IN THE MATTER OF RIVERSIDE CHALET PARK, SINGLETON, LANCASHIRE

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1. I am instructed by Ian Curtis, Head of Governance, Fylde Borough Council (“the Council”) in connection with the Riverside Chalet Park (“the Park”) which lies within the Council’s district. I am told that the Park contains 36 structures, of which, one is recognisably a static caravan, while the remainder, which are occupied as permanent homes, are described in my Instructions as “*what would informally be called ‘chalets’*”. The context in which my Opinion is sought is that there have been complaints about the conduct of the present owner of the site, Mr Saunders (“the Owner”).

Advice Sought

1. I am asked to advise on the following:
2. The legal basis upon which the chalets are occupied;
3. The existence of any statutory or other protections for residents that flow from the legal basis of their occupation;
4. Whether the chalets are “residential premises” for the purposes of the Housing Act 2004 and, if so, whether the Council, as local housing authority, would be entitled or required to take action to enforce housing standards in appropriate cases; and
5. Any other matter which I consider relevant.

**Summary of advice in this Opinion**

1. **Section 269 of the Public Health Act 1936 does not apply to any of the Chalets; the 1936 Act Licence does not permit the siting of any of the Chalets on the Park. Depending on the nature of the chalets and their user and occupation at the time, it may have been ultra vires when issued but it cannot in any event now permit the siting of any of the chalets on the Park because they are, on the available evidence, plainly well outside the ambit of the provision.**

**Paras 14 & 72**

1. **Where a chalet has become annexed to the land on which it is standing, the likely result is that the combination of:**

**(1) exclusive residential occupation and**

**(2) periodic payment to the landowner**

**would lead to the conclusion that a tenancy had been created, and, provided it does not fall within any of the statutory exceptions, it is likely to be either an Assured or an Assured Shorthold tenancy depending upon when the tenancy came into existence.**

**Paras 52, 68 & 71**

1. **On the material before me, Chalet 1 would appear to be a mobile home or caravan subject to, and making the Park subject to, the mobile homes legislation (the most important elements of which are set out in Table 2 below). The Park would appear to qualify as both a “protected site” and a “relevant protected site” (the terms are defined in Table 1 below).**

**Paras 15, 37, 73 & 74**

1. **Chalets 2 to 36 would appear to have become annexed to the land and thus subject to housing legislation.**

**Paras 65, 68 & 70**

1. **There are both beneficial and adverse consequences for the individual occupiers, the most significant adverse consequence being that they will only have a periodic lease to assign rather than a physical chalet to sell and they are unlikely to obtain a premium equivalent to the original purchase price.**

**Paras 69 & 70**

1. **It is possible some chalets fall under both statutory regimes because all are the subject of agreements to site a caravan and their character may not have changed so completely as to bring the agreement to an end contractually.**

**Paras 58-63, 66 & 67**

1. **Chalets 2 to 36 are “residential premises” for the purposes of the Housing Act 2004 and it is probable that a duty to inspect has already arisen under Section 4 of the Act. What powers the Council has and whether or not it has a duty or a discretion to exercise them would depend on the results of any inspection.**

**Paras 76-78**

1. **The Park does not have planning permission but, provided the Park is subject to the normal planning regime, it is likely any enforcement proceedings could be defended successfully by the Owner on the basis of established use for the requisite period. The Owner would appear to be in a position to seek a Certificate or Certificates of Lawful Use.**

**Para 79**

Documents

1. For the purposes of advising I have been provided with the following as either enclosures to my Instructions or internet links:

(1) The registered title of the Park;. I am instructed that no other titles are registered

(2) Building surveyor evidence commissioned by the Council from James Alderson of Leeming Associates, Chartered Building Consultancy, dated February 2020 consisting of:

(i) a Report

(ii) a Chalet Summary Spreadsheet

(iii) an Indicative Site Plan; and

(iv) a photographic record of each chalet.

(3) Historical photographs of the Park dating from the 1960’s.

(4) Documents which are typical of the documentation governing the occupation of individual chalets, namely:

* Copy “2018 Licence Agreement” issued by the Owner to residents when he acquired ownership of the park, including an attached set of “Rules”;
* Rules for the site issued by previous site owner;
* Letter to Residents from the Owner dated 1st September 2018;
* Bill of Sale No 9 Riverside dated 7th December 2001;
* Bill of Sale No 14 Riverside dated 19th March 2013 and property advert for the same chalet;
* Agreement of Sale for 19 Riverside including notice of sale to the Owner and owner’s copy contract to receive 10% of sale price; and
* Sale Agreement for 35 Riverside and property advert for the same chalet.

(5) Links to planning documentation relating to individual chalets, namely the following:

* 14/0474 Proposed replacement single storey residential unit - 19 Riverside Chalet Park, 2014
* 12/0516 Proposed single storey rear extension with hipped roof - 35 Riverside Chalet Park, 2012
* 10/0456 Proposed replacement single storey chalet, 5 Riverside Chalet Park, 2010
* 06/0628 Rebuild single storey chalet (amendment to permission 05/1078) 7 Riverside Chalet Park, 2006
* 05/1078 Rebuild single storey chalet 7 Riverside Chalet Park, 2005
* 03/0490 Replace existing felt roof with lightweight tile effect and fit new upvc fascia boards and guttering, 4 Riverside Chalet Park, 2003
* 01/0593 Proposed extension to front porch, 33 Riverside Chalet Park, 2001
* 00/0590 Proposed extension to chalet, 16 Riverside Chalet Park, 2000
* 00/0567 New elevations, new roof and front porch to chalet, 32 Riverside Chalet Park, 2000
* 97/0552 Porch to front elevation, 30 Riverside Chalet Park, 1997

I followed each of the links to the planning documentation; not every one of the individual documents that I selected to view was accessible (this may have been an internet issue, the second link failed to work twice initially), nonetheless they have assisted in building up an overall picture of the site.

Limits of Documentation and/or Advice

1. This Advice is given on the basis of the material before me and it follows that, if there is other information not available to me, that could have an impact on the advice which follows. Sometimes an omitted piece of information can have a crucial impact. In the instant case I have been provided with what appears to be a good representative sample of the documentation but, to the extent that there is any variation from the sample in individual cases, the analysis which follows may require some modification. Where it is apparent that might be the case, I will draw attention to any obvious omission but it is not always possible to anticipate what may be missing.

Background

1. I am instructed that The Park does not have planning permission for use as a caravan or chalet park. I am instructed that the first use of the Park pre-dated comprehensive planning control.

Current Licensing Position

1. The Park is not licenced under the **Caravan Sites and Control of Development Act 1960** (“the CSCDA”), rather it has a licence (not within my Instructions) under **section 269** of the **Public Health Act 1936** (“the 1936 Act”) as a site for moveable dwellings. The section in question, in its present form, is in the following terms:

“**269.— Power of local authority to control use of moveable dwellings.**

*(1)   For the purpose of regulating in accordance with the provisions of this section the use of* ***moveable******dwellings*** *within their district, a local authority may grant—*

*(i)   licences authorising persons to allow land occupied by them within the district to be used as sites for* ***moveable******dwellings****; and*

*(ii)   licences authorising persons to erect or station, and use, such* ***dwellings*** *within the district;*

*and may attach to any such licence such conditions as they think fit—*

*(a)   in the case of a licence authorising the use of land, with respect to the number and classes of* ***moveable******dwellings*** *which may be kept thereon at the same time, and the space to be kept free between any two such* ***dwellings****, with respect to water supply, and for securing sanitary conditions;*

*(b)   in the case of a licence authorising the use of a* ***moveable*** *dwelling, with respect to the use of that dwelling (including the space to be kept free between it and any other such dwelling) and its removal at the end of a specified period, and for securing sanitary conditions.*

*(2)  Subject to the provisions of this section, a person shall not allow any land occupied by him to be used for camping purposes on more than forty-two consecutive days or more than sixty days in any twelve consecutive months, unless either he holds in respect of the land so used such a licence from the local authority of the district as is mentioned in paragraph (i) of the preceding subsection, or each person using the land as a site for a* ***moveable*** *dwelling holds in respect of that dwelling such a licence from that authority as is mentioned in paragraph (ii) of the said subsection. For the purposes of this subsection, land which is in the occupation of the same person as, and within one hundred yards of, a site on which there is during any part of any day a* ***moveable*** *dwelling shall be regarded as being used for camping purposes on that day.*

*(3)   Subject to the provisions of this section, a person shall not keep a* ***moveable*** *dwelling on any one site, or on two or more sites in succession, if any one of those sites is within one hundred yards of another of them, on more than forty-two consecutive days, or sixty days in any twelve consecutive months, unless either he holds in respect of that dwelling such a licence from the local authority of the district as is mentioned in paragraph (ii) of subsection (1) of this section, or the occupier of each piece of land on which the dwelling is kept holds in respect of that land such a licence from that authority as is mentioned in paragraph (i) of the said subsection.*

*(4) Where under this section an application for a licence is made to a local authority, the authority shall be deemed to have granted it unconditionally, unless within four weeks from the receipt thereof they give notice to the applicant stating that his application is refused, or stating the conditions subject to which a licence is granted, and, if an applicant is aggrieved by the refusal of the authority to grant him a licence, or by any condition attached to a licence granted, he may appeal to a court of summary jurisdiction.*

*(5)  Nothing in this section applies—*

*(i)  to a* ***moveable*** *dwelling which—*

*(a)   is kept by its owner on land occupied by him in connection with his dwelling-house and is used for habitation only by him or by members of his household; or*

*(b)   is kept by its owner on agricultural land occupied by him and is used for habitation only at certain seasons and only by persons employed in farming operations on that land; or*

*(iii) to a* ***moveable*** *dwelling while it is not in use for human habitation and is being kept on premises the occupier of which permits no* ***moveable******dwellings*** *to be kept thereon except such as are for the time being not in use for human habitation.*

*(6) If an organisation satisfies the Minister that it takes reasonable steps for securing—*

*(a)   that camping sites belonging to or provided by it, or used by its members, are properly managed and kept in good sanitary condition; and*

*(b) that* ***moveable******dwellings*** *used by its members are so used as not to give rise to any nuisance,*

*the Minister may grant to that organisation a certificate of exemption. A certificate so granted may be withdrawn at any time, but while in force shall for the purposes of this section have the effect of a licence—*

*(i)   authorising the use as a site for* ***moveable******dwellings*** *of any camping ground belonging to, provided by or used by members of, the organisation;*

*(ii) authorising any member of the organisation to erect or station on any site, and use, a* ***moveable*** *dwelling.*

*In this subsection the expression “member”  in relation to an organisation includes a member of any branch or units of, or formed by, the organisation.*

*(7)  A person who contravenes any of the provisions of this section, or fails to comply with any condition attached to a licence granted to him under this section, shall be liable to a fine not exceeding level 1 on the standard scale, and to a further fine not exceeding £2 for each day on which the offence continues after conviction therefor.*

*(8)  For the purposes of this section—*

*(i) the expression “****moveable*** *dwelling”  includes any tent, any van or other conveyance whether on wheels or not, and, subject as hereinafter provided, any shed or similar structure, being a tent, conveyance or structure which is used either regularly, or at certain seasons only, or intermittently, for human habitation:*

*Provided that it does not include a structure to which building regulations apply;*

*(ii)   the owner of land which is not let shall be deemed to be the occupier thereof;*

*(iii) if a* ***moveable*** *dwelling is removed from the site on which it stands, but within forty-eight hours is brought back to the same site or to another site within one hundred yards thereof, then, for the purpose of reckoning any such period of forty-two consecutive days as is mentioned in subsection (2) or subsection (3) of this section, it shall be deemed not to have been removed or, as the case may be, to have been moved direct from the one site to the other.*

*(9) Subject as hereinafter provided, this section shall not apply to any district in which at the commencement of this Act there was in force a local Act containing provisions enabling the local authority to regulate, by means of byelaws or licences or otherwise, the use of* ***moveable******dwellings*** *or camping grounds:*

*Provided that, on the application of the local authority, the Minister may declare this section to be in force in their district, and upon the declaration taking effect, such of the provisions of the local Act as may be specified in the declaration shall be repealed or, as the case may be, shall be repealed as respects the district of that authority.*”

I am instructed that my Instructing Solicitor and other council officers consider that the **1936 Act** licence is anomalous. For reasons explained below I agree.

Survey Evidence

1. Mr Alderson inspected the site over the course of two days, the 15th January and the 13th February 2020. The Chalet Summary Spreadsheet, summarises his individual findings in relation each chalet; it describes 33 of 36 chalets as being “*timber framed*” and “*rendered*” or “*part-rendered*” or “*plastic cladded*”, the exceptions are Chalet 1, which is described as a “*static caravan*”, Chalet 35, which is described as “*Rendered Chalet \* L-shape footprint, potentially a caravan with evidence that the unit has been extended at least twice.*” And Chalet 36, which is described as “*Rendered Chalet\* Unit footprint typical of a static caravan size. Elevations stone chipping rendered*”. The photographic survey includes, in some cases, pictures of the underfloor voids which show the chalets typically to be supported by plinths within enclosed substructure voids. Some of the voids were inaccessible.
2. From the survey report, I note the following passages:

“*C. SITE OBSERVATIONS*

*1.0 All structures on the site are single storey. There is a mix of shallow pitched and flat roofs.*

*2.0 Almost every structure is individual in its style to its neighbour. There is a mix of external walling finishes, ranging from various types of render, timber cladding, and uPVC cladding. It would appear that most of the units have had their rendered external walls covered with uPVC cladding.*

*3.0 There appears to be a wide range of age to the structures on site. From very modern units through to structures that appear to be decades old.*

*4.0 … Almost every unit / structure was unique in shape, size and layout. There was no obvious standard or repetitive size to any of the structures. The differing unit layout would appear to be the result of many years, in some cases decades, of individual replacing whole dwellings, and a multitude of small scale extensions.*

*5.0 There appears to be no obvious standard ‘caravan’ shaped / sized structures on site (excluding Unit 1). However there are a couple of units (numbers 35 & 36) that show signs that the original structure could be a caravan, however the footprints have been historically extended.*

*6.0 There would appear to be no coherent strategy / site plan for individual owners to adhere to when extending, replacing, modifying their dwelling*

*7.0 The overall condition of the structures vary significantly. Ranging from almost brand new, to some that appear close to uninhabitable. There were many cases of a ‘DIY’ type approach to building works.*

*D. CONCLUSIONS*

*1.0 No evidence was found of any wheels or metal chassis sub-frames that you would expect to find under a caravan, to any of the sub-structure voids that were inspected. (\*Note that this excludes Unit 1, which is clearly a static caravan). This is concluded by an assessment of the substructures that we were able to inspect, every one comprised of a suspended timber floor, sat on a masonry footing / subfloor.*

*2.0 In terms of an assessment of each unit dimensions, this is challenging due to unique sizes of each individual structure. (Refer to C4.0 above). It would appear that only 12 units on the site are a standard rectangular shape, however none of these 12 units fall into the category of typical modular sizes, and all differ in size to one another with no clear repetition.*

*3.0 Refer to the Chalet Summary Spreadsheet that states the basic overall dimensions for each structure. Due to the unique footprint of each unit, we have recorded only the longest / maximum width and length on the spreadsheet. However the Indicative Site Location Plan shows the accurate footprint of each unit.*

*4.0 It is our view that based upon the site inspections summarised in this report and appendices, we would classify 35 of the 36 Chalets as permanent fixed structures, with no obvious means of the units capable of being moved.*”

1. I note that at Section B para 11.0 Mr Alderson accessed Building Control records but does not make any further reference to them, he also does not expressly say whether, from a surveying point of view, the Building Regulations would appear to apply to these chalets. Having regard to the provisions of the **Building Regulations 2010** and in particular, the primary provisions covering the exemptions, **Reg 9** & **Sch 2**, and to the Chalet Summary Spreadsheet, I find it quite hard to envisage how the Chalets Mr Alderson concludes are immoveable could escape being covered by the **Building Regulations 2010**.

Planning Permissions & Historic Evidence

1. The effect of the various planning permissions, which run from 1978 to 2016 is, primarily, to reinforce the uniqueness of the individual chalets and to support the conclusion that those chalets to which the permissions relate have become immoveable structures. The permissions, however, encompass just 9 chalets, namely:

Chalet 4

Chalet 5

Chalet 7

Chalet 16

Chalet 19

Chalet 30

Chalet 32

Chalet 33

Chalet 35

Of these, there are two permissions relating to rebuilding and two to the replacement of existing chalets, two involving the replacement of whole roofs, and five permitting the construction of porches or extensions, plainly not designed to be mobile.

1. I infer from the survey evidence that alterations to other chalets either pre-date the available records or that, in some instances, alterations, whether lawfully permitted or not, were carried out without formal planning permission. I do not know what Building Control records may contain but I do not think their absence is likely to have a significant impact on my advice.
2. The historic photographs are not easy to correlate with photographs taken in the recent photographic survey but they indicate that at least some of the chalets had started to lose such moveable character as they had ever possessed by at least the 1960s.

Documents at Enclosure 4 to My Instructions: Sales & Purchase Documentation, Site Rules etc.

1. The representative documentation is rudimentary (here I am not being critical of what my Instructing Solicitor has supplied but of the documents themselves). It is not wholly internally consistent. The Owner’s ‘Caravan Licence Agreement For Your Home Pitch’, which I take to be typical of all the agreements, beyond identifying the parties and the chalet, providing somewhere for signatures to be appended and incorporating the Site Rules, which in themselves are fairly scant, says almost nothing and certainly does not, for example, even list what appears to be the rule that the Park is for retirement homes. The Park’s headed paper refers to it as “***A Beautiful Retirement Location***"and the Zoopla sales information in my Instructions also refers to the Park’s being for “*for people over 55*” (No. 35), and “*for the over 55’s*” (No. 14). Because the Site Rules are on the Park’s headed paper the words “***A Beautiful Retirement Location***" appear at the top but the Site Rules themselves, which have not been updated since the Owner acquired the Park from the former owner, Mr Parkinson, in 2018 do not refer to an age limit.
2. The Site Rules include a provision regarding sale in the following terms:

“ *Any tenant wishing to sell his chalet must first notify the Proprietor, and any prospective buyer must be introduced to me before any transaction is agreed upon. Any tenant failing to do this will receive notification to remove his chalet from the site.*”

This appears to be, or to have been, supplemented by an additional pro forma document purchasers are, or were, required to sign in the following terms:

“ *As owner of Chalet No 19, Riverside Chalet Park, I agree to pay 10% of the sale price agreed upon future sale of the chalet to the owner of Riverside Chalet Park*”

1. In relation to actual “sales” (I shall return to the reason why I am putting “sales” in parentheses) the documentation in my Instructions is inconsistent, and it seems to have been produced on an ad hoc by whomever were parties to the individual transactions.
2. By way of example, the agreement in respect of the “sale” of No. 19 by Charles Lennox to Lynn Parsons & Marie McDonald in 2016, demonstrates that the parties were aware of the existence of the mobile homes legislation and contains a note in the following terms:

“ *(i) An existing agreement is an agreement under section 1(1) of the Mobile Homes Act 1983 which was made on or before 25 May 2013 and which has not been assigned since that date. This form only needs to be completed for mobile homes being sold under existing agreements. Where an agreement was made on or after 26 May 2013 or was made before that date but has been assigned on one or more occasions since 25 May 2013, the mobile home may be sold and the agreement assigned without the need to notify the site owner (see paragraph 7A(2) of Chapter 2 of Part 1 of Schedule 1 to the Mobile Homes Act 1983). {ii} In accordance with regulation 7 of the Mobile Homes (Selling and Gifting) England Regulations 2013, the only grounds upon which an application for a refusal order may be made are that, if the proposed occupier were to become the occupier the proposed occupier or a person intending to reside with the proposed occupier would breach a pre-commencement rule or site rule: (a) by reason of age, (b) by keeping animals that are of a description specified in the rule, (c) by parking vehicles on the site that are of a description specified in the rule, (d) by parking a number of vehicles on the site in excess of the number specified in the rule. (iii) Before signing the form you must ensure that the information provided is (to the best of your knowledge and belief) truthful, accurate and up-to-date.*”

It was also accompanied by a formal notice of the sale to the site owner. It would seem, notwithstanding the Site Rules, that this “sale” was effected, as it was entitled to be, without prior consent from Mr Parkinson, the Park owner at the time. By way of contrast the more recent “sale” in 2019 of No. 35 by Mr & Mrs Clarke to Mr & Mrs Hendricks, makes no reference to the mobile homes legislation. While it is formal in its layout and makes a reasonable stab at legal phraseology, it is essentially amateur in its drafting, see for example its endnote:

“ *Discussions can be made informally. And not necessary to form part of this contract*”

It does, however, explicitly refer to the payment of commission to the Owner:

“ *It has been agreed with the Site Owner that Mr & Mrs Clarke will pay him his commission fee and that they will take this out of the purchase price of £78,000 when received from the purchaser*.”

I should note that the sale price of No. 19 was £70,000.00 and that for “Hope Cottage”, which I infer is No.14, was £60,000 in 2013.

1. What can be drawn from the documentation is that there have been consistent assumptions on the part of the Owner and the former Park owner, on the one hand, and the occupiers of the chalets, on the other:

(1) that the Owner

(i) owns and

(ii) licenses just the right to occupy

the pitch and

(2) that the occupiers of the chalets:

(i) own the chalet, which is legally distinct from the pitch on which it stands and thus

(ii) possess a valuable asset which

(a) has a value in its own right and

(b) is capable of being bought and sold.

Relevant Legal Principles

1. My Instructing Solicitor is correct in observing in my Instructions that the chalets and their basis of occupation seem to be very similar to those considered by the House of Lords in **Elitestone Ltd v Morris [1997] 1 WLR 687** in which originally mobile chalets were held to have become annexed to the land on which they stood and thus subject to tenancies. The law relating to annexation is not without its difficulties, not least because it has been bedevilled by “problematic” decisions. Additionally annexation does not necessarily exclude all operation of the mobile homes legislation; there remains some room for overlap.
2. Before I turn to the specific questions raised in my Instructions, I need to deal with

the relevant law primarily in relation to annexation and to mobile homes in some detail.

Annexation

1. The basic principle is very simple: something (and I shall use the neutral term “object” to describe the “something”) which has been regarded by the parties as a chattel may become annexed to the land on which it stands.
2. In **Elitestone** the following three-part classification of objects on land taken from **Woodfall on Landlord & Tenant**, was approved:

" *An object brought on to land may be:*

*(a) a chattel;*

*(b) a fixture; or*

*(c)* [an integral] *part of the land itself.*"

(the words in square brackets are my addition)

The three categories are referred to hereafter as categories "A" "B" and "C". Those objects which fall into B and C are treated as being part and parcel of the land, while category A, chattels, are not.

1. The difference between categories B and C is that fixtures, that is, objects in category B, are physically capable of being severed from the land without damage and, at the end of the term, ***once removed***, revert to being chattels - see **Webb v Frank Bevis Ltd. [1940] 1 All ER 247 (CA)**\***.** Objects falling within category C are not capable of being severed without an element of damage or destruction, either to the object itself, or to a greater object of which the object is an integral part. The latter gloss is necessary because, for example, a window, may be capable of being removed without damage to itself but, because it is an integral part of the building, it still falls within category C - **Boswell v. Crucible Steel Co. [1925] 1 K.B. 119, @123**.

\* *Webb* is a Cassandra of a case, seemingly doomed to be misunderstood by the Court of Appeal, as it was both in *Elitestone* and *Mew v Tristmire*, referred to below.

Category C – An Integral Part of the Land

1. The chalets in **Elitestone v Morris** were objects that fell within category C because they had become irremovable from the land on which they stood without substantial damage or destruction.
2. An object may become a part of the land on which it stands by virtue of later works. This is an evident but sometimes overlooked consequence of the approval by the House of Lords of the first instance decision in **Elitestone**, which the Court of Appeal had (wrongly) overturned.
3. **Elitestone** implicitly endorses the Assistant Recorder’s analysis of the evidence in relation to a chalet, which had originally been built in or before 1945 and later been altered so as to increase the degree of physical attachment to the ground:

" ...*it seems to me clear that* ***at least by 1985 and probably before, it would have been clear to anybody that this was a structure that was not meant to be enjoyed as a chattel*** *to be picked up and moved in due course but that it should be a long-term feature of the realty...*"

(emphasis added)

The House of Lords expressed no criticism of this approach, which is cited in full in the speech of Lord Lloyd @ 689E.

1. There is a Court of Appeal decision, **Mew v Tristmire Ltd [2011] EWCA Civ 912,** which appears to suggest that the degree of annexation has to be judged when an object is first brought on to the land in question and that it cannot thereafter become annexed by virtue of subsequent works. It should be noted, however, that the decision was based on concessions made in argument (see paragraphs 21 and 22 of the judgment) and a statement of law based on a concession does not create binding authority - **R on the application of Kadim v Brent LBC [2001] QB 955**. Given that in **Elitestone** the chalet was brought on to the land in 1945 and became annexed some time around 1985, had **Mew v Tristmire** purported to give an authoritative statement of the law, it would still have been *per incuriam*.
2. In **Elitestone** the Court of Appeal had erroneously held that the chalets were chattels (i.e. of category A). They had done so, in part by not understanding the distinction between annexation under Categories B and C. In explaining how the Court of Appeal had fallen into error in **Elitestone**, Lord Lloyd observed **@691BC** that:

“ *The term fixture is apt to be a source of misunderstanding owing to the existence of the category of so called "tenants' fixtures" (a term used to cover both trade fixtures and ornamental fixtures), which are fixtures in the full sense of the word* ***(and therefore part of the realty)*** [emphasis added] *but which may nevertheless be removed by the tenant in the course of or at the end of his tenancy. Such fixtures are sometimes confused with chattels which have never become fixtures at all.*”

1. Lord Lloyd **@691D**, went on, in the course of disapproving it, to quote the following passage from the judgment of Aldous LJ in the Court of Appeal:

" *In the present case we are concerned with a chalet which rests on concrete pillars and I believe falls to be considered as a unit which is not annexed to the land. It was no more annexed to the land than the greenhouse in* ***Deen v. Andrews*** *or the large shed in* ***Webb v. Frank Bevis Ltd****. Prima facie, the chalet is a chattel and not a fixture.*"

Lord Lloyd’s disapproval, **@691F**, was put in the following way:

“ *But when one looks at Scott L.J.'s. judgment in* ***Webb v. Frank Bevis Ltd****. it is clear that the shed in question was not a chattel. It was annexed to the land and was held to form part of the realty. But it could be severed from the land and removed by the tenant at the end of his tenancy because it was in the nature of a tenant's fixture, having been erected by the tenant for use in his trade...*"

Category B – Fixtures; not an Integral Part of the Land

1. Although the Chalets in the instant case, other than Chalet 1 are likely to fall within Category C, I should deal with Category B because a true mobile home or another building of a fundamentally impermanent nature can still be annexed under it.
2. Ex hypothesi, there is no requirement for an object in Category B to be likely to suffer of damage on removal in order to become annexed. An object at risk of or being likely to suffer substantial damage on removal would fall within Category C - see Lord Lloyd in **Elitestone v Morris @ 691**.
3. There are in reality two types of fixture within Category B but only “Tenant’s fixtures”, those fixtures which a tenant is entitled to remove during or at the end of the term, are material, because a fixture which is annexed and becomes the property of the reversioner, though technically within category B is as irremoveable in law as an object annexed under Category C is physically irremoveable.
4. Although tenant’s fixtures form part of the reality during the currency of the term, up to the end of the term or up to the point of the tenant’s giving up possession, if later, they can be removed by the tenant - **New Zealand Government Property Corporation v HM & S Ltd (The New York Star). [1982] 2 W.L.R. 837**. It is only upon removal that they cease to be fixtures and revert to being chattels.
5. During the currency of the term, however, tenant’s fixtures remain part of the realty. Thus if, for example, the realty is mortgaged, tenants’ fixtures are rendered irremovable in law unless and until the mortgage is redeemed, because the mortgage attaches to them every bit as much as it attaches to the rest of the mortgaged land. This means that even if the physical attachment is minimal and the fixtures could, in practical terms, be removed very easily they remain part of the realty and subject to the mortgage - **Holland v Hodgson (1871-72) LR 7 CP 328**.

Annexation & Removal are Subject to Separate Rules

1. In **Elitestone v Morris** Lord Clyde, citing Lord Cairns L.C. in **Bain v. Brand (1876) 1 App.Cas. 762**, stressed that in relation to such fixtures there are two separate rules in operation:

“ *Lord Cairns … declared that the law as to fixtures is the same in Scotland as in England. His Lordship stated, at p. 767, that there were two general rules under the comprehensive term of fixtures*:

…*one of these rules is the general well-known rule that whatever is fixed to the freehold of land becomes part of the freehold or inheritance. The other is quite a different and separate rule;— whatever once becomes part of the inheritance cannot be severed by a limited owner, whether he be owner for life or for years, without the commission of that which, in the law of England, is called waste, and which, according to the law of both England and Scotland, is undoubtedly an offence which can be restrained. Those, my Lords, are two rules, not one by way of exception to the other, but two rules standing consistently together. My Lords, an exception indeed, and a very important exception, has been made, not to the first of these rules, but to the second. To the first rule which I have stated to your Lordships there is, so far as I am aware, no exception whatever. That which is fixed to the inheritance becomes a part of the inheritance at the present day as much as it did in the earliest times. But to the second rule, namely, the irremovability of things fixed to the inheritance, there is undoubtedly ground for a very important exception. That exception has been established in favour of fixtures which have been attached to the inheritance for the purposes of trade, and perhaps in a minor degree for the purpose of agriculture. Under that exception a tenant who has fixed to the inheritance things for the purpose of trade has a certain power of severance and removal during the tenancy."*

*…*

*“ It would be right to add that the exception has been developed so as to extend beyond the purposes of trade. By the end of the 19th century it was clearly established that the exception included objects which had been affixed to the freehold by way of ornament:* ***In re De Falbe; Ward v Taylor [1901] 1 Ch. 523, 539****. This reflected not a change in the law but, as Lord Macnaghten put it in* ***Leigh v. Taylor [1902] A.C. 157, 162****, a change "in our habits and mode of life." No doubt the category of exceptions may continue to change.*”

1. The importance of there being two separate rules governing annexation and removal is that the intention of the parties and the terms of what has been agreed between them is relevant to the operation of the second rule rather than to the operation of the first - see per Lord Lloyd in **Elitestone v Morris 693E**

“ *as the … decision of the Court of Appeal in* ***Hobson v. Gorringe [1897] 1 h. 182*** *made clear, and as the decision of the House in* ***Melluish v. B.M.I. (No. 3) Ltd. [1996] A.C. 454*** *put beyond question, the intention of the parties is only relevant to the extent that it can be derived from the degree and object of the annexation. The subjective intention of the parties cannot affect the question whether the chattel has, in law, become part of the freehold, any more than the subjective intention of the parties can prevent what they have called a licence from taking effect as a tenancy, if that is what in law it is: see* ***Street v. Mountford [1985] A.C. 809****.*”

and per Lord Browne-Wilkinson in **Melluish v. B.M.I. (No. 3) Ltd. [1996] A.C. 454 @ 473**:

" *The terms expressly or implicitly agreed between the fixer of the chattel and the owner of the land cannot affect the determination of the question whether, in law, the chattel has become a fixture* ***and therefore in law belongs to the owner of the soil*** [emphasis added]*: . . . The terms of such agreement will regulate the contractual rights to sever the chattel from the land as between the parties to that contract and, where an equitable right is conferred by the contract, as against certain third parties. But such agreement cannot prevent the chattel, once fixed, becoming in law part of the land and as such owned by the owner of the land so long as it remains fixed.*"

1. A recent example of how this distinction continues to get blurred by the courts is **Gilpin v Legg [2017] EWHC 3220 (Ch), [2018] L. & T.R. 6**, which suffers from having treated **Mew v Tristmire** as authoritative. The case concerned chalets partly fabricated off-site in several sections. There was thus never any question of their being mobile homes. The occupiers, who were seeking to assert a tenancy had been created, contended that passage of time had meant that they were longer capable of being removed without substantial damage. The chalets were held, nonetheless, to be chattels. The judge further held that:

“ *even if the huts were held to form part of the realty, and then to be subject to tenancies in favour of the occupiers, in the circumstances I am in no doubt that it would have been at least an implied term of those tenancies that the tenant could remove the hut at the end of the term. The evidence of the defendant was clear that the huts could and should be removed by the claimants. The evidence of the claimants was equally clear that they had paid for their huts, and that for them the problem was not that they did not have the right to take them away, but rather that it would damage them too much to do so*”.

The best that can be said for **Gilpin** is that it lies very much on the borderline between categories B and C. My view is that had the judge decided that a term could be implied *obliging* the occupier to remove the chalet at the end of the term, the decision would be unexceptionable (terms requiring the removal of tenant’s fixtures at the end of the term are not only permissible under the ‘Removal Rule’ in **Elitestone** but quite common in commercial leases).

Consequences of Treating an Object which has been Annexed Under Category C as a Chattel

1. When an object becomes annexed under category C, having become an integral part of the land on which it stands, it ceases to exist as a separate entity in law. When such an object has been erroneously treated as still being a chattel by parties, who have, as a result, entered into separate contracts in relation:

(1) the object and

(2) the land of which it has become an irremoveable part,

the contract relating to the object is void at common law for want of subject matter - **Nutt v Read (2000) 32 H.L.R. 761 (CA)**.

1. While it is not the subject of direct authority, severability at the end of the term is, in my view, probably sufficient to prevent a contract for the sale of an object annexed as a tenant’s fixture under category B from being void, the sale would be construed as a sale of the right to remove the object at the end of the term.
2. It was held in **Nutt v Read** that, in addition to the contract for the sale of the chattel’s being void at common law, the contract in relation to the land (in that case, the lease of the plot) was also capable of being rescinded in equity for mistake.
3. That part of the decision is no longer good law because it has since been held that there is no equitable jurisdiction to grant rescission for common mistake in circumstances falling short of those in which the common law held a contract void - see **Great Peace Shipping Ltd v Tsavliris Salvage (International) Ltd [2002] EWCA Civ 1407, [2003] Q.B. 679**.
4. That part of **Nutt v Read** that remains good law has since been re-confirmed (without direct reference to it) by the subsequent Court of Appeal decision in **Spielplatz Ltd v Pearson [2015] EWCA Civ 804.**
5. The legal issues in that case bear a close resemblance to those in the instant one (even if the wider circumstances do not). The claimant company owned a naturist resort, with 64 plots let out to tenants, who initially put up tents or stationed caravans on them. Subsequently some of the tenants constructed chalets or bungalows on their plots. In 1992, the company granted the defendants a yearly, periodic tenancy of a plot on which a chalet had previously been built and at the same time, the defendants entered into a contract to buy the chalet from the former tenant of the plot on the basis that the former tenant owned the chalet as a chattel. In 2008, the defendants carried out extensive works to the chalet. The company served notice to quit on the defendants and subsequently brought a claim for possession. The defendants contended that they were assured tenants of the chalet. The company contended that the defendants had a tenancy only of the plot and that the chalet was a chattel which belonged to the defendants. At trial, the judge heard evidence from a jointly instructed expert on how the chalet would have been in 1992, when the tenancy was granted and before the works were done. The expert considered that the chalet would have been intended to be permanent and was not movable. There was also evidence that it would not have been possible to move the chalet without dismantling it into its constituent parts. The judge found that the chalet had become part the plot and that the defendants were assured tenants. The company’s appeal to the Court of Appeal was dismissed.
6. In giving the judgment of the Court, Sir Colin Rimer said **@ [43-44]**:

“ *43…The proposition is that the court should hold that the premises let under the tenancy agreement were confined to the soil of Plot 44A and that, as regards the chalet, Spielplatz is to be regarded as having impliedly given the Pearsons a gratuitous licence to occupy it. It is said that such an interpretation would fairly reflect the social purposes underlying the grant of the tenancy in 1992. The objective of such suggested interpretation is of course to enable the avoidance by Spielplatz of having unwittingly created an assured tenancy of the chalet. It would in turn also enable Spielplatz to escape the repairing obligations that would be imposed upon it by s.11 of the Landlord and Tenant Act 1985.*

*44. I regard this as an impossible argument…*”

1. In most cases, where annexation of a chalet has occurred, whether under Category B or C, the likely result is that exclusive residential occupation coupled with periodic payment to the landowner would lead to the conclusion that a tenancy had been created and, unless any particular tenancy were to fall within an exception (primarily under the **Housing Act 1988, Sch 1** (hereinafter “HA, Sch1, Part I” – other references to the act will, mutatis mutandis, be similarly so identified)), it will satisfy the test for an assured tenancy under **HA s.1(1)**:

“**1.— Assured tenancies.**

*(1)  A tenancy under which a dwelling-house is let as a separate dwelling is for the purposes of this Act an assured tenancy if and so long as—*

*(a)   the tenant or, as the case may be, each of the joint tenants is an individual; and*

*(b)   the tenant or, as the case may be, at least one of the joint tenants occupies the dwelling-house as his* *only or principal home; and*

*(c) the tenancy is not one which, by virtue of subsection (2) or subsection (6) below, cannot be an assured tenancy*.”

In those circumstances possession will only be able to be recovered under the provisions of the **HA, s.8** on the grounds in **HA, Sch 2**.

1. If, for any reason, an individual tenancy were not to satisfy the test, for example, by dint of not being, as required by **HA s.1(1)(b)**, an “*only or principal home*”, it would, ostensibly be a periodic tenancy without statutory protection *as a tenancy*.

The Mobile Homes Legislation

1. Effectively the **CSCDA** remains the primary legislation, although it has been progressively supplemented and amended, principally by the **Caravan Sites Act 1968** (“the CSA”), the **Mobile Homes Act 1975** (“the 1975 Act”, now largely replaced), the **Mobile Homes Act 1983** (“the 1983 Act”), and the **Mobile Homes Act 2013** (“the 2013 Act”).

Mobile Home Terminology

1. A number of terms have specialised meanings: “*caravan site*”, “*protected site*” (the term used in the **CSA** and the **1983 Act**), “relevant protected site” (introduced by the Mobile Homes Act 2013), "*caravan*" and "*mobile home*" (which are effectively interchangeable), "*twin-unit caravan*" and "*park home*". It is easiest to set out the terminology in tabular form.

|  |  |  |
| --- | --- | --- |
| TABLE 1 - Mobile Home Definitions | | |
| Term | Enactment | Definition or Meaning |
| caravan site | **Caravan Sites and Control of Development Act 1960 s.1(4)** | “*means land on which a caravan is stationed for the purposes of human habitation and land which is used in conjunction with land on which a caravan is so stationed*.” |
| protected site | **Caravan Sites Act 1968 s.1(2)** | “*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*” |
| relevant protected site | **Caravan Sites and Control of Development Act 1960 s.3(7)**, inserted by **Mobile Homes Act 2013 s.1(2)(b)** | “*the use of land as a caravan site other than an application for a licence—*  *(a) to be expressed to be granted for holiday use only, or*  *(b) to be otherwise so expressed or subject to such conditions that there will be times of the year when no caravan may be stationed on the land for human habitation;*  *whether or not because the relevant planning permission under Part 3 of the Town and Country Planning Act 1990 is so expressed or subject to such conditions*." |
| caravan | **Caravan Sites and Control of Development Act 1960 s.29(1)** | “*means any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted, but does not include—*  *(a) any railway rolling stock which is for the time being on rails forming part of a railway system, or*  *(b) any tent;*" |
| mobile home | **Mobile Homes Act 1983 s.5(1)** | "*has the same meaning as “caravan” has in* [Part I of the Caravan Sites and Control of Development Act 1960]" |
| twin-unit caravan  . | **Caravan Sites Act 1968 s.13**. | The section potentially provides an extension of the meaning of caravan provided the structure in question meets dimensional requirements in s.13(2) - L 20m x W 6.8m x H 3.05m (or 65.616’ x 22.309’ x 10.006') but note the double negative “*shall* ***not be treated as not being*** *(or as not having been) a caravan*”  “*(1) A structure designed or adapted for human habitation which—*   1. *is composed of not more than two sections separately constructed and designed to be assembled on a site by means of bolts, clamps or other devices; and* 2. *(is, when assembled, physically capable of being moved by road from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer),*   *shall not be treated as not being (or as not having been) a caravan within the meaning of Part I of the Caravan Sites and Control of Development Act 1960 by reason only that it cannot lawfully be so moved on a highway when assembled.*”  While the case law has tended to treat the legislation as imposing a requirement that a caravan be in no more than two prefabricated pieces, that is not in fact what **s.13(1)** provides and it may be possible for a structure in more than 2 sections to meet the mobility requirement, provided it is not outside the dimensional constraints imposed by **s.13(2)**. |
| Park Homes | not defined by statute | Used - as in the **Communities and Local Government select committee report 'Park Homes'** published in June 2012 and the Residential Property Tribunal website - to describe parks consisting of "true" mobile homes as opposed to leasehold properties. |

The Scheme of the Current Mobile Homes Legislation

1. As with the definitions this is most easily summarised in tabular form.

|  |  |
| --- | --- |
| PARKS COMPRISING MOBILE HOMES FOR RESIDENTIAL USE OR HOLIDAY AND RESIDENTIAL USE (MIXED USE) | |
| **TABLE 2** | |
| Primary Legislation | **Caravan Sites and Control of Development Act 1960**  **Caravan Sites Act 1968**  **Mobile Homes Act 1983**  **Mobile Homes Act 2013** |
| Key Secondary Legislation | **The Mobile Homes (Site Rules) (England) Regulations 2014**  **The Mobile Homes (Selling**  **and Gifting) (England) Regulations 2013**  **The Mobile Homes (Pitch Fees)**  **(Prescribed Form) (England) Regulations 2013** |
| Main provisions  **Licensing under the Caravan Sites and Control of Development Act 1960** (as amended)  Appeals  Manager of a relevant protected site to be a fit and proper person  **NOT YET IN FORCE**.  New provisions for sales, gifts and assignments under the **1983 Act** inserted by the **2013 Act** and the **Selling and Gifting Regulations**  Site rules  Pitch Fees  Security of tenure  Succession  Transfer of ownership  First Tier Tribunal given jurisdiction under the **1960 Act**  Protection against eviction and harassment, provision of false information, penalties and offices by bodies corporate under the **Caravan Sites Act 1968** (as amended) | **s.1(1)** makes it an offence to operate a caravan site without a licence:  *(1) Subject to the provisions of this Part of this Act, no occupier of land shall after the commencement of this Act cause or permit any part of the land to be used as a caravan site unless he is the holder of a site licence (that is to say, a licence under this Part of this Act authorising the use of land as a caravan site) for the time being in force as respects the land so used.*  **s.1(2)** The licensing requirement is subject to the exemptions under **Schedule 1**:   * Use within curtilage of a dwellinghouse - **para. 1** * Use by a person travelling with a caravan for one or two nights - **para. 2** * Use of holdings of five acres or more in certain circumstances - **para. 3** ﻿ * Sites occupied and supervised by exempted organisations - **para. 4** * Sites approved by exempted organisations - **para. 5** * Meetings organised by exempted organisations - **para. 6** * Agricultural and forestry workers -   **paras. 7 & 8**   * Building and engineering sites - **para. 9** * Travelling showmen - **para. 10** * Sites occupied by licensing authority - **para. 11** * Gipsy sites occupied by county councils or regional councils - **para. 11A**   …  **s.3** deals with applications for licences, **s.5** permits licences to be issued subject to conditions and **s.5A** the charging of fees in relation to the issue of such licences, **ss.9 - 9I** deal with enforcement. **Sections 3(5A)-3(5F), 5A & 9A-9I** apply to relevant protected sites only. The local authority also has discretion as to whether to permit the transfer of a site licence.  By virtue of **s.3(2) of the 2013 Act** appeals against conditions may be to the First Tier Tribunal (Property Chamber) or to the Magistrates Court  **s.8 of the 2013** Act by inserting **s.12A into the 1960 Act** gives power to enable the Secretary of State to introduce by way of secondary legislation a “fit and proper” person requirement for managers of relevant protected sites.  Any requirement for site owners to approve a purchaser or a person to whom a mobile home has been gifted is removed. **s.10 of the 2013 Act** amends **Schedule 1 to the MHA 1983**. The new paragraphs make different provision in relation to cases where the proposed sale or gift concerns an existing pitch agreement (“an existing agreement”) and in relation to cases where the proposed sale or gift concerns a new pitch agreement (“a new agreement”) i.e.. one made or assigned after they came into force. The new provisions deal with the giving of notice to the site owner of an intended sale or gift and for the provision of information to prospective purchasers.  **s.9 of the 2013 Act** inserted two new sections into the **1983 Act**, which make provision about “site rules” (as defined in new **s.2C(2)**). Every site rule is an express term of the pitch agreement between the site owner and the mobile home occupier creating certainty for both parties (but there is no requirement for site owners to have site rules in the first place). The provisions apply in relation to existing pitch agreements as well as to those made after the new provisions come into force.  The **Mobile Homes (Site Rules) (England) Regulations 2014**, which came into force on February 4, 2014 prohibit certain rules and provide that all must be of general benefit to occupiers and necessary to maintain standards and promote community cohesion.  Under **Reg. 15 of The Mobile Homes (Site Rules) (England) Regulations 2014** existing site rules ceased to have effect in most cases by the 4th. February 2015.  **Reg.10 of the Mobile Homes (Site Rules) (England) Regulations 2014** confers a right on a mobile home occupier to appeal against the introduction of new rules by a caravan site owner. The appeal must be "within 21 days of receipt of the consultation response document". As to how the period in **reg.10(1) and reg.10(3)** is construed - see **O'Kane v Charles Simpson Organisation Ltd [2015] UKUT 355 (LC)**  **s.11 of the 2013 Act** amends **Chapter 2 of Part 1 of Schedule 1 to the MHA 1983** requires a site owner, when serving a pitch fee review notice on an occupier of a mobile home which proposes an increase in the pitch fee, to provide an accompanying document which meets the requirements of new **para.25A**. Where the site owner fails to provide that document, the notice which proposes the increase in the pitch fee has no effect; and in cases where an occupier has, nonetheless, begun to pay the increased pitch fee to the owner a residential property tribunal or arbitrator can order repayment.  **s.11(2)(b) and (d)** amend **para 17 of Chapter 2** so as to enable an occupier who does not agree to a proposed pitch fee to apply to the tribunal for an order determining the amount of the new pitch fee.  **s.11(3) and (4)** make amendments to **paras 18 and 19 respectively of Chapter 2** about the matters to which site owners must have particular regard, and the costs to be disregarded, when determining the amount of the new pitch fee.   1. **Section 1(2) of the 1983 Act** now requires owners of a protected site to provide, 28 days before a sale or any other agreement to which the Act applies is made, a written statement containing prescribed information including details of the occupier and owner and particulars of the land on which the mobile home is or is to be stationed 2. The proposed occupier may agree a later date for provision of the statement and, if no statement is provided, **s.1(6)** permits either site owner or occupier to make an application to the First Tier Tribunal (FTT) to obtain one. 3. Terms giving security of tenure and regulating the right of a site owner to terminate a written statement for breach are implied by **s.2 and Sch.1, Pt 1, Ch.2 of the 1983 Act**. The process which has to be followed to obtain possession in the event of a breach is not unlike the s.146 procedure in the case of a tenancy. 4. A notice under **Chapter 2** ought, however, to be served in respect of each breach upon which an owner wishes to rely even where the breach may be irremediable: **Telchadder v Wickland (Holdings) Ltd [2014] UKSC 57; [2014] 1 W.L.R. 4004**. 5. Termination of a written statement is permitted if the mobile home is no longer occupied as a main residence or its condition is having a detrimental impact on the site if a court or tribunal considers the termination reasonable. 6. Provided a written statement has been given or obtained, it is binding on and inures to the benefit of any successor in title (**s.3(1)**), may be assigned, (**s.3(2)**).   Subject to certain limitations, the benefit of a written statement is transmissible on death (**s.3(3) and (4)**).  Until May 26, 2013, an occupier was required to obtain the consent of the site owner before selling or gifting a mobile home. Now the position is as follows:   1. In relation to protected sites, **s.10 of the 2013 Act** removed such requirement and the **Mobile Homes (Selling and Gifting) Regulations 2013** (“the 2013 Regulations”) introduced a mechanism for selling or gifting. 2. A site owner may apply to the FTT if, after receiving notice of the proposed sale, he objects on one of the specified grounds to the proposed occupier; it will, however, be slow to prevent the exercise of the right of sale - **Re Wyldecrest Parks (Management) Ltd [2014] UKUT 351 (LC)**. 3. On a sale, a site owner is entitled to receive up to 10 per cent commission which is paid by the buyer. Prior to the 2013 Regulations, the seller paid.   An amendment to **s.7 of the 1960 Act** gave Residential Property Tribunals, and, now, the First Tier Tribunal jurisdiction over site licence appeals, while an amendment to the **Housing Act 2004**, by the insertion of **s.230(5ZA)** gives it power to require the payment of money by one party to the proceedings to another by way of compensation, damages or otherwise when exercising jurisdiction under the **CSCDA**.  **s.12** deals with offences, amending **s.3 of the CSA 1968** while **s.13** increases penalties for certain offences under the **1960 Act** and **s.14** deals with offences by bodies corporate under the **1960 Act** |
| Non-statutory materials | Mobile Homes Act 2013  Explanatory Notes  Explanatory Memorandum To  The Mobile Homes (Site Rules) (England) Regulations 2014  Mobile Homes Act 2013: a guide for local authorities on setting licence fees, March 2014  Communities and Local Government select committee report 'Park Homes' published in June 2012  Holiday Caravan Parks, House of Commons Standard Note: SN/SC/988, 13 July 2012 |

1. In addition to the **CSCDA, s.1** prohibiting land’s being used as a caravan site without a site licence from the local authority, appropriate planning permission is required.

The possibility of overlap between the Housing and Mobile Home legislation

1. The potential for overlap arises from the decision in **Howard v Charlton [2002] EWCA Civ 1086; [2003] 1 P. & C.R. 21**. A new park owner, who had bought the park in question in 1999, sought to argue that an existing occupier of a plot had, by attaching a porch extension to her mobile home in 1992 pursuant to planning permission obtained in 1991, ceased to reside in a mobile home and therefore was not entitled to the statutory protection afforded by the **1983 Act**. The argument failed both at first instance and in the Court of Appeal.
2. At first instance the judge found that the extension had not changed the mobility aspect of the home within the **CSCDA, s.29** and, on that ground dismissed the Park Owner’s claim for possession, but granted in relation to another unit, which had ceased to be mobile. Only the first decision was appealed. The Court of Appeal found the judge’s approach had been wrong; the question he should have determined was whether there had been a termination of the agreement under which the home was situated on the site.
3. The agreement had been for the stationing of a mobile home within the definition of the **1983 Act** and the caravan was still on the site and none of the grounds for terminating the agreement provided in the agreement itself applied. Insofar as the Park Owner may have had a route to terminate the agreement for failure to remedy a breach (it was not clear that the extension or other alterations to the roof had been effected with the consent of the then-owner) the judge had found that any breach had been waived, so the new owner had no remedy.
4. That will not be the inevitable result in every case; **Howard v Charlton** decided that a Mobile Homes Act Agreement was not terminated, as a matter of law, by the addition of the porch extension but it did not decide, because it did not need to, whether or not the **1983 Act** still applied to the extended Park Home. Nonetheless, the best guidance still comes from paragraph 23 of the decision, where Carnwath LJ (as he then was) said:

“ *However, it is also important to remember that the Act applies, not to the mobile home as such, but to any agreement under which the occupier is “entitled to station a mobile home” on relevant land. Thus, the criterion for application of ..* [**CSA, s.1(1)**].. *is* ***not whether the structure is a mobile home, but whether the agreement*** ***entitles the occupier to station a mobile home****. One can no doubt envisage circumstances in* *which* *the structure on the site is so far from that contemplated by the original agreement,* *that the agreement is to be regarded as having been impliedly revoked, or in any event is not to be taken as applying to the structure on the site. However, that is far from this case.* ***The agreement gave the right to station a particular form of caravan, as described in the Schedule. That caravan is still on site. The extension is entirely within the scope of the matters contemplated by the agreement****.*”

(emphasis added)

1. **Howard v Charlton** was decided before the **2013 Act** came into force, but remains good law, in my opinion, because, although the **2013 Act** substantially changed the law in relation to mobile homes, it did so by making changes within the framework of the existing legislation, so while the protections afforded to residential mobile homes were extended considerably, what might be termed the basic statutory architecture, remained unaltered and **CSA, s.1(1)**, which provides that the 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.*”

is still in force in the same terms.

1. This leaves open the possibility that, because an agreement is expressed in such a way that on its face it “*entitles the occupier to station a mobile home*” on a plot, it may trigger the mobile home legislation even when the mobile home in question has become annexed to the land on which it stands and the occupier has become a tenant. This is more likely to be the case if, whenever the tenancy was first created, the chalet was mobile home. A mobile home annexed under Category B could be very easily subject to a combination of mobile home and landlord & tenant legislation and, while it is less likely that a former mobile home annexed under Category C would be, it is not impossible.

(1) THE LEGAL BASIS ON WHICH THE CHALETS ARE OCCUPIED;

1. In the light of Mr Alderson’s findings, Chalets 2 to 36 would all appear to be annexed to the land on which they stand under category C.
2. On the basis of my Instructions, that all the chalets are occupied as permanent homes, the only or principal residence test under **HA, s.1** would appear to be satisfied and it follows that the Chalets will be occupied under Assured or Assured Shorthold tenancies depending on when individual tenancies were created. **HA, s 1(1) and (2) and Sch 1**, respectively, define assured tenancies and list those tenancies which cannot be assured tenancies. **Section 96** of the **Housing Act 1996** operates to make assured tenancies entered into on or after 28 February 1997 assured shorthold tenancies unless the tenancy falls within one of the exceptions.
3. The extent to which, by virtue of **Howard v Charlton**, any annexed chalet may still enjoy the protection of the mobile homes legislation as well will depend partly on whether the rudimentary drafting of License Agreement is construed as satisfying **CSA, s.1(1)(a) & (b)** (my view is that it does – just) and partly on the particular circumstances applicable to each individual chalet: when the agreement to occupy originated, when particular alterations were made and when annexation first occurred may well be relevant.
4. Mr Alderson’s evidence suggests it may only be Chalets 35 & 36, which from his description have their origins as mobile homes still discernible, that may fall within both the housing and mobile homes legislation under **Howard v Charlton** but it may be that there are other chalets to which changes in their character have been sufficiently cosmetic or superficial to be within both schemes.
5. At the other end of the spectrum, and likely to be such that “*the structure on the site is so far from that contemplated by the original agreement, that the agreement is to be regarded as having been impliedly revoked*” are those chalets that have been completely rebuilt and probably those that have been completely re-roofed. They are likely to fall exclusively under the housing legislation.
6. While occupation under a tenancy as a result of annexation confers certain benefits on the occupier of a chalet, a periodic assured or assured shorthold tenancy does not necessarily have any intrinsic capital value. Although in the instant case a term permitting assignment with the landlord’s consent will be implied by **HA, s.15(1)** because there is no express provision - **R. (Macleod) v Peabody Trust Governors [2016] EWHC 737 (Admin) [2016] H.L.R. 27**, a premium equivalent to the purchase prices in excess of £60,000 that I know from my Instructions were paid for some chalets is unlikely to be achievable. While the “sales” would have been premised upon the occupiers having owned the fabric of the chalets, an effect of annexation has been to divest the occupier of that presumed ownership. No mortgage can be raised on or borrowing otherwise secured against a right to assign. Contracts of sale relating to the chalets made after annexation occurred will have been rendered void, which is why the word “sales” was put in parentheses when I referred to them earlier in this Opinion. While that is something that will undoubtedly be of concern to the occupiers, it is not something about which I can advise further here. One consequence of annexation is that the individual chalet “owners” are likely to need their own legal advice.
7. The occupiers of chalets wholly outside the mobile home legislation will also not have the benefit of the powers to sell the chalets under that legislation referred to in Table 2 above, nor will the rights of succession conferred by the **1983 Act, s.3(3) and (4)** apply. They will only have such rights are conferred on them as tenants by the housing legislation. Ironically, while park owner have only limited powers to vet the purchaser of a mobile home as a result of the **2013 Act** they have an entitlement to refuse an assignment and nor does a tenant does not have the same ability to challenge Site Rules as the residential occupier of a mobile home; the lesser form of occupation has, in some respects, the better protections.
8. It is possible, however, that tenants may have additional rights through the operation of estoppel - **Sahota v Prior** **[2019] EWHC 1418 (Ch)** - or constructive trust - **Brightlingsea Haven Ltd v Morris [2008] EWHC 1928 (QB) [2009] 2 P. & C.R. 11** (to the extent the latter case appears to suggest that **s.2(5**) of the **Law of Property (Miscellaneous Provisions) Act 1989** is a bar tothe operation of estoppel, the decision is wrong in my view, see my article **Estoppel and elephant traps: section 2(5) of the Law of Property (Miscellaneous Provisions) Act 1989 (Legislative Comment)**, **Conv. 2015, 3, 240-244)**. An assured or assured shorthold tenancy may, by the operation of either, be rendered more secure either by restricting a landlord’s rights of termination or by giving the tenant the right to a longer lease. The applicability of either doctrine will be dependant on the individual circumstances of each case and is outside the ambit of this Opinion.
9. Those chalets which have become annexed cannot possibly fall within ambit of the **1936 Act, s.269**, it would appear to be ousted by the application of the **Building Regulations** but also, self-evidently, because the chalets are not moveable. I do not know when the licence was granted or whether the chalets were technically compliant at the time. If they were not, the licence will have been ultra vires, if they were and only subsequently became non-compliant, the effect would be to render the licence irrelevant; the licence would have simply ceased to permit their being sited under it. To the extent any chalet was technically compliant for a time but the conditions as to user or occupation in the section were not adhered to, there will have been historic breaches of the section. In my view this is entirely academic.
10. In relation to Chalet 1, as it retains the characteristics of a mobile home, it cannot have been annexed under Category C and there is nothing in the material before me to suggest that it has been annexed to the land under Category B either. It therefore remains a chattel and falls within the ambit of the mobile homes legislation. The Owner, it seems to me, is under a duty to apply for a Site Licence as a result and will be committing an offence if he does not do so.

THE EXISTENCE OF ANY STATUTORY OR OTHER PROTECTIONS FOR RESIDENTS THAT FLOW FROM THE LEGAL BASIS OF THEIR OCCUPATION

1. If I start with Chalet 1, it will have the panoply of protections under the mobile homes legislation summarised in Table 2 above. Since the site rules have simply been continued, unless the present ones were newly drafted after 2014, which seems unlikely, they will have been rendered void by the transitional provisions. The current Site Agreement, as a written agreement required under the legislation, is grossly deficient. The owner of Chalet 1 will be entitled, in my view, to make an application to the First Tier Tribunal but as the Owner still requires a licence, complying with the legislation within a specified period could, in my view, be made a requirement under the licence.
2. In relation to the other chalets, there may, as I have said above, be some that still fall within both sets of legislation, subject to that, the tenants will enjoy all the protections to which any other assured tenant of residential premises will be entitled, such as, for example the implied repairing covenant under **Landlord and Tenant Act 1985, s. 11**. This is subject to the caveat that the circumstances relating to an individual tenancy may have an impact on the duration of the term or some other factor material to whether a particular benefit inures to the tenant. I should add, given what is in the Site Rules in relation to repairs **s.11(4)** provides:

“*(4) A covenant by the lessee for the repair of the premises is of no effect so far as it relates to the matters mentioned in subsection (1)(a) to (c)*”

The Owner is thus not able to use the Site Rules to avoid obligations to do the following:

(a) to keep in repair the structure and exterior of the dwelling-house (including drains, gutters and external pipes),

(b) to keep in repair and proper working order the installations in the dwelling-house for the supply of water, gas and electricity and for sanitation (including basins, sinks, baths and sanitary conveniences, but not other fixtures, fittings and appliances for making use of the supply of water, gas or electricity), and

(c) to keep in repair and proper working order the installations in the dwelling-house for space heating and heating water.

WHETHER THE CHALETS ARE “RESIDENTIAL PREMISES” FOR THE PURPOSES OF THE HOUSING ACT 2004 AND, IF SO, WHETHER THE COUNCIL, AS LOCAL HOUSING AUTHORITY, WOULD BE ENTITLED OR REQUIRED TO TAKE ACTION TO ENFORCE HOUSING STANDARDS IN APPROPRIATE CASES

1. In the **Housing Act 2004**, it is provided in **s.1(4)** that “*residential premises*” means, among other things: “*a dwelling*” and, in s.1(5), that:

*“ ‘dwelling’ means a building or part of a building occupied or intended to be occupied as a separate dwelling;*”

Dwelling is not a term of art; it appears in a number of pieces of legislation and in the **Rent Acts** had the specific meaning of “*only or principal residence*”; in the **HA, s.1** that requirement in relation to assured tenancies is put into the statute itself and there is no need to read the word down. I interpose here that on the basis of my Instructions, these chalets satisfy that test in any event. In **Phillips v Francis [201 0] 24 E.G. 118** HHJ Griggs, sitting as a Deputy High Court Judge had to decide the meaning of “*dwelling*” in the **Landlord & Tenant Act 1985** and said this:

“ *The contention advanced by Mr Crozier on behalf of the claimants is that the word "dwelling" should be given its ordinary and natural meaning, namely that a dwelling is where someone resides and that it is sufficient for such premises to come within the purview of the Act if they are residential premises, as distinct from business premises … In my judgment the correct approach therefore is, as Mr Crozier submitted, to apply the normal rules of statutory construction, namely that the words in the statute are to be applied according to their natural and ordinary meaning without addition or subtraction unless that meaning produces injustice, absurdity, anomaly or contradiction*.”

1. My view is that on the basis of the material before me the Chalets 2 to 36 are “*dwellings*” and thus *“residential premises*” within the **Housing Act 2004**.
2. As with the precursor to the **Housing Act 2004**, **Pt 6** of the **Housing Act 1985**, local authorities have a combination of duties and discretionary powers - **Heffernan v Hackney LBC [2010] H.L.R. 17.**Primarily under the scheme of the **Housing Act 2004** they are cast in relation to hazards affecting residential premises. There are, I think, 61 separate occurrences of the word “*duty*” in the Act (although because of references back, that does not mean that there are 61 separate duties). Essentially the starting point, it seems to me, is the Council’s duty under **s.3** to review housing conditions in its district; thereafter a duty to inspect under **s.4** may arise depending upon the result of the review. Given that my Instructions suggest a degree of concern about the condition of at least some chalets, I suspect that, on the basis of the material before me, the duty to inspect may well have been triggered in relation to those chalets about which concern currently exists. What powers the Council has and whether or not it has a duty or a discretion to exercise them would depend on the results of any inspection. There are no special considerations which apply simply because the chalets started out as moveable buildings.

ANY OTHER MATTER WHICH I CONSIDER RELEVANT

1. Under this heading I ought to deal briefly with planning. It seems to me that the present user is not authorised and in my view that is an inherently unsatisfactory position. However, unless there is anything that places the Park within some non-standard planning regime (such as exists in relation to National Parks or other specifically designated areas), the Owner would be able to apply for a Certificate of Lawful Use (“CLU”). Even in the absence of a CLU any enforcement proceedings could be almost certainly be resisted on the grounds a lawful use had been established for the requisite period (4 years). Were a CLU obtained, thereafter, under **Town & Country Planning Act 1990, s.191(6)**:

“ *The lawfulness of any use, operations or other matter for which a certificate is in force under this section shall be conclusively presumed.*”

Concluding Observations

1. I apologise for having taken longer than the usual 14 days in which I aim to complete all paperwork. Should my Instructing Solicitor have any follow-up queries I will be happy to answer them either formally or on the telephone or by e-mail.

RAWDON CROZIER

9th April 2020

KBG CHAMBERS

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**EXETER**

**EX1 1UG DX 8237 PLYMOUTH 1**

IN THE MATTER OF RIVERSIDE CHALET PARK, SINGLETON, LANCASHIRE

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***I.K. Curtis***

***Head of Governance***

***Fylde Borough Council***

***Town Hall***

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***Solicitors’ Reference: : IKC-1215***

***Counsel’s Reference: 85737***

***Document Reference: 20 A 014 Fylde BC,***