
- 15) Mr Bird expresses a number of opinions in his report, those relevant to this decision can be summarised as follows:

Observations from review of the documentation

- (i) Mr Bird noted that the OnSite CCTV report provides considerable detail of the condition of the drainage. He then confined his comments to "those pertinent sections of the drainage" being the upstream section from MH01 to MH02, which serves the upstream runs from MH07 and MH08. Mr Bird stated that from the diagram appended to his report, it appears that the drainage run serving from MH01 upstream to MH02 passes directly beneath the front right-hand corner of Mr Joyce's caravan. The OnSite report at page 3, details this section as having settled deposits, fine root ingress at pipe junctions commensurate with older types of vitrified clay pipes, pipe fractures, a section of deformed pipe and a broken section of pipe. Mr Bird noted a change in materials from vitrified pipe to PVCu and back, suggesting a previous repair had been undertaken.
- (ii) Mr Bird confirmed that the condition of the pipe is graded using *The Water Research Centre Manual of Sewer Condition Classification* ("the Classification manual"). Pipes are classified from 1 (being good i.e. no structural defects) to 5 (poor i.e. requiring replacement). He confirmed that the overall condition of the pipe was grade 4 for both service and structural. Mr Bird's report then confirmed that "*requested correspondence from OnSite determines that Grade 4 is recorded when one or more of the following is recorded: broken; deformation up to 10% and broken; fracture with deformation 5-10%; multiple fracture; serious loss of level; spalling large; wear large.*" In evidence Mr Bird confirmed there was no actual correspondence from OnSite, the information concerning the grading of pipes was conveyed to him by telephone.
- (iii) Mr Bird confirmed from viewing the CCTV pictures in the report, that the pipework was a rigid salt glazed style pipe commonly jointed with sisal rope, and mortar, which has a tendency to open or fracture on ground movement. These types of pipe have generally been superseded by PVCu with rubber seals, or vitrified clay with plastic socket and rubber seal, to allow for joint movement following settlement or ground movement.
- (iv) Mr Bird drew the following conclusions from the OnSite report: the settled deposits suggest that the pipe had insufficient gradient, possibly due to leakage softening the surrounding soil; the condition of manholes MH01 and MH02 were 'OK' in all parameters; effecting a repair of the pipe by resin coated lining

to extend its life and re-establish water integrity was, in his opinion, unsuitable and replacement was required, which would also resolve any issue with gradient.

- (v) Mr Bird made some observations on noise from the main road on the northern side of the Park which was screened with two rows of conifer hedging. The north side of Pitch 5 is approximately 27m from the road with pronounced traffic noise. Pitch 22 is approximately 10m from the road, traffic levels were louder but in Mr Bird's opinion no more detrimental to use. He suggested additional planting of hedging could ameliorate the additional noise.
- (vi) Mr Bird confirmed that Mr Joyce's home appeared to be in reasonable condition albeit with some degradation to the barge boards. He noted the side extension, but could not offer an opinion on the type or extent of the base or whether the home was capable of being moved because hadn't inspected it.
- (vii) Responses to the specific questions in paragraph 13(i) to (vi) above:

- (i) Mr Bird confirmed that new mains gas, electrical supplies, underground sewers and completion of the partially installed water supply would be required to complete the upgrading of the north-eastern corner. These were, he understood, to be laid within a service strip under the new internal access road.

- (ii) The technical specification for the installations was beyond his expertise.

- (iii) Based on his letter of instruction (not provided) which confirmed the Park was 50 years old, his assumption that the services had not been substantially overhauled since installation, his inspection of an electrical cable within an open trench and his consideration of the CCTV report, Mr Bird considered that upgrading of the services is essential repair. However, Mr Bird went on to say that before determining whether the existing services were compliant with legislation it would first be necessary to have each of the services tested and/or inspected by *suitably qualified professional* to ascertain current condition and serviceability. He then considered condition 22 and 23 of the Park Licence which requires "*satisfactory provision for the complete and hygienic disposal of foul...water from the Park, buildings, caravans....*" and "*All drainage... shall be in accordance with all current legislation and British or European Standards*" In Mr Bird's stated opinion the current drainage does not meet these standards, but he doesn't explain why, in his report. In evidence Mr Bird confirmed that his opinion was based on the OnSite CCTV report and the relevant BS standard which was BS752- drainage outside buildings. When asked if BS EN13508 was relevant Mr Bird was unsure.

- (iv) Mr Bird acknowledged that timing would be subject to the expedience and qualification of the contractors engaged but expected the infrastructure works could be completed in a period of 3 months, with good weather and unrestricted access.

- (v) Mr Bird confirmed that it would be necessary to relocate Mr Joyce's home to excavate and replace the sewer pipe, and install the new services beneath Mr Joyce's property where he understood the new road would be sited.

- (vi) Mr Bird stated that Pitch 22 was in his opinion broadly comparable to Pitch 5 and that it would not be possible to move Mr Joyce back to his current pitch because it will form part of the new access road under which the new services will be buried.

- 16) Mr Bird's report concluded with details of his relevant qualification to provide expert evidence. He is not a qualified surveyor, but is completing his final year of a MSc Building Surveying course and actively pursuing RICS membership. Mr Bird says that although not a chartered surveyor, his appointment and conduct is compliant with the RICS Code of Conduct. He points to over 10-years experience of employment as a building surveyor dealing with a variety of property related matters and he lists a number of projects that he has been engaged on, none of which were specific to site infrastructure, foul drainage systems or noise attenuation. In evidence Mr Bird conceded that he was not a drainage expert or an expert on site infrastructure works. Mr Bird had in the past worked with OnSite on one project carried out for a firm of loss adjusters, but apart from that had no particular expertise relevant to foul drainage systems or remediation techniques. His interpretation of the OnSite report was largely gleaned from a telephone conversation with one of their expert technicians. For instance, Mr Bird did not know that the 4th edition of the Classification Manual was the current edition, he did not have a copy of the Manual or a copy of the Water Research Centre Sewerage Rehabilitation Manual 4th Edition.
- 17) In January 2020, armed with the Scanlon Report, the Applicants' solicitor resumed correspondence with Mr Joyce; and also sent a copy of the report to the Council asking them to comment on the findings and the proposed relocation of Mr Joyce to Pitch 22 to facilitate essential works. A copy of the Council's response dated 11 March 2020, is at page 123 of the Bundle. In summary it confirms that as the Park owner had identified a potential problem and intended taking remedial action to remedy the breaches identified by the Scanlan Report the Council did not propose taking any action. The Council declined to offer an opinion on how the works should be carried out but supported the principle that any necessary remedial works should be carried out.
- 18) The letter to Mr Joyce dated 20 January 2020, (page 118-119 of the Bundle) encloses a copy of the Scanlon Report and raises for the first time, the need for total replacement of the drainage to the north-eastern corner, which the letter states will necessitate a permanent relocation of Mr Joyce's home to a newly constructed pitch 22. The letter goes on to set out the justification for this under s10 of the 1983 Act, which is that the works are needed to comply with *relevant legal requirements* and therefore *essential repairs* under s10(1)(b). Reference is made to condition 22 and 23 of the Park Licence being the relevant legal requirement, which in the expert's opinion, was not being complied with because the drainage did not meet current standards. The letter confirms that it will not be possible to move Mr Joyce's home back to Pitch 5 because it is needed for two new pitches and the new access road. The letter also asks if Mr Joyce will allow a surveyor to inspect his home to assess its structural capability for the move.
- 19) Mr Joyce responded by letter dated 14 February 2020 (page 120-122 of the bundle). He disputes that pitch 22 is broadly comparable because its stuck in a dark corner surrounded by 12 feet hedges. He disputes that the drains pass under his home and asserts that the Applicants' intention in seeking to move him, is to facilitate their redevelopment plans, which Mr Joyce says, is not within the 1983 Act. Mr Joyce also refused to allow a surveyor to inspect his home. The Applicants' say this response left them with no option but to pursue this application.
- 20) The Applicants' statement sets out the relevant law and submits that it is reasonable, as contemplated by s10(1)(a) for Mr Joyce's home to be permanently relocated to pitch 22; and/or, necessary to enable them to carry out essential repairs,

as contemplated by s10(1)(b) – and in either case Pitch 22 is broadly comparable with Pitch 5. The Statement then considers each issue in turn:

- (i) Are the works essential repairs – i.e. works necessary to comply with relevant legal requirements (s10(1)(b) and s10(4)(b)). The Applicants’ rely on Mr Bird’s report as evidence that replacement of the foul drainage system is an essential repair as defined by s10(4) and that it currently fails to comply with Condition 33 and 34 of the new Park Licence. The Applicant also suggests that the breach has been confirmed by the Council in its letter of 11 March 2020 (page 123 of the Bundle), but conceded at the hearing that the letter was a response to Mr Bird’s report which stated this to be the case. The Council had not inspected or made any independent determination of this issue.
- (ii) Could the works be carried out without moving Mr Joyce’s home? – The Applicant relies on Mr Bird’s report which states that *“It will be impossible to excavate and replace the sewerage pipe and install the new services beneath as “Mr Joyce’s caravan sits astride the sewer pipe where I understand the service road would be sited”* A hand drawn plan (with no discernible scale) is referred to as being annexed to the OnSite Report, showing the location of the drainage pipes overlaid on a site plan (page 101 of the Bundle). A later plan showing the approximate position of Mr Joyce’s pitch in relation to the drainage pipes was also provided to the Tribunal. This shows four drainage pipes running under the base of Pitch 5, which centre on manhole MH01, situated just to the south of Mr Joyce’s mobile home. The plan indicates that the pipe running between MH01 and MH02 catches the southern corner of Mr Joyce’s mobile home and the through pipe running from MH03 through MH01 and on to MH05 may also run under the edge of Mr Joyce’s base. The Applicants’ express concern that working in close proximity to Mr Joyce’s home could unnecessarily expose Mr Joyce to foreseeable risks that they should control or eliminate by relocating him, in order to comply with their obligations under Regulation 2(1) of the CDM regulations 2015.
- (iii) Is Pitch 22 broadly comparable with Pitch 5? In the absence of case law guidance, the Applicants’ adopt the common-sense approach of asking if the alternative Pitch 22, is generally at least as good as Pitch 5. In terms of size Pitch 22 is larger by some 74%. A double unit has been allocated to accommodate the extension. They have changed the original location and sited Pitch 22 further from the road and hedges to address Mr Joyce’s concern about light and to reduce the distance between the pitches. This, they say, will also reduce the risk of damage to Mr Joyce’s home on removal. To compensate for the loss of Mr Joyce’s established garden the Applicants’ have offered to purchase new plants and shrubs comparable to Mr Joyce’s garden before it was damaged by the Applicants’ in 2018. This will include a fishpond if requested. Pitch 22 will, unlike Pitch 5, include a parking area and finally, it will benefit from connection to new services and improved access. For these reasons the Applicants’ say Pitch 22 is more than comparable, it is superior to Pitch 5.
- (iv) Permanent relocation. The Applicants point to paragraph 2.14 of the DCLG fact sheet (page 133 of the bundle) which states that *“If a site owner wants to move a home for any reason (whether temporarily or permanently), for example to carry out site improvements or as part of a redevelopment, they can only do so with authorisation from a residential property tribunal...”*. The Applicants’ also mention that paragraph 10(2), which can oblige the park owner to return the mobile home to the original pitch, does not apply because

the repairs are not to the base. The Applicant recites several advantages to a permanent relocation as being: an opportunity to bring the north-eastern corner in line with the more modern appearance of the remainder of the Park; reduce the increased risk of damage created by two moves and provide Mr Joyce with an improved pitch. Furthermore, the Applicants' state that the new layout, which has been approved by the Council, makes it impossible to return Mr Joyce to Pitch 5 because it will no longer exist.

- (v) Costs. The Applicants' confirm that pursuant to paragraph 10(3), they have offered to pay the costs of relocating Mr Joyce's home using independent specialists to minimise the risk of damage, but this does not extend to any repairs needed to render it capable of being moved. This they say is Mr Joyce's responsibility under Paragraph 21(c) of the statutory implied terms 'to keep the mobile home in a sound state of repair' which the Applicants' contend includes keeping it in a condition capable of being moved.
- (vi) Is it reasonable to relocate Mr Joyce? The Applicants' rely on all the above points in relation to s10(1)(a) and say additionally that it is reasonable to permanently relocate Mr Joyce because it allows the Applicants' to comply with the approved layout plan attached to the 2019 Park Licence. Furthermore, the proposed upgrading of the Park is supported by the Council and the Residents Association of the Park, which comprises 22 of the 24 occupants, who are keen to see the refurbishment completed.

21) To avoid litigation offers and counter offers have been made to purchase Mr Joyce's home. The current position is that the Applicants' have offered to pay £89,950.00, Mr Joyce is seeking £150,000.00. In December 2018 the Applicants also offered to purchase and give to Mr Joyce, a new Omar Newmarket mobile home measuring 36'x12' to station on pitch 22 (pages 253-258 of the bundle). The offer remained open to acceptance at the date of the hearing.

Respondents submissions

- 22) Mr Joyce filed a written statement of case disputing the Applicants' right to relocate his home to Pitch 22. [pages 155-231 of the bundle]. Mr Joyce was, for a period, General Secretary and also founder member, of the Park Home Residents Action Alliance ("PHRAA"). A voluntary organisation formed in 2002 to provide advice to park home owners faced with unscrupulous park owners. He describes problems with the fresh water supply going back to 1999, complaints about which were, he says, met by foul mouthed abuse. He also complains about the general unkempt state of his part of the Park, poor surface drainage causing flooding in wet weather and exposed electrical cables. Mr Joyce disputes that he has ever complained about the foul drainage system.
- 23) Mr Joyce recounts a history of irresponsible behaviour, harassment and intimidation by the Applicants going back to 2013 when the Applicant disposed of a double unit behind Mr Joyce's home by setting it alight. Photographs of the fire and its proximity and damage to Mr Joyce's property were attached to his statement [pages 175-192]. The incident was reported in an edition of the Sunday Mercury, June 16 2013 [page 196 of the bundle].
- 24) In 2016 Mr Joyce reported problems with the water supply to Severn Trent. In response the Applicants gave formal notice that they intended to connect Mr Joyce's home to a new supply which would necessitate entry onto his property with a mini excavator to remove part of the hedge, two fish ponds and all flower beds. This followed an aggressive confrontation with Mr Nedic who threatened to put the new

- water main through the middle of Mr Joyce's garden as revenge for complaining to Severn Trent [pages 210-211 of the bundle].
- 25) On 4 September 2018 The Applicants' disconnected the water supply to Mr Joyce's home and refused to reconnect it until threatened with legal action by the Council's EHO some 4 days later.
- 26) Later the same month, without warning or notice, Mr Nedic entered Mr Joyce's garden and bulldozed a large area, ripping out tree and shrubs including a 6' high stretch of hedging. The next day he returned to finish the destruction of the rear and side part of Mr Joyce's garden, disposing of a seat gifted to Mr Joyce by his neighbour which he used when taking break from his PHRAA work. Mr Joyce provided photographs of his garden before, during and after the destruction, including one of Mr Nedic doing what he describes as a victory dance on the wreckage of his once perfectly maintained garden. Mr Joyce states that his demand for an explanation was met with verbal abuse and threats. When Mr Nedic saw Mr Joyce taking pictures, he came towards him in a threatening manner shouting obscenities over and over until Mr Joyce retreated indoors. The police were called out twice but deemed it a 'civil matter'.
- 27) Mr Joyce postulates three reasons for the attacks. First, because having suffered for years with a poor quality water supply he'd reported the problem to Severn Trent Water. Secondly, because the Applicants' want the older style homes removed from the Park to complete their development plans and thirdly, because in his role as an officer of PHRAA, Mr Joyce had provided advice and assistance to a number of park home residents who had issues with the Applicants' parks.
- 28) Mr Joyce exhibits the exchanges of correspondence with the Applicants' solicitor during 2018-2020, to his statement. The correspondence includes details of the Applicants' behaviour during the incidents outlined above, with photographs and reasons why Mr Joyce does not wish to be relocated. He explains that the price asked for the sale of his home to the Applicants reflects the cost of purchasing a permanent home for Mr Joyce and his family off-site. He says that he no longer wishes to endure the trauma, harassment and abuse suffered at the hand of the Applicants' or continue living in fear on the Park. Equally, he does not want to be forced into expensive rented accommodation and has therefore asked for a sum that would enable him to move to a new permanent home.
- 29) With regard to the Scanlon Report, Mr Joyce says that he can't really comment, not being a drainage expert, but to his knowledge the only part of the system still in use passes by the front left corner of Mr Joyce's home and could easily be replaced without endangering his home if necessary. However, as all the homes currently served by this section are about to be removed as part of the Park redevelopment it would not need to be replaced. Mr Joyce also states that as no part of the system passes under his home there is no substance to the Applicants' claim that his home needs to be moved.
- 30) Mr Joyce does not believe that his home is capable of being moved without considerable damage which would render it uninhabitable without very great expense. As an 81 year old pensioner whose only income is Pension Credit the expense would be unaffordable. The home cannot be easily moved because it has a side extension that is not moveable. The extension houses the central heating boiler and some of the kitchen appliances. The entire exterior of the home was newly skinned and roofed with cavity and roof insulation. To move the home would, Mr Joyce submits, totally wreck it.

Applicants' response to Mr Joyce's statement

- 31) The Applicants' filed a brief response to Mr Joyce's statement which acknowledged that considerable mistrust had arisen between the parties. The Applicants' denied deliberately disconnecting the water supply in September 2018 but acknowledged that the Applicants' had arranged for Severn Trent Water to repair a leak in the north-eastern section of the Park which affected Mr Joyce's home, but any disruption was caused by Severn Trent not the Applicants. The Applicants' admitted damaging Mr Joyce's property in September 2018 when removing a tree to clear a path for an old mobile home to be removed and acknowledge that they should have taken more care, but have offered to replace the items destroyed if provided with a list.
- 32) The Applicants' clarified that the drainage pipes under Mr Joyce's pitch also serve the homes on the occupied pitches 1, 2 and 4, which the Applicants' will also seek to relocate in due course to complete the infrastructure works. However, those pitches are reliant on an outdated service which the expert report states needs to be replaced to meet the requirements of the Park Licence. Finally, the Applicants' say that Mr Joyce has overlooked the point that the Applicants' need to complete relocation of the homes to comply with the approved layout plan attached to the Park Licence.

INSPECTION and HEARING

Inspection

- 33) The Tribunal carried out an external inspection of the Park on the morning of 21 October 2020. Present for the Applicant was Mr Nedic, the Applicants' solicitor, Mr Clements from IBB law and Mr Bird. Mr Joyce left his home briefly to say that he did not wish to participate in the inspection with Mr Nedic present, but did not object to the Tribunal inspecting the Park in the presence of just the Applicant and his representatives. Mr Joyce was extremely hard of hearing and walked with some difficulty due to a bad back.
- 34) Silver Poplars Park is a mobile home park located in rural countryside near the village of Albrighton. At the time of the inspection the Park was licensed for 29 park homes but the approved licence plan, which is based on completion of the proposed reconfiguration of the north-eastern section of the Park, shows 37 mobile home pitches.
- 35) The Tribunal inspected Pitch 5, the concrete base laid for Pitch 22, the common areas around both pitches and the remainder of the north-eastern part of the Park. Apart from Mr Joyce's Pitch 5, the only remaining occupied pitches on this part of the Park at the date of the inspection were, Pitches 1, 2 and 3 which all front the main access road leading into the Park. The units on pitches 1A and 20 (to the rear of Pitches 1, 2 and 3) had been removed. The Applicants' pointed out to the Tribunal various items on the Park which had been referred to in the Bundle – including: the position of the proposed new internal access road leading from an existing turning adjacent to Pitch 5 (currently used for parking), running through Pitch 5 before turning east to serve the remainder of this part of the Park which will provide access and services for the 11 new pitches; the location of manhole cover MH01; the points at which various new services will enter the Park and the point of connection for existing services to the proposed new services.
- 36) Pitch 5 is an older styles mobile home with an established attractive garden to the north-east side which includes a fish pond and many varieties of shrubs and small trees. To the rear and west side of there are other cultivated areas, some hedging and a small brick outbuilding. Externally, the home appears to be generally well

maintained in good condition. There is slight wear and tear to the barge boards. Manhole MH01 is visible, located within the garden slightly to the south west of the mobile home's extent.

- 37) Pitch 22 is a large double space concrete base situated near to the north-eastern boundary of the Park, which will connect directly to the new internal access road. New services will be laid in a service strip alongside the new road.

The Hearing

- 38) This was a remote hearing. A face to face hearing was not held, because it was not practicable on account of the Coronavirus pandemic and all issues could be determined in a remote hearing. The hearing was attended by the Applicant's representative, Mr Clements of IBB Law LLP. Mr Nedic and the Applicants' surveyor, Mr Bird both attended and gave evidence. Mr Joyce represented himself and gave evidence.

The submissions

The Applicants' evidence

- 39) Mr Clements agreed that the issues the Tribunal needed to be satisfied on were:
- (i) in relation to s10(1)(a), whether Pitch 22 is broadly comparable to Pitch 5 and that it is reasonable to relocate Mr Joyce to Pitch 22 for the "relevant period" to facilitate the redevelopment of the north-eastern section of the Park; and/or
 - (ii) in relation to s10(1)(b), that the proposed works to replace part of the foul drainage system are "essential repairs" that can only be carried out by moving Mr Joyce's pitch for the "relevant period" to Pitch 22, which is broadly comparable to Pitch 5.
- 40) Mr Clements submitted that the term "relevant period" was not limited to a fixed period but could include a permanent removal. He confirmed that the Applicants' intention was to combine any essential repairs required to the foul drainage system with the Park infrastructure works needed for the redevelopment. He conceded that this was primarily an application under s10(1)(a), however, as the Applicant had provided evidence of 'essential repairs' needed to the drainage system which can only be carried out by relocating Mr Joyce, it would not be reasonable to move Mr Joyce back to Pitch 5 pursuant to s10(1)(b), because the Applicants' also seek an order under s10(1)(a) for permanent relocation on the grounds that it is reasonable. This, because Mr Joyce's original pitch will cease to exist once the Park has been re-developed. Mr Clements confirmed that Applicants' relied on the evidence of Mr Bird in relation to these issues.

Is the foul drainage system in need of "essential repairs"?

- 41) Mr Bird confirmed his understanding that there had been ongoing problems with drainage from Pitches 1, 2 and 3. Based on the CCTV report obtained from OnSite, it was his opinion that the drainage pipe running upstream from MH03 to MH01, did not meet the conditions of the Park Licence relating to drainage and sanitation and needed to be replaced. As part of the pipe was laid beneath Mr Joyce's pitch, it would be necessary to relocate his home to facilitate the works. Mr Bird acknowledged that

the pipe running from MH02 to MH01 was no longer in use, following the removal of Pitches 1A and 20.

- 42) The Tribunal expressed concern that OnSite appeared not to have been asked to provide any analysis of the findings of their Report, there was no explanation of the terms used and no recommendations from OnSite, concerning whether replacement of any part of the system was required, or whether a “no dig” or “cured in place pipe” repair or refurbishment was an option. Given that OnSite boast expertise in this area and had been commissioned to prepare a comprehensive CCTV report, the Tribunal found this omission surprising. Instead, Mr Bird has been asked to interpret the Report and provide an opinion on the actions that should be taken by the Applicants’, despite lacking any relevant expertise on foul drainage systems. Mr Bird acknowledged that his explanation of condition of the pipe sections in the OnSite report had been drawn from a telephone conversation with OnSite, because he did not have a copy of the Classification Manual.
- 43) Mr Clements conceded that the letter from the Council dated 11 March 2020, on which the Applicants’ relies, was written in response to Mr Clements letter of 20 January 2020 to the Council, enclosing a copy of the Scanlon Report, which stated that in Mr Bird’s opinion, the current drainage system did not comply with the relevant British and European standards. The Council had not initiated any concern about a breach of the licence conditions, their letter assumes that Mr Bird’s opinion on the status of the drains is correct.

Can they be carried out without relocating Mr Joyce?

- 44) Mr Bird acknowledged that he had not been asked about the possibility of laying a new pipe in the ground around Mr Joyce’s pitch. Mr Nedic said that he and his sons carried out regular maintenance of the on-site drains. They did not use independent contractors, although had used dyno-rod once or twice in the past to clear the drains. Mr Clements confirmed that it was Mr Nedic’s preference not to lay the new pipes around Pitch 5 because it was simpler to use the run of the old drains. Mr Nedic confirmed that he would use his own men to take up and replace the existing drain with a 4-inch pipe in the same run, using the same fall. When asked whether he had commissioned the earlier repairs indicated in the CCTV report, Mr Nedic confirmed that he had not carried out any work to the drains on this part of the Park during his ownership. Mr Clements also clarified that the pipe run that needed to be replaced ran under the concrete base of Pitch 5 not the mobile home itself.

Is Pitch 22 broadly comparable to Pitch 5?

- 45) Mr Clements pointed to the submissions made in the Applicants’ statement concerning this issue, as summarised in paragraph 20(iii) above. Additionally, Mr Nedic confirmed that there would be no restriction on planting over the line of the new services installed along the edge of the Pitch 22 and that the pitch would include a dedicated parking area (which Pitch 5 does not have).

Is it reasonable to relocate Mr Joyce to further the Applicants’ re-development plans?

- 46) Mr Clements submitted that it was reasonable because:
- (i) it enabled the Applicants’ to complete their upgrading and re-development of the Park.

- (ii) the refurbishment was supported by the Council and the majority of the Park residents.
 - (iii) It would improve Mr Joyce's amenity in that he would benefit from a larger pitch and new services.
 - (iv) It would allow the Applicants' to place 8 additional homes on the Park.
- 47) Mr Clements confirmed that the Council had worked with Mr Nedic over a number of years to improve the Park and would like to see this last part redeveloped to reflect the higher standard of the rest of the Park. It was not uncommon for 1960/70's parks to undergo a programme of upgrading and updating for the general benefit of the residents.
- 48) In relation to Mr Joyce's allegations of harassment, Mr Nedic said that at no point had he disconnected anyone's water. He wouldn't do that. Mr Nedic said there had been a problem with the water supply to Pitches 2, 3, 5 and 1A. Severn Trent Water had been looking for leaks over a period of years. They eventually fixed the supply for Pitches 1, 2 and 20. They couldn't do Mr Joyce's pitch because he had stopped them working, but the water supply was never disconnected.
- 49) Mr Nedic admitted to destroying part of Mr Joyce's garden in September 2018. It was necessary, he said, to clear a path for the mobile units on Pitches 1A and 20 to be removed from site. There was no other way to remove the units other than through Mr Joyce's garden. To his credit, Mr Nedic accepted that this would have been a very distressing event for Mr Joyce and admitted that he probably should have been more careful. When asked if he had spoken to Mr Joyce beforehand about the need to bring the units through his property, or written to him, Mr Nedic said that he couldn't speak to Mr Joyce, they hadn't spoken for years, not since an argument with him when the Applicants' first purchased the Park. Mr Nedic also acknowledged that he should have reinstated Mr Joyce's garden. Mr Nedic denied that the event was part of a campaign designed to drive Mr Joyce from the site, he said that he just needed to move the two units, which were very large, 1A was 46 feet long and there was no other way to remove it from the site. Mr Nedic also confirmed that although he had purchased the two units in 2018 as part of his redevelopment plan, they were only removed from the site in 2020, about 2 months prior to the hearing.
- 50) Mr Clements summarised by saying that it was necessary and/or reasonable to relocate Pitch 5 to Pitch 22. He relied on the evidence of Mr Bird that the drainage was not fit for purpose. Mr Clements conceded that it was debateable whether the drainage work needed to be done straight away, but the works would need to be done in the future and it was sensible to do it now in conjunction with the redevelopment. He accepted that moving Mr Joyce's home was a concern but Mr Nedic had offered a replacement unit and one solution might be to order an inspection of Mr Joyce's home and if it was not capable of being moved Mr Nedic's offer of a new for old unit would stand. Mr Joyce could then sell his home and Mr Nedic would waive the 10% commission. The offer to move Mr Joyce's current home and if not possible provide a new replacement home on Pitch 22, was reasonable.

Mr Joyce's evidence

- 51) Mr Joyce confirmed the contents of his statement of case, but didn't want to run through it in detail, he thought he had written enough on the subject. He did comment on the two incidents in 2018. Mr Joyce said that the water supply to his part of the Park had been terrible for 10 years or more and he had complained

repeatedly about it. This culminated with his water being disconnected for 4 days in September 2018. He complained to the Council and an officer came out to speak to him. He was told that the Council had ordered Mr Nedic to reconnect his water supply. Mr Joyce confirmed that he was only repeating what he had been told by the Council.

- 52) Mr Joyce said that in September 2018, Mr Nedic and his sons drove a JCB onto the middle of his lawn and then totally destroyed the garden to the front and side. It had been a lovely garden that was much admired. A mature hedge was ripped out along with an aviary. When challenged, Mr Nedic and his sons were abusive and made comments like “you can go and tell the BBC”. Mr Joyce called the Police twice and also the Council. The Police and Council officer were sympathetic but said there was little they could do, the police officer advised Mr Joyce to move. Mr Joyce said that he felt completely devastated by the response and helpless. No one wanted to know and the situation had been going on for years.
- 53) Mr Joyce gave several reasons for not wanting to be moved to a larger concrete pitch. Primarily it was because he feared the harassment would continue. Mr Joyce said that he’d had use of a car parking space but Mr Nedic had allowed another resident to use it depriving him of the benefit for some time. This sort of harassment had been going on for years and years. Mr Joyce was happy to move off site, if Mr Nedic wanted to pay £150,000.00 for his home he could have it. Mr Joyce can’t wait to get out but he needs that sort of figure to purchase a suitable permanent home.
- 54) Mr Joyce disputed that there were any essential repairs but acknowledged that if the plan on Mr Bird’s report was viewed from a certain angle a pipe appeared to run under his home. It was however Mr Nedic’s problem to resolve.
- 55) In relation to the feasibility of moving his home, Mr Joyce said that it would be impossible due to the extension which was put on when it was legal to do so. Mr Joyce acknowledges that it would not now be permitted. The extension houses the central heating boiler and washing machine, both are connected to the main part of the home. It would be necessary to demolish the extension and rebuild it.
- 56) Mr Joyce confirmed that the home had been completely refurbished 10-15 years ago, as detailed in his statement. Mr Joyce had spent a lot of money on this because he’d intended it to be a permanent home for his daughter who lived with him. Mr Joyce has raised his daughter as a single parent since she was seven years. Mr Joyce also confirmed that he had done all the work to the garden including the pond. Mr Joyce confirmed that his home was situated on a concrete base and the skirting around his home was wood. He had not complained of any problem with the foul drains, most of blockage had been at the top end of the site.
- 57) When asked by Mr Clement why Mr Nedic’s offer of a replacement home similar in size to his current home was unacceptable, Mr Joyce said that it would not resolve the problem of Mr Nedic. He conceded that if the offer had been made by a different, reasonable site owner he would have considered it to be a reasonable offer. Mr Joyce’s concern was Mr Nedic and how he would actually behave, he recounted a recent incident when Mr Nedic sidled up to his daughter and said “we are going to have you kicked off here”.
- 58) Mr Joyce complained that it was just not fair, he bought the home to relax and retire to. He didn’t bargain for JCB’s coming through his washing line, the owner doing a victory dance, which by pure luck he managed to photograph, or being followed back to his home and verbally abused. He agreed with Mr Clements that it was fair to say that, other than pay him £150,000.00, there was no way of resolving matters with Mr Nedic – not after all the hassle, and that was the minimum sum he needed to buy something suitable. Mr Joyce agreed that Mr Nedic’s offer to relocate him to a new

home on Pitch 22 was a reasonable offer and if it had been made by a reasonable site owner, such as the previous owner, he wouldn't have had any problem with it and would have considered moving.

59) Mr Joyce said that he would never buy another park home or encourage anyone else to. He said he was sick to death of every day, not knowing what Mr Nedic was up to. He had not left the site since the incident in 2018 for fear of what might be done while he was away. The trouble is, once it's done it's too late and he'd seen it before.

Tribunals Deliberations and Decision

S10(1)(b) application

60) The Tribunal finds that the evidence provided by the Applicants' is insufficient for the Tribunal to determine that the proposal to relay the foul drainage pipes under and around Pitch 5 are essential repairs needed to comply with relevant legal requirements, for the following reasons:

- (i) Mr Bird lacks any relevant qualification or experience that would allow the Tribunal to treat his report as that of an expert on the issues before it. In particular, the Tribunal is unable, to give sufficient weight to Mr Bird's opinion that the drainage pipes under and around Pitch 5 fail to comply with relevant BS or EU standards. It goes without saying that the letter from the Council dated 11 March 2020, which is written in response to the opinions set out in Mr Bird's report, rather than as a concern arising from any inspection of the drains by the Council, is also of insufficient weight to determine that the condition of the drains under and around Pitch 5 breach the Licence Conditions.
- (ii) No consideration has been given to any alternative, no dig repairs that might have stabilised the deficiencies shown in the CCTV report without relocating Pitch 5.
- (iii) The CCTV did not indicate that any of the drainage pipes were category 5 - poor and requiring replacement.
- (iv) The option of laying a new pipe outside the perimeter of Pitch 5 was not considered because as a matter of convenience, rather than necessity, Mr Nedic's preference was to lay the pipes in the same run.
- (v) The Tribunal finds that the primary purpose of the Scanlon Report is to provide evidence of essential repair works for the purpose an application under s10(1)(b), that in practice will not be carried out, because once Pitch 5 is relocated, the current drainage system will be replaced by a new system laid within the service strip adjacent to the new internal access road. The application has been made to secure the relocation of Pitch 5 for redevelopment purposes, not to address any genuine concern about a potential breach of the Licence Conditions.

S10(1)(a) application

61) The Applicants' redevelopment plans for the north-eastern part of the site will undoubtedly secure an improvement to the visual impact of the site and its main entrance. It will also provide enhanced services and amenities for the new Pitches that will be constructed on it. However, absent any contractual right for the site

- owner to require a pitch owner to permanently relocate, in order to facilitate its development plans, the site owner must satisfy the Tribunal that it is reasonable to relocate the owners mobile home to another, broadly comparable pitch, for a period.
- 62) The Tribunal finds that Pitch 22 is broadly comparable with Pitch 5 in terms of size and amenity. It comprises a large concrete pad a little closer to the road than Pitch 5 with a flat grassed area immediately to the north-east, adjacent to the site boundary. If Mr Nedic makes good on his promise to provide replacement trees, shrubs and a pond, it is still likely to take many years for the garden reach the mature diversity of Pitch 5.
- 63) The Tribunal does not find that it is reasonable for Mr Joyce's home to be stationed on Pitch 22 for any period for the following reasons:
- (i) The Tribunal finds it likely that Mr Joyce's home will not survive the move intact, resulting in what is likely to be considerable expense in rebuilding or reinstating the extension. The Tribunal is persuaded by Mr Joyce's evidence that his home cannot be moved without undue risk of damage. He is an experienced park home owner who has fully refurbished his home and knows it's capability to withstand a move. Mr Nedic has offered to provide a new for old alternative, but is not willing to underwrite the cost of any remedial work required to Mr Joyce's current home following any attempt to move it.
 - (ii) Mr Joyce does not trust Mr Nedic to deliver on his promise to either reinstate his garden on Plot 22, or provide a new for old alternative unit of comparable size. The Tribunal finds that Mr Joyce's lack of trust is reasonable given the history of his dealings with Mr Nedic. An order under s10(1)(a) would leave Mr Joyce in the hands of Mr Nedic, either to attempt to move his existing home with no commitment to reinstate, or to provide a comparable new unit on Pitch 22.
 - (iii) Either course of action would require a significant level of trust and confidence in the other party to act in good faith. Trust and confidence is however completely absent between the parties and an order would put Mr Joyce in an unacceptably precarious position. The Tribunal has weighed the many benefits of the Applicants' proposed redevelopment plan against the detriment to Mr Joyce of moving his home and determined that, on balance, it would not be reasonable to for Mr Joyce's home to be moved to Pitch 22.
 - (iv) In reaching these conclusions the Tribunal took particular account of the following:
 - i. Mr Nedic did not dispute Mr Joyce's evidence of some serious actions and incidents of behaviour that caused damage to Mr Joyce's property and considerable distress to Mr Joyce. The explanation put forward by Mr Nedic, in relation to the destruction of Mr Joyce's garden does not justify his actions, particularly as the two units he claimed to have been clearing a path for, were not actually removed from the site until almost two years later. Mr Nedic acknowledged in evidence that he should have reinstated Mr Joyce's garden, but so far, has only made a fairly self-serving offer to reinstate the garden on Pitch 22.
 - ii. Mr Nedic is, on his own evidence, unable to communicate with Mr Joyce, other than through his solicitor. He has not disputed or commented on the allegations of abusive language and threatening behaviour and has not offered to refrain from using such language or exhibiting such behaviour in the future.
 - iii. The Tribunal found Mr Joyce to be an honest witness who gave his evidence simply and without exaggeration. The Tribunal accept Mr

Joyce's evidence that Mr Nedic has, at times, behaved, aggressively and abusively, which Mr Joyce has found distressing and threatening. The Tribunal finds that whether or not, Mr Nedic intended to harass and intimidate Mr Joyce, he has behaved in a way that has led Mr Joyce to reasonably believe that to be the case.

- 64) Having determined that there are no essential repairs need to comply with legal requirements and that it would not be reasonable to move Mr Joyce's home to Pitch 22 for any period, the Tribunal has not needed to consider whether the term 'any period' in s10(1)(a) and (b), can include permanent stationing of a mobile home on the alternative Pitch. If the term 'any period' cannot connote permanence, the Applicants' could not bring an application for permanent relocation of a mobile home within either subsection of s10. Mr Clements offered no real authority on this point and the Tribunal doubts that s10 was intended to cover permanent relocation, because the notion of permanence is inconsistent with the references to rights "exercisable for any period" and for the mobile home to be stationed "for that period". However, as in reaching its decision the Tribunal has not needed to determine this point, it has not done so.

Name: Deputy Regional Judge Barlow

Date: 23 December 2020

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).