Neutral Citation Number: [2023] EWHC 1479 (KB)

Case No: KB 2022-002460

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 15 June 2023

Before:
HUGH MERCER KC
(sitting as a Deputy Judge of the High Court)

- -

Between:

(1) SOPHIE CATHERINE MARY DEAN
(2) EMILY MARGARET ANN HAGGART
(3) ANNABEL NANCY ANGELA HARDING **Claimants**

- and -

(1) SIMON MITCHELL
(2) SECRETARY OF STATE FOR LEVELLING-UP, HOUSING AND COMMUNITIES **Defendants**

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Stephen Cottle (instructed by **Community Law Partnership**) for the **First Defendant**

Zoe Leventhal KC, Emma Dring (instructed by **Government Legal Department**) for the **Second Defendant**

Hearing dates: 8, 9, 10 February 2022

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Approved Judgment

This judgment was handed down remotely at 10.00am on 15 June 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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HUGH MERCER KC

HUGH MERCER KC:

1. Pursuant to the Order of HHJ Glen dated 4 May 2022, this is a hearing to determine preliminary issues in relation to the First Defendant's claim for declaratory relief under the Human Rights Act 1998, arising from a possession claim in which the Claimants are seeking to evict the First Defendant who lives in a coach and caravan on their land.

2. Before one gets to the Human Rights Act 1998, the Secretary of State raises a logically prior argument to the effect that a site which does not have a site licence cannot in any event qualify as a "protected site" as defined so that caravans parked on the site might benefit from the provisions on security of tenure. This point was included in an Agreed List of Issues dated 1 February 2023 and I shall deal with this argument first. This land has never had the benefit of a site licence and so, if a site licence were a prerequisite to a site qualifying as a "protected site", it would follow that the First Defendant could not obtain any security of tenure under the 1983 Act.

3. If a site licence is not a prerequisite to a site qualifying as a "protected site", the First Defendant argues that, in order to protect the right to respect for his home under Article 8 European Convention on Human Rights (ECHR), the Mobile Homes Act 1983 ("**MHA 1983/1983 Act**") must either be interpreted under s. 3 Human Rights Act 1998 ("**HRA**") so as to apply to the First Defendant's licence to occupy the Claimants' land or a declaration of incompatibility is required under s. 4 HRA. If a s. 3 HRA interpretation were possible, it would defeat the Claimants' possession claim. These arguments are reflected in the First Defendant's claim for declaratory relief in paragraph 1 of the prayer to the First Defendant's counterclaim herein. No doubt as a consequence of such arguments, the Secretary of State has been joined to the proceedings.

4. The specific problem in this case is that, when the occupation agreement was made and the First Defendant entered into occupation, the site did not benefit from planning permission. In a case where Article 8 was not argued, the Court of Appeal held that the scope of the 1983 Act is limited to agreements where the site is a protected site at the inception of the agreement: *Murphy v. Wyatt* [2011] EWCA Civ 408, [2011] 1 WLR 2129 ("***Murphy***"). The issue of importance under the Human Rights Act 1998 in this case is whether, in order to give effect to Article 8, the 1983 Act needs to be interpreted to apply to a licence to occupy land when the land on which a mobile home is stationed was not originally a protected site (within the meaning of s. 1(2) of the Caravan Sites Act 1968, "**the 1968 Act**") when the agreement for occupation was made but became a protected site at a later date whilst the occupation was still continuing. The First Defendant submits that the impact of Article 8 in this case is to require the opposite conclusion to that reached by the Court of Appeal in *Murphy*.

5. By a letter dated 6 February 2023, the Claimants informed the Court that they did not propose to appear at the hearing of the preliminary issue both in order to save costs and on the basis that no relief was sought at this hearing against the Claimants. That letter also referred to an agreement between the parties that, following the determination of the preliminary issue, all remaining issues should be transferred to Bournemouth County Court for disposal.

The Facts

6. Certain facts were agreed for proceedings involving the Claimants and the First Defendant before the Upper Tribunal, as recorded in the judgment of Fancourt J at paragraph 6 in conjunction with the factual finding in paragraph 19 of the same judgment. These have been summarised by the Secretary of State, and the First Defendant was prepared in submissions to accept this summary provided that it incorporated reference to the fact that (as found by Fancourt J) the terms of the agreement entitled the First Defendant to occupy the mobile home as his only or main residence. Accordingly, I summarise the facts as follows:

   i) The First Defendant began occupying a mobile home on land now owned by the Claimants in around 2001. There was never any written agreement. There was a verbal licence the terms of which entitled the First Defendant to occupy his mobile home as his only or main residence in return for payments of £10 per week, later increased to £30 per week.

   ii) At the commencement of the First Defendant's licence agreement the use of the Claimant's land for the stationing of a mobile home was not authorised by any public authority in that there was a) no planning permission and b) no site licence authorising the use of the land as a caravan site.

   iii) In October 2015 a certificate of lawful use or development was issued under s. 191 Town and Country Planning Act 1990 on the basis that the use of land had become immune from enforcement. This certified that the use of the part of the Claimant's land occupied by the First Defendant for stationing a mobile home was lawful i.e. the equivalent to the grant of planning permission for the purposes of the site licensing regime: see s. 191(7).

   iv) The day after the grant of the certificate of lawful use, the Claimant's solicitors served a notice on the First Defendant purporting to terminate his agreement.

   v) No site licence has ever been applied for, so the use of the Claimants' land as a caravan site continues in contravention of s. 1 of the Caravan Sites and Control of Development Act 1960.

Legislative history

7. For reasons which will become apparent, at the heart of this case are first the prohibition in s. 1 Caravan Sites and Control of Development Act 1960 ("**the 1960 Act**") on occupiers of land causing or permitting any of the land to be used as a caravan site unless the occupier holds a site licence. Second, the term "protected site" as defined in s. 1(2) Caravan Sites Act 1968 (see paragraph 15 below) is also used in the 1983 Act.

8. Moreover, although the focus must be on the amended statute as if it were a free-standing piece of legislation (see *Inco Europe Ltd v. First Choice Distribution* [1999] 1 WLR 270 at 272-3) an understanding of steps towards a degree of security of tenure taken both in the Mobile Homes Act 1975 ("**the 1975 Act**") and the 1983 Act as amended from time to time is relevant to understand both the caselaw and also the mischiefs against which such statutory developments were directed together with the

purpose of those developments. Moreover, as noted by Hobhouse LJ in the same passage in that case, "The expression of the relevant parliamentary intention is in the *amending* Act.". In so far as an Act is not amended, the original wording of the Act remains relevant as an aid to interpreting the meaning of words that are unaltered: *Bennion*, 8th edn at Section 8.6(1). The meaning of concepts which have been applied over the course of time, in particular where they have acquired an accepted meaning, is of assistance in interpretation and: "An important element in the construction of a provision in a statute is the context in which that provision was enacted": *Bloomsbury International Ltd v. Sea Fish Industry Authority* [2011] 1 WLR 1546 per Lord Phillips at 61 and see paragraphs 58-60 and 66.

9. In considering the successive statutory amendments, I shall also draw attention to the relevant background material to the legislation in so far as it might assist in identifying the mischief against which each legislative development was directed and which may also inform the reader as to the legitimate aim pursued by each such development, to put matters in ECHR terms. I have been assisted in relation to the background material by a witness statement from Ms Grace Duffy, who is responsible on behalf of the Secretary of State for park homes policy, including the licensing of caravan sites in England and the contractual terms between site owners and mobile home occupiers. At certain points, the First Defendant has also directed my attention to certain additional matters from what have been called the Secretary of State's duty of candour bundles but I limit my references to those materials which the Secretary of State has agreed may be referred to for establishing the mischief behind the legislation.

The 1960 Act

10. The starting point is the 1959 Caravans as Homes Report by Sir Arton Wilson which was relied on by the Minister of Housing and Local Government the Rt Hon Mr Henry Brooke in promoting the bill in Parliament, from which, among many other points, the following points are apparent:

   i) Due to the scarcity of sites for residential caravanners, the threat of being turned out was considered to be present to a much greater extent than is common in rented houses or flats which means that mobile home owners are shy of pressing complaints about site conditions. This is good for good operators but creates an opportunity for abuse by bad operators and a "source of some uneasiness" to many mobile home occupiers (under the heading "The caravanners' tenure" at para. 150);

   ii) Over 2,000 pre-1948 sites had benefited from existing use rules in the planning rules which granted them "a virtual exemption" meaning that for example almost a third of sites in Surrey benefit from existing use rules (para. 198);

   iii) Many mobile homes used for living were not at all suitable for permanent residential use and many caravan sites were badly located, and an unpleasant intrusion into the landscape including in green belt around large urban centres. "Many of the sites are also ill-equipped and ill-run"; (para. 337)

iv) Caravans were considered by their nature to be less amenable than other dwellings to regulation designed to ensure that their location and internal/environmental conditions should be suitable (para. 338).

11. The Minister summarised the purposes of the Bill as follows in a Parliamentary debate on the Bill on 2 June 1960:

> "There are two purposes here in Part I—to secure that caravan sites do not become established in the wrong places; and then to make sure that sites, when properly authorised from the planning standpoint, are well laid out and managed and equipped with proper sanitary and other services and facilities. The Bill achieves both these purposes by a licensing system to be operated by the local authorities.
>
> …
>
> The key to the whole policy in Part I is that a site will not be eligible for a licence unless and until it has planning permission for caravan use. This is in Clause 3 of the Bill. But, once a site has planning permission, unless the permission has less than six months to run, the occupier of the site will be entitled as of right to a licence."

12. Section 1 of the 1960 Act introduced a prohibition on permitting land to be used as a caravan site unless the occupier of the land holds a site licence and s. 1(2) provides that contravention of the prohibition is a criminal offence. S. 3(3) prevents a local authority from granting a site licence unless planning permission is in place and the original version of s. 3(4) granted an entitlement to a site licence whereas, since 2013, local authorities have had a discretion whether or not to grant a licence. The 1960 Act, as amended, remains the principal Act regulating site licences.

13. S. 1(3) defines the "occupier" as the person entitled to possession or who would be entitled to possession "but for the rights of any other person under any licence granted in respect of the land". S. 12(1) provides as follows:

> "It shall be a condition of any licence or of any such tenancy as is mentioned in subsection (3) of section one of this Act that if any person in exercise of rights under the licence or tenancy does anything which would constitute an offence under that section if that person were the occupier of the land, the person who is the occupier of the land may take possession of the land and terminate the licence or tenancy; …"

14. I note that, by s. 12(1), the 1960 Act implies a condition into any licence or tenancy enjoyed by a resident of a mobile home and not simply those on a site which benefits from planning permission and/or a site licence.

*The Caravan Sites Act 1968 ("**the 1968 Act**")*

15. This Act introduced certain procedural protections for residents of mobile homes on protected sites. Section 1 defines the scope as follows:

> "1.— Application of Part 1.
>
> (1) This Part of this Act applies in relation to any licence or contract (whether made before or after the passing of this Act) under which a person is entitled to station a caravan on a protected site (as defined by subsection (2) below) and occupy it as his residence, or to occupy as his residence a caravan stationed on any such site; and any such licence or contract is in this Part referred to as a residential contract, and the person so entitled as the occupier.
>
> (2) For the purposes of this Part of this Act a protected site is any land in respect of which a site licence is required under Part I of the Caravan Sites and Control of Development Act 1960 or would be so required if [paragraph 11 or 11A of Schedule 1 to that Act (exemption of gypsy and other local authority sites)] were omitted, not being land in respect of which the relevant planning permission or site licence—
>
> (a) is expressed to be granted for holiday use only; or
>
> (b) is otherwise so expressed or subject to such conditions that there are times of the year when no caravan may be stationed on the land for human habitation."

16. As regards the procedural protections themselves, for those contracts which require notice, a minimum period of notice of 4 weeks is provided for by s. 2. S. 3 provides for a measure of protection against eviction and harassment and imposes criminal sanctions on certain conduct.

17. S. 4 permits a court to suspend an order for eviction for a reasonable period not to exceed 12 months. However, in the context of the arguments deployed in this case, the power of the Court to suspend the order for eviction is subject to an important proviso by s. 4(6) which provides as follows (with the words in parenthesis having been introduced by the Housing Act 2004, s. 211(1)):

> "(6) [The court shall not suspend the enforcement of an order by virtue of this section if—
>
> (a) no site licence under Part 1 of that Act is in force in respect of the site, …
>
>] and where a site licence in respect of the site is expressed to expire at the end of a specified period, the period for which enforcement may be suspended by virtue of this section shall not extend beyond the expiration of the licence."

18. Further s. 5(4) applies the safeguards for mobile home residents set out in the 1968 Act even if a site occupier were to have the right to terminate a licence or tenancy for

breach of the obligation by a licensee/tenant operating a caravan site on land to have a site licence. The sub-section provides as follows:

> "(4) Subsection (1) of section 12 of the Caravan Sites and Control of Development Act 1960 (power of site occupier to take possession and terminate a licence or tenancy in case of contravention of section 1 of that Act) shall have effect subject to the foregoing provisions of this Part of this Act."

*Mobile Homes Act 1975 ("**the 1975 Act**")*

19. S. 1 introduced an obligation on owners of protected sites to offer to enter into a written agreement with a duration of not less than five years (s. 2). S. 9(1) defined "protected site" in materially identical terms to the definition in s. 1(2) of the 1968 Act. S. 3 required s. 1 agreements to contain specified particulars.

20. The 1975 Act applied to existing agreements in the following ways:

    i) On entry into force of the Act, compliance with the duty to offer a written agreement had to be achieved within a period of three months (s. 1(1)(i));

    ii) Where a mobile home was occupied on a protected site and became the occupier's only or main residence (s. 1(3));

    iii) Where an agreement related to a site with limited planning permission and further planning permission was subsequently granted for either a limited or a specified period (2(2)(b)).

21. In cases of failure to comply with the s. 1 duty, a court could, among other things, determine "such terms and conditions as the court thinks reasonable": s. 4. S. 5 provided that a section 1 agreement was also binding on successors in title of the owner.

22. The definition of "owner" in s. 9(1) appears important:

> " "owner" means, in relation to any land which is a protected site and in respect of which a site licence is for the time being in force, the person who, by virtue of an estate or interest therein held by him, is entitled to possession thereof …"

So the 1975 Act expressly only applied to sites which benefited from a site licence and an occupier would cease to benefit from the 1975 Act if a site licence had expired so that the site owner no longer qualified as an "owner" under the Act. It also follows from the definition of "owner" that the draftsman of s. 9(1) read the words "land in respect of which a site licence is required" in the definition of "protected site" as not requiring a site licence to be in force.

The 1983 Act as enacted

23. The 1983 Act was preceded by the Report of the Mobile Homes Review 1977 ("the Review"). Ernest Armstrong, Parliamentary under Secretary of State for the Environment, stated in the Foreword to this review that:

> "The Government have been concerned for some time about the lack of legal rights of those who live on mobile home sites and this was indeed one of the major reasons for setting up the Review. The Mobile Homes Act 1975 was a praiseworthy attempt to sort out these problems with the minimum of statutory or bureaucratic intervention, but unfortunately it has not always proved successful in practice."

24. The Review, commenting on the shortcomings of the 1975 Act stated:

> "3.5.2 There are two other factors limiting the security of tenure the Act gives. Firstly, where the site-owner's interest in the land will expire in the within the eight years of an agreement, he is obliged only to offer an agreement lasting as long as his interest. The same is true where there is a temporary planning permission - and this was the case on about 16 per cent of private sites covered by the BRE survey. Although the permission may be renewed neither resident nor owner can be sure of this. Residents often appear to be unaware of the length of planning permission for their site, and there have been several examples of site-owners misleading residents about the true position. There is some evidence that a few site-owners who wanted to upgrade a site or switch to holiday homes have used this situation to get rid of residents once the site licence expired and the site ceased to be protected.
>
> 3.5.3 Secondly, some owners have restricted the length of their agreements where in their view the occupier's mobile home is coming to the end of its life. …
>
> 3.5.7 The fundamental weaknesses of the Act stem from the principles on which it is based. It depends on negotiation between two parties when their negotiating strengths are in many cases unequal.
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> …
>
> 4.3.4 But the problems of the Mobile Homes Act are not just ones of unsatisfactory drafting and omissions; they arise from the principles on which the Act is based and the framework of protection which it sets. The reliance of the Act on offer and negotiation, with recourse only to the courts where agreement cannot be reached, tends to reinforce the relative strengths of the parties and is likely to leave the weakest residents unprotected. To change this would require fundamental revision of the Act. …"

25. The proposals in the Review to improve the Act included the following:

> "4.3.9 A more rigorous approach to regulating the terms on which pitches are occupied would be to impose implied terms

> into all residential contracts covering the right to occupancy, maintenance obligations, undertakings about payments, quiet enjoyment, access, assignment of the contract, re-sale rights and the 'reasonableness' of charges. Implied terms are common in landlord and tenant law and work recently carried out by the Law Commission to codify existing statute and common law rules could provide a basis for adapting some of these provisions to cover occupancy of mobile home pitches. An example is the obligation imposed by Section 32 of the Housing Act 1961 on landlords of short-lease property to keep in repair the structure exterior the dwelling and the sanitary installations and power supply."

26. The summary of the Review included the following points:

> "8.1.4 … But if mobile home production is to expand on a steady basis finance for purchasers will need to be available on competitive terms. This inevitably means construction to higher standards and movement towards a form of tenure which will give residents an interest in the land.
>
> 8.1.5 The present form of tenure on sites gives a resident no long-term security of tenure and very little control over charges. Although he has bought his own home, the resident is in a worse position than the private tenant. The Mobile Homes Act gave certain rights to those residents who took up agreements under its provisions; they have greater security, a means by which to challenge increases in pitch fees, and resale rights which enhance greatly the prospects of selling the home at a fair market price. But these rights are by no means comprehensive and probably about two thirds of all residents have no agreement.
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> …
>
> 8.1.7 Although the volume of complaints is now at a lower level than during some recent periods there is need for more thoroughgoing legislation to provide an equitable framework of statutory rights for residents, while not denying to the operator a reasonable return on his investment and operating costs. The most satisfactory approach is considered to be <u>the imposition of implied terms into all residential contracts</u>, the subject matter of the terms being closely related to those which are required to be included in written agreements offered under the Mobile Homes Act. This would deal with problems such as premiums on entry and assignment and discount and commission on resale. Adequate security of tenure should be afforded by limiting the power of the courts to grant possession orders to specified cases, such cases to take account of the operator's need to manage a well-ordered and properly maintained site. …" (emphasis added)

27. The Recommended Programme of Action at the end of the Review included at 8.2.1 (i) that: "the Government should work towards the introduction of legislation to give more broadly based protection to residents covering such matters as security of tenure, trade practices, charges and information on the lines described in 8.1.7 above."

28. The Parliamentary Under-Secretary of State at the Department of the Environment, Lord Bellwin, in moving the bill for the second time said the following:

> "Mobile homes are a small but significant source of housing and it is important that those who live in them should have statutory protection. I am glad to be able to say that this Bill will strengthen the protection which is available to them.
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> …
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> In the first place, it will oblige site owners to offer new statutory agreements to all mobile home residents, not just those who have 1975 Act agreements—to all those on site at commencement and to those who come onto site subsequently. And the Bill contains several important differences from the 1975 Act.
>
> First, the Bill puts the initiative to offer agreements firmly on site owners. Under the 1975 Act, a resident who came onto site after commencement had to take the initiative himself. He was obliged to notify the site owner in writing before coming onto site of his intention to occupy his mobile home as his only or main residence, in order to qualify for an agreement. With hindsight, it is perhaps not surprising that many residents have failed to meet this requirement, simply because they were unaware of it. The result is that they have not been offered an agreement under the Act. The Bill removes the requirement for advance notification. It imposes an absolute duty on site owners to offer statutory agreements to all residential occupiers.
>
> Second, the Bill requires site owners to give residents, at the same time as they offer an agreement, a notice which we will prescribe by regulations. Our intention is that the notice will advise residents to think carefully before they decide whether to accept or refuse the agreement, to take legal advice and to read a booklet explaining the legislation which the Government will produce. The notice was not required by the 1975 Act and we believe that it can play a valuable part in enabling residents to find out what their rights are.
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> …
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> It is not only in the procedures governing the offer of statutory agreements that the Bill improves upon the 1975 Act. The third major difference between the Bill and the Act concerns the security tenure which it offers. Security of tenure is the most

> important benefit which agreements under the 1975 Act, and agreements under the Bill, provide for those who take them. I have said that the 1975 Act required site owners to offer agreements to last for five years, with an option for the resident to for a further three. The Bill will provide for agreements to last indefinitely, subject to the condition of the mobile home. The site owner will have an opportunity every five years to apply to the court, or to an arbitrator agreed by both parties, to terminate the agreement on the grounds that the mobile home will not last a further five years.
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> ...
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> The Government believes that these changes which the Bill proposes will significantly strengthen the rights of mobile home residents. At the same time, they will not impose an unreasonable burden on site owners. The last thing that we want to do is to legislate site owners out of business. That is the effect that the Rent Acts have had on landlords in privately rented housing and the people to suffer have been those looking for housing—the potential tenants."

29. It is apparent from the passages from Hansard exhibited by Ms Duffy to her witness statement for the Secretary of State that the bill came to the House of Commons on 5 May 1983 at which time Sir George Young, Parliamentary Under-Secretary of State for the Department of the Environment, spoke on behalf of the Government. After noting that Mr Nicholas Lyell had spoken in Committee in favour of an approach based on "standard" or "implied" terms and after noting that industry bodies for site owners and for consumers had received a consultation letter inviting views on the possibility of incorporating implied terms in the Bill, Sir George continued:

> "I shall say something about the responses we received, but first I will describe what the new clauses and amendments achieve. They will replace the system of agreements which had previously been the basis of the Bill, and of the 1975 Act before that, with a combination of implied terms and express terms. The terms to be implied by law into all agreements between site owners and residents will be those in part I of schedule 1 to the Bill. They concern principally security of tenure, the right of a resident to sell his mobile home and his right to give it to a member of his family. These implied terms will apply from the date of commencement to all agreements between site owners and residents, whatever those agreements may say.
>
> The site owner will be obliged to provide residents with a written statement setting out the implied terms and the express terms of his agreement with the resident. The express terms are those which site owner and resident have agreed between them — on subjects not covered by implied terms. Either the resident or the site owner may then apply to the court within six months

of the date on which the written statement is provided to ask that any of the express terms be varied or deleted from the agreement or to ask that terms concerning the subjects listed in part II of schedule 1 should be added to the agreement. The written statement will also have to comply with regulations made by the Secretary of State.

Those are the bare bones of the approach set out in the new clauses and amendments. We have accepted that an element of implied terms will further strengthen the protection which the Bill provides for residents. But we have been careful to limit the scope of implied terms to those subjects that need to be covered by them. We must not push the balance of the Bill too far against site owners. The new approach will leave them free to negotiate with their residents on a local basis those matters that should be negotiated locally—on pitch fees, on the services that the site owner will provide and on the details of the resident's obligations. At the same time, the written statement the site owner must provide will set out all the terms of the agreement between site owner and resident so that both sides may know the basis of their relationship. In that respect, we believe that the written relationship statement can serve much the same purpose as the written agreement in the Bill.

…

As the scope of implied terms is limited to essentials, site owners will still have the flexibility they need on other subjects. I ask my hon. Friends who speak for the site owners to tell them not to be over-anxious about the new clauses. They will not harm the interests of the great majority of responsible site owners.

I very much hope that the new approach we are now proposing will be warmly welcomed by those whose main interest is in the position of residents under the Bill. The Government have moved a long way on the Bill in response to the views that have been put to us in this House and in another place. In particular, these new clauses will meet the anxiety expressed by members of the Committee on the Bill that some residents would never gain the most basic rights that the Bill provides, either because they would never be offered a statutory agreement or because they would be prevailed upon in some way to refuse the agreement offered to them. Residents will not now be able to lose their basic rights in that way. They will be guaranteed security of tenure and the right to sell on site from the moment the Bill comes into force. …

The Bill will make a significant difference to the lives of many people who live on mobile home sites. Without the amendments we are now considering, the Bill would strengthen

> the position of mobile home residents in a number of important ways. With them, it will improve upon that protection still more. I do not believe that it will do so in a way that will adversely affect the interests of site owners. We have strived to retain a fair balance between the interests of residents and of site owners. These new clauses and amendments will keep that balance."

30. The above debates in the Lords and the Commons have been quoted at perhaps unusual length because it is in my judgment necessary to examine with some care the key statements both in the preparatory report and also by the representatives of the Government in order to seek to evaluate whether the proposition for the Secretary of State, that there has been an "informed legislative choice" to exclude from protection those mobile home occupiers whose sites gain planning permission after the agreement of tenancy/licence has been granted, is justified.

31. Turning then to the terms of the 1983 Act as enacted, the definition of "owner" in section 5(1) departed from the definition in the 1975 Act in that, in order to come within the scope of that term, it was no longer a requirement that the site benefit from a licence. The term "protected site" was, so far as material to the present case, to have the same meaning as in the 1968 Act.

32. Section 1(1) determined the scope of the Act which was to apply to "any agreement" giving a person an entitlement to station a mobile home on land and to occupy the mobile home as his only or main residence.

33. The requirement for the giving of a notice containing the express and implied terms was contained in s. 1(2) which required the serving of a written statement of terms "within three months of the making of an agreement to which this Act applies". That obligation was limited to "an agreement to which this Act applies", i.e. to agreements within s. 1(1). This Act also dealt expressly with existing agreements: a period of six months from entry into force was allowed for the service of the written statement: s. 1(3).

34. Again only for "an agreement to which this Act applies" the terms set out in Part I of Schedule 1 were to be implied: s. 2(1). Schedule 1 terms covered duration, issues relating to termination including following a quinquennial review (every five years "beginning with the commencement of the agreement") of the age and condition of the mobile home and granted the right to transfer of the mobile home by sale or gift subject to consent of the owner not to be unreasonably withheld.

35. For "an agreement to which this Act applies", the agreement expressly bound successors in title of the owner: s. 3.

The 1983 Act as amended in 2004

36. In 1989, Model Standards were promulgated by the Department of the Environment pursuant to the power in s. 5 of the 1960 Act. This document set out standards for the facilities and density of mobile home sites, with such standards to be taken into account by Courts considering appeals against conditions of site licences.

37. In 2000, a Report of the Park Homes Working Party for the Department of the Environment, Transport and the Regions directed its attention to some of the problems arising from the operation of the 1983 Act and recommended in particular that the written statement of terms should be provided "a reasonable period in advance of the sale". A foreword by the Minister recorded that 200,000 people live in residential mobile homes in England and Wales. Paragraph 5 of Chapter 2 noted that "Park homes and home parks fall outside the large body of housing, landlord and tenant, and building control legislation which applies to permanent homes, though they are subject to planning controls". Reference was made to the "overwhelming predominance of small (one- or two-person) households and a predominance of elderly and retired households". In Chapter 8, the report considered the possible effects of revocation of site licences but concluded on the basis of legal advice that mobile home owners' security of tenure "would be unlikely to be affected if the licence for their site was revoked" because a protected site was defined as "land in respect of which a site licence is required".

38. The Government Response of November 2001 to the Recommendations of the Park Homes Working Party accepted in principle the recommendation that written statements of terms should be provided in advance. The Government also accepted that the protection against harassment available to mobile home owners ought to be on a par with that available to private rented tenants. The Government expressed an initial view that revocation of a site owner's licence "would not be likely to affect residents' security of tenure". With regard to a suggestion from the Report that planning rules should be relaxed to permit minor additions to homes as for bricks and mortar homes, the Government expressed concern with regard to the visual impact but recognised that minor additions might enhance the mobile homes.

39. When the 2004 Housing Bill was in Committee, Yvette Cooper, then a junior minister of the Government, said the following:

> "New clause 44 would require owners of park home sites to provide a written statement setting out the terms and conditions of a site agreement to the other party at least 28 days before that agreement commences. That would remove the anomaly in the Mobile Homes Act 1983, which enables site owners to provide the terms and conditions of the agreement up to three months after the agreement commences. It will still be possible for parties to agree a period shorter than 28 days between themselves, but the occupier must give his consent in writing to the specified shorter timetable.
>
> The new clause is designed to ensure that potential park home occupiers are in the strongest possible negotiating position with the site owner before coming onto the site. Given that many of the conditions of site agreements are already laid out in the implied terms in schedule 1 to the 1983 act, it has always been possible in theory for occupiers to find many of the terms of their agreement by looking at the legislation, if they know how to get hold of it and understand its details. However, site owners may also include express terms specific to their park in the agreement and previous legislation does not provide for an

> occupier to have prior knowledge of those. That puts occupiers in an unreasonable position, because they must, in effect, sign up to an agreement without knowing detailed provisions that govern their site and the home that they have purchased."

40. Section 1(1) of the 1983 Act remains as enacted but the recommendation to impose a requirement to give notice of all terms in advance of the agreement was implemented by s. 1(2). S. 1 provides, so far as relevant, as follows:

> "**1 Particulars of agreements**
>
> (1) This Act applies to any agreement under which a person ("the occupier") is entitled–
>
> (a) to station a mobile home on land forming part of a protected site; and
>
> (b) to occupy the mobile home as his only or main residence.
>
> (2) Before making an agreement to which this Act applies, the owner of the protected site ("the owner") shall give to the proposed occupier under the agreement a written statement which–
>
> (a) specifies the names and addresses of the parties;
>
> (b) includes particulars of the land on which the proposed occupier is to be entitled to station the mobile home that are sufficient to identify that land;
>
> (c) sets out the express terms to be contained in the agreement [(including any site rules (see section 2C))];
>
> (d) sets out the terms to be implied by section 2(1) below; and
>
> (e) complies with such other requirements as may be prescribed by regulations made by the appropriate national authority.
>
> (3) The written statement required by subsection (2) above must be given–
>
> (a) not later than 28 days before the date on which any agreement for the sale of the mobile home to the proposed occupier is made, or
>
> (b) (if no such agreement is made before the making of the agreement to which this Act applies) not later than 28 days before the date on which the agreement to which this Act applies is made.
>
> (4) But if the proposed occupier consents in writing to that statement being given to him by a date ("the chosen date")

which is less than 28 days before the date mentioned in subsection (3)(a) or (b) above, the statement must be given to him not later than the chosen date.

(5) If any express term [other than a site rule (see section 2C)] –

(a) is contained in an agreement to which this Act applies, but

(b) was not set out in a written statement given to the proposed occupier in accordance with subsections (2) to (4) above,

the term is unenforceable by the owner or any person within section 3(1) below. This is subject to any order made by the [appropriate judicial body] under section 2(3) below.

(6) If the owner has failed to give the occupier a written statement in accordance with subsections (2) to (4) above, the occupier may, at any time after the making of the agreement, apply to the [appropriate judicial body] for an order requiring the owner–

(a) to give him a written statement which complies with paragraphs (a) to (e) of subsection (2) (read with any modifications necessary to reflect the fact that the agreement has been made), and

(b) to do so not later than such date as is specified in the order.

(7) A statement required to be given to a person under this section may be either delivered to him personally or sent to him by post.

(8) Any reference in this section to the making of an agreement to which this Act applies includes a reference to any variation of an agreement by virtue of which the agreement becomes one to which this Act applies.

…"

41. Section 2 provides that:

"2.— Terms of agreements.

(1) In any agreement to which this Act applies there shall be implied the [applicable] terms set out in Part I of Schedule 1 to this Act; and this subsection shall have effect notwithstanding any express term of the agreement.

(2) The [appropriate judicial body] may, on the application of either party made within the relevant period, order that there

> shall be implied in the agreement terms concerning the matters mentioned in Part II of Schedule 1 to this Act."

42. There was no relevant change by the 2004 Housing Act to the definitions in the 1983 Act and so the term "protected site" retained the same definition as that in the 1968 Act.

43. The Schedule 1 implied terms are however considerably more extensive than in the original Act. The implied terms continue to cover aspects of the duration (para. 2) and regulate the termination of agreements (paras. 3-6). Para. 7A (as amended in 2014) in relation to sale of the mobile home and assignment of the occupation agreement provides as follows:

> "7A (1) This paragraph and paragraph 7B apply in relation to a protected site in England.
>
> (2) Where the agreement is a new agreement, the occupier is entitled to sell the mobile home and to assign the agreement to the person to whom the mobile home is sold (referred to in this paragraph as the "new occupier") without the approval of the owner.
>
> (3) In this paragraph and paragraph 7B, "new agreement" means an agreement—
>
> (a) which was made after the commencement of this paragraph, or
>
> (b) which was made before, but which has been assigned after, that commencement."

44. Moreover Schedule 1 also goes on, in particular, to imply a covenant of quiet enjoyment in favour of the occupier (para. 11); to regulate access for meter readings and essential repairs (paras. 12-15); pitch fees (paras. 16-20); to set out the occupier's and the owner's obligations (paras. 21 & 22-23 respectively); to make provision for the giving of notices by the owner breach of which prevents the pitch fee being due (para. 26); to regulate demands for payment (para. 27).

*The Mobile Homes Act 2013 ("**the 2013 Act**")*

45. The Mobile Homes Act 2013 significantly upgraded the licensing regime, mainly through amending the 1960 Act. At the same time, by inserting a discretion for local authorities into s. 3(4) of the 1960 Act in relation to the issue of site licences, the 2013 Act removed the automatic nature of the issue of site licences for all sites with planning permission or a certificate of lawful existing use. A Best Practice Guide of 13 March 2015 stated in respect of the 2013 amendments that: "Any licensable caravan site will be a relevant protected site unless it is specifically exempted from being so" (para. 2.2).

<u>Whether a site can qualify as a "protected site" in s. 1(2) of the 1968 Act, as incorporated into the 1983 Act, where there is no site licence</u>

46. The issue here is whether a licence must be 'in place' or whether the site must merely be 'licensable, albeit not in fact licensed'.

47. I start with the word 'required' in the phrase "land in respect of which a site licence is required". It can be contrasted with the words of s. 4(6) of the 1968 Act 'in force' which is part of the context in which the words of s. 1(2) fall to be interpreted. It strongly suggests that the licence does not in fact need to be in place in order for a site to qualify as a protected site.

48. Such a reading would be consistent with the change in the definition of 'owner' as between the 1975 Act and the 1983 Act (described in paragraphs 22 and 31 above) to omit the words "in respect of which a site licence is for the time being in force". That is a significant point against the Secretary of State's case.

49. However, an interpretation in which no site licence needs to be in place in order for a site to qualify as a protected site creates a tension with the words which follow in s. 1(2) which provide that the land must satisfy the negative condition of "not being land in respect of which the relevant planning permission or site licence" is expressed to be granted for holiday use or which is expressed or subject to conditions so that there are times of the year when no caravan may be stationed on the land for human habitation. That is the first point made by the Secretary of State in contending that, to qualify as a protected site, a site licence must be in force for the site. Clearly, each caravan site is required to benefit from planning permission and also to have a site licence, either or both of which may be restricted or limited in some way. In a context where Parliament evidently wished to grant limited rights by the 1968 and 1983 Acts to persons using caravans as their only or main residence, it is understandable that residents of sites subject to planning permission or site licences which do not permit use of caravans for the whole year are excluded. It is less clear whether this negative condition means that the true interpretation of s. 1(2) is that a site licence must be in force for a site to qualify as a protected site.

50. In this context, Mustill LJ in *Adams v Watkins* (1990) 22 HLR 107 at p. 111 highlighted an apparent tension between the words of the negative condition in s. 1(2) of the 1968 Act, which seems to assume that there will be a relevant site licence in place, and section 4(6).

> "… there is at least on first impression some tension between section 1(2), which assumes that in the cases to which the protection regime applies there will be a relevant planning permission or site licence, and section 4(6) which assumes that there may be cases falling within the scheme where the occupier does not have a site licence: which in practice is likely to mean he does not have planning permission either."

51. The 1968 Act creates in particular a system which requires site owners to go to court in order to obtain possession. S. 4(1) gives a power to suspend the operation of the possession order for up to 12 months. The factors to which a court shall have regard when exercising its powers include any failure to observe the terms of the contract for occupation, of any conditions of the site licence or any reasonable site rules. That also, as the Secretary of State argues, is indicative of an assumption that there will be a site licence in force.

52. However, s. 4(6) points in the opposite direction in removing the jurisdiction to suspend enforcement of a possession order where no site licence is 'in force' in respect of the site. The Secretary of State suggests that s. 4(6) is limited to cases of a site licence limited in duration where possession proceedings are commenced during the currency of the licence but the site licence expires during the possible 12 month period of possible suspension of the possession order. While possible, this seems to me to be a rather strained reading of a simple provision which is more naturally read as being consistent with the fact that the relevant land in s. 1(2) is "land in respect of which a site licence is required" and also with the removal of the requirement for a current site licence in the change of definitions between the 1975 and 1983 Acts.

53. Moreover, s. 5(4) of the 1968 Act appears to evidence a conscious choice by Parliament not to require a site licence in order to benefit among other things from the protection under sections 2 and 3 of that Act as the nature of the offence referred to in s. 12 of the 1960 Act is an offence under s. 1 of that Act, i.e. in relation to the absence of a site licence. Yet the right of the park owner to terminate the tenancy under s. 12 is made subject by s. 5(4) to the 'foregoing provisions' of the 1968 Act.

54. The Secretary of State also relies on paragraph 19(3) of Schedule 1 to the 1983 Act which prohibits the taking into account of costs in relation to the alteration/transfer of a site licence and therefore proceeds on the basis that there would be a site licence for a site to which Schedule 1 applies.

55. I do not however find convincing the Secretary of State's reliance on a consistency argument based on 'wider indicators' from the definitions of 'relevant protected site' and 'relevant protected site application' in the 1960 Act, ss. 5A(5) and 3(7). As noted by the Secretary of State, these provisions were introduced by the Mobile Homes Act 2013 which substantially upgraded the site licensing system in the 1960 Act. In any event the terms of those provisions do not materially add to the Secretary of State's argument derived from the negative condition in s. 1(2) of the 1968 Act.

56. The Secretary of State also relies on the fact that by the Housing (Scotland) Act 2014, a new paragraph 1A was inserted in Schedule 1 of the 1983 Act in respect of Scotland to provide expressly that the right to station a mobile home under paragraph 1 of the Schedule is not affected by various matters affecting the site licence (expiry, revocation etc). The Secretary of State contends that in England where there is no such provision, by necessary implication, the indefinite right to station a mobile home would be lost when the site becomes unlicensed. Again that provision is from an Act many years after the 1968 and 1983 Acts and the implication is apparently said to arise from the Government's failure to take similar action for England. However it seems to me that the evidence before me in relation to the mischief against which the relevant statutes are directed is against such an implication. A question relating to the possible fate of the mobile home owner/resident in circumstances where the site licence is revoked has been raised but the Government declined to take action on the basis of their view that revocation of the site licence would not affect the security of tenure of residents as the site would continue to qualify as a protected site: see the 2000 Report and the Government's response thereto at paragraphs 38-39 above; see also the Best Practice Guide quoted at paragraph 45 above.

57. By way of an interim conclusion before considering the caselaw in detail, it seems plain to me both from the context of the definition of "protected site" in the 1968 Act

and in accordance with the legislative history between the 1975 and 1983 Acts that the definition does not require that a site licence be in force for a site to qualify as a protected site. When set against those matters, in my judgment the negative condition considered in paragraph 49 above does not require a contrary conclusion.

58. Turning to the case law, I bear in mind in this regard that until 2013 an applicant for a site licence for a site with planning permission was entitled to a licence which reduces the force of these authorities as precedents in today's situation where a site may have planning permission but still be refused a licence. Both parties rely on *Balthasar v. Mullane* (1985) 17 HLR 561 where the site had neither planning permission nor a site licence. The argument on this issue focused on whether or not planning permission was required in order for a site to be a protected site. Particular reliance was placed on what was said to be the absurdity that planning enforcement in the event of the absence of planning permission proceeds by the service of an enforcement notice on the site owner with criminal sanctions in default of compliance. But, if the representative of the resident in that case had been correct that a site would be a protected site in the absence of planning permission, the planning authorities could not have removed the caravan because of the protection of the 1983 Act. The First Defendant relies on the fact that there was no argument that the absence of a site licence had a similar effect but the Secretary of State relies on the fact that the Court of Appeal's reasoning based on the negative condition in s. 1(2) (which, it seems, was accepted in relation to planning permission when Glidewell LJ accepted the site owner's arguments) should apply equally to a site licence. The First Defendant placed much reliance in submissions on a statement by Neill LJ at p. 570 that a site cannot be a protected site "unless planning permission for the relevant user has been obtained". Clearly there was no reference by Neill LJ in that sentence, as might in my judgment reasonably have been expected, to the need also for a site licence in circumstances where the land benefited from neither planning permission nor a site licence. Neill LJ's remark therefore supports the First Defendant's argument but it is not of course part of the ratio as the Court of Appeal was addressing whether planning permission was required or not for a site to qualify as protected, not whether a site licence was required in circumstances where there is a certificate of lawful use which is the issue in this case.

59. There was reference in *Balthasar* to the previous Court of Appeal decision of *Brice v. National By-Products* (1983) 46 P&CR 281 which is relied on by the First Defendant. An employer had permitted employees to live in caravans on his premises and had obtained planning permission in that regard. A site licence had been held but had since expired. Two persons continued living in their caravan despite no longer being employed. The matter fell to be determined under the 1975 Act and so a current site licence was expressly required (see paragraph 22 above). However, given that there had been a site licence when the 1975 Act came into force, when it expired Fox LJ giving the first judgment observed (at p. 285):

> "It seems to me that when the licence came to an end in 1977 the plaintiffs were bound, both under the 1960 Act and in order to comply with their obligations under the 1975 Act, to apply for a new licence. They did not do so. They cannot set up their own breach of duty to obtain a site licence as a defence to a claim for the enforcement of their duty to enter into an agreement [with the resident]."

60. The Court of Appeal decided that, by virtue of the existence of a site licence upon entry into force of the Act, the 1975 Act obliged the site owner to enter into the requisite agreement. It is right to observe, as does the Secretary of State, that this case does not decide that a site can continue to be a "protected site" even after the expiry of the licence as the obligation to offer the agreement had crystallised on entry into force of the statute and did not disappear when the site owner let the site licence lapse.

61. The First Defendant justifiably placed particular reliance on *Holmes v. Cooper* [1985] 1 WLR 1060 where the Court of Appeal upheld a first instance decision that a caravan site without a site licence was nevertheless a protected site and granted a declaration that the 1983 Act applied to the relevant oral agreement. The focus of the argument was on whether the land was land in respect of which a site licence was required because the site owner's argument was that an exemption from the requirement to obtain a site licence applied. However, it seems to me that, in dismissing the appeal, the Court of Appeal was holding that, despite the absence of a site licence, the site was nevertheless a protected site: see in particular p. 1062G in the judgment of Sir Edward Everleigh. Despite various other amendments to the 1983 Act, both as enacted and in today's version, the definition of protected site in s. 1(2) of the 1968 Act continues to apply in order to determine eligibility to the protections in the 1983 Act. Accordingly, I accept the First Defendant's submission that I should apply the Court of Appeal judgment in this case.

62. The Secretary of State relies however on the reasoning in *Berkeley Leisure Group Ltd v. Hampton* [2001] EWCA Civ 1474. The main issue was whether it was right to consider the applicability of the 1983 Act by reference to the position of each individual caravan or at least separate parts of a single site. In deciding that it was, the Court of Appeal overturned a first instance decision on the basis that there was no planning permission in favour of the caravan in question being used throughout the year due to potential flooding issues. The Court of Appeal proceeded on the basis that both planning permission and a site licence were required in order for a site to be protected. The Court of Appeal concluded that planning permission applicable to the individual caravan or part of the site must be considered. The site owner had argued that a contrary decision would mean that the 1983 Act would protect a site resident in circumstances where the site owner could be liable to criminal sanctions but was unable to bring about removal of the caravan, thereby giving rise to hardship and absurdity. Though argued on the basis of both planning enforcement and criminal sanctions under the 1960 Act (see paragraph 28), Lord Justice Robert Walker's judgment, in relying on a quotation in paragraph 29 from *Balthazar v Mullane*, at paragraph 36 expressly accepts the absurdity point only in relation to planning enforcement measures so that a site could not be protected unless planning permission applied to the permanent residence in a particular caravan. Although the same reasoning is capable of applying to site licences, that is not necessarily the case as the failure to obtain a site licence might simply be due to a failure by the site owner to apply for such a licence – which would not be an attractive basis on which to exclude a site resident from the protection of the 1983 Act. That was not the case in *Berkeley* where the site licence (see Judgment, paragraph 20) had been applied for but was limited by reference to the restrictions in the planning permission as to the caravans authorised for permanent residential occupation.

63. In a case of this type, where there is no site licence and there is no evidence that a site licence was applied for, there is force in the view of Lord Justice Fox at p. 285 of *Brice* in a slightly different context that a site owner cannot rely on his own failure to obtain a site licence as a defence to a claim for enforcement of a Mobile Homes Act duty.

64. Finally, the Secretary of State argued that site residents qualifying for protection under the 1983 Act in circumstances where there was no site licence was contrary to the purposes of the statutory scheme. Reliance was placed on the statutory scheme being reliant on the dual linked control of both planning permission and a site licence and also on Lord Justice Neuberger's statement of the legislative policy of the 1983 Act in *Murphy v. Wyatt* [2011] 1 WLR 2129 at paragraph 49 under "which the interests of the individual occupier are subordinate to those of the community at large in maintaining a proper control over the development of caravan sites: *Adams v. Watkins* (1989) 22 HLR 107, 111." Both the reference to "development" and the balance of paragraph 49 of Lord Justice Neuberger's judgment show that this remark was focussed on planning permission. Whilst there is a system of dual regulatory control via the planning process and the licensing process, this does not establish that a site licence is a prerequisite to the site qualifying as a protected site. The Secretary of State also relies on the statement by Lady Justice Arden LJ at paragraph 78 of *Murphy* that "Parliament's purpose in enacting the statute was to give occupiers of mobile homes…only a measure of security of tenure, and not all-inclusive and watertight protection…". However, that statement does not help me to determine whether or not this case is within or without the "measure of security of tenure" referred to.

65. With regard to the First Defendant's argument that the court in *Murphy* proceeded on the basis that planning permission alone was considered by the Court of Appeal to be required for a site to be protected, there is no express consideration of this issue. Paragraph 34 in Lord Justice Neuberger's judgment does suggest this to be the case but, given the conclusion that a grant of planning permission subsequent to the occupation agreement could not bring the agreement within the 1983 Act, the issue with regard to the site licence was not part of the Court of Appeal's decision.

66. Ms Duffy also pointed out in paragraphs 43-52 of her witness statement the reasons which support the need for the dual control of planning permission and the difficulties which would be caused by a finding that a site can be a "protected site" even if it does not benefit from a site licence. Whilst I acknowledge the force of these arguments in policy terms and as part of the broader context of s. 1(2) of the 1968 Act, they face significant challenges both in terms of the more immediate context of the other provisions of the 1968 Act and a binding Court of Appeal decision.

67. Drawing together the strands of the above discussion, the correct interpretation of the definition of "protected site", both as a matter of principle and authority is that it is not necessary for a site licence to be in force in order for a site to qualify as a "protected site". It follows that I must now go on to consider the First Defendant's Article 8 argument as the First Defendant is not excluded from the benefit of the 1983 Act by the absence of a site licence. However, the effect of *Murphy* is that, as a matter of statutory interpretation without regard to Article 8 or the Human Rights Act 1998, caravans on a site which did not have planning permission at the inception of

the occupation agreement (which is this case) are outside the scope of the 1983 Act. The First Defendant argues that Article 8 requires a different conclusion.

Alleged disproportionate interference with the First Defendant's Article 8 rights

68. Article 8 ECHR provides as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Interference

69. For the Secretary of State, Ms Leventhal submits in reliance on the decision of Mr Justice Fancourt in *Dean v Mitchell* [2020] UKUT 306 (LC) at paragraphs 55-56 that the First Defendant has never been excluded by the statutory definition as was formerly the case for gypsies and travellers. Accordingly, as this is a question of extending protection to the First Defendant, there is a high hurdle.

70. Reliance is also placed on *McDonald v McDonald* [2017] UKSC 52 which involved an argument that the grant of a possession order under the legislation applicable to assured shorthold tenancies was a disproportionate interference with the Defendant's Article 8 rights. The Supreme Court upheld the first instance and Court of Appeal decisions to the effect that the judge was not required to consider the proportionality of the order. Paragraph 45 of Lord Neuberger's and Lady Hale's joint judgment is important as it notes that the result in that case did not mean that a tenant could not contend that the provisions of the relevant statute did not properly protect the Article 8 rights of the tenant (see also paragraph 57).

71. That Article 8 is capable of applying in a case such as this one where the dispute is between two private parties is not contested by the Secretary of State and the correct approach in such cases is apparent from the following words of the European Court of Human Rights in *Moreno Gómez v Spain* (2005) 41 EHRR 40 at paragraph 55:

> "Although the object of Art.8 is essentially that of protecting the individual against arbitrary interference by the public authorities, it may involve the authorities' adopting measures designed to secure respect for private life even in the sphere of the relations of individuals between themselves. Whether the case is analysed in terms of a positive duty on the State to take reasonable and appropriate measures to secure the applicants' rights under para.1 of Art.8 or in terms of an interference by a public authority to be justified in accordance with para.2, the applicable principles are broadly similar. In both contexts

> regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole. Furthermore, even in relation to the positive obligations flowing from the first paragraph of Art.8, in striking the required balance the aims mentioned in the second paragraph may be of a certain relevance."

72. It is clear in this case that the challenge is to the compatibility with Article 8 ECHR of the exclusion from the benefit of the 1983 Act of persons whose occupation agreement pre-dates the grant of planning permission but where planning permission has in fact been obtained.

Justification of interference

73. As is expressly recognised within Article 8, the right to respect for a person's home is not absolute but is capable of justification on the grounds set out in Article 8(2). According to the European Court of Human Rights, "An interference will be considered 'necessary in a democratic society' for a legitimate aim if it answers a 'pressing social need' and, in particular, if it is proportionate to the legitimate aim pursued": *Connors* at paragraph 81.

74. Moreover the classic formulation by the European Court of the test in Article 8(2) is provided by *Silver v United Kingdom* (1983) 5 EHRR 347 at paragraph 97 (citations omitted):

> "(a) the adjective 'necessary' is not synonymous with 'indispensable', neither has it the flexibility of such expressions as 'admissible', 'ordinary', 'useful', 'reasonable' or 'desirable'.
>
> (b) the Contracting States enjoy a certain but not unlimited margin of appreciation in the matter of the imposition of restrictions, but it is for the Court to give the final ruling on whether they are compatible with the Convention.
>
> (c) the phrase 'necessary in a democratic society' means that, to be compatible with the Convention, the interference must, *inter alia*, correspond to a 'pressing social need' and be 'proportionate to the legitimate aim pursued'.
>
> (d) those paragraphs of Article 8 of the Convention which provide for an exception to a right guaranteed are to be narrowly interpreted."

75. It is common ground that a structured approach for the carrying out of the proportionality assessment is provided by the Supreme Court judgments in *Bank Mellat v HM Treasury (No. 2)* [2013] UKSC 39, in particular at paragraph 74 per Lord Reed:

"(1) whether the objective of the measure is sufficiently important to justify the limitation of a protected right,

(2) whether the measure is rationally connected to the objective,

(3) whether a less intrusive measure could have been used without unacceptably compromising the achievement of the objective, and

(4) whether, balancing the severity of the measure's effects on the rights of the persons to whom it applies against the importance of the objective, to the extent that the measure will contribute to its achievement, the former outweighs the latter."

Legitimate Aim

76. The starting point is to identify the relevant "measure". It seems to me that, in this case, the measure is the grant by the 1983 Act of certain benefits to those mobile home occupiers whose site benefited from planning permission at the time of the occupation agreement but not to those whose sites obtain planning permission after the occupation agreement is made unless a) the relevant occupation agreement is varied subsequent to the grant of planning permission in such a way as to bring the agreement within the 1983 Act (s. 1(8) as explained in *Murphy*, paragraph 47); or, as submitted by the First Defendant and as will be considered further below, unless b) the occupier sold his mobile home and assigned his occupation agreement after the grant of planning permission pursuant to the 1983 Act, Schedule 1 paragraph 7A.

77. The above description of the measure is also in principle capable of serving as a description of the purpose of the measure. As Lady Justice Arden in the Court of Appeal observed in *Murphy* at paragraph 79, looked at in that light the purpose of the measure can be stated as being to add a piece to the jigsaw of protection for residential tenants but without completing the jigsaw.

78. However the House of Lords in *Wilson v First Counties Trust (No. 2)* [2003] UKHL 40 explained the appropriate approach in the context of Convention rights (the Convention was not argued in *Murphy*) at paragraph 61 per Lord Nicholls as follows:

> "If the legislation impinges upon a Convention right the court must then compare the policy objective of the legislation with the policy objective which under the Convention may justify a prima facie infringement of the Convention right. When making these two comparisons the court will look primarily at the legislation, but not exclusively so. Convention rights are concerned with practicalities. When identifying the practical effect of an impugned statutory provision the court may need to look outside the statute in order to see the complete picture, as already instanced in the present case regarding the possible availability of a restitutionary remedy. As to the objective of the statute, at one level this will be coincident with its effect. At this level, the object of section 127(3) is to prevent an enforcement order being made when the circumstances specified in that provision apply. But that is not the relevant level for Convention purposes. What is relevant is the underlying social purpose sought to be achieved by the statutory provision. Frequently that purpose will be self-evident, but this will not always be so."

79. The background to the 1983 Act includes the Mobile Homes Review 1977 ("**the Review**"), Lord Bellwin's speech in the House of Lords in support of the second reading of the Bill and Sir George Young's speech in Parliament of 5 May 1983 on behalf of the Government. The mischief which can be identified from those materials is the absence of long-term security of tenure for residents in contrast to the position for private tenants in housing and, according to Sir George Young, the anxiety expressed in Committee that "some residents would never gain the most basic rights". Each of the three sources makes clear in the quotations above that it is all residential occupiers who are to benefit from these "most basic rights":

> "The most satisfactory approach is considered to be the imposition of implied terms into all residential contracts …" (the Review, paragraph 8.1.7)
>
> "[The Bill] imposes an absolute duty on site owners to offer statutory agreements to all residential occupiers." (Lord Bellwin)
>
> "These implied terms will apply from the date of commencement to all agreements between site owners and residents, whatever the agreements may say." (Sir George Young)

80. However, in my judgment there was a further mischief in this case which one can discern, in particular, from the words used by Parliament in the 1983 Act and its reliance on the definition of "protected site" in the 1968 Act which in turn requires reference back to the 1960 Act which prevents local authorities granting a site licence unless planning permission is in place. This goes back to the origins of the 1960 Act and the 1959 Report of Sir Arton Wilson which noted among other matters (paragraph 10) above that many caravan sites were badly located and an unpleasant intrusion into the landscape including in green belt, i.e. a clear reference to planning considerations. In that regard, it is well established that a system of planning permission pursues "the legitimate aim of protecting the 'rights of others' through preservation of the environment": *Chapman v UK* (2001) 33 E.H.R.R. 18 at paragraph 82.

81. To return to the changes which were to be introduced in 1983 to grant certain basic rights in order to address the absence of long-term security, as reviewed in paragraphs 23-29 above, this was to lead to four innovations in which the interests of mobile home residents and site owners were expressly balanced by Parliament:

    i) A desire to improve the position of residential tenants of mobiles homes by:

        a) First, the imposition of implied terms into all residential occupation contracts;

        b) Second, a requirement to offer a written notice/statement of the terms of the agreement;

        c) Third, the grant of a measure of security of tenure via the implied terms which make the rights of the owner to give notice to terminate the

agreement subject to the requirement of first satisfying the Court that it is reasonable to do so;

d) Fourth, the extension of these rights to local authority owned sites;

ii) Sir George Young emphasised that the scope of the implied terms had been limited to "those subjects that need to be covered by them" so that he did not believe that it would "… adversely affect the interests of site owners. We have strived to retain a fair balance between the interests of residents and of site owners. These new clauses and amendments will keep that balance".

82. It is apparent from the terms of the 1983 Act that it was designed to have an effect at three points/periods in the life of an occupation agreement in order to address the inequality of bargaining power:

i) By the provision of written notice of the terms of the agreement at the outset of the agreement, initially within three months of the agreement and, latterly, a minimum of 28 days before the agreement is made;

ii) By the implication of terms designed to regulate the operation of the agreement during the period that it is current, such as regulating the sale/gift of the mobile home and, from 2004, implying a covenant of quiet enjoyment, regulating increases of pitch fees, setting out the respective obligations of the owner and the occupier etc;

iii) By including implied terms which limit the circumstances in which the agreement may be terminated by the site owner.

83. Moreover, in *Connors v UK* [2004] HLR 52, the UK Government's case before the European Court of Human Rights was summarised by the Court (at paragraph 80) as follows:

> "The Government further explained that the policy and object of the mobile homes legislation was to remedy a different problem, namely, the inequality of bargaining power between the mobile home owner and the site owner, in which area there was a deficiency of supply over demand which the private sites, run as businesses, were in a position to exploit, by for example compelling a resident to buy his mobile home from the site owner and then evicting him and forcing him to sell the home back at a significant undervalue. The 1983 Act was designed specifically to remedy such abuses by giving residents of such sites stronger security of tenure."

84. Whilst the Parliamentary material and other debates tend to focus on the improvement in security which is expressly to be for all residential occupiers and which is clearly a legitimate aim, there is no indication of any intent to resile from the previous position that protection was only to be extended to occupiers on those sites which benefit from planning permission. Indeed, the statutory wording and the express requirement of planning permission in order to obtain a site licence (para. 80 above) indicates that it is only residents of sites which benefit from planning permission which are included

in phrases such as "all residential occupiers", used in the Parliamentary background material.

85. The subsequent change in 2004 followed a report recommending that the written statement of terms should be provided a reasonable period in advance of the sale, a recommendation which was accepted by the Government (paragraphs 37-38 above). That was the "anomaly" focused on by the Rt Hon Yvette Cooper and the objective of the requirement for a statement of terms in advance was to place occupiers in the strongest possible negotiating position (paragraph 39 above). It is moreover plain from the extract from Yvette Cooper's speech that the Government in 2004 considered the written statement of terms to be separate from the implication of terms: the speech noted that occupiers had always been able to find out the terms implied by Schedule 1 but the written statement was to inform occupiers of all the terms including in particular the express terms specific to their site/agreement as otherwise occupiers would be in an unreasonable position in signing up to an agreement without knowing the detailed provisions. That "unreasonable position" goes to the lack of bargaining power of the potential residents (which in my judgment describes the mischief to which the 2004 amendments were directed) and must refer primarily to the express terms.

86. Ms Duffy in paragraphs 58-70 identifies three purposes behind the development of the statutory scheme:

    i) Public interest: limiting the benefit of the 1983 Act to those sites which benefit from planning permission and a site licence from the inception of the occupation agreement supports the public interest in ensuring that sites are fully and effectively regulated;

    ii) Deterrence: the exclusion of persons in the First Defendant's position provides an incentive on mobile home occupiers to carry out checks on the planning and licensing status of the site before moving onto the site;

    iii) Freedom of contract: which supports the importance of written statements of terms being given in advance and conversely would be undermined by including existing agreements.

87. Despite asserting that this rationalisation of the purposes has not been carried out after the event, the Secretary of State fairly does not suggest that these *were in fact* the purposes of the 1983 or 2004 Acts at the time and accepts that Ms Duffy is also giving evidence as to the Secretary of State's "understanding and analysis of the issues which arise on the First Defendant's case"

88. The first and second suggested purposes start with the exclusion of persons in the First Defendant's position and therefore risk having an element of circularity or at least incorporating an element of submission. Moreover, whilst ensuring that sites are "fully and effectively regulated" so that they are "well run and are safe and comfortable to live on" is likely to have been a purpose of the 2013 amendments to the 1960 Act, it is not clear to me that this is the case for the 1983 or 2004 Acts. Whilst I fully accept that the 1960 Act is part of the context within which the 1983 and 2004 Acts must be interpreted, it does not seem to me legitimate in analysing the underlying social purposes of specific Acts to rely on such purposes from other Acts.

89. Promoting the public interest in ensuring that sites are appropriately located as per Ms Duffy's evidence clearly is one of the purposes of the 1983 Act as already considered above. However, the reference to a requirement that the mobile home site has planning permission "at the inception of the agreement" appears based on, and therefore not to add to, the *Murphy* judgment.

90. On the Secretary of State's submission that deterrence is a purpose of the measure, at paragraph 64 of Ms Duffy's witness statement, she says the following:

> "Given that mobile homes are likely to be a significant financial investment, it is reasonable to expect prospective occupiers to carry out checks (although I recognise that on the specific facts of Mr Mitchell's case, he did not purchase his mobile home from Mrs Dean). I understand that this too has been recognised by the Court of Appeal i.e. that prospective occupiers would want to be satisfied they were legally entitled to occupy the site before entering into an agreement (see *Murphy v Wyatt* at paragraph 48). The Government publishes advice about what prospective mobile home occupiers should do and expect to see when purchasing a mobile home, and information about the planning and licensing status of any given piece of land can be accessed easily. In these circumstances it is fair and appropriate that mobile home occupiers bear responsibility for carrying out due diligence, and are excluded from the protections of the 1983 Act if they fail to do so."

91. I asked in argument for the references in the documents which support the above quotation and I was taken to a Government Fact Sheet dated July 2013 which advised persons intending to buy a park home on a protected site in England to seek the advice of a solicitor. There is no indication there that information about the planning and licensing status of the land can be "accessed easily" or that this was the case in 1983 and therefore a basis on which one might approach the assessment of the provisions of the 1983 Act. Indeed, the Review which preceded the 1983 Act (paragraph 24 above) indicates that residents often do not know the length of planning permission which shows that the view was taken that residents do not in general check the planning permission. It is perhaps significant that this material was not apparently before the Court of Appeal in *Murphy*.

92. My difficulty is that the search for the legitimate aim is not for what is fair and appropriate. The very limited evidence from the background does not in my judgment support a legislative aim that existing occupation agreements on sites originally without planning permission, but which obtain planning permission later, cannot at that point come within the 1983 Act. The starting point is that the environment needs protection from caravans parked on green belt land (the mischief); there is therefore an objective only to grant security of tenure to residents of sites with planning permission (the objective); the relevant measure grants basic rights to those whose home is on a site benefiting from planning permission at the outset of the occupation agreement but not otherwise. This measure goes beyond the objective in issue for example in *Chapman v UK* (environmental protection through the enforcement of planning rules) because it is not in dispute that the First Defendant's site does have

planning permission. I can understand that a measure which limited security of tenure to cases where the occupation agreement post-dates planning permission might make sense and might help to ensure that, for those who are aware that no security of tenure is obtained unless the site benefits from planning permission and who are able to check planning permission, prospective residents might only search on sites with planning permission. I can however find no supporting material in the background to support this and still less of any underlying social purpose to that effect. Also, there is an air of unreality with a submission that the occupiers, who are acknowledged to be in the weaker bargaining position, bear the consequences of a failure to obtain planning permission. The background to the 2004 Act informs us that the purpose of Parliament was to improve the bargaining power of potential residents by imposing additional obligations on site owners prior to the conclusion of an occupation agreement. There is no evidence of a corresponding legislative intent to impose obligations on site residents to take particular steps prior to entry into occupation. While I follow that excluding all residents of sites without planning permission contributes to a general deterrence objective, there is no support in the background material for the additional deterrent element that, even if a site has planning permission, residents with prior occupation agreements remain excluded from the 1983 Act. I acknowledge that Neuberger LJ at paragraph 49 of his judgment in *Murphy* considered that his interpretation of the 1983 Act, i.e. that it did not apply to agreements entered into prior to the grant of planning permission, was at least consistent with the purpose enunciated in *Adams v Watkins* at page 111 to the effect that the legislative policy was one under "which the interests of the individual occupier are subordinate to those of the community at large in maintaining a proper control over the development of caravan sites". The immediate difficulty with such an objective is that it does not indicate the *extent* to which the occupier's interests are to be subordinated to the community interest in planning control.

93. With regard to the freedom of contract contended for, statutory implication of terms is itself an inroad on freedom of contract and, in any event, Sir George Young made absolutely plain that the interests of site owners had been taken into account in putting forward the innovations contained in the Bill. It is also necessary to recall that the 1983 Act as enacted did not require a statement of terms before the agreement but within three months of the making of the agreement. That difference is an important reason behind the 2004 Act, and I accept Ms Duffy's evidence to this extent that the purpose of the 2004 amendment to require advance notice of terms, but not the 1983 Act, was to permit residents to take informed choices, to place proposed occupiers in a better bargaining position and to act as a written record of the terms.

Rational connection

94. I turn then to the issue of whether there is a rational connection between the objectives and the measures. The provisions of the 1983 Act clearly seek to provide security of tenure for mobile home residents and, equally clearly, do not seek to do so at the expense of the requirement that, to be a protected site, the site must benefit from planning permission. However, for there to be a rational connection with the measure as summarised in paragraph 76 above, the purpose needs to go beyond requiring a site to have planning permission and to exclude occupation agreements pre-dating planning permission even if planning permission is subsequently obtained. Whilst the paucity of evidence of any purpose of the measure including deterrence casts

significant doubt on whether there is such a legitimate aim in this case, if such an aim were established, I would be prepared to accept that withholding 1983 Act protection from residents of sites which did not benefit from planning permission at the time of the occupation agreement may logically further such an objective (applying the approach of Lord Reed in *Bank Mellat* at paragraph 92 – Lord Sumption giving the majority judgment agreed with Lord Reed on rational connection). This is because such a limitation could be capable of persuading potential residents not to enter into occupation of a caravan located on a site without planning permission because they will never obtain security of tenure. I reject the First Defendant's submission to the contrary, although the lack of evidence for this purpose makes it correspondingly difficult for any such purpose to satisfy the balancing aspect of the proportionality analysis.

95. With regard to the 2004 amendments, there clearly is a rational connection between facilitating informed choices by residents, improving the residents' negotiating position and having a written record of terms on the one hand, and, on the other hand, a requirement of advance notice of terms prior to concluding the occupation agreement.

Margin of appreciation

96. I must turn then to the issue of less intrusive measures but, before I do so, I accept the Secretary of State's submission that the absence of specific consideration in debates by Parliament (of whether to exclude Existing Agreements from 1983 Act protection) does in no way "count against" upholding the measure: "the courts will simply have to consider the issue [of compatibility] without that factor being present, but nevertheless paying appropriate respect to the will of Parliament as expressed in the legislation" (paragraph 182 of Lord Reed's judgment in *R(SC) v. Secretary of State for Work and Pensions* [2021] UKSC 26, [2022] AC 223).

97. The First Defendant also relied on this issue on the House of Lords' judgments in *Belfast City Council v. Miss Behavin' Ltd* [2007] UKHL 19, [2007] 1 WLR 420. I have in mind that that case involved a decision by a Council and not an Act of Parliament. Baroness Hale said the following:

> "37. …Had the Belfast City Council expressly set itself the task of balancing the rights of individuals to sell and buy pornographic literature and images against the interests of the wider community, a court would find it hard to upset the balance which the local authority had struck. But where there is no indication that this has been done, the court has no alternative but to strike the balance for itself, giving due weight to the judgments made by those who are in much closer touch with the people and the places involved than the court could ever be." (see also Lord Mance at paragraph 47).

98. This leads into the issue of the margin of appreciation. The European Court of Human Rights in its judgment in *FJM v. United Kingdom* [2019] H.L.R. 8 at paragraphs 35-36, said the following:

> "35. … The procedural safeguards available to the individual will be especially material in determining whether the respondent State has, when fixing the regulatory framework, remained within its margin of appreciation. In particular, the court must examine whether the decision-making process leading to measures of interference was fair and such as to afford due respect to the interests safeguarded to the individual by art.8 [citations omitted]
>
> 36. As the court emphasised in *McCann* (cited above, § 50), the loss of one's home is the most extreme form of interference with the right to respect for the home. Any person at risk of an interference of this magnitude should in principle be able to have the proportionality of the measure determined by an independent tribunal in light of the relevant principles under art.8 of the Convention, notwithstanding that, under domestic law, his right to occupation has come to an end."

99. That was a case concerned with whether an assured shorthold tenant of a private landlord was entitled to a proportionality review on an application for a possession order. No challenge was made to the compatibility of the legislation itself with the Convention (paragraph 46). The Court held (paragraph 43) that the Housing Act 1988 reflected the State's assessment of where the balance should be struck between the rights of residential tenants and private sector landlords and that the parties had entered into a contractual relationship under a regime in which the balance had already been struck. That case was therefore within the wide margin of appreciation allowed to States in the field of social policy.

100. Nevertheless, the point made by the European Court in *Chapman v. United Kingdom* (2001) 33 E.H.R.R. 18 at paragraph 92 (and reiterated in *Connors* at paragraph 83) remains important:

> "In these circumstances, the procedural safeguards available to the individual applicant will be especially material in determining whether the respondent State has, when fixing the regulatory framework, remained within its margin of appreciation. In particular, it must examine whether the decision-making process leading to measures of interference was fair and such as to afford due respect to the interests safeguarded to the individual by Article 8."

101. In addition, in *Connors*, the Court said:

> "82. … This margin will vary according to the nature of the Convention right in issue, its importance for the individual and the nature of the activities restricted, as well as the nature of the aim pursued by the restrictions. The margin will tend to be narrower where the right at stake is crucial to the individual's effective enjoyment of intimate or key rights.

> 86. The serious interference with the applicant's rights under Art.8 requires, in the Court's opinion, particularly weighty reasons of public interest by way of justification and the margin of appreciation to be afforded to the national authorities must be regarded as correspondingly narrowed. The Court would also observe that this case is not concerned with matters of general planning or economic policy but with the much narrower issue of the policy of procedural protection for a particular category of persons. …"

102. At issue in this case is the effective enjoyment of a key right. It is one which had been exercised for around 15 years when the notice of termination was served. The Secretary of State invited me to consider this matter on the basis that the occupation had been unlawful at all times when no planning permission was in place and that, even when the matter was regularised, this was by a certificate of lawful use and not a grant of planning permission. However, for the purposes of site licensing the judgment of Parliament in s. 191(7) Town and Country Planning Act 1990 is that a certificate of lawful use "shall also have effect … as if it were a grant of planning permission" and s. 191(6) conclusively presumes the lawfulness of "any use, operations or other matter for which a certificate is in force". It seems to me that I cannot go behind those provisions. So it is the right for the First Defendant lawfully to occupy his caravan as his home which is in issue and which would be restricted. It remains however to consider the nature of the aim pursued by the restrictions in the balancing process under the fourth limb of the proportionality test.

Less restrictive measure

103. I turn to considering whether a less intrusive measure could have been used without unacceptably compromising the achievement of the objective.

104. The First Defendant relies on the fact that the 1983 Act as amended treats two categories of persons differently: a) persons such as the First Defendant who entered into an occupation agreement prior to the grant of planning permission; b) a resident of a holiday let caravan which is hypothetically on the same site without planning permission who subsequently (after the site obtains planning permission) agrees a variation to his occupation agreement to permit him permanently to reside in the caravan. It is not in dispute that the variation would bring the resident within the 1983 Act protection (s. 1(8) 1983 Act and *Murphy*, paragraph 48).

105. Moreover the First Defendant submits that the second category is also capable of including persons who took an assignment of the First Defendant's existing agreement after the entry into force of the 2004 Act and after planning permission has been granted on the basis that the assignment – and presumably the site owner's agreement to the assignment – could be considered a fresh agreement. My attention was drawn to paragraph 7A of Schedule 1 to the 1983 Act. However, if an agreement has to qualify from its inception (per *Murphy*), then it would seem that paragraph 7A could not apply unless there were a fresh agreement with the site owner made after planning permission.

106. Whilst I would accept that both the variation of the holiday let case and the assignment case could reasonably have been considered by Parliament (see *Murphy*,

paragraph 44) as the making of new agreements it does not seem that this is the relevant issue. From the point of view of an underlying social purpose of the legislation which might justify exclusion from the benefit of the 1983 Act of agreements where planning permission was not present at the outset, both the First Defendant and the holiday let which is subsequently varied suffer from the same defect: occupation of a caravan commenced at a time when the site lacked planning permission and therefore both occupations were potentially equally inimical to the environmental protection aims of, and therefore any deterrent effect of requiring planning permission. It would appear therefore that, despite the two situations being equally within the purpose or objective, a less restrictive approach has been adopted for the holiday let which is varied as compared with those in the position of the First Defendant. That casts doubt on the existence of a pressing social need in the case of the First Defendant and the proportionality of excluding the First Defendant's agreement from the benefit of the 1983 Act.

107. With regard more specifically to the relevance of a new agreement, it is clear that a requirement for advance notice of terms is more difficult to apply unless some new agreement intervenes after the 1983 Act applies such as is the case for the holiday let in the example above. However, as we have seen from paragraphs 81-82 above, the 1983 Act went considerably further than simply requiring advance notice of terms, in particular by granting procedural protection against eviction. On that point, the concern expressed in *Murphy* at paragraph 35 was that "it seems a little unsatisfactory" that an agreement can start off outside the 1983 Act and then come within it. However, it seems implicit in this formulation that Neuberger LJ did not regard such a situation as out of the question and the loss of all implied terms in the case of the First Defendant but not of the holiday let (where the agreement started off outside the 1983 Act but later came within) tends to show that less restrictive measures were available for a comparable situation.

108. The First Defendant further submits that the 1983 Act as enacted applied to existing agreements and that the First Defendant's agreement is itself a form of existing agreement. The Act expressly (s. 1(3)) required a written statement within six months of existing agreements, namely "agreement[s] made before the day on which this Act comes into force"". S. 1(2) required (in its original version) a written statement within three months "of the making of the agreement" but s. 1(3) adapts that deadline to deal with existing agreements. Paragraph 6 of Schedule 1 provided for a possible ground of termination based on a review every five years "beginning with the commencement of the agreement" – a provision which was not the subject of adaptation, despite the possibility of, in effect, short or very short review periods depending on the date when the agreement was made. In any event, s. 1(3) shows that Parliament was prepared to apply the provisions of the 1983 Act as enacted to existing agreements.

109. But I am not persuaded that s. 1(3) assists the First Defendant. That provision was to deal with agreements made before the 1983 Act, which was a significant departure from the 1975 Act. It is true that agreements pre-dating the 1983 Act may have been made at a time when the site had no planning permission but that was not the focus of the provision which was in my judgment principally focused on ensuring a transition between pre- and post-1983 agreements (see also paragraph 20 above for a brief summary of the 1975 Act transitional provisions).

Balancing severity of effects against importance of objective

110. As already noted above, there are various objectives in this case. The express objective where Parliament has struck a balance is to increase security of tenure as considered in paragraph 77 above. That a balance has been struck is evident both from the speeches of Lord Bellwin and Sir George Young. After describing security of tenure as "the most important benefit" for residents, Lord Bellwin notes in the final paragraph of the quotation in paragraph 28 above that the significant strengthening of the rights of mobile home residents "will not impose an unreasonable burden on site owners" and he points in that regard to avoiding the excesses of the Rent Acts. After noting that the implied terms under the Act are "limited to essentials" and asserting his belief that the amendments will not adversely affect the interests of site owners, Sir George Young stated that "We have strived to retain a fair balance between the interests of residents and of site owners. These new clauses and amendments will keep that balance".

111. The result of the striking of such a balance is that all residents were to benefit: see paragraph 79 above. Whilst the adoption of the 1968 Act definition of "protected site" in fact limited the benefit of the amendments to those persons on sites with planning permission, that simply maintains what has been a consistent line that planning permission is a prerequisite for protection.

112. In his judgment in *Lawrence v Fen Tigers Ltd* (No 3) [2015] 1 WLR 3485 at paragraph 58, Lord Neuberger said that a court:

> "… must give considerable weight to informed legislative choices, at least where state authorities are seeking to reconcile the competing interests of different groups in society. In such cases, they are bound to have to draw a line somewhere in order to mark where a particular interest prevails and another one yields. Making a reasonable assessment of where to draw the line, especially if that assessment involves balancing conflicting interests falls within the state's wide discretionary area of judgment."

113. The difficulty in this case is that a clear balancing has occurred as between increasing security of tenure for residents of sites with planning permission (as provided in the 1983 Act) and the interests of site owners but no such balancing is apparent in relation to any possible deterrent objective for residents (whose sites have planning permission but did not when the resident made the occupation agreement) considering moving onto sites without planning permission. It follows that the relevant balancing is for the court which must give considerable weight to informed legislative choices.

114. Before I carry out the balancing, I remind myself that an "exacting analysis of the factual case advanced in defence of the measure" is required: *Bank Mellat (no 2)* at paragraph 20 per Lord Sumption. Similarly the European Court of Human Rights subjects Governments' factual matters by way of justification to careful scrutiny.

115. First, I must bear in mind both that the loss of one's home "is the most extreme form of interference" (see *FJM v United Kingdom* at paragraph 36) and that the terms in Schedule 1 of the 1983 Act which are to be implied include much by way of

procedural safeguards which are considered by the European Court to be "especially material" (see paragraphs 98-102 above). In respect of Schedule 1, I refer in particular to paragraphs 4-6 thereof which regulate the termination of agreements by the site owner and which require the site owner to establish grounds for termination, in two cases before a court/tribunal. Paragraph 16 imposes recourse to a judicial body if the site owner wishes to change the pitch fee without the agreement of the occupier and succeeding paragraphs regulate what can or cannot be taken into account in determining the pitch fees. Paragraph 26 requires the site owner to specify an address at which notices can be served on him and paragraph 27 imposes procedural conditions to be satisfied by any demands for payment.

116. Second, if I take a hypothetical example, there appears to be a risk of arbitrariness from depriving of the benefit of the 1983 Act all persons whose residential occupation commenced prior to the grant of planning permission. Had a site owner obtained planning permission for residential caravans shortly before the arrival of an occupier for residential use in say 2010, the 1983 Act would apply to the occupation agreement. Had the site owner obtained planning permission shortly after such arrival in 2010, the Secretary of State's case is that no length of use of a caravan as a person's home could entitle the occupier to the benefit of the 1983 Act. The difficulty with this in terms of proportionality is that blanket rules are more difficult to justify: *R(Chester) v Secretary of State for Justice* [2014] AC 271 at paragraph 34. Even an unlawfully established home qualifies as a home and it is the "existence of sufficient and continuous links" which determines whether or not a place qualifies as a person's home: see on both points *Buckley v United Kingdom* (1996) 23 EHRR 101 (with quotation from paragraph 63). In the second case of the above example, where planning permission post-dates arrival of the occupier, a notice to terminate the agreement might (as in this case) be served the day after planning permission is obtained. Had the resident arrived a short time earlier (but sufficient time to establish their home), the eviction of a settled resident would inevitably be regarded by the European Court as a very serious interference with the person's Article 8 rights. It is not an answer to this to argue that legal certainty requires clear rules which can give rise to tough cases because the nature of proportionality would generally require differentiated outcomes depending on the facts.

117. Third, contrary to the Secretary of State's submissions that the protection of the 1968 Act is sufficient: that is not what the background material shows was intended by Parliament. Lord Bellwin's speech referred to security of tenure as "the most important benefit" and Sir George Young's speech both stressed that the implied terms were "limited to essentials" and that the 1983 Bill would meet the anxiety of some members in committee that some residents "would never gain the most basic rights that the Bill provides". On that basis, the protection by way of security of tenure envisaged was that in the 1983 Act and not the procedural protections already available to residents on sites with planning permission under the 1968 Act.

118. Fourth, there is also an apparent contradiction between an objective to confer additional security of tenure on all persons on sites with planning permission and an objective to deter persons from occupying sites without planning permission by denying all benefits of the 1983 Act to residents of sites with planning permission, but whose occupation agreements pre-date the grant of planning permission on the relevant site. Parliament was however clear that the priority (Lord Bellwin's "most

important benefit") was to increase security of tenure. The evidence establishes that Parliament voted for such security of tenure on the basis of a careful balancing of the interests of site owners and residents.

119. Fifth, the Secretary of State prays in aid assured shorthold tenancies and wishes to compare the result of termination of an assured shorthold tenancy with what is contended for in this case under the 1983 Act. The first difficulty with that approach is the situation of private tenants in 1983 was evidently better than that of mobile home occupiers under the 1968 and 1975 Act (see the quotation from 8.1.5 of the Review at paragraph 26 above). The second difficulty is that assured shorthold tenancies depend on both parties entering into a specified form of contractual agreement with known legal effects so as to maximise legal certainty. On Lady Justice Arden's point re a "measure of security", this corresponds closely with what Sir George Young said to Parliament in promoting the Bill – but the only acceptable minimum measure of security of tenure was that in the Bill.

120. Sixth, the primary answer of the legislator to the issue of residential sites being operated without planning permission is the well-known provisions for planning enforcement action. In effect the Secretary of State's arguments assume that councils may fail over many years to use their planning enforcement powers to close a site so that a resident has a very well established home. Such planning enforcement is the principal deterrent element but it is principally a deterrent for the site owner. As regards residents, the material before Parliament included the statement from paragraph 3.5.2 of the Review in 1977 quoted above (paragraph 24) that residents are "often unaware of the length of planning permission for their site". Whilst I acknowledge Ms Duffy's evidence of the ease of obtaining information about planning permission today, I cannot assume that that was the situation in 1983 or 2004. There is no evidence about the effectiveness or otherwise of the alleged deterrence on the actions of potential residents or about whether residents' knowledge of site planning permission has improved since 1977 so that no impression can be gained by the Court of the practical benefits from a planning perspective of the deterrent objective relied on. In those circumstances, visiting the effects of the absence of planning permission on the long term resident who has made his home on the site again has more than an element of arbitrariness.

121. Seventh, the Secretary of State argues that the benefit of the 1983 Act would constitute a windfall for persons such as those in the First Defendant's position. My first observation on this point is to query whether it is any more or less of a windfall than for example the long term hotel resident in a case such as *Uratemp Ventures Ltd v Collins* [2001] UKHL 43, [2002] 1 AC 301. At the very least, that point is double-edged because site owners can use long term occupation to obtain a certificate of lawful use of the land as a caravan site. It is the site owners who commit a criminal offence in hosting caravans without a site licence and who are also in breach of planning control, a situation in which the site owners are in by far the best position to apply to correct. If a certificate of lawful use is obtained, the expectation of a residential landlord after years of occupation by a resident of a flat or house as the resident's only or main residence having agreed no specific legal regime for the occupation would be likely to be that the resident could well have acquired some rights specified by law.

122. Eighth, no one suggests that the loss by a person of his home is not the most extreme form of interference. The Secretary of State points however to the fact that the First Defendant's original occupation was on the basis that "he could be asked to leave at any time". The analysis of the proportionality of a statutory provision cannot depend however on the individual facts of the case before the Court. But, as Mr Johnson, who has significant experience in this field, observes, the nature of the terms on offer would generally be imposed by the site owner in any event. Moreover, the very nature of statutorily implied terms is that they are intended to, and do, change the bargain.

123. Ninth, the starting point of the Court of Appeal in Murphy was that advance notice of terms must be possible. The result is that no implied terms apply at all to someone such as the First Defendant. Given however that the 2004 addition of advance notice of terms was intending to be an incremental step beyond the 1983 implied terms, to exclude all 1983 Act protection appears disproportionate in that the 2004 Act tail appears to wag the 1983 Act dog.

124. On the basis of (a) Parliament's own assessment of priorities with regard to the appropriate level of security of tenure for full time residents of sites benefiting from planning permission as part of the package to redress the perceived inequality of bargaining power of residents taken in conjunction with the above nine points; and (b) the fact that Parliament was prepared to use a less restrictive measure for another case (variation of the occupation agreement under s. 1(8), 1983 Act) where a site was occupied before planning permission, I find that the severity of the effects of not receiving the benefit of the implied terms for those in the position of the First Defendant (i.e. persons whose occupation agreement pre-dates planning permission) must outweigh and therefore render disproportionate any implicit support which the terms of the 1983 Act as amended might provide for an objective which includes seeking to deter potential mobile home occupiers from entering into occupation prior to the grant of planning permission for the relevant site because 1983 Act protection can never be obtained even if planning permission is subsequently obtained.

Section 3 of the Human Rights Act 1998

125. I must now turn to the question whether section 3 Human Rights Act 1998 ("**the 1998 Act**") requires the court to depart from the interpretation of the 1983 Act enunciated by the Court of Appeal in *Murphy*. My task here is to use s. 3 HRA to enable the court to interpret the relevant provisions in such a way as to render them compatible with the Convention: *In re Abortion Services (Safe Access Zones)(Northern Ireland) Bill* [2022] UKSC 32, [2023] ACT 505 at paragraph 57 per Lord Reed. Whilst I fully accept that the reasoning and indeed the result of the judgments in *Murphy* is highly persuasive (neither party contended that I am bound by the result in that case), I am also conscious that I am engaged in a different task which may require courts to depart from the legislative intention of Parliament.

126. I am also mindful that section 3 is the "prime remedial remedy" and that resort to section 4 "must always be an exceptional course" (*Ghaidan v Godin-Mendoza* [2004] UKHL 30, [2004] 2 AC 557 at paragraph 50, per Lord Steyn). It is also common ground that, as Lord Nicholls observed at paragraphs 52-3, section 3 is apt to require a court to read in words which change the meaning of the enacted legislation so at to make it Convention-compliant provided that the meaning adopted is not "inconsistent

with a fundamental feature of the legislation". See to similar effect: *In re S*, [2001] UKHL 10, [2002] 2 AC 291 at paragraph 40 per Lord Nicholls and see also *Poplar Housing Association Ltd. v Donoghue* [2001] EWCA Civ 595, [2002] QB 48 at para. 75.

127. The amendments to the statutory framework ultimately contended for by the First Defendant are underlined in the relevant parts of the provisions of the below:

> "1 Particulars of agreements
>
> (1) This Act applies to any agreement under which a person ("the occupier") is entitled for the time being –
>
> (a) to station a mobile home on land forming part of a protected site; and
>
> (b) to occupy the mobile home as his only or main residence.
>
> (2) Before making an agreement to which this Act applies or after the Act applies, the owner of the protected site ("the owner") shall give to the proposed occupier under the agreement a written statement which–
>
> (a) specifies …
>
> (3) The written statement required by subsection (2) above must be given–
>
> (a) not later than 28 days before the date on which any agreement for the sale of the mobile home to the proposed occupier is made, or
>
> (b) (if no such agreement is made before the making of the agreement to which this Act applies) not later than 28 days before the date on which the agreement to which this Act applies is made or not later than 28 days after the Act applies.
>
> (4) But if the proposed occupier consents in writing to that statement being given to him by a date ("the chosen date") which is less than 28 days before the date mentioned in subsection (3)(a) or (b) above, the statement must be given to him not later than the chosen date.
>
> (5) If any express term [other than a site rule (see section 2C)] –
>
> (a) is contained in an agreement to which this Act applies, but
>
> (b) was not set out in a written statement given to the proposed occupier in accordance with subsections (2) to (4) above or was given not later than 28 days after the Act applies,

the term is unenforceable by the owner or any person within section 3(1) below. This is subject to any order made by the [appropriate judicial body] under section 2(3) below.

(6) If the owner has failed to give the occupier a written statement in accordance with subsections (2) to (4) above, the occupier may, at any time after the making of the agreement or after the Act applies, apply to the [appropriate judicial body] for an order requiring the owner–

(a) to give him a written statement which complies with paragraphs (a) to (e) of subsection (2) (read with any modifications necessary to reflect the fact that the agreement has been made), and

(b) to do so not later than such date as is specified in the order.

…

2.— Terms of agreements.

…

(2) The [appropriate judicial body] may, on the application of either party made within the relevant period, order that there shall be implied in the agreement terms concerning the matters mentioned in Part II of Schedule 1 to this Act.

The [appropriate judicial body] may, on the application of either party made within the relevant period, make an order–

(a) varying or deleting any express term of the agreement [other than a site rule (see section 2C)] 5 ;

(b) in the case of any express term to which section 1(6) above applies [other than a site rule (see section 2C)] 5 , provide for the term to have full effect or to have such effect subject to any variation specified in the order.

(3A) In subsections (2) and (3) above "the relevant period" means the period beginning with the date on which the agreement is made or after the Act applies and ending–

(a) six months after that date, or

(b) where a written statement relating to the agreement is given to the occupier after that date (whether or not in compliance with an order under section 1(6) above), six months after the date on which the statement is given …

Schedule 1

> 18.— (1) When determining the amount of the new pitch fee particular regard shall be had to—
>
> …
>
> (3) In a case where the pitch fee has not been previously reviewed, references in this paragraph to the last review date are to be read as references to the date when the agreement commenced or when the Act applies."

128. It will be noted that the number of additional words is relatively modest and deals with the fact that advance notice of terms cannot be given for existing agreements.

129. However the Secretary of State raises two arguments. The first is that, since 2004, a fundamental feature of the 1983 Act is that the written statement of terms is expressly to be provided before the occupation agreement. As is plain from the quotation from the speech of Yvette Cooper at paragraph 39 above, a major change in 2004 was a requirement to provide prior notice of the terms 28 days ahead of the occupation agreement. Whilst such advance notice of terms is only one aspect of a broader objective to redress the inequality of bargaining power of site residents, in particular by implying terms into occupation agreements, it was an express objective of the 2004 amendments. The terms of s. 1(2) of the 1983 Act, following its replacement in 2004, are "clear express and intentional" and an "ingrained feature of the legislation" such that to override those terms would go against the grain: *Smith v Lancashire Teaching Hospitals NHS Foundation Trust* [2017] EWCA Civ 1916, [2018] QB 804 at paragraph 97 per Sir Terence Etherton MR.

130. Second, it is argued that to add the words proposed by the First Defendant would trespass on choices which should be made by Parliament. Reference was made to the changes which followed the judgement of the European Court in *Connors v United Kingdom* in which summary eviction of gypsies on local authority sites by means of an express exclusion from the benefit of the 1983 Act was held to be unlawful. The consequential amendments are described in detail by Fancourt J at paragraphs 33 to 36 his judgment in the Upper Tribunal in *Dean v Mitchell* referred to above. Of particular interest are the transitional measures to ensure that existing occupation agreements of gypsies on local authority sites would be covered. The straightforward point is that transitional measures contained in the Housing and Regeneration Act 2008 (Commencement No. 8 and Transitional, Transitory and Savings Provisions) Order 2011 includes in paragraph 5 a long list of transitional disapplication of provisions in the 1983 Act. Indeed the fact that the Order made provisions other than those proposed by the First Defendant tends to support the Secretary of State's submission. Ms Leventhal KC also drew attention to some of the policy choices to be made including the time for the written statement to be provided, modification or not of the rights to apply to the FTT, dealing with the apparent unenforceability of terms, whether the implied terms should apply in full and how to apply the Written Statement Regulations 2011. I accept the Secretary of State's overall submission that there are policy issues to be determined which this court must leave to Parliament.

131. Although the above analysis means that the incremental increase in protection in 2004 thereby prevents all of the improvements of 1983 from being applied to those in the First Defendant's position, this is the result of the words used by Parliament. As

illustrated by *Benkharbouche v Embassy of the Republic of Sudan* [2015] EWCA Civ 33, [2016] QB 347 at paragraphs 67-8 and 85 per Lord Dyson, disapplication was a remedy under EU law but is not available under the Human Rights Act 1998. It follows that the only available remedy in this case is a declaration of incompatibility under s. 4 Human Rights Act 1998. I will grant a declaration that the terms of 1983 Act, in excluding from the scope of the Act all those whose occupation agreements pre-date the grant of planning permission, infringe Article 8 of the European Convention on Human Rights. If it is not possible to agree an appropriate order, I shall receive submissions thereon.