RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

LANDLORD & TENANT ACT 1985 : SECTION 27A

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
PRELIMINARY ISSUE - JURISDICTION

Case No:	CHI/29UM/LSC/2004/0046
Property:	**Saddlebrook Holiday Park** **Leysdown-on-Sea** **Kent ME12 4QA**
Applicant:	Mrs Ellen Agombar & Others
Respondent:	Mr Anthony Barney
Date of Application:	2 August 2004
Preliminary hearing:	17 September 2004
Members of the Tribunal:	Mr P B Langford MA LLB (Chairman) Mr M G Marshall FRICS Mr T W Sennett MA MCIEH
Date decision issued:	25 October 2004

SADDLEBROOK HOLIDAY PARK, LEYSDOWN

1. The Application

This is an application by Mrs Ellen Agombar and other Lessees at Saddlebrook Holiday Park under Section 27A Landlord and Tenant Act 1985 ("the 1985 Act")in respect of service charges during the year 2003-2004. The Respondent to the application is the Landlord of Saddlebrook Holiday Park, Mr Anthony Barney.

2. Inspection

On 17 September 2004 we attended at Saddlebrook Holiday Camp in order to inspect the property. On the inspection we were accompanied by representatives of the Landlord and the Tenants. We saw a large area of land on which there were numerous small bungalows, some clad in brickwork, some in process of construction others simply constructed as prefabricated units. In some cases we saw small bare plots of land with a concrete hard-standing in the middle, where we were told the original buildings had been demolished. There was a central building which we did not go inside but which provided restaurant and other facilities. There were also estate roads.

3. The Hearing

At the hearing, the Applicants were represented by Mr Paul Tapsell of Counsel, instructed by Ms Nathalie Friday from A J Field & Co, solicitors in Sheerness. Two of the Leaseholders, Mr D Moon and Mrs L Clark were also present. The Landlord was represented by Mr George Hayman of Counsel instructed by Mr Ivor Morrison, of Ivor Morrison & Co.

4. The purpose of the hearing was to consider and decide an issue of jurisdiction as a preliminary point and, if necessary, to go on to give directions for the further conduct of the case. The issue was whether the Tribunal had jurisdiction to consider the application because the leases produced by the Applicants referred to the demise of "chalet sites" and not to the demise of chalets. Section 18(1) of the 1985 Act

defined service charges as being amounts "payable by a tenant of a dwelling". Could a "site" be construed as "a dwelling"?

5. Mr Tapsell presented the case for the Applicants. He said that the lease of a chalet did not stand or fall on its own interpretation but had to be looked at in conjunction with a second lease ("the Amenity Lease") which each of the Leaseholders had signed at the same time as they had signed the lease of the chalet site. The second recital in the Amenity Lease stated – "By a lease intended to be executed contemporaneously herewith the lessee will become a lessee for the term of 999 years from the said date of the chalet numbered more particularly referred to in the said lease". Mr Clark's lease referred, for example, to the chalet numbered 139. The third recital of the Amenity Lease then began – "For the purpose of enabling the lessee to secure the full use and enjoyment of the chalet.....". Furthermore at the time of the leases being granted and when the Leaseholders went on the site, chalets were in existence standing on the respective sites in many cases and certainly in the case of Mr Moon and Mrs Clark. These buildings were designed for living in, with all facilities. He refuted absolutely the statement appearing in Mr Hayman's written skeleton argument (which he had seen immediately before the hearing) that it was common ground that there were no buildings or other structures on the sites at the time of the leases being granted. He maintained that, read together, the lease and the Amenity Lease clearly showed that what was being demised was a chalet and not merely a chalet site. He accepted that the leases prohibited the Leaseholders from residing in the chalets for 4 months a year but he rejected Mr Hayman's argument that this meant the chalet could not be regarded as a dwelling. A holiday chalet was no different from a Kensington flat used by a leaseholder for short periods in the year when he was not resident at, for example, his normal country establishment. His solicitors had already submitted a copy of the report on the case of Minster Chalets Ltd v Irwin Park Residents Association but he accepted that this case was not on "all fours" with the present case.

6. Mr Hayman presented the case for the Landlord. Prior to the hearing, he handed to the Tribunal a skeleton argument in writing, which he proceeded to amplify at the hearing. His first point was that in terms the lease demised a chalet site with a particular number. It did not satisfy therefore the definition contained in Section 38

of the 1985 Act – "a building or part of a building occupied or intended to be occupied as a separate dwelling, together with any yard, garden, outhouses and appurtenances belonging to it or usually enjoyed with it". His second argument was that the way in which the lease prohibited a certain use of the land in question prevented it from being a dwelling. The leases contain covenants that there should be no occupation for living purposes except between the period of March to October inclusive every year. In order to be a dwelling, the property should be a permanent abode. He contended that the requirement of permanence stemmed from the definition of dwelling, not in the 1985 Act where the definition was circular but, in the shorter Oxford English dictionary which defined a dwelling as "a place of residence, a habitation, a house". He then referred to the shorter Oxford English dictionary of "residence" which gave as one of the meanings "the circumstance or fact of having one's permanent or usual abode in or at a certain place". He said that, in view of what he had been informed immediately prior to the hearing, he withdrew his contention that there had not been any structural building on the sites at the time the leases were granted.

7. Consideration

We considered that it was not open to the Tribunal to look to other documents or circumstances in defining the term "chalet site", if the meaning in the lease itself of the property was clear and unambiguous. We did consider that the definition of the property being demised in the lease itself was clear and unambiguous and therefore there was no need to look at the other lease. However, even the Amenity Lease made clear that the reference in a recital to a "chalet" referred to "a chalet site".

We noted that there were several references in the lease which pre-supposed that there would be a chalet on the site. For example Clause 2(i) required the leaseholder "to permit the landlord and its agents at all reasonable times to enter the said chalet to read the electricity meter". Clause 2(j) required the leaseholder "at all times to leave a duplicate key of the chalet at the landlord's office". Clauses such as that might appear to give some support to Mr Tapsell's argument. However Clause 2(l) required the leaseholder "to keep the chalet (the property of the tenant and placed on part of the chalet site coloured red) in good repair and in clean and tidy condition.....". Of

course it could be argued that a chalet was the property of the tenant by virtue of the demise. If that was the case however the use of those words would simply be tautologous and the clause would mean just the same without the words "the property of the tenant" as with them. In our view those words can only mean therefore that the chalet was to be the absolute property of the tenant, with the landlord as freeholder having no interest in it. It did not therefore form part of the demise, in which the Landlord would retain the freehold interest. This interpretation is supported by the fact that, contrary to the invariable practice of either the landlord insuring the property at the leaseholder's expense or alternatively requiring the leaseholder to insure up to the full replacement value of the property, there are in the leases no insurance requirements at all.

We did not accept Mr Hayman's second reason for saying that the leases were not leases of dwellings. That seemed to depend on using one among several definitions of dwelling and one among several definitions of residence. We did not accept that a dwelling might lose its essential characteristic of being a dwelling, simply because it was not occupied for a period of the year. However we consider his first argument was sound and that in itself is sufficient to dispose of the matter.

8. Decision

For the reasons we have given, we have decided that the Tribunal has no jurisdiction to entertain this application, which is accordingly dismissed. It follows that there is no need to give directions for the further conduct of the case.

P B LANGFORD (Chairman)