UPPER TRIBUNAL (LANDS CHAMBER)

UT Neutral citation number: [2014] UKUT 0351 (LC)
UTLC Case Number: LRX/33/2014

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

PARK HOMES – sale of mobile home and assignment of pitch agreement – occupier's notice of proposed sale - owner's notice of application for a refusal order – whether notice may predate or must postdate application – para 7B, Sch 1, Mobile Homes Act 1983 – Mobile Homes (Selling and Gifting) (England) Regulations 2013 – appeal dismissed

IN THE MATTER OF AN APPEAL AGAINST A DECISION OF THE FIRST-TIER TRIBUNAL (PROPERTY CHAMBER)

BY

WYLDECREST PARKS (MANAGEMENT) LTD Appellant

Re: 11 Scatterdells Park,
Scatterdells Lane,
Chipperfield,
Hertfordshire
WD4 9ET

Before Martin Rodger QC, Deputy President

Sitting at: 45 Bedford Square, London WC1B 3AS
on
22 July 2014

The appellant was represented by its director, Mr David Sunderland
There was no respondent to the appeal

The following cases are referred to in this decision:

R (Lester) v London Rent Assessment Committee [2003] EWCA Civ 319

R v Secretary of State for the Home Department Ex parte *Jeyeanthan* [2000] 1 WLR 354

Avon Freeholds Ltd v Regent Court RTM Co Ltd [2013] UKUT 0213 (LC)

DECISION

Introduction

1. Before 26 May 2013 (by virtue of paragraph 8(1) of Schedule 1 to the Mobile Homes Act 1983) ("the 1983 Act") the terms on which mobile homes on protected sites in England were occupied included a term that the occupier was entitled to sell the mobile home and to assign the agreement under which the home was stationed on the protected site, to a person approved by the owner of the site. The approval of the site owner was not to be unreasonably withheld, but there was no effective sanction if an owner withheld consent to a proposed sale and assignment unreasonably. No equivalent of the statutory right to damages for unreasonable refusal conferred on tenants by the Landlord and Tenant Act 1988 exists in this context.

2. To reduce the risk of abuse by park owners of their right to refuse consent to proposed sales, the Mobile Homes Act 2013 introduced new provisions placing responsibility on the owner to apply to a tribunal (in England the First-tier Tribunal (Property Chamber) ("the F-tT")) if, after receiving notice of a proposed sale, the owner wished to object to it. The time limit for such an application is very short (21 days) and the owner is required to give notice of the application to the occupier within the same period. The grounds on which an owner may object to a proposed assignment are also extremely limited.

3. This appeal against a decision of the First-tier Tribunal (Property Chamber) given on 17 December 2013 is brought by the owner of Scatterdells Park, a mobile home park at Chipperfield in Hertfordshire ("the Park"). It concerns the procedure for such an owner to object to a proposed sale.

4. Both the appeal and the proceedings before the F-tT were rendered academic by the withdrawal of the proposed purchaser from the sale shortly before the F-tT's decision (which came almost three months after the occupiers' notice of the proposed sale had been given to the appellant). For that reason the occupiers of the mobile home, who were respondents to the proceedings before the F-tT, have not participated in this appeal. Mr Sunderland, who appeared for the appellant as one of its directors, emphasised in his helpful submissions that the appeal nonetheless raises a point of some practical significance to the occupiers of mobile homes and the owners of the parks on they are located.

The facts

5. The Park is a protected site within the meaning of the 1983 Act. It was acquired by the appellant in 2010 subject to the rights of occupation of the occupiers of the various mobile homes located on it.

6. Number 11 Scatterdells Park is the pitch occupied by Mr and Mrs Peddle pursuant to a pitch agreement made by their predecessor in 1994 and assigned to them in 1999. The pitch agreement prohibits the keeping of any animal on the pitch.

7. On 23 September 2013 solicitors acting for Mr and Mrs Peddle gave notice to the appellant of the proposed sale of their mobile home and assignment of their pitch agreement to a third party who wished to keep two dogs at the mobile home. The appellant took the view that this would be a breach of the pitch agreement and informed Mr and Mrs Peddle that it would object to the proposed assignment if no assurance could be given that the assignees would comply with the agreement.

8. No such assurance was forthcoming and by letter dated 10 October 2013 the appellant informed Mr and Mrs Peddle's solicitors that:

> "We are making an application to the Residential Property Tribunal for a Refusal Order" and gave its reasons.

9. On 11 October 2013 the appellant completed the F-tT's standard form of application by the owner of a park home site for a refusal order preventing the occupier from selling the park home and assigning the agreement to the proposed occupier. The appellant stated that it had given notice of the application to the occupier, and that it had done so by first class post and email to the occupier's solicitors on 10 October 2013. The application was posted on the day it was completed and received by the F-tT on the following working day, 14 October 2013. Both the appellant's application to the F-tT and its notification to the occupiers of its intention to make it were received within 21 days of the receipt by the appellant of notice of the proposed sale.

10. The F-tT gave directions for the conduct of the application on 30 October 2013 and informed the parties that, if neither party requested an oral hearing the application would be determined on paper after 9 December. The F-tT issued its decision on 17 December, by which it refused to make a prohibition order, but by that time the proposed purchaser had withdrawn from the sale.

Relevant statutory provisions

11. The Mobile Homes Act 2013 ("the 2013 Act") distinguishes between pitch agreements made after 26 May 2013, which are referred to as "new agreements", and those made before that date which are treated as "other agreements".

12. Section 10 of the 2013 Act introduces two new paragraphs into Schedule 1 to the 1983 Act dealing with sale and assignment: paragraph 7A concerning new agreements and paragraph 7B dealing with other agreements. Similar arrangements in paragraphs 8A and 8B deal with the gift of mobile homes. So far as is relevant for this appeal, paragraph 7B of the 1983 Act now provides as follows:

"7B(1). Where the agreement is not a new agreement, the occupier is entitled to sell the mobile home and assign the agreement without the approval of the owner if –

(a) The occupier serves on the owner a notice (a "notice of proposed sale") that the occupier proposes to sell the mobile home, and assign the agreement, to the person named in the notice (the "proposed occupier"), and

(b) The first or second condition is satisfied.

(2) The first condition is that, within the period of 21 days beginning with the date on which the owner received the notice of proposed sale ("the 21-day period"), the occupier does not receive a notice from the owner that the owner has applied to a tribunal for an order preventing the occupier from selling the mobile home, and assigning the agreement, to the proposed occupier ("a refusal order").

(3) The second condition is that –

(a) Within the 21-day period –

(i) the owner applies to a tribunal for a refusal order, and

(ii) the occupier receives a notice of the application from the owner, and

(b) The tribunal rejects the application.

(4) If the owner applies to a tribunal for a refusal order within the 21-day period but the occupier does not receive notice of the application from the owner within that period –

(a) the application is to be treated as not having been made, and

(b) the first condition is accordingly to be treated as satisfied.

(5) A notice of proposed sale must include such information as may be prescribed in regulations made by the Secretary of State.

(6) A notice of proposed sale or notice of an application for a refusal order –

(a) must be in writing, and

(b) may be served by post."

13. In addition to the procedures for notices of proposed sale and applications for refusal orders, paragraph 7B goes on to restrict the grounds on which an application for a refusal order may be made and to limit the sum which the new occupier may be required to pay the owner as a commission on the sale of the mobile home. It is clear, therefore, that paragraph 7B was intended to remove obstacles to the speedy sale of mobile homes and the assignment of pitch agreements and to prevent abuse and exploitation of occupiers who may lack negotiating power and find themselves in a relatively vulnerable position.

14. Pursuant to powers conferred by the 2013 Act, the Secretary of State has made the Mobile Homes (Selling and Gifting) (England) Regulations 2013 ("the 2013 Regulations"). Regulation 4 specifies the information required to be provided by an occupier when a sale is proposed and regulation 4(7) prescribes the form which a notice of proposed sale must take. The 2013 Regulations also prescribes various other standard forms of documents and notices but it does not prescribe any form of application to the F-tT for a refusal order nor any notice for the purpose of paragraph 7B(2) informing an occupier that an owner has applied to a tribunal for a refusal order.

The Practice Direction

15. On 9 September 2013 the Senior President of Tribunals made a Practice Direction applying to all applications to the First-tier Tribunal (Property Chamber) by a site owner for a refusal order. The Practice Direction was made in the exercise of the Senior President's powers conferred by section 23 of the Tribunals, Courts and Enforcement Act 2007.

16. The Practice Direction, and the F-tT's own application form which reflects its provisions, have been relied on by Mr Sunderland in support of his preferred construction of paragraph 7B. It is therefore necessary to set out the more relevant parts of it.

17. Paragraph 2 of the Practice Direction provides that all applications for a refusal order must be received by the Tribunal within 21 days of the site owner's receipt of notice of a proposed sale. The same time limit applies to notices of a proposed gift which are the subject of section 8B of the 1983 Act and also covered by the Practice Directions.

18. The Practice Direction provides in paragraph 3 as follows:

> *"Proof of notice*
>
> The legislation requires that a site owner who seeks a refusal order from the Tribunal must not only ensure that the application is made to the Tribunal within 21 days of receiving notice of the proposed sale or gift from the mobile home occupier but also he/she must have notified the occupier of the application within that 21 day period. Therefore the Tribunal will require proof that the occupier has been notified of the application. It is unlikely that a simple statement that the occupier has been notified will suffice. Where the Tribunal has received an application from a site owner which does not include proof that notice of the application has been given to the occupier by the site owner, the proceedings may be stayed for a period of 7 days for such proof to be provided."

19. Having regard to the requirements of the Practice Direction the First-tier Tribunal (Property Chamber) has issued a standard form of application (PH5) available on its website for use by park owners wishing to apply for a refusal order. Section 5 of the standard form invites the owner to answer yes or no to the question: "Have you given notice to the occupier of your application to the Tribunal?" The form continues:

> "If yes, please enclose a copy of your notice and specify the date on which you gave that notice to the occupier including evidence of how it was given."

The form provides for the owner to sign a statement of truth stating that the signatory believes that the facts stated in the application are true.

20. In this case the appellant completed the standard form of application answering yes to the question in section 5 of the form. The appellant (I assume Mr Sunderland on its behalf) signed the statement of truth confirming the truth of the facts stated in it.

21. The Practice Direction itself goes on to provide that on receipt of an application the F-tT will notify the site owner and the occupier that the application has been received (paragraph (7(a)). If the application does not include proof that the occupier has been notified of the application by the site owner, the site owner will be invited to provide such proof within 7 days (paragraph 7(b)). After 7 days the F-tT is to consider whether to strike-out the application on the basis that "no proof that the occupier was served with notice of the proceedings has been provided" (paragraph 7(c)(i)). If the application is not struck out the F-tT is required to give directions for the urgent determination of the application and should set a date for the hearing or a paper determination of the application within 14 days (paragraph 7(e)).

22. Paragraph 8 of the Practice Direction requires the F-tT to issue its determination "as soon as possible and in any event within the 48 hours of the hearing or paper determination."

23. The sequence of events now provided for by paragraph 7B of Schedule 1 to the 1983 Act is designed to ensure that, if a park owner does not object to a proposed sale within 21-days of receiving notice of the proposed sale an occupier will know immediately on the expiry of that period that the sale may proceed. If the owner does object and applies for a refusal order within the 21 day period, the timescales envisaged by the Practice Direction aim to provide certainty within a further 7 days (if the application is struck out without a hearing in the absence of proof of notice of the application having been given to the occupier) or at the most within a total of 23 days (making 44 days from the receipt of the notice of proposed sale) if a hearing is convened or the application is determined on paper. These timescales are ambitious but they are consistent with the obvious policy of the 2013 Act, and it is the responsibility of the F-tT to accommodate them.

The F-tT's decision

24. The F-tT determined that Mr and Mrs Peddle were entitled to sell their mobile home and assign the agreement, and that the appellant was not entitled to object because it had not followed the correct procedure. At paragraph 21 of its decision the F-tT referred to paragraph 7B(3) and said:

> "The words "the notice of the application" must be read in conjunction with paragraph 7B(2) which provides that it is a notice "that the owner has applied to a Tribunal" for a refusal order. The Tribunal takes the view that the chronology is important …. if the notice of the application under paragraph 7B(3)(a)(ii) could refer to an application that had not yet been made, there is

no other time limit which would apply under paragraph 7B(3) and the owner could delay an application to the Tribunal."

25. In paragraph 24 of its decision the F-tT determined that the appellant's notice of application given to Mr and Mrs Peddle on 10 October 2013 was defective because the application itself was not made until 14 October 2013. The F-tT went on:

> "For it to comply with the Act, a notice to the occupier that the application "has been made" could not be validly sent until after 14 October 2013 (or on that date, but after the application had been received by the Tribunal). The notice is dated 10 October 2013 and the application is dated 11 October 2013 and the appellant indicates that these documents were despatched on these dates. The notice of application could not therefore have stated that application "has been made"; the use of the words "are making" was an accurate statement of what was being done but what was being done did not comply with the statutory requirements. The notice of the application was therefore defective.

26. On that basis the F-tT was able to find that the first condition under paragraph 7B(2) was to be treated as having been satisfied so that Mr and Mrs Peddle were entitled to sell their mobile home and assign the agreement without the approval of the appellant.

27. The F-tT itself gave permission to appeal on 14 February 2014 having been shown a decision of a differently constituted F-tT in the Southern Region in which a notice of intention to seek a refusal order which had been served by the appellant on the same day as it made its application to the F-tT was found to have been properly made.

The issue

28. The issue in this appeal is whether, as the F-tT held, paragraph 7B requires that notice of an application for a refusal order must be given by an owner to an occupier after the application has been received by the Tribunal or whether, as the appellant contends, and both the Practice Direction and the standard form of application appear to anticipate, notice of the application may be given before the owner has applied to the Tribunal for a refusal order.

29. This issue is significant for practical reasons. The occupier of a mobile home must know whether the first or second conditions have been satisfied since, if they have, the occupier will be free to sell their home and assign their pitch agreement without the consent of the owner of the park. If the conditions have not been satisfied and a sale goes ahead, the occupier will be at risk of an application by the owner to terminate the agreement.

30. The issue is also important for park owners. As Mr Sunderland pointed out, section 12 of the 2013 Act introduces a new section 3(1AA) of the Caravans Site Act 1968 by which it is a criminal offence for the owner of a protected site or its agent knowingly or recklessly to provide information or makes a representation which is false or misleading, knowing, or having reasonable cause to

believe, that doing so is likely to cause a person who is considering whether to purchase or occupy a caravan to decide not to do so. It is not fanciful to think that being informed that a park owner has given notice of an application for a refusal order might cause a proposed assignee to decide not to proceed with an assignment, is important for a park owner to know what statement paragraph 7B entitles him to make.

The applicant's submissions

31. Mr Sunderland pointed out that the F-tT's view that notice of an application for a refusal order could only be sent to an occupier after the application had been made and received by the F-tT contradicts the standard form of application and the Practice Direction, each of which requires evidence that notice of the application *has been given* to the occupier to be supplied with the application and, if it is not supplied, indicates that the application should be stayed and is liable to struck out.

32. Mr Sunderland relied on the decision of the F-tT of the Southern region and suggested that paragraph 7B would be satisfied if, within the 21-day period, the two essential events had occurred i.e. that an application had been made and notice had been given to the occupier, in whatever order those events occurred. A notice that an application was being made or was intended to be made satisfied the requirement of clarity so that the occupier would know that it was not yet safe to proceed with the proposed assignment.

33. If the park owner had to wait until the Tribunal had received the application before it could give a valid notice to the occupier, the effect of the Practice Direction would be the imposition of a stay of 7 days in every case. Since notice of the application had to be given within the 21-day period a requirement for the service of notice only after receipt by the F-tT of the application would in practice significantly truncate the 21-day period within which the application was required to be made. Mr Sunderland submitted that, given the importance of the procedure, the shortness of the time limit and the intention that proceedings should be expedited and not delayed by unnecessary stays, the F-tT's approach could not be right.

Discussion

34. I propose first to consider the language of paragraph 7B and its meaning, and then to consider the effect of the Practice Direction and the standard form.

35. Paragraph 7B(2) ("the first condition") is satisfied by the occurrence of a single event within the 21-day period or, more correctly, by the non-occurrence of a single event. If within that period the occupier does not receive a notice that the owner has applied for a refusal order, the first condition will be satisfied and the occupier will be free to sell the mobile home and assign the pitch agreement. The first condition would be satisfied in either of two situations: if the occupier received no notice of any sort within the 21-day period; or, alternatively, if the occupier received a notice within the 21-day period but that notice did not correspond to the description in paragraph 7B(2).

36. The second condition in paragraph 7B(3) is only satisfied if three separate events occur, namely: first, the owner applies to a tribunal for a refusal order within the 21-day period; secondly, the occupier receives a notice of the application from the owner within the 21-day period; and, thirdly, the tribunal rejects the application. It is perhaps worthy of observation that the order in which these three events are described in the second condition places the application to the tribunal first in the sequence.

37. It is also notable that paragraph 7B(4) contemplates circumstances in which an application is made for a refusal order within the 21-day period but no notice of the application is received by the occupier within that period. In those circumstances the application is "to be treated as not having been made… [and the first condition] is to be treated as satisfied", leaving the occupier free to assign the agreement. Why that provision was thought necessary is less clear. It would seem to be the case that in the circumstances described in paragraph 7B(4), no notice of the application having been received within the 21-day period, the first condition would be fully satisfied since non-receipt of the notice is the essence of the first condition. There is no obvious reason why, in those circumstances, the first condition should have to be "treated as satisfied."

38. Nonetheless the draftsman of paragraph 7B(4) obviously considered that certainty around the effect of the failure to serve a notice was sufficiently important to require the consequences to be spelt out. It is notable that the draftsman did not feel that it was necessary to spell out what was to happen if a notice was given to the occupier within the 21-day period but no application was made to a Tribunal for a refusal order. It must have been considered abundantly clear that the first condition would be satisfied in those circumstances.

39. Although Mr Sunderland accepted that both the notice and the application must be delivered within the 21-day period, the first condition does not state in terms that an application must have been made within that period. Construed literally the first condition would fail to be satisfied provided the occupier received notice that the owner had applied for a refusal order, whether such an application had actually been made or not. It is also a curiosity that, if an application for a refusal order is made late (i.e. outside the 21-day period) the second condition could not be satisfied, since the first step towards its satisfaction is that the owner applies for a refusal order within the 21-day period.

40. If the approach adopted by the appellant of giving notice that an application is about to be made is a valid one, it leaves open the possibility that a notice might be received by the occupier within the 21-day period without the owner actually applying for a refusal order until after the 21-day period has expired. If giving notice that an application is about to be made is sufficient, and has the same effect (for the purpose of the first condition) as giving notice that an application has been made, it is hard to see what would be wrong with that sequence of events, at least so far as the first condition is concerned.

41. I am satisfied, however, that the making of an application within the 21-day period, and not simply the making of a statement that an application has been made or will be made, is fundamental to the avoidance of satisfaction of the first condition. Parliament cannot have intended that a false

statement would be as good for this purpose as a true statement. More importantly, the second condition can be satisfied only if an application is made within the 21-day period, so the consequences of a failure to make an application at all, or the making of a late application, must be dealt with by the first condition. The evident statutory purpose is that in the case of a late application or no application, the occupier's freedom to assign is to be crystallised at the end of the 21-day period by the first condition being satisfied. The first condition must therefore be understood as requiring not only that within the 21-day period a notice be given to the occupier that the owner has applied for a refusal order, but also that within the same period the application has actually been made.

42. The plain and ordinary meaning of the first condition, with its requirement that notice be given that "the owner *has applied*" indicates that notice may not be given prospectively of an event that has not yet occurred. The first condition does not contemplate the absence of a notice of intention to make an application; it is satisfied unless a notice has been received by the occupier that an application has been made and both the application and the notice (in that order) must therefore come within the 21-day period.

43. This view of the natural meaning of the language of the first condition is fortified by the unsatisfactory consequences if a notice of *intention* to make an application may be treated as sufficient to avoid the satisfaction of the first condition. If such a notice, given within the 21-day period, could prevent the first condition from being satisfied the occupier would be left in a state of uncertainty up to and after the end of the 21-day period as to whether an application had in fact been made. The owner would be under no duty to inform the occupier whether the application foreshadowed in the notice had actually been made or not since satisfaction of the first condition would have been precluded by the giving of a notice of intention to make an application. The occupier's only means of securing certainty would either be by waiting to see if notice of an application was received from a tribunal (in accordance with paragraph 7(a) of the Practice Direction), or by taking the initiative and making enquiries of the appropriate tribunal (which he would first have to identify by his own research). These consequences of an elastic interpretation of the first condition would be inconsistent with the change in emphasis of the 2013 Act in putting the burden of prompt action on the park owner who wishes to object to an assignment. The apparent policy of the Act is that the occupier should be aware at the end of 21 days whether he can assign or not; since the making of an application within that period is an essential step in restricting the freedom to assign, the notice which must be given by the owner is a notice that an application has been made.

44. Having considered paragraph 7B I am therefore firmly of the view that it is not permissible for a part-owner to give notice that an application for a refusal order will be made, and that the F-tT was right in its conclusion that the first condition was satisfied in this case.

45. I am not deflected from that view by the Practice Direction or by the contents of form PH5, neither of which is prescribed by the 2013 Act or the 2013 Regulations. Although the provision of the information required by the Practice Direction is compulsory, the use of the Tribunal's own standard form is not (although obviously it is greatly to be encouraged). Undoubtedly both reflect an informed view of the effect of paragraph 7B, and for that reason they may support a particular interpretation of an ambiguous statutory provision, but they cannot alter the clear meaning of the

statute. Their utility is strictly limited however and it would be wrong to treat them as an aid to the construction of the primary legislation, notwithstanding that they may be supportive of a particular view of that legislation (see *R (Lester) v London Rent Assessment Committee* [2003] EWCA Civ 319 at paragraph 27).

46. In this case Mr Sunderland points out that section 5 of form PH5 asks the owner "have you given notice to the occupier of your application?" He suggests that that indicates that the giving of notice is optional at that stage. I agree with Mr Sunderland that the question, and the requirement that in the event of an affirmative answer a copy of the notice together with "evidence of how it was given", suggests that the form was drafted on the assumption that it was at least permissible for an owner to give notice of an application which has not yet been received by the F-tT. Otherwise it would be impossible for the owner to inform the Tribunal in the application that notice had been given. I also agree with Mr Sunderland that the Practice Direction contemplates the proof of the giving of notice may be provided with the application.

47. Despite these features of the Practice Direction and the standard form, they cannot alter the fact that paragraph 7B(2) refers to a notice, "that the owner has applied to a Tribunal" rather than a notice that the owner intends to apply. In those circumstances I give no weight to the Practice Direction or the form in reaching my conclusion, in agreement with the LVT, that the notice in this case did not correspond to the description in paragraph 7B(2).

Consequences

48. The LVT assumed that a failure to serve a notice corresponding to the description in paragraph 7B(2) meant that the first condition had been satisfied and that the occupiers were free sell the mobile home and assign the pitch agreement without the approval of the appellant. I agree with them and the appeal must therefore be dismissed. There are two further matters on which I would like to comment before concluding this decision.

49. The first is the LVT's proposition (see paragraph 25 above) that:

> "For it to comply with the Act, a notice to the occupier that the application "has been made" could not be validly sent until after … the application had been *received* by the Tribunal."

50. The LVT reached this conclusion after considering the decision of the Court of Appeal in *R (Lester) v London Rent Assessment Committee* [2003] EWCA Civ 319, which concerned the proper construction of section 13(4) of the Housing Act 1988, the effect of which is that the rent payable by an assured tenant will become the rent specified in a notice of increase served by the landlord unless the tenant "refers the notice to a rent assessment committee" within a specified time. The question for consideration was whether the word "refers" required that the tenant's challenge to a proposed rent should be received by the committee within the specified period or whether it was sufficient for it to be sent by the tenant within that period (whether or not it was received). Waller LJ considered that the more natural meaning of the word "refer" connoted "receipt by" the committee (paragraph 19) and that practical considerations suggested that meaning natural meaning was the one which

should be adopted (paragraph 30); Tuckey LJ agreed with him (paragraph 37). Sedley LJ agreed in the outcome but did not agree that "refer" had an ordinary or natural meaning in the context in which it was used in section 13(4), describing it instead as a "protean and problematic word" (paragraph 40). He based his conclusion on the consideration that there was always a risk of the loss or non-delivery of the tenant's challenge so that if despatch of the challenge was sufficient to satisfy the requirement that it be referred to the committee, the parties' legal rights might be altered without the landlord's knowledge, which was unacceptable.

51. By analogy with the Court of Appeal's decision in *Lester,* the LVT considered that the reference in the second condition to the owner applying to the tribunal within the 21-day period required that the application must be received within the period, and that the first condition should be construed in the same way so that the owner's notice must be a notice that an application has been made (in the sense of having been received) so could not be given until the application had in fact been received.

52. The reasons given in paragraphs 41 to 43 above, and the reasons given by Sedley LJ in *Lester,* would all seem to support that approach. Unless both the making of an application for a refusal order, and its receipt by the tribunal, are treated as necessary to the avoidance of the first condition, the risk of non-receipt will fall on the occupier, who will be prevented from lawfully selling the mobile home and assigning the agreement without the owner's consent even though no application for a refusal order has in fact been received by the tribunal.

53. Nonetheless, I am uncomfortable with the LVT's conclusion for two practical reasons. The first is that the time within which the owner must apply for a refusal order would be truncated by the need for the owner to wait until the application has been received before it can give notice to the occupier (which must itself be received by the occupier within the 21-day period). The second is the practical problem of how the owner will know that the application has been received.

54. In my judgment it ought to be permissible for an owner who has in fact sent an application for a refusal order to a tribunal to give a notice to the occupier saying that an application "has been made", even before receiving confirmation from the tribunal itself that the application has been received. The language of the first condition would seem to me to permit that. Nonetheless, as it is not necessary for me to express a concluded view on this issue for the purpose of the appeal, I prefer not to do so and to wait a future appeal in which the issue arises and can be considered against a concrete set of facts.

55. Finally, a further issue which was not raised in this appeal, but which it may be necessary to consider in future, is whether the consequence of a failure to make an application for a refusal order before giving notice of the application must always be that the first condition is satisfied and the sale and assignment may proceed without the owner's consent, or whether the tribunal has power in an appropriate case to overlook a non-compliance with the statutory procedure. An alternative approach to that taken by the LVT (which assumed that premature service of the notice was fatal to the owner's entitlement to apply for a refusal order) might be to adopt the approach of the Court of Appeal in *R v Secretary of State for the Home Department* Ex parte *Jeyeanthan* [2000] 1 WLR 354

and to consider whether "substantial compliance" with the statutory requirement would suffice to achieve the statutory purpose so that a defect in the procedure may be waived or overlooked. The Tribunal has recently adopted that approach (in a different statutory context) in *Avon Freeholds Ltd v Regent Court RTM Co Ltd* [2013] UKUT 0213 (LC), but whether it would be a permissible approach in a case of this sort is a difficult question best left for consideration when it arises in a specific factual context.

56. For these reasons I dismiss the appeal.

Martin Rodger QC

Deputy President

31 July 2014