

Park Home Owners—What Security?

Professor James Driscoll

Solicitor, writer and Visiting Professor of Law, Essex University

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Caravan sites, as they are commonly known, are a familiar sight in some parts of the countryside. People living there will typically have a contractual right to park their caravan on one of the pitches in the site. In some cases, the pitch may include a garden area. Comparatively little has been written on this small but important area of housing law. This article examines the current regulatory framework in light of two recent and important developments. The first both applies part of the regulatory framework to local authority run traveller's sites and transfers jurisdiction over most disputes from the county court to the residential property tribunal; the second is a recent decision of the Court of Appeal on the scope of the legislation.

Introduction

In England alone there are some 85,000 “park homes” located on 2,000 sites. This is the modern term for a caravan or mobile home that is placed on a residential site and used as the home owner’s main or only residence. There are also many households who use their homes for travel as well as a residence (gypsies and travellers). What all these residents have in common is that they own their home and purchase the right to keep it on a pitch on a site. The owner of a mobile home pays for the hire or rent of the pitch on which the home rests and they will usually have access to other facilities provided by the site owner. Comparatively little has been written on this small but important area of housing law.

Statutory changes

Significant changes took place from April 30, 2011 for park homes situated on protected sites in England. These are the extension of the rights of occupiers of local authority (including county councils) gypsy and traveller sites and the transfer of jurisdiction over most disputes between site owners and occupiers of both park homes and local authority gypsy and traveller sites from the county court to the residential property tribunal.

Park home residents have rights under the Caravan Sites and Control of Development Act 1960, the Caravan Sites Act 1968 and the Mobile Homes Act 1983. The latter has been amended by the Housing Act 2004 and the Housing and Regeneration Act 2008. Sites which are used exclusively for holiday purposes are excluded. Under the 1960 Act, owners of sites must obtain a licence to operate. Such sites are known as “protected” sites.

Park homes sites are a small part of the housing sector and often cater for older people. Although a park home is sometimes referred to as a “caravan”, they are often prefabricated bungalows, albeit mobile, many of very high quality. Park home sites are usually divided into pitches for the siting of the homes and most of the services and amenities are provided by the site owner.

The legal position of park home owners is unusual. They own their home which is not physically attached to the pitch (ground) on which it stands. In other words, the resident owns the home as a chattel and pays the site owner a “pitch fee” for the right to station the home on that particular pitch.

The bargaining position of the site owner and the residents is unequal. To some extent this imbalance has been mitigated by the Mobile Homes Act 1983, which confers security of occupation to residents and regulates many of the contractual dealings between them and the site owners. This includes regulating the amount of pitch fee payable and conferring on a resident a right to sell his or her home and assign the agreement to a person approved by the site owner whose approval must not be unreasonably withheld. Even so, there are concerns that some site owners treat the residents unfairly. This is why the procedures for dealing with disputes has been reformed.

Gypsies and travellers currently occupy pitches on local authority sites provided under the Caravan Sites Act 1968. This Act provides limited protection from eviction and harassment. To evict a person from one of these sites, a local authority need only give four weeks notice to terminate the licence and then seek a court possession order. No reasons need to be given for seeking possession.

From April 30, 2011, most of the provisions in the Mobile Homes Act 1983 now apply to local authority owned gypsy and traveller sites as well, including the new dispute resolution system. However, some of the implied terms which apply to park homes will not apply to these gypsy and traveller sites; for example, the right to sell a home and assign the agreement. Furthermore, some rights, including the right to challenge decisions or apply to the residential property tribunal, are disapplied to local authority transit pitches (i.e., temporary stay sites).

The change in the law is a response to the European Court of Human Rights decision in *Connors v United Kingdom* (66746/01) (2005) 40 E.H.R.R. 9 which decided that the lack of procedural safeguards for gypsies and travellers facing eviction from local authority owned sites was incompatible with art.8 of the European Convention on Human Rights (which provides a right to respect for a person’s private, home and family life).

How are disputes resolved?

Until April 2011 under the 1983 Act, disputes between residents and site owners were dealt with by the county court, or an arbitrator. If their agreement requires disputes to be referred to arbitration, this ousts the county court’s jurisdiction. For some time there have been objections from park home residents that the use of county courts to resolve disputes under the Act often favours site owners and disadvantages residents, two thirds of whom are thought to be over the age of 60 and on limited and fixed incomes (see, *Economics of the Park Home Industry*, ODPM October 2002).

From April 30, 2011, most disputes are now determined by the residential property tribunal. The county courts will retain jurisdiction only in relation to applications by the owner of a park home site to terminate the agreement that allows a person to station a park home on the site and to occupy it as his main residence. Applications for termination are only permitted on limited grounds. However, where an agreement specifies that any dispute is to be determined by an arbitrator that requirement will not have effect and instead the dispute will be determined by a residential property tribunal. This will apply also to termination disputes.

The aim of the transfer is to introduce a system for bringing proceedings and resolving disputes under the Act which operates fairly between residents and site owners and which ensures both are treated on an equal footing, through access to low cost specialist non-adversarial tribunals

that can use their expertise to resolve matters between parties relatively informally, cheaply and quickly. It is estimated that 150 and 200 cases per annum will go to the residential property tribunal and that cases will normally last a day.

This is not the end of the reforms: changes to the licensing system and further changes to the jurisdiction of the tribunal are contemplated (Ministerial announcement, February 10, 2011, CLG). These changes are made by the following regulations: Housing and Regeneration Act 2008 (Consequential Amendments to the Mobile Homes Act 1983) Order 2011 (SI 2011/1004); Mobile Homes Act 1983 (Amendment of Schedule 1 and Consequential Amendments) (England) (SI 2011/1003) and Mobile Homes Act 1983 (Jurisdiction of Residential Property Tribunals) (England) Order 2011 (SI 2011/1005).

Recent decision

A recent decision of the Court of Appeal, *Murphy v Wyatt* [2011] EWCA Civ 408; [2011] N.P.C. 41, examines the boundaries of these statutory protections. The facts of the case are unusual and far removed from the conditions of most park homes sites. Ms Wyatt appealed against the decision that the Mobile Homes Act 1983 did not apply to her tenancy. She occupied a plot of 1.7 acres of pasture land under a weekly tenancy. The current owner's late husband, Mr Murphy, granted a weekly tenancy of the land to Ms Wyatt's partner in 1975 which he used for keeping horses and similar commercial activities. Later in 1979, he stationed a caravan on part of the site. Later still, he formed a relationship with Ms Wyatt and he and Ms Wyatt occupied it as their home it appears with the agreement of the owner. Eventually, he gave up his business. Later, he persuaded the local authority to grant a certificate of lawfulness (following an application for housing benefit as the authority needed confirmation that the caravan was occupied lawfully). On his death (in 2002), the new landlord (Ms Murphy) agreed to Ms Wyatt staying on the land living in the caravan and paying a rent. Later, Ms Wyatt replaced the caravan with a more up-to-date version and the local authority granted a certificate of lawful use in 2007.

In May 2009, Ms Murphy served Ms Wyatt with a notice to quit. Possession proceedings followed and they were defended. The court decided that, as the notice to quit had not taken effect before the possession proceedings were started, the claim must be dismissed. In addition, the court dealt with the issue of whether the 1983 Act applied to the tenancy, the extent of the land covered by the Act and whether (as the landlord contended) there were grounds for possession. On the second issue, the court, after hearing the evidence, decided in favour of the tenant that there were no grounds for possession if the 1983 Act applied to this tenancy. The tenant argued that the 1983 Act applied to the whole of the tenancy; the landlord contended that it only applied to the site of the mobile home.

In a reserved judgment, the court held that the 1983 Act did not apply to the tenancy at all: there was no planning permission for a mobile home when the tenancy was originally granted and the extent of the land was far greater than the site of the home to warrant the protection of the 1983 Act. Thus, the learned judge reached a conclusion that was more favourable to the landlord than was argued on her behalf at the hearing after the hearing had concluded.

The tenant's appeal to the Court of Appeal was dismissed with the main judgment given by Lord Neuberger, who examined the question by asking first, whether the 1983 Act only applied if the site was protected from the start of the tenancy and whether the 1983 Act could apply to an agreement such as this with nearly two acres of land.

On the first issue, the Court of Appeal decided that, for various reasons, the 1983 Act could only apply to a site that was protected from the inception of the agreement. A contrary decision would not work given the other provisions of the Act such as the requirement that the landlord

should give a written statement of rights when the agreement was entered into. Turning to the second issue, the Court concluded that the sheer extent of the land militated against concluding that the 1983 Act could apply to an arrangement such as this. It could hardly be described as a garden or an amenity to be enjoyed with the site of the mobile home. Taking these points together, Lord Neuberger concluded that, in practice, the 1983 Act will, almost always, only apply to an arrangement which is limited to allowing the owner of a mobile home to station a mobile home on a pitch. Moreover, it can only apply to such an arrangement if it was lawful from the inception.

The Court of Appeal seemed troubled by the suggestion that statutory rights might be acquired after the original tenancy has been granted. However, the way in which residential tenancies can drift in and out of statutory protection is not uncommon. Take, for example, the increase in the maximum rent for assured tenancies last October which will have taken countless common law residential tenancies into protection as assured shorthold (or, in some cases, fully assured tenancies) with the application of the tenancy deposit scheme post the granting of the original tenancy.

Because the appeal was dismissed, it was open to the landlord to bring a fresh claim for possession. However, as Arden L.J. pointed out, it is possible that the tenant could invoke art.8 of the European Convention on Human Rights to defend the claim: see, *Manchester City Council v Pinnock* [2010] UKSC 45; [2010] 3 W.L.R. 1441 where the Supreme Court left open the question whether art.8 applies to claims made by private landlords.

Some additional thoughts

The subject of park homes raises a number of issues that yet remain to be resolved. First, what is, in general terms, the legal position of the owner of a mobile home who pays for the hire of a pitch on a site? Clearly, he has a contract which, as explained in this article, is statutorily regulated. As he has exclusive use (one assumes) of the pitch and pays for it, does this confer on him a tenancy or a mere licence? If he has a tenancy, can it be an assured or a shorthold tenancy under the Housing Act 1988?

The law is stated as at June 13, 2011.