FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CAM/12UB/PHC/2020/0011**
Site	**:**	**Hartford Marina, Wyton, Huntingdon PE28 2AA**
Property	**:**	**Number 8, West Pontoon**
Applicant	**:**	**Janet Maureen Jaffe**
Representative	**:**	**Deighton Pierce Glynn & Mr Cottle of Counsel**
Respondent	**:**	**Tingdene Marinas Ltd**
Representative	**:**	**Ryan & Frost Solicitors & Mr Judd of Counsel**
Date of Application	**:**	**17th December 2020**
Type of Application	**:**	**To determine questions arising under the Mobile Homes Act 1983 or an agreement to which it applies – section 4 Mobile Homes Act 1983**
Tribunal	**:**	**Judge J R Morris** **Regional Judge R Wayte**
Date of Directions	**:**	**18th December 2020**
Date of Hearing	**:**	**14th October 2021**
Date of Decision	**:**	**25th November 2021**

DECISION

Decision

1. The Tribunal determines that:
    a. The Applicant's Property is a caravan on a float.
    b. The 1998 Planning Permission and 2014 Certificate allow for the stationing of a houseboat, which in the circumstances of this case is a caravan on a float, on that part of the Site on which the Property is situated.
    c. As the Property is a caravan which may be occupied as a sole residence, then the area edged red on the plan annexed to 2014 Certificate is a "caravan site" to which the Mobile Homes Act 1983 applies and therefore is a "protected site".

d. The parties must enter into a Written Agreement that is compliant with the Mobile Homes Act 1983.

Reasons

Application

2. The Applicant made an Application to the Tribunal, on 17th December 2020 under Section 4 of the Mobile Homes Act 1983 (as amended) "(the 1983 Act") which enables an application by an Occupier of a Park Mobile Home or a Park Mobile Home Site Owner to be made to a Residential Property Tribunal for a determination of any question arising under the Mobile Homes Act 1983 or agreement to which it applies.

3. The Respondent indicated that it intended to commence possession proceedings if the Applicant did not give up possession by 10th January 2021 or sooner should the West Pontoon deteriorate further.

4. The Applicant applied to the Tribunal under section 4 of the 1983 Act for a declaration that the Property she occupies on the Site is a *caravan* as defined in the Caravan Sites and Control of Development Act 1960 and that the Site is a *protected site* as defined in Part I of the Caravan Sites Act 1968 and the *agreemen*t under which she keeps her unit on the site is within the provisions of the 1983 Act.

5. Whereas the Tribunal cannot make a declaration it can pursuant to section 4 of the Caravan Sites Act 1968 determine any question under the Act or any agreement to which it applies.

6. Directions were issued on 18th December 2020. The Directions were amended to allow extra time for compliance on 3rd March 2021, to allow both parties to submit expert evidence and an agreed statement of facts and on 19th March 2021, to allow exhibits to a witness statement and consequentially a reply in response to those exhibits.

Issues

7. The overall issue is whether the Mobile Homes Act 1983 applies to that part of the Site owned by the Respondent upon which the Applicant has stationed her Property and therefore whether the Tribunal has jurisdiction to determine any question arising from that agreement. The Tribunal identified the main individual issues as being:

    a) Whether the Property occupied by the Applicant is a *caravan* as defined by the Caravan Sites and Control of Development Act 1960.

    b) Whether the part of the Site owned by the Respondent upon which the Property is situated is a *protected site* as defined in Part I of the Caravan Sites Act 1968.

8. The Tribunal has identified three matters to be addressed to answer the two questions which are the subject of the Application. These are:
    1. Whether the Applicant's Property is a caravan

2. Whether there is a planning permission for the siting and use of the Property
3. Whether there is an agreement for the siting and use of the Property

Hearing

9. A hearing took place on 14th and 15th October 2021 which was attended by:

Ms Maureen Jaffe, the Applicant,
Mr Stephen Cottle of Counsel, for the Applicant,
Mr Keith Coughtrie, of Deighton Pierce Glynn, Solicitors for the Applicant,
Ms Lisa Milton, Witness for the Applicant,
Ms Sue Rodwell Smith Witness for the Applicant,
Mr Paul Bullen, Expert Witness appointed by the Applicant.

Mr Michael Rudd of Counsel, for the Respondent,
Mr Keith Ryan of Ryan & Frost, Solicitors for the Respondent was unable to attend and Mr Duffy was present on his behalf.
Mr Stephen Arber, Operations Director and Witness for the Respondent,
Mr Elliot Berry, Expert Witness appointed by the Respondent.

Ms Lucy Zeka, Marina Manager employed by the Respondent and provided a witness statement but did not attend throughout hearing.
Mr James Armstrong, Sales & Marina Assistant employed by the Respondent and provided a witness statement but did not attend hearing.

10. Prior to the hearing Solicitors for both parties provided correspondence setting out their initial arguments, Counsel for both parties provided skeleton arguments and witness statements were also provided for each of the witnesses.

11. The cases for the parties set out below includes both the written and oral submissions and statements.

Description of the Site

12. The Tribunal did not inspect the Site or the Property but the following description was obtained from the Statements of Case, witness statements and documents provided together with the expert witnesses' reports.

13. The Site centres around a lake created by a flooded gravel pit from which access has been cut to the River Great Ouse and upon which is a marina ("the Marina"). The Marina comprises about 200 mixed leisure and residential berths accommodating cruisers, narrow boats, floating lodges, brokerage and houseboats. Within the Site around the lake is a road giving access to the moorings comprising jetties and floating pontoons forming the marina. There are several access pontoons from the edge or shore of the lake towards its centre.

14. The Property comprises a Willerby static caravan on a float and references to "the Property" include both Willerby caravan and float. The Property was of a type that was designed by Mr Perry, the previous owner of the Site. A patent application and marketing material was provided which corresponded to the description agreed by the expert witnesses as being the "Hartford Houseboat".

15. West Pontoon to which the Property is attached is supported on a metal frame with a wood planked floor which is attached to several floats. The central walkway provides access from the shore to 16, what are described, as houseboats. There are 7 on the left side and 6 on the right and a further 3 in a half diamond at the end.

16. The houseboats, including the Property, comprise a static caravan on their own pontoon attached to the West Pontoon. With a view to avoid confusion between the pontoons the Property's pontoon is referred to as a float.

17. The Parties each appointed an expert witness to describe the construction and condition of the Property. In accordance with the Tribunal's Directions the expert witnesses provided a joint statement of facts which stated as follows:

18. The Parties' expert witnesses Mr Elliott Berry appointed by the Respondent and Mr Paul Bullen appointed by the Applicant attended the property on 1st April 2021 in order to produce a joint statement of agreed facts.

19. On the day of the survey the weather was dry and the water clear enabling a more thorough examination than previously experienced by both surveyors.

20. The following facts were agreed by both surveyors:
    1) The Willerby caravan is completely intact with both chassis and wheels attached and is considered to be in good condition.
    2) The float (Pontoon on which the caravan sits) is in generally good order and it is probable that the spalling noted on the concrete flats may well have been present at manufacture.
    3) The damage/misalignment of the aluminium edging on the starboard side of the pontoon, on which the caravan sits, is likely to have been caused by a hard docking of a boat at some time in the past; this does not affect the integrity of the Pontoon.
    4) The pontoon is attached to the bed of the marina via the central walkway which has piles driven into the marina bed. A mud weight (concrete block) sits on the marina bed and the front of the Pontoon is attached, by a chain, to this block.
    5) The Willerby caravan simply sits on the frame of the Pontoon and is not secured, or otherwise attached, to the Pontoon. However, the caravan is connected to mains water, electricity and sewage.
    6) The Pontoon was originally attached to the central walkway by bolts. One attachment is now damaged and the pontoon is secured with a ratchet strap and chain.
    7) The main heating inside the caravan is electric.
    8) The Willerby caravan is owned by the Applicant.
    9) The Pontoon on which the caravan sits is also owned by the Applicant.
    10) The central walkway is owned by the Respondent.
    11) The unit consists of a metal frame attached to circa ten proprietary floats on which the caravan sits.
    12) The pontoon was constructed by Hartford Marina Limited and the caravan was then placed onto the pontoon.
    13) The caravan could be easily lifted off the pontoon and transported by road or other means.

14) The pontoon could with specialist lifting equipment also be lifted and transported by road.
15) If required the entire unit could be lifted by professional personnel with specialist lifting equipment. However, this would not be a practical manoeuvre.
16) Houseboat 8 is not a vessel.

21. Copies of the full reports were provided.

22. The reference to "the Site" in this Decision and Reasons is to the whole area of the marina and the surrounding land which comprises Hartford Marina. The issue as to whether or not a "protected site" exists on the Site is only in relation to that part of the Site owned by the Respondent upon which the Applicant's Property is situated.

23. The Tribunal heard the case under three headings:
    1. Whether the Applicant's Property is a *caravan* as defined by the Caravan Sites and Control of Development Act 1960 (the Property);
    2. Whether the part of the Site owned by the Respondent upon which the Property is situated has a Planning Permission to enable it to be a *protected site* as defined in Part I of the Caravan Sites Act 1968;
    3. Whether there is an agreement for the stationing and use of the Property and if so, what is its nature in the light of the two previous questions (the Agreement).

Applicant's Case re the Property

24. The Applicant's Counsel (in line with the Applicant's solicitor's previous correspondence) submitted that the Applicant's accommodation at No 8 West Pontoon, Hartford Marina comprises a standard single Willerby static caravan stationed on a platform, raft or pontoon of proprietary manufacture and constructed of concrete encased polystyrene. The top of this raft or pontoon is mainly aluminium, and the caravan is surrounded with aluminium railings topped with a varnished hardwood handrail (apart from the starboard side which is open to allow for a boat to be moored alongside). A slatted wooden walkway, of approximately 1m width, surrounds the houseboat. There is a sundeck to the front of the pontoon which measures approx. 6m x 3m.

25. It is accessed by a central pontoon owned by the Respondent and is connected to mains electricity, sewage and water. The Willerby static caravan can be disconnected, taken from the supporting raft or pontoon, it has at all material times been continuously stationed on and then moved by road and is therefore a caravan within the definition of a mobile home under section 5 of the Mobile Homes Act 1983. The Tribunal was referred to the *Howard v Charlton* [2002] EWCA Civ for the proposition that if the caravan can be detached from the raft it is sited on, then the fact it is attached to it, does not mean it no longer meets the statutory definition of caravan.

26. The Mobile Homes Act 1983 may apply to a case where the protected site has only a single pitch for a single mobile home. It was submitted that the Applicant's home is situated on the Respondent's land, being the bed of the marina, notwithstanding that the land is covered with water.

27. Applicant's Counsel referred the Tribunal to the cases of *Balthasar v Mullane* (1985) 17 HLR 561 in which it was held that the legislation made it clear that a protected site is only one with planning permission. In addition he referred to *Greenwich LBC v Powell* [1989] AC 995, *Romans Park Homes* [2018] UKUT 249 (LC) and *Berkley Leisure Group Ltd v Hampton* [2001] EWCA Civ 1474 in support of the proposition that whether an individual caravan dweller is "protected" in terms of the Caravan Sites Act 1968 s1(2) and the Mobile Homes Act 1983 section 1(1) requires consideration of individual circumstances because the relevant planning permission regarding the pitch and the rest of the park it is on, may differ and because things attached to a caravan do not stop it being a caravan.

28. In addition, the Applicant's Counsel submitted that the case of *Environment Agency v Gibbs & Parker* [2016] EWHC 8431 was informative as it related to the specific site now in issue and in which Teare J, referred to the salient facts as being that there was a raft on which living quarters were placed and that the structure is held in place by chains. He concluded: -

> "66. .... Their function is to remain fixed in one position connected to mains electricity, sewage and water so as to provide accommodation for their owners and family.
>
> 67. It is true that the houseboats were constructed and are used to support the weight of the living quarters, of the furniture placed in the living quarters and of those persons who live in them but that does not amount to the houseboats "being constructed or used to carry persons or goods on or by water". An observer of the houseboats in the marina would not describe them as structures designed for the carriage of goods or persons but as structures designed for people to live in."

29. At the hearing Applicant's Counsel referred the Tribunal to paragraph 20 of Mr Arber's witness statement in which it was said that it would not be possible to lift both the accommodation and the float out of the water together. He referred to a recent occasion when a house boat of this structure had to be towed across the marina to a boatyard where the accommodation was removed and placed on a new float. He also referred the Tribunal to the patent application which was annexed as an exhibit to Mr Arber's witness statement.

30. The Application was made by the previous owner of the Site and describes a floatation device upon which could be placed a caravan. Applicant's Counsel referred the Tribunal to paragraph 10 of the Claims which describes how deploying a detachable ramp between the bank and the float, the caravan using its wheels can be rolled to move it between the two. He also referred the Tribunal to plan 2 within the Application and the narrative on page 8 of the Application which he said illustrated and explained that the Property comprised a caravan that could be rolled on and off the float and that it made no difference whether the caravan was in a field or the float, it remained a caravan.

31. Applicant's Counsel also referred the Tribunal to a number of authorities as follows:

32. In *Gray v Secretary of State for the Communities and Local Government & Harrogate Borough Council* [2015] EWHC 2452 (Admin) an Inspector was found not to be in error to grant a certificate of lawful use for a structure of breeze blocks and timber decking but not for the caravan which had been incorporated into the structure. The caravan was not a "permanent structure, being neither attached to the adjacent timber and steel frame… nor is its removal prevented by the construction of breeze block columns… Service connection to the caravan could be readily disconnected. The caravan unit remains on its original chassis and possesses wheels." [6] & [7]. The concrete pillars could be removed and the caravan released [23] to [25]. It had been submitted against the Inspector's decision that the caravan would be damaged if moved [28]. "As a matter of fact, and degree [the Inspector] found "that the caravan has not taken on a quality of permanence or become so integrated into other structures on the land as to be deemed a building or part of a building."

33. It was submitted that *Gray* supported the view that even if the caravan was held in some way on the float, if it could be released then it remained a caravan. In fact, this Willerby caravan is not attached at all on the float and is free standing, which goes to show that it is not part of the float.

34. In *Carter v Secretary of State for the Environment* [1994] 1 WLR 1212 (CA), it was held that a caravan was a structure that had to be capable of being moved from one place to another as a single unit. At 1219 D & E Russell LJ states that in order to qualify for the description "caravan" in section 29 it is therefore a "structure" that has to possess two qualities…it is necessary for "the structure" to be designed or adapted for human habitation" and ""the structure" has to possess mobility." The particular structure was in *Carter,* prefabricated in four parts, was re-constructed on the site and dragged using rollers into position. Applicant's Counsel stated that the first instance judge noted that the Secretary of State had referred to the attachment of extensions to the ground. He said that this was not relevant and the Court of Appeal agreed.

35. It was submitted that *Carter* supported the view that it was the features of habitation and mobility that defined the caravan not its attachment. In this case the Willerby caravan is for habitation, is mobile and is not affixed and can be moved on and off the float.

36. In *Webb v Frank Bevis Ltd* [1940] KBD 247 a timber superstructure which was affixed to bolts into a concrete floor was constructed by the tenant. The landlord argued that its being affixed to the concrete floor made it a single unit and therefore a landlord's not a tenant's fixture. It was found that the superstructure could be unbolted from the floor and removed. It was held that it was not all one unit.

37. It was submitted that this case was analogous to the present circumstances in that the caravan is the equivalent of the super structure and can be removed and stand as a separate entity from the float.

38. In *Sussex Investments Limited v Secretary of State for the Environment & Spelthorne Borough Council* [1998] PLCR 172 meaning of "residential houseboat" was considered. The particular structure in this case was objected to as being not a residential houseboat but a prefabricated wooden dwelling house affixed to a

floating platform, Page 174 D to G. Applicant's Counsel drew the Tribunal's attention to the reference made in the case, at page 179 A to D, to Lord Reid's statement in *Cozens v Brutus* [1973] AC 854 at 861:

"It is for the tribunal which decides the case to consider, not as law but as fact, whether in the whole circumstances the words of the statute do or do not as a matter of ordinary usage of the English language cover or apply to the facts which have been proved. If it is alleged that the tribunal has reached the wrong decision then there can be a question of law but only of a limited character. The question would normally be whether their decision was unreasonable in the sense that no tribunal acquainted with the ordinary use of language could reasonably reach that decision."

39. Also, to page 180 C to E where it was stated that the decision in that case should be based upon "the pictorial and literary material submitted to them".

"Applying these principles to the present case I respectfully think that the Judge was wrong if and insofar as he thought he had to provide (as the answer to a question of law) a precise definition of "houseboat". Moreover, he was wrong to take the view (as he seems to have done) that as a matter of law a houseboat must be "boat shaped" in the sense of having a hull approximating to the shape already mentioned. But a craft which consists of a low rectangular floating platform with a two-storey prefabricated building erected on it differs from what I would venture to call a typical houseboat in much more than the shape of its hull. It may diverge so far from the typical as no longer to merit the description "houseboat" as that expression would normally be used. Whether it does so is a question of fact and degree."

40. Applicant's Counsel submitted the "houseboat" being referred to in the 2014 Certificate was and is a caravan on a float which is the Hartford Houseboat.

41. He stated that caravans on park home sites invariably have a skirt, often of brick, around them which would have to be removed for them to be moved. He suggested that the float was no different. He said he saw no reason why the caravan could not be stationed on a structure on land so that it is off the ground provided it could be rolled off the structure on to a low loader and taken by road.

42. Applicant's Counsel stated that the 1998 Planning Permission and 2014 Certificate related to the Property as constructed which he said was a Willerby caravan on a float. He referred the Tribunal to the definition of a caravan in the section 29 of part 1 of the Caravan Sites and Control of Development Act 1960 which states:

"caravan" 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 rolling stock which is for the time being on rails forming part of a railway system, or
(b) any tent."

43. He said that there is no doubt that the Willerby caravan meets the definition and that the 1998 Planning Permission and 2014 Certificate are referring to the same

structure i.e., the Property, which is the Willerby caravan on a float, which is a Hartford Houseboat.

Respondent's Case re the Property

44. The Respondent's Counsel (in line with the Respondent's solicitor's previous correspondence) submitted that the Property is not a caravan, as statutorily defined. The statutory definition of a caravan requires the following essential elements to be present or apply to the structure in question:
    a) Structure designed or adapted for human habitation;
    b) Capable of being moved from one place to another whether by being towed or by being transported on a motor vehicle;
    c) It may be comprised of no more than two sections separately constructed and designed to be assembled on site and, when assembled, is physically capable of being moved by road from one place to another.

45. In *Carter and Another v SSE8* the Court of Appeal considered the proper construction of Section 29 Caravan Sites and Control of Development Act 1960, Russell LJ held at [1219D-E] 8 [1994] 1 W.L.R. 1212

    "...In order to qualify for the description "caravan" in section 29 it is therefore "the structure" that has to possess two qualities. The first part of the section provides that it is necessary for "the structure" to be designed or adapted for human habitation. This, in my view, clearly contemplates the structure as a whole, as a single unit, and not the component parts of it. The second quality which "the structure" has to possess is mobility. The structure has to be capable of being moved by being towed or transported on a single motor vehicle or trailer. "The structure" contemplated by the second part of the section is, in my judgment, precisely the same structure as that contemplated by the first part of the section, not a structure which has been dismantled before loading has taken place. In my view the second limb of the definition can therefore refer only to a whole single structure and not to component parts of it..."

46. Ostensibly, the Court held that for a caravan or mobile home to fall within the definitions at section 29 Caravan Sites and Control of Development Act 1960, the structure as a whole must be considered and that whole must be capable of being moved as a single unit. Such a structure has to possess two properties; it must have been designed or adapted for human habitation, and the entirety of the structure must be capable of being moved by being towed or transported on a single motor vehicle or trailer, without the need for it to be dismantled before loading takes place.

47. The Unit in this matter comprises the following:
    a) The Willerby caravan;
    b) The float upon which it has been placed;
    c) The decking affixed to the float after the 'Willerby' was sited;
    d) The hand rail installed around the float.

48. All four of these elements comprise the houseboat. All four are required to make the houseboat habitable. All four elements considered as a whole comprise the single unit that is moored at berth 8 on the West Pontoon, and comprises the houseboat that can benefit from the 1998 Planning Permission.

49. Respondent's Counsel submitted that the Applicant's approach was flawed as follows:

a) The Property that is placed on the Land is not the Willerby unit but the float, upon which the Willerby is placed and is entirely dependent.

b) The Property of ownership and occupation comprises in its entirety the Willerby caravan and the float, together with the additions of the decking and hand rails.

c) Consequently, the Property is made up of more than two parts. Without the decking the Property as a whole is not capable of human habitation.

d) The Willerby caravan is not capable of being placed on the Land or Site alone, it requires the float upon which it is placed.

e) The evidence relied upon by the Applicant in the form of the Inspection Report addresses only the mobility of the Willerby caravan. In order to establish the Property is a caravan the mobility of it as a whole, that being both the Willerby caravan and float, as one must be demonstrated.

f) The Property as a whole must be capable of being lifted out of the water and still as a whole, placed on a motor vehicle or trailer and transported on a road. There is no evidence to establish that this essential criterion is established and the Respondent considers, from experience (witness evidence of Stephen Charles Arber), that the Property as a whole would not be capable of being lifted out without damage.

50. The accommodation of the Applicant at the Site comprises the Willerby caravan as well as the float and as such does not meet the statutory definition of a caravan. This is the unit of occupation and the unit of ownership. Th Property as a whole is moored at and attached to the West Pontoon, which is owned by the Respondent. The Respondent does not own the float upon which the Willerby caravan is sited. The Property is connected to mains electricity, sewage and water. This provision is made to the Property, not to the Willerby home in isolation. The bed of the Marina directly beneath the Property is owned by the Respondent. The Willerby caravan is not sited on the land, it is sited on the float and is entirely dependent upon the float. The Willerby caravan cannot be sited on the land without the float.

51. Respondent's Counsel confirmed his submissions at the hearing. He said that the key message for all the authorities is that it is a matter of fact and degree whether the Property is a caravan or a houseboat. He said that there were no authorities to say that a caravan is a houseboat, the word "houseboat" is used in the 1998 Planning Permission which is what the Property is.

52. In response to questions, Respondent's Counsel said that whether a Park Home site could be established whereby all the homes are on floats would depend on the 1998 Planning Permission but this was a site for houseboats.

53. With regard to the suggestion that the float was much the same as a plinth or steps to a caravan, Respondent's Counsel said that it was an addition to the caravan and could be removed whereupon the caravan would be mobile. The float is an integral part and if removed the caravan would not be habitable.

54. Respondent's Counsel referred the Tribunal to the joint statement of the expert witnesses which said that it was not practicable to move the Property and that Mr Bullen and Mr Adler said that it would be damaged in doing so.

55. Respondent's Counsel agreed that the 1998 Planning Permission and 2014 Certificate related to the Property as constructed, which he said was a houseboat.

Legislation relevant to both Parties' Submissions re the Planning Permission

56. Section 1 of the Caravan Sites and Control of Development Act 1960 provides:

"(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 . . . for the time being in force as respects the land so used.

(2) If the occupier of any land contravenes subsection (1) of this section he shall be guilty of an offence . . .

(4) In this Part of this Act the expression 'caravan site' 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."

57. Section 1(1) of the Caravan Sites Act 1968 extends the protection to any residential occupier of a caravan on a protected site which is defined in section 1(2) in these terms:

"a protected site is any land in respect of which a site licence is required under [the Caravan Sites and Control of Development Act 1960] . . . 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 subject to such conditions that there are times of the year when no caravan may be stationed on the land for human habitation."

58. Section 1 of the Mobile Homes Act 1983 provides that "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"

59. Section 5(1) of the 1983 Act explains that "mobile home" has the same meaning as that of "caravan" in section 29 of part 1 of the Caravan Sites and Control of Development Act 1960 which is "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 any rolling stock ...on rails forming part of a railway system... or any tent."

60. Section 191(6) of the Town & Country Planning Act 1990 in combination with the terms of the certificate means the relevant planning permission for the purposes of section 1 of the Mobile Homes Act 1983, is not expressed to be for holiday use only,

rather it is expressed to be as the certificate certifies, for use as a sole residence. Section 191 provides –

(1) If any person wishes to ascertain whether—
  (a) any existing use of buildings or other land is lawful;
  (b) any operations which have been carried out in, on, over or under land are lawful; or
  (c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful,

  he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.

(2) For the purposes of this Act uses and operations are lawful at any time if—
  (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and
  (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

(3) . . .

(4) If, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

(5) A certificate under this section shall—
  (a) specify the land to which it relates;
  (b) describe the use, operations or other matter in question (in the case of any use falling within one of the classes specified in an order under section 55(2)(f), identifying it by reference to that class);
  (c) give the reasons for determining the use, operations or other matters to be lawful; and
  (d) specify the date of the application for the certificate.

(6) The lawfulness of any use, operations or other matter for which a certificate is in force under this section shall be conclusively presumed."

Applicant's Case Re the Planning Permission

61. Applicant's Counsel addressed the Planning Permission Issue under the headings of:

Planning Permission; Land Covered by Water; Caravan Site and Protected Site.

He progressed his argument on the basis that:

- The 1998 Planning Permission with the 2014 Certificate of Existing Use and Development gave planning permission for the Property to be stationed on the land,
- It made no difference that the land was covered with water.

- As the Property was a caravan the land amounted to a "caravan site" and because the Property could be occupied all the year round as a sole residence.
- Therefore, it must be a "protected site".

The Planning Permission

62. Applicant's Counsel submitted that prior to the Applicant's purchase and prior to any agreement between the Applicant and the Respondent in relation to the Property, the 2014 Certificate was issued by the local planning authority.

63. No subsequent events since 6th June 2014 when the 2014 Certificate was issued have brought about any abandonment, operational development or change in use of the Property that could overtake the application of that certificate to the Applicant's Property.

64. Applicant's Counsel submitted that the 1998 Planning Permission granted by Huntingdon DC ref 98/0115 was for the Property to be lived in. It was recognised by the local planning authority in respect of the Applicant's predecessor in title, that the Property was used as his only home. The Applicant has continued this use since she took possession following her purchase on 26th May 2017.

65. It was said that the Tribunal should adopt the approach as described by Martin Rodger QC in *John Romans Park Homes Limited v Hancock* [2018] UKUT 249 (LC) at [15]: - "whether an agreement is one under which a person is entitled to station a mobile home on land forming part of a protected site must be answered having regard to the planning and regulatory status of the site at the date the relevant agreement is entered into".

66. The Applicant's Counsel submitted that the 2014 Certificate, in respect of the Property, overtakes, supplants or acts as a rider to the conditional 1998 Planning Permission that applies to the wider area, where the 15 units subject of the application were to be located. Under section 191(6) of the Town and Country Planning Act 1990 a Certificate of Existing Lawful Use and Development is presumed to be "conclusive". This means that the 2014 Certificate is conclusive as to what it states, namely that the use in question as sole residence was lawful at the date of the application.

67. He referred to the statement by Neuberger LJ, as he then was, in *Murphy v Wyatt* [2011] 1 WLR 2129 at [62] that the whole thrust of the 1983 Act "seems to be clearly directed to agreements whose purpose is, and is substantially limited to, what is described in paragraphs (a) and (b) of section 1(1)".

68. It was submitted that therefore the 1998 Planning Permission now has to be read subject to the 2014 Certificate issued in respect of the Property and that the relevant planning permission for the purposes of Caravan Sites Act 1968, section 1 is the one permitted by the 2014 Certificate. Therefore, the current planning status of the Property is that of a protected site, i.e., a single pitch.

69. In addition, Applicant's Counsel suggested to the Tribunal that it had a degree of latitude in its interpretation, referring to *John Romans Park Homes Limited v Hancock* [2018] UKUT 249 (LC). It should look at the mischief, which in this case is

to prevent development in the countryside. The Site already has residential use. The effect of making the part of the site upon which is stationed the Applicant's Property is only to grant that for the whole year. He referred the tribunal to [72] and [73] in *Norfolk Homes Limited v North Norfolk District Council* [2020] EWHC 2265 (QB) of Holgate J at which he referred to *Bank of Credit and Commerce International SA v Ali* [2002] 1 AC 25 where Lord Bingham stated at [8]:

"To ascertain the intention of the parties the court reads the terms of the contract as a whole, giving the words used their natural and ordinary meaning in the context of the agreement, the parties' relationship and all the relevant facts surrounding the transaction so far as known to the parties. To ascertain the parties' intention the court does not of course inquire into the parties' subjective states of mind but makes an objective judgement based on the materials already identified."

70. Holgate J also referred to *Rainy Sky SA v Kookhmin Bank* [2011] 1 WLR 1 WLR 2900 where Lord Clarke said at [21] to [30]:
"…the exercise of construction is essentially one unitary exercise in which the court must consider the language used and ascertain what a reasonable person, that is a person who has all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract, would have understood the parties to have meant. In doing so, the court is entitled to prefer the construction which is consistent with business common sense and to reject the other."

71. Applicant's Counsel noted that the Respondent's Counsel had stated that the 2014 Certificate allowed the Applicant to use the Property all the year round but it was subject to the original 1998 Planning Permission which referred to the Property as a "houseboat". Therefore, the Property is not a caravan and so therefore cannot be a "protected site" under the Mobile Homes Act 1983. The Applicant's Counsel disagreed referring back to *Sussex Investments Limited v Secretary of State for the Environment & Spelthorne Borough Council* [1998] PLCR 172 and stating that the Property was in situ when the 1998 Planning Permission was granted on 9th November 1998. He drew attention to the 1998 Planning Permission being retrospective. The Local Planning Authority therefore knew what they were giving permission for i.e., the Hartford style houseboat which is a caravan on a float.

Land Covered by Water

72. Applicant's Counsel submitted that inland water has been treated by the common law as areas of land covered by water. In *Hampton UDC v Southwark &Vauxhall Water Co* [1900] AC 3 at [4] it was decided that a reservoir was land covered by water. The Respondent owns the gravel pit and the bed of the marina that is the land that lies directly beneath the Property. It follows that in deciding if there is land that is being used for the purposes of a caravan site for which a site licence is required, for the purposes of section 1 of the Caravan Sites and Control of Development Act 1960, then the land that is in issue is the land that the Respondent owns and occupies, which lies underneath the Property, *Port of London Authority v Ashmore* [2010] EWCA 30; [2011] 1 All ER 1139.

91. According to section 22 of the Interpretation Act:

(1) This Act applies to itself, to any Act passed after the commencement of this Act [(subject [, in the case of [section 20(2A) to (6)]3, to the provision made [in section 20(2A) or (3)]4 and]2, in the case of section 20A, to the provision made in that section)]1 and, to the extent specified in Part I of Schedule 2, to Acts passed before the commencement of this Act."

73. The Interpretation Act 1978 has different interpretations of land for "any Act passed before the commencement of this Act and after the year 1850, "land" includes messuages, tenements and hereditaments, houses and buildings of any tenure". It is submitted that this non exhaustive definition did not exclude land covered by water as century old common law demonstrates was the case, when required.

74. But in relation to use of the word "land" as it appears in s 1 of the Mobile Homes Act 1983, which was enacted in the light of the Interpretation Act 1978, schedule 1 of the Interpretation Act 1978 defines land as including "buildings and other structures, land covered with water, and any estate, interest, easement, servitude or right in or over land."

75. Applicant's Counsel submitted that therefore when the Respondent or its predecessor agreed to the Property being stationed at West Pontoon it was allowing the mobile home to be sited on the Respondent's land. The pitch being the float which is on the Respondent's land.

Caravan Site

76. By section 1(1) of the Caravan Sites and Control of Development Act 1960 a site licence is required for any land which is a "caravan site". Section 1(4) explains that the expression "caravan site" 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"

77. Applicant's Counsel submitted that since the Property includes a caravan and since land in section 1(4) of the Caravan Sites and Control of Development Act 1960 includes land covered by water, as land in section 1(1)(a) of the Mobile Homes Act 1983 does, and is for the purposes of human habitation then the land is a caravan site.

Protected Site

78. Applicant's Counsel referred to a passage from the judgement of Deputy President Martin Rodger QC in the case of *John Romans Park Homes Limited v Hancock* [2018] UKUT 249 (LC). In that case the occupiers of pitch 43 and 48 both applied to the First-tier Tribunal [4]. The Upper Tribunal decided that the Mobile Homes Act 1983 applied because no particular part of the site was restricted to holiday use only. The Learned Judge held: - "The meaning of "protected site"

9 The Mobile Homes Act 1983 is intended to benefit the occupiers of permanent residential caravans or mobile homes, rather than the occupiers of caravans intended only for holiday or seasonal use. Effect is given to that policy by both of the qualifying conditions expressed in section 1(1), which applies the Mobile Homes Act 1983 to any agreement under which a person

is entitled to station a mobile home on land forming part of a protected site, and to occupy the mobile home as their only or main residence.

10 By section 5(1) of the Mobile Homes Act 1983 "protected site" has the same meaning as in Part I of the Caravan Sites Act 1968. Section 1 of the Caravan Sites Act 1968 is concerned with the application of Part I. So far as is material, and as amended, section 1(2) provides as follows:

(2) For the purposes of this Part of this Act a protected site is any land in England in respect of which a site licence is required under Part I of the Caravan Sites and Control of Development Act 1960 ..., 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."

11 To be a protected site, therefore, land must first be land in respect of which a site licence is required under Part I of the Caravan Sites and Control of Development Act 1960. It must additionally 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 have effect so that there are times of the year when no caravan may be stationed on the land for human habitation".

79. In *Balthasar v Mullane* [1985] 2 EGLR 260, Glidewell LJ concluded (at 263B) that the definition of "protected site" involves the site being one in respect of which planning permission has been granted for the stationing of one or more caravans so that "if planning permission has not been granted, then the site is not a protected site within the meaning of [the Caravan Sites Act 1968] or, thus, within the meaning of the 1983 Act". Here the effect of the 2014 Certificate is that there is a 1998 Planning Permission prior to the Applicant's purchase and prior to any agreement between the Applicant and the Respondent. Therefore, there is a planning permission in existence at the time the Applicant commenced residence in the Property with the Respondent's consent.

80. The Property is stationed on a protected site because the Respondent allowed her to station her mobile home there and neither of the negative conditions referred to para 11 in the judgment of the Deputy President, derived from s 1(2) of the Caravan Sites Act 1968, apply.

81. Applicant's Counsel referred to *Royale Parks Limited v Secretary of State of Housing Communities and Local Government* where it was held that there will be some planning conditions that apply to the entirety of the relevant land and cannot sensibly be regarded as being the subject of a partial breach only, while others apply only to a specific area. The issue of whether a case falls on one side or another is one of fact of degree. Respondent's Counsel submitted that in this case the 2014 Certificate can only apply to the Property.

Respondent's Case re Planning Permission

82. Respondent's Counsel addressed the Planning Permission Issue under the same headings as the Applicant of:

Planning Permission; Land Covered by Water; Caravan Site and Protected Site.

83. He answered the points raised in turn. His argument in summary was that:
- There was a 1998 Planning Permission for houseboats not caravans, and the 2014 Certificate of Existing Use and Development only gave permission for the Applicant to use the Property all the year round as a sole residence.
- It made no difference that the land was covered with water because the Property was a houseboat not a caravan.
- The 1998 Planning Permission was not for a "caravan site".
- As the area the Property was on did not have planning permission for a caravan site it could not be a "protected site".

The Planning Permission

84. The Respondent's Counsel stated that the 1998 Planning Permission was granted on 9th November 1998 for:

> "…retention of use of land for 15 houseboats for holiday use, moorings, parking and ancillary development…"

85. The 1998 Planning Permission related to only part of the Marina, and is the extant permission for the development at West Pontoon. The 1998 Planning Permission is subject to 4 conditions:
1 restricted the use of the permitted houseboats to a holiday use, condition
2 prevented their extension or external alteration and conditions
3 and 4 related to pollution control and parking.

86. A 2014 Certificate of Legal Existing Use and Development was issued pursuant to section 191 Town and Country Planning Act 1990 on 6th June 2014, the use declared as being lawful in the First Schedule being ". . .occupation as a sole residence. . .", the location of that lawful use being identified in the Second Schedule as "…Houseboat 8 West Pontoon…". The reason for granting the Certificate of Legal Existing Use and Development was stated to be "…that the accommodation has been occupied continuously as a sole or main residence in breach of condition 1 of the planning permission 9800115 for a period of more than 10 years prior to the date of application. . .".

87. Firstly, Respondent's Counsel said that the 1998 Planning Permission and the 2014 Certificate of Legal Existing Use and Development must be read together with reference to section 191 of the Town and Country Planning Act 1990. He referred to *Adams v Secretary of State for Housing, Communities and Local Government and Huntingdonshire District Council*. He said that Secton 191 distinguishes between certification of lawfulness of
(a) existing use of buildings or land;
(b) operations which have been carried out over land; and
(c) any other matter constituting a failure to comply with any condition or limitation subject to which planning has been granted.

88. Respondent's Counsel made reference to a number of passages but essentially in that case Mrs Justice Lange DBE held that the original permission was extant and applied except for the specific parts of the permission to which the certificate applied. In the present case it was submitted that the only part of the 1998 Permission to which the 2014 Certificate applied was the condition regarding the occupation of the houseboat. The 2014 Certificate did not change the use (section no191(1)(a)) or the operations (secton 191(1)(b)) only the condition (section 191(1)(c)).

89. Secondly Respondent's Counsel referred to a number of cases in respect of the interpretation of planning permissions. These were:

R v Ashford Bought Council ex parte Shepway District Council [1999] PLCR 12 QBD in which Keene J summarised the 5 principles which are to be used in construing a planning permission the only two of which that were potentially applicable are:

"(1) the general rule is that in construing a planning permission which is clear, unambiguous and valid on its face, regard may only be had to the planning permission itself, including the conditions (if any) on it and the express reasons for those conditions: see *Slough Borough Council v Secretary of State for the Environment* (1995) JPL 1128 and *Miller-Mead v minister of Housing and Local Government* [1963] 2 QBD 196
(2) This rule excludes refence to the planning application as well as to other extrinsic evidence, unless the planning permission incorporates the application by reference. In that situation the application is treated as having become incorporated by reference. The reason for normally not having regards to the application is that the public should be able to rely on a document which is plain on its face without having to consider whether there is a discrepancy between the permission and the application: *Slough Borough Council v Secretary of State for the Environment* (1995) JPL 1128; Wilson v West Sussex County Council [1963] 2QB 764; *Slough Estates Limited v Slough Borough Council* [1971] AC 958"

90. In the present case, Respondent's Counsel stated that there was no planning application or other accompanying documentation so (2) did not apply. The 1998 Planning Permission was one with which no other documentation might be expected, unlike in *Barnett v Secretary of State for Communities and Local Government* [2010] 1 P&CR 8 where the nature of the planning permission was such that in addition to the permission, members of the public would expect there to be other documents such as plans. He added that even if there had been an application it would be unnecessary to refer to it as there was no ambiguity.

91. In *Trump International Golf Club Ltd v Scottish Ministers* [2015] UKSC 74; [2016] 1 WLR 85 at paragraph [34] Lord Hodge said:

"When the court is concerned with the interpretation of words in a condition in a public document…it asks itself what a reasonable reader would understand the words to mean when reading the conditions in the context of the other conditions and of the consent as a whole. This is an objective exercise in which the court will have regard to the natural and ordinary meaning of the relevant words, the overall purpose of the consent, any other conditions which cast light on the purpose of the

relevant words, and common sense. Whether the court may also look at other documents that are connected with the application for the consent or are referred to in the consent will depend on the circumstances of the case, in particular the wording of the document that it is interpreting. Other documents may be relevant if they are incorporated into the consent by reference ...or there is an ambiguity in the consent, which can be resolved, for example, by considering the application for consent."

92. In *Lambeth LBC v Secretary of State for Housing Communities and Local Government* [2019] 1 WLR 4317 in which Lord Carnwath stated at paragraph [19]:

"In summary, whatever the legal character of the document in question, the starting point-and usually the end point- is to find the natural ordinary meaning" of the words used, viewed in their particular context (statutory or otherwise) and in the light of common sense."

93. Respondent's Counsel stated the above decisions have since been followed by Holgate J in *Norfolk Homes Limited v North Norfolk District Council* [2020] EWHC 2265 (QB) at [62-80], restating the principles established by Lord Carnwath and Lord Hodge at [[64] and [6] respectively.

94. Thirdly, the Respondent's Counsel said that the 1998 Planning Permission expressly provides for houseboats, associated moorings and infrastructure. It does not provide for a caravan site. A caravan site is "...land on which a caravan is stationed for the purposes of human habitation..." (see s 1(4) Caravan Sites and Control of Development Act 1960).

95. In addition, the Town and Country Planning (Use Classes) Order 1987 provides at Article 3:

3.— Use Classes

(1) Subject to the provisions of this Order, where a building or other land is situated in Wales and is used for a purpose of any class specified in Schedule 1, the use of that building or that other land for any other purpose of the same class is not to be taken to involve development of the land.

96. The uses of land for houseboats, as a marina and as a caravan site are not included in the Schedules to the 1987 Order, they fall outside of the specified Use Classes and thus are considered to be *sui generis*. Changing the use of land from one *sui generis* use to another is development that requires planning permission.

97. In this Application, the *sui generis* use permitted by the 1998 Planning Permission, that being ostensibly for a marina for the mooring of houseboats for holiday purposes, is not the same as *sui generis* use of the Land as a caravan site, as statutorily defined. The 1998 Planning Permission expressly provided for houseboats, not caravans.

98. In the matter of *Winchester City Council v Secretary of State for Housing Communities and Local Government* [2015] EWCA Civ 563 the Court of Appeal considered an argument that a planning permission for a 'Travelling Show peoples' Site' also provided for a residential caravan site. There was no dispute that a

Travelling Show people's Site could encompass a residential caravan use but the Court considered that the words 'Travelling Show peoples' Site' had a functional significance, or functional limitation, that defined the use provided for by the planning permission [20]. The planning permission was limited in that context and did not provide for a use as a caravan site.

99. In the same context, the 1998 Planning Permission provides for a use of Land for houseboats, the term 'houseboat' having a functional significance, or a functional limitation. Respondent's Counsel referred to the Supreme Court decision in the *Lambeth LBC v Secretary of State for Housing Communities and Local Government* [2019] 1 WLR 4317 stating that a houseboat is ". . .a boat which is fitted for use as a dwelling. . ." as defined in the Oxford English

100. Respondent's Counsel said that a caravan, without adaptation, is not a structure that would float on water and be capable of human habitation.

101. In comparison he said that a planning permission for a caravan site would be a permission that allowed for any caravan to be stationed on the relevant land. Such caravan would be limited to the statutory definitions. A planning permission for a houseboat on the other hand is not so limited. There is no statutory definition of a houseboat except as expressly applied for by way of the planning application.

102. Respondent's Counsel said that there is a clear functional difference between a permitted use of land for the mooring of houseboats for residential use and a permitted use of land as a caravan site, both being different sui generis uses. It would not be a natural and ordinary meaning of the words contained in the 1998 Planning Permission to transpose "caravans" for "houseboats".

103. Respondent's Counsel drew attention to *Breckland District Council v Secretary of State of Housing Communities and Local Government and Plum Tree Country Park Limited* [2020] EWHC 292 (Admin) where Mrs Justice Lange DBE referred to the cases on interpretation and to the statutory provisions already mentioned above. In particular reference was made in [34] to [39] of her decision, to the definition of a caravan in section 29(1) of the Caravan Sites and Control of Development Act 1960. Counsel submitted that if there was no mention of caravan in the 1998 Planning Permission then it did not extend to caravans.

104. Fourthly, Respondent's Counsel referred to *Royale Parks Limited v Secretary of State of Housing Communities and Local Government* where it was held that there will be some planning conditions that apply to the entirety of the relevant land and cannot sensibly be regarded planning as being the subject of a partial breach only others apply only to a specific area. The issue of whether a case falls on one side or another is one of fact of degree. Respondent's Counsel submitted that in this case the 2014 Certificate can only apply to the Property.

Land Covered by Water

105. Respondent's Counsel accepted that for these purposes land can include areas covered by water.

Caravan Site

106. The Site or any part of it can only be a caravan site if so provided for by a planning permission. The 1998 Planning Permission does not provide for a caravan site.

Protected Site

107. Respondent's Counsel stated that the 1998 Planning Permission is not to be read in the context of the 2014 Certificate. The only effect of the 2014 Certificate is that it confirms that the houseboat at the Site can be used as a sole residence, there having been a breach of condition 1 on the 1998 Planning Permission such that the condition is no longer enforceable. It does no more. It does not change the primary use for which the 1998 Planning Permission provides and does not establish a protected site.

Applicant's Case re Agreement

108. Applicant's Counsel submitted that she had been given permission to station the Property on the Site as indicated on the plans provided. Reference was made to the plan annexed to the 2014 Certificate which identified the Property as being the Willerby caravan on its float together with an area of water to the right-hand side looking from the West Pontoon for a boat to be moored.

109. Applicant's Counsel stated that an oral agreement was obtained at time of purchase for use of the Property to live in as her sole residence, and that agreement was entered after the 2014 Certificate had been granted which was nearly three years earlier. As paragraph 2 to the notes to the 2014 Certificate and the Town and Country Planning Act 1990 section 191(6) make clear, that use is not restricted to use as a second home nor were times of the year specified when no caravan may be stationed on the land, as would prevent the site from being protected.

110. Applicant's Counsel referred the Tribunal to clause 7 of the Agreement that he said purports to prohibit residential use. He submitted that Clause 7 does not reflect the terms on which the Applicant purchased and in any event section 1(5) of the Mobile Homes Act 1983 provides that if an express term is included in an agreement to which the Act applies, but "was not set out in a written statement given to the proposed occupier in accordance with subsections (2) to (4)", then the term is unenforceable by the site owner.

111. Ms Jaffe had provided a statement that was supported by Ms Milton's saying that when Ms Jaffe discussed the purchase of the Property with Ms Zeka and Mr Armstrong both stated that the Property had security for permanent residence. Ms Jaffe confirmed this at the hearing. She said that she was aware of the 2014 Certificate and this was very important to her as she intended to live in the Property as her sole residence.

112. She said that she paid a bank transfer for £48.000 to pay for the Property and provided the Bill of Sale dated 26th May 2017. She said she moved into the Property on 26th May 2017 and on 5th June 2017 completed the necessary paperwork to set up a direct debit for the monthly marina fees which were in 2017 £290.00 per month.

She said that Ms Zeka handed her an annual Contract/Licence along with an Invoice for the Marina Fees. Ms Jaffe said that Ms Zeka also gave her a copy of the tariffs. She said that she truly believed that the document she was signing was just an invoice for the mooring fees and details of the cost of the services so she did not read it. She added that she had no idea that the documents affected her purchase of the Property and neither the General or Special terms and conditions on the back of the Licence were brought to her attention. Copies of the documents were provided.

113. Ms Jaffe went on to state that she was led to believe that the marina fees went towards the general maintenance, repair and upkeep of the Marina grounds, facilities and the access pontoons. She said she did not sign any of the annual agreements for 2018 and 2019 as it was the general understanding amongst the mobile home owners and lodge owners that these only applied to boats because they were vessels.

114. Ms Jaffe confirmed her statement at the hearing. In answer to questions which drew attention to the contents of the documents which she had signed Ms Jaffe stated that she had not read the documents and, in any event, believed that the Licence did not apply to her.

115. Ms Sue Rodwell Smith also provided a statement which gave background to the 1998 Planning Application and the 2014 Certificate. However, her statement did not add materially to the specific issues to be determined by the Tribunal.

116. Applicant's Counsel submitted that the Applicant is entitled to occupy her Property as a mobile home because:
the 1998 Planning Permission allows the caravan to be stationed on the Respondent's land;
the 2014 Certificate removed the holiday home condition allowing the Applicant to use the caravan as her sole residence;
the Permission and Certificate were extant when she occupied the caravan; and
the oral agreement with the Respondent allowed her to station her caravan on the Site.
Therefore, the Mobile Homes Act 1983 applies.

117. As the Mobile Homes Act 1983 applies Applicant's Counsel said that the Licence provided by the Respondent did not reflect the terms of the Written Agreement under the Mobile Homes Act 1983 and that the Respondent should be directed to provide the Applicant with a written statement of the terms on which she occupies the pitch, under section 1 (6), 1983 Act, including those matters specified in section 1(2)(a)-(e), of the Act.

Respondent's Case re Agreement

118. Respondent's Counsel stated that it is not correct to find that the Respondent agreed to the Applicant "stationing her mobile home at No.8 West Pontoon". The Respondent agreed to allow the Applicant to berth or moor her houseboat on the West Pontoon, by way of an annual Mooring Agreement. There was and is no acceptance that the Applicant can site a mobile home or caravan anywhere on the Respondent's land.

119. The Bill of Sale describes the goods sold by Mr Gerard Bol to the Applicant as a "ship" known as "No.8 West Pontoon". The Mooring Agreement provides for that "ship" to be moored or berthed at the West Pontoon. The Applicant is now seeking to interpret that Bill of Sale as applying only to the Willerby unit and the Mooring Agreement as providing for the stationing of the Willerby unit on the pontoon.

120. There is no agreement that allows the Applicant to site a caravan on land. There is no "pitch" as there is no lawful caravan site, the float cannot be a "pitch", it is an essential and integral part of the houseboat in sole ownership of the Applicant.

121. With reference to the Agreement Mr Aber's Statement said, noting the document provided that it was only ever a mooring agreement He said that the Respondent is terminating the Applicant's annual mooring agreement because:
(a) the West Pontoon where the Property is berthed has deteriorated and the Respondent intends to remove it and not repair or replace it.
(b) there are no other berths available.

122. Respondent's Counsel indicated that Ms Jaffe was somewhat naïve in not reading the agreement she had been provided with. He said that there was no dispute that the Applicant had purchased the houseboat from Mr Bols and was able to moor it at No 8 West Pontoon. As a result, the Applicant is not a trespasser.

123. The issue is whether the 1998 Planning Permission and 2014 Certificate allow the Applicant to station a caravan on that part of the Site occupied by the Property. The Respondent's position is that the Applicant's Property is a houseboat and the 1998 Planning Permission and 2014 Certificate allow a houseboat to be moored and do not allow for the stationing of a caravan.

124. At the hearing, as it was agreed that the Applicant was not a trespasser and that she had permission to station the Property on the Site as a sole residence, it was not necessary to call evidence as to what was said prior to the signing of the Licence. If the Tribunal determined that the Mobile Homes Act 1983 applied then the agreement entered into would not be compliant and a new agreement would need to be drawn up. If it determined that the Mobile Homes Act 1983 did not apply then the agreement would apply and any dispute as to what was said prior to entering the agreement would be a matter for the County Court, not the Tribunal.

Tribunal's Decision

125. The Tribunal considered each of the three main issues in turn.

The Property

126. Firstly, the Tribunal considered the facts as agreed by both Surveyors to determine the identity of the Property.
    1) The Property is a Willerby Caravan completely intact with both chassis and wheels attached and is considered to be in good condition.
    2) The Willerby Caravan sits on the float which also is in generally good order.
    3) The Willerby caravan simply sits on the frame of the float and is not secured, or otherwise attached, to the float.
    4) The caravan is connected to mains water, electricity and sewage.

5) The float is attached to the bed of the marina via the West Pontoon central walkway and a mud weight (concrete block) sits on the marina bed and the front of the Pontoon is attached, by a chain, to this block.

5) The float was constructed by Hartford Marina Limited and the caravan was then placed onto the float.

127. Secondly, the Tribunal examined the Patent Application as provided by the Respondent. The Tribunal found that the findings of the Surveyors corresponded with the description in the Patent Application. In particular that the Property is a caravan on a float and that the caravan could by the use of ramps be moved on and off the float.

128. Thirdly, the Tribunal noted that the findings of the Surveyors and the description in the Patent Application corresponded to marketing material that was provided which depicted structures the same as the Property and referred to them as the 'Hartford Houseboat'.

129. The Tribunal found that the Property is a caravan on a float, which is a type referred to on the Site as the 'Hartford Houseboat'.

130. The Tribunal did not see any virtue in considering whether it could be moved as a whole. In *Gray v Secretary of State for the Communities and Local Government & Harrogate Borough Council* [2015] EWHC 2452 (Admin), and *Carter v Secretary of State for the Environment* [1994] 1 WLR 1212 (CA) and *Webb v Frank Bevis Ltd* [1940] KBD 247 the issue was whether the structure was affixed or incorporated into its surroundings. This is not the case here the Willerby caravan is clearly identifiable; it is not fixed to the float and can be moved on and off. From the Surveyors reports it was apparent that the Property could be towed across the marina, as had occurred previously to a similar structure which was to be repaired, to a suitable place, such as a boatyard or shore of the marina. There the caravan could, by reason of its having wheels, be moved via ramps to the land from whence it could be loaded onto a vehicle and moved by road. Then if desired the float could be lifted separately from the water and moved.

131. To provide the Property with a particular nomenclature, such as the 'Hartford Houseboat' does not alter what it is, namely, a caravan on a float.

132. The sub-issue regarding the position of the Property on the Respondent's land was addressed by the parties under the second main issue of the Planning Permission. However as this did not appear to be contentious the Tribunal considered it appropriate to make a finding under the heading of the first main issue regarding the Property. The Tribunal finds that the Property is on the Respondent's land notwithstanding that there is a body of water between the Willerby caravan on its float and the land itself. The fact that the float is owned by the Applicant makes no difference as to whether the Property is on the Respondent's land.

The Planning Permission

133. The Tribunal then considered whether the 1998 Planning Permission together with the 2014 Certificate allowed for the stationing of a caravan on that part of the Site occupied by the Property.

134. Firstly, the Tribunal found, as held in *Adams v Secretary of State for Housing, Communities and Local Government and Huntingdonshire District Council* [2020] EWHC 3076 (Admin), that the 1998 Planning Permission applies and is only modified by the 2014 Certificate by the removal of the condition under section 191(1)(c) of the Town and Country Planning Act 1990.

135. Secondly, the Tribunal took account of the cases as to the interpretation of planning permissions. It firstly noted *R v Ashford Bought Council ex parte Shepway District Council* [1999] PLCR 12 QBD in which Keene J stated 5 rules, the first and general rule is that in construing a planning permission which is clear, unambiguous and valid on its face, regard may only be had to the planning permission itself, including the conditions (if any) on it. Secondly, this rule excludes refence to the planning application as well as to other extrinsic evidence, unless the planning permission incorporates the application by reference. Here, there was no evidence that any other documentation had been provided with the application.

136. It also noted *Trump International Golf Club Ltd v Scottish Ministers* [2015] UKSC 74; [2016] 1 WLR 85 and Lord Hodge's statement at [34] in particular that the words of a planning permission must be interpreted objectively, giving them their natural and ordinary meaning, the overall purpose of the consent, any other conditions which cast light on the purpose of the relevant words, and common sense." It further noted Lord Carnwath's statement in *Lambeth LBC v Secretary of State for Housing Communities and Local Government* [2019] 1 WLR 4317 at [19]:

"In summary, whatever the legal character of the document in question, the starting point -and usually the end point- is to find the natural ordinary meaning of the words used, viewed in their particular context (statutory or otherwise) and in the light of common sense."

137. Thirdly, the Tribunal applied the above to the 1998 Planning Permission which allowed the "...retention of use of land for 15 houseboats for holiday use, moorings, parking and ancillary development..."

138. The difficulty in this instance is that houseboats are not included in the Schedules to the 1987 Order, they fall outside of the specified Use Classes and thus are considered to be *sui generis*. Respondent's Counsel stated that the 1998 Planning Permission expressly provided for houseboats, not caravans. However, there is no definition of "houseboat" and in the present case, the houseboat referred to is a caravan on a float.

139. In *Sussex Investments Limited v Secretary of State for the Environment & Spelthorne Borough Council* [1998] PLCR 172 in which the meaning of "residential houseboat" was considered reference made, at page 179 A to D, to Lord Reid's statement in *Cozens v Brutus* [1973] AC 854 at 861:

"It is for the tribunal which decides the case to consider, not as law but as fact, whether in the whole circumstances the words of the statute do or do not as a

matter of ordinary usage of the English language cover or apply to the facts which have been proved. If it is alleged that the tribunal has reached the wrong decision then there can be a question of law but only of a limited character. The question would normally be whether their decision was unreasonable in the sense that no tribunal acquainted with the ordinary use of language could reasonably reach that decision." Also, to page 180 C to E it was stated that the decision should be based upon "the pictorial and literary material submitted to them".

140. The Tribunal found that when the 1998 Planning Permission was granted the Local Planning Authority must have known that it was in respect of the "houseboats" which were already in place, which were caravans on floats.

141. Under the 1998 Planning Permission alone, this raised no difficulties as the "houseboats" were originally only for holiday use and so the 1983 Act could not apply. There is also no difficulty when the 2014 Certificate is granted to Mr Bols, the original owner of the Property. The 2014 Certificate granted exemption from the condition which only allowed holiday use and gave him lawful use of the Property for "occupation as a sole residence" but he did not have that when he took up occupation so the 1983 Act did not apply. However, when the Applicant took up occupation in 2017 there was in place a planning permission which by reason of the 2014 Certificate allowed for "occupation as a sole residence" of what was described as a "houseboat" and which was in fact a caravan on a float.

142. The Tribunal is of the opinion that the essential point in this case is whether the reference in the 1998 Planning Permission to "houseboat" is actually a reference to a "caravan". The Tribunal finds that in these particular circumstances the permission is for what is actually there, and what is actually there is a caravan as defined in section 29 of the Caravan Sites and Control of Development Act 1960 which is incorporated into the Mobile Homes Act 1983 under section 5. There is no statutory definition of "houseboat" and the houseboat referred to in the 1998 Planning Permission is the "Hartford Houseboat" which is a caravan on a float. The Tribunal did not consider that the caravan had metamorphosed into something else because it had been placed on a float.

143. Therefore, the Tribunal finds the 1998 Planning Permission gave permission when the Applicant purchased the Property in 2017 for a caravan to be stationed on the Respondent's land and for it to be occupied by the Applicant as her sole residence by virtue of the 2014 Certificate.

144. Respondent's Counsel stated that permitting the use of land for a houseboat was not the same kind of use as permitting the use of land for a caravan. He referred to *Winchester City Council v Secretary of State for Housing Communities and Local Government* [2015] EWCA Civ 563 stating uses of like find *sui generis* have a functional use. He referred to the Oxford English Dictionary which defines houseboats as "a boat which is fitted for use as a dwelling".

145. The common factor was that both the caravan and the houseboat are fitted for use as a dwelling. However, in the present case the Tribunal found that the functionality use was not so singular in that as a caravan on a float the Property could be used on water but was capable of being taken off the float and used on land.

146. Having made the finding that the 1998 Planning Permission and the 2014 Certificate allowed the Property to be stationed as a caravan for human habitation it followed that the part of the Site on which the Property was stationed was a “caravan site” under section 1(4) of the Caravan Sites and therefore was “protected site” in respect of which the Mobile Homes Act 1983 applied.

Agreement

147. The Tribunal found it was agreed that the Applicant was not a trespasser and that she had permission to station the Property on the Site as a sole residence. The Tribunal therefore determines that the Mobile Homes Act 1983 applies. The Licence entered into is not compliant and a new agreement will need to be drawn up in accordance with the Mobile Homes Act 1983.

Summary

148. The Tribunal determines that:
    - a. The Applicant’s Property is a caravan on a float.
    - b. The 1998 Planning Permission and 2014 Certificate allow for the stationing of a houseboat, which in the circumstances of this case is a caravan on a float, on that part of the Site on which the Property is situated.
    - c. As the Property is a caravan which may be occupied as a sole residence, then the area edged red on the plan annexed to 2014 Certificate is a “caravan site” to which the Mobile Homes Act 1983 applies and therefore is a “protected site”.
    - d. The parties must enter into a Written Agreement that is compliant with the Mobile Homes Act 1983.

Judge J R Morris

APPENDIX 1 - RIGHTS OF APPEAL

1. If a party wishes to appeal the decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application for permission to appeal must arrive at the Regional Office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

3. If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e., give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

APPENDIX 2 – THE LAW

The Law

Section 4 of the Mobile Homes Act 1983 (as amended)

(1) In relation to a protected site in England, a tribunal has jurisdiction –
  (a) to determine any question arising under this Act or any agreement to which it applies, and
  (b) to entertain any proceedings brought under this Act or any such agreement subject to subsection (2) to (6).

(2) Subsection (1) applies in relation to a question irrespective of anything contained in an arbitration agreement, which has been entered into before that question arose.

(3) In relation to a protected site in England, the court has jurisdiction—
  (a) to determine any question arising by virtue of paragraph 4, 5 or 5A(2)(b) of Chapter 2, or paragraph 4, 5 or 6(1)(b) of Chapter 4, of Part 1 of Schedule 1 (termination by owner) under this Act or any agreement to which it applies; and
  (b) to entertain any proceedings so arising brought under this Act or any such agreement,

  subject to subsections (4) to (6).

(4) Subsection (5) applies if the owner and occupier have entered into an arbitration agreement before the question mentioned in subsection (3)(a) arises and the agreement applies to that question.

(5) A tribunal has jurisdiction to determine the question and entertain any proceedings arising instead of the court.

(6) Subsection (5) applies irrespective of anything contained in the arbitration agreement mentioned in subsection (4).