

Y TRIBIWNLYS EIDDO PRESWYL  
RESIDENTIAL PROPERTY TRIBUNAL

Reference: RPT/0033/12/19

In the Matter of 38 Heronstone Park, Heronstone Lane, Ewenny, Bridgend, CF31 3BZ

And in the Matter of the Mobile Homes (Wales) Act 2013 –Section 54(1)

Applicant: Trimmager Limited

Respondents: Mr Paul Jenkins and Mrs Susan Jenkins

Tribunal;  
Richard Payne – Tribunal Judge  
Mark Taylor- Surveyor Member  
Juliet Playfair – Lay Member

**ORDER**

Upon considering written representations from both parties and an application to withdraw from Mr Richard Mullan, Counsel for the Applicant, the application is withdrawn with no order as to costs or compensation or damages.

**IT IS ORDERED THAT;**

1. The tribunal consents to the withdrawal of the application.
2. There is no order as to costs or for compensation or damages.

**REASONS.**

1. The Applicant had originally sought an order that the Respondents should remove the cladding from their mobile home and return the exterior of the home to the style and colour which complies with the terms of their occupancy agreement and the Park Rules, to be agreed with the Park owner.
2. Evidence was exchanged and a full remote digital hearing took place by Cloud Video Platform (CVP) on 5th August 2020. Following that hearing, the tribunal made certain conclusions of fact and issued a decision dated 20th November 2020 to the parties. The tribunal sought submissions upon the question of waiver and/or equitable estoppel as well as submissions upon potential remedies and costs. A copy of the tribunal's findings is annexed to this decision at Appendix 1.

3. In response to the tribunal's order, the Respondents Mr and Mrs Jenkins provided details of the costs that they had incurred in cladding their mobile home by e mail to the tribunal dated 24<sup>th</sup> November 2020. By e mail of 7<sup>th</sup> December 2020, Counsel for the Applicant, Mr Richard Mullan, sent an e mail to the tribunal containing further submissions. Mr Mullan noted that the submissions were outside the time-scale given in the tribunal's order but asked that they be considered as they were intended to clarify the Applicant's position and to assist the tribunal. The tribunal is grateful to Mr Mullan for his representation and assistance throughout and accepted the submission.
4. The submission on behalf of the applicant, stated "*The Applicant accepts, in the light of the findings of fact made, that [the] Respondent should not be obliged to remove the cladding from his mobile home. The Applicant accordingly does not seek to pursue the remedy sought within the application and, with the permission of the Tribunal withdraws its application. In the light of the withdrawal of the application no further remedy is required under s.230(5A). The Applicant makes no application for costs. It is not anticipated that the Respondents would make any application given they are represented.*"
5. The Respondents did not make any submissions upon costs or claims for costs. They sent a further email to the tribunal on 16th December 2020 seeking updated information but this did not contain any submissions upon costs.

### **Decision.**

6. Regulation 35 of the Residential Property Tribunal Procedures and Fees (Wales) Regulations 2016 deals with the withdrawal of an application. Under regulation 35(3), a withdrawal cannot take effect where, as in this case, the tribunal has invited parties to make representations as to costs or other remedies such as compensation or damages (within the tribunal's powers under section 230 (5A) of the Housing Act 2004), unless the withdrawing party has given notice of the intended withdrawal to all parties and requested the tribunal to give directions as to the conditions on which the withdrawal may be made, and the tribunal has given such directions (regulation 35(6)(b)).
7. The submissions sent to the tribunal by Mr Mullan on 7 December 2020 were sent by the tribunal to the Respondents on 16th of December 2020 and therefore the tribunal is satisfied that notice of the intended withdrawal has been given to all parties. The applicant, the withdrawing party made no application for costs as set out above. In the circumstances, having carefully considered the contents of both parties' submissions in addition to the original findings of fact, the tribunal accepts the application to withdraw.
8. In the circumstances, there is no order for the tribunal to make under section 230(5A) and the tribunal makes no order for costs. The tribunal notes the Applicant's acceptance through its Counsel, that the Respondents should not be obliged to remove the cladding from their mobile home.

DATED this 11<sup>th</sup> day of January 2021.

R. Payne

TRIBUNAL JUDGE

# APPENDIX 1

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Tribunal: Richard Payne - Tribunal Judge  
Mark Taylor - Surveyor Member  
Juliet Playfair - Lay Member

**ORDER**

Upon hearing the application by cloud video platform at a digital hearing on 5<sup>th</sup> August 2020, and upon hearing Mr Richard Mullan, Counsel for the Applicant, and the Respondent in person:

IT IS ORDERED THAT;

3. The tribunal, in the light of the findings of fact in this draft decision consider that it is appropriate to allow further submissions from the parties. Therefore, by no later than 4 pm on Friday 4<sup>th</sup> December 2020 the parties are at liberty to file at the tribunal and to serve upon the other party by e mail;
  - a. Any submissions upon the question of waiver and /or equitable estoppel applicable to the facts found.
  - b. Any submissions on remedy with reference to the tribunal's powers under section 230(5A) of the Housing Act 2004.
  - c. Any submissions on costs, having regard to rule 34 (1) and (3) of the Residential Property Tribunal Procedures and Fees (Wales ) Regulations 2016 together with any supporting evidence of any costs incurred.
4. The Respondent Mr Jenkins is to file at the tribunal and serve on the Applicant by e mail by 4pm on 27<sup>th</sup> November 2020, a statement or schedule of the costs incurred by him in fitting the cladding to his home, together with any quotes or estimates for removing the cladding, supported by copies of relevant invoices for costs incurred and/ or estimates for costs to be incurred.

**REASONS.**

**Background.**

9. The Applicant Trimmager Limited, a company registered in the Isle of Man, by letter dated 29<sup>th</sup> January 2020 signed by Director P.W Garrett and addressed "To whom it may concern" confirmed that "in terms of all properties owned by this company in the United Kingdom, Michael Maguire and Chanel Maguire have at all times since 2012 had authority to act on our behalf and sign contracts and any other documents with regard to the properties."
10. The Applicant, via its agent and site manager Mr Michael Maguire, applied to the tribunal on 10<sup>th</sup> December 2019 for an order that the Respondents should remove the cladding from their mobile home and return the exterior of the home to a style and colour which complies with the terms of their occupancy agreement and the Park Rules, to be agreed with the park owner. The Applicant asserted that the cladding used by the Respondents is prohibited under the Park Rules. The Respondents maintain that they had the permission of the Applicant to clad their mobile home in the current materials.
11. Mr and Mrs Jenkins, the Respondents, occupy their mobile home at 38, Heronstone Park, under the terms of a written agreement dated 25<sup>th</sup> August 2008 between the site owner and previous occupants, which was assigned to the Respondents on 8<sup>th</sup> May 2017. Part 5 of the written agreement contains the "Express terms of the agreement". The Occupier Respondents' obligations are at paragraph 3 (a) to (n) of Part 5. Paragraph 3 says that "You agree with the Site Owner as follows:" and at paragraph 3 (e)
- "You must not, without the written consent of the site owner (which must not unreasonably be withheld) carry out any of the following;*
- (l) Building works to the mobile home or the base or the pitch....*
- .....
- (h) You must comply with the park rules. A copy of the current park rules is attached to this Written Statement."*
12. There was one set of park rules in existence at the time that the Respondents originally took up occupation at the Park, but these were replaced by the current Park Rules which were introduced after the passing of the Mobile Homes (Wales) Act 2013 ("the Act") and came into effect in 2014. The current park rules say in the Introduction that *"These rules will not have retrospective effect, meaning that they will only apply from the date on which they take effect. No occupier who is in occupation on that date will be in breach of these rules by reason of any circumstances known to the park owner which were in existence on that date and which would not have been a breach of the previous park rules."*
13. The relevant rules to the current issue are Rules 14, 16 and 17 which read as follows;
- Rule 14 "No extension of, or structural alteration to the exterior of the mobile home is permitted."*
- Rule 16. "If you wish to carry out improvements to your home or pitch you must make a written request to us in advance, setting out the details of the proposed improvements along with plans/sketches of the proposed improvements. No improvements may be carried out to the pitch or the exterior of the home without our prior written permission, which will not be unreasonably withheld."*

*Rule 17. "You must maintain the exterior of your park home in a clean and tidy condition. Where the exterior is re-painted or re-covered, you must use reasonable endeavours not to depart from the original exterior colour scheme and any exterior painted surfaces must be re-painted at least once every three years. UPVc cladding, or similar products, are not to be used to re-clad the exterior of the mobile home, with the exception of soffits and fascias."*

14. It was not in dispute that there was no written permission for the Respondents to clad their home in the disputed materials, but the Respondents maintain that they were given oral permission to do so. This is denied on behalf of the Applicant.

The hearing and evidence.

Inspection, 9.30 am August 5<sup>th</sup> 2020.

15. Due to regulations in force to deal with minimizing the spread of Covid 19 it was only possible to carry out an exterior inspection of the property which was undertaken by the Tribunal Judge and Surveyor in the company of Mr Jenkins. The Applicant was informed of the date and time of the inspection but there was no attendance by or on behalf of the Applicant. Heronstone Park comprises some 39 mobile home properties, restricted to occupants being a minimum of 50 years old. The park is in a semi-rural location in open countryside with pleasant views over the valley towards Ewenny Priory, yet is less than two miles of the county town of Bridgend, to the east, with additional local shopping facilities in close proximity, at Hernstone. The area has good road access to the M4 Junction 36, via the A48 with a railway station at Bridgend.
16. Access to the park is off the B4265 and along some approximately 500 metres of single carriageway, Heronstone lane, leading to a private drive with a coded security gate controlling entry into the park. The site is sloping so development has been facilitated over three terraced sections with significant retaining walls of varying height to respond to the cross slope and single width access road, which loops around the site with vehicles following a one-way system. There are no large common areas within the park but all planting, access roads and parking areas, including grass verges to the main drive way, are very well maintained.
17. Homes are of differing types and models but are all of a basic timber frame construction being clad in board finished in a roughcast texture with painted finish. Roofs are finished in textured metal in a tile profile. It would appear that all windows and doors are of PVCu. It was apparent that a small number of units had utilised, in part PVCu cladding and other bespoke render type external wall cladding systems.
18. The subject property, later identified by the applicant as a Home seeker Langdale Plus, is primarily of the same construction as utilised across the site. However, it has, atypically, been over clad in an insulated PVCu / Vinyl covering in a sand colour. No detailed

specification has been provided but enclosure within the Respondents' bundle, suggest that it is from the Royal Building product range. Rainwater goods and soffit boards are in white PVCu. There is a brick shirt enclosing the rear of the underside of the property. To the front elevation there is a block paver finish, providing parking for up to three vehicles. The plot, is located in the central terrace, falling gently down from front to rear and is mainly finished in concrete paving slabs with two small sets of steps and a small retaining wall, dealing with the change in levels.

19. Generally, the plot is of appropriate proportions allowing pedestrian access along both side elevations together with space storage sheds. Towards the rear there is a small garden with a mixture of predominantly hard landscaping and small areas of planting. This elevation backs on to the top of a large retaining wall and is finished with decorative metal railings to protect the edge. Being in an elevated position the rear affords views, over the properties in the lower terrace, to open countryside/farmland.

#### The Hearing.

20. There remained a stark contrast upon the evidence, and it is this contrast that, factually, remains at the heart of the case. The tribunal was provided with considerable written evidence, in terms of statements and supporting documentation from the parties, in addition to the oral evidence given at the hearing.
21. Mr Jenkins' position was that he had spoken upon a number of occasions to Mr Michael Maguire.
22. Mr Michael Maguire confirmed in his oral evidence to the tribunal that he had the authority of the applicant company to represent them. Mr Maguire, in his statement to the tribunal of 22<sup>nd</sup> January 2020 said that Mr Jenkins had contacted him via telephone in May 2019 to inform Mr Maguire that he was thinking of putting an insulating material on the exterior of his home and described it as being "similar to what other residents have used". Mr Maguire says that he highlighted that these insulating materials had not been used for long enough to be aware of any adverse effects that they may have on the home itself and that he advised Mr Jenkins to look into this if he wished to go ahead. He says that he asked Mr Jenkins to send samples and a written request if he did decide to go ahead so that Mr Maguire could review and give or decline permission accordingly. Mr Maguire says that at no point during the conversation did Mr Jenkins describe the material as a UPVC tongue and groove type material and that "I never received any further communication from Mr Jenkins and I assume that Mr Jenkins had changed his mind after looking into the points I have raised."
23. Mr Maguire said that the only other telephone call that he had with Mr Jenkins was after he had been informed by other residents that Mr Jenkins had put the cladding on his home. Mr Maguire had received written complaints about this. Mr Maguire in his oral evidence denied that he had given oral consent to Mr Jenkins for the works. He maintained that Mr Jenkins had initially called him to say that he was thinking of getting work done and that Mr Jenkins was going to send him samples or drawings, and that no consent was given to Mr Jenkins on anything, certainly no permission was granted for the



works that Mr Jenkins carried out. He described how, when Mr Jenkins said he was thinking of doing the work, that “if that was the case I would have no major concerns” but he stressed that no samples of material or written details were supplied to him by Mr Jenkins at any stage.

24. Mr Jenkins gives a different account. In his statement dated 17<sup>th</sup> January 2020, he describes how he researched the market and settled upon a product called Royal Vinyl Cladding which is heavily promoted in Parks Homes magazines. He says that he had his first conversation with Mr Maguire about this in May 2019 and that he fully appraised Mr Maguire of his plans, including the product, colour and time scales for installation. Mr Jenkins says that he offered to send samples and provided the manufacturer’s website address so that Mr Maguire could consider this for himself. Mr Jenkins said that he had done this in the knowledge that dispensation had been granted to others to use Upvc products on several other homes on the site. Mr Jenkins in his statement of the 17<sup>th</sup> January 2020 says that Mr Maguire said that although he did not like the product, that he would not stand in Mr Jenkins’ way and that he told Mr Jenkins to go ahead. Mr Jenkins asked him what he did not like and said that Mr Maguire replied that “the product had not been used in the UK long enough to see if there would be any long term adverse effects on the building core structure and that only time would tell”.
25. Mr Jenkins says that he was told to go ahead and when he asked Mr Maguire if he should put the request in writing, Mr Maguire replied that he was too busy. Mr Jenkins interpreted this as implying that Mr Maguire’s word was enough. Mr Jenkins says that he told Mr Maguire that he would ring him back with time scales and final colour choice.
26. Mr Jenkins then refers to a telephone call that he made to Mr Maguire some weeks later prior to confirming his order, and that this call was witnessed by Mr Alan Robson, a fellow resident of the Park. Mr Jenkin’s statement says that in contacting Mr Maguire, he wished to confirm his approval and that there would not be any adverse reaction from Mr Maguire going forward. Mr Jenkins’ describes how he was about to make a large financial outlay but Mr Maguire told him that he was familiar with the product, he had already given his consent and that Mr Jenkins should now go ahead. Mr Jenkins said that this is what he then did on the basis of that verbal approval.
27. Mr Jenkins says that his house phone was put on speaker during this call so that Mr Robson could hear what was being said. He said that it was Mr Robson who suggested this. In oral evidence to the tribunal, Mr Robson confirmed that he had advised Mr Jenkins to have someone with him upon learning that Mr Jenkins was going to phone Mr Maguire about the works as he had not had anything in writing.
28. Mr Robson in his oral evidence accepted that he and everyone was aware that it was part and parcel of park homes living that permission had to be in writing, but Mr Maguire “always does things orally- I’ve been here ten years, that is what he always does.” In his written statement, Mr Robson gives a detailed account of the phone call and that Mr Jenkins was phoning some two weeks after last speaking to Mr Maguire and giving him details of the materials to be used and method of installation. Mr Robson records; *“He again asked if he was okay with the proposed materials and method of installation and*

*said that it would be about 14 days for delivery. He had spoken to the people who were going to install the cladding and once given the go ahead would take 2 to 3 weeks to complete. Michael's words were, crack on I have no problems with it. Paul again asked if he was sure as he would be placing the order the next day. Michael again agreed everything was okay to carry on. I have no doubt from the conversation that Michael Maguire was fully aware of the material (vinyl) being used for the cladding and was fully aware of the method of installation to be used. He gave his permission for the work to be carried out."*

29. Mr Robson was cross-examined by Mr Mullan on this conversation, as was Mr Jenkins, and they maintained their account. Mr Jenkins said that it was on the basis of this conversation that he engaged the contractors and the work was undertaken.
30. Mr Jenkins said that inclement weather delayed the completion of the works, but Mr Maguire visited Mr Jenkins's home when he and his wife were away, post completion of the works and that he received a telephone call the next day from Mr Maguire saying that the cladding would have to go. Mr Jenkins says that Mr Maguire told him that he had received three complaints, two of which were anonymous and the request to remove the covering was at the request of Bridgend County Borough Council who would insist on its removal. Mr Jenkins said that he subsequently checked with a Mr Mike Wright, Licensing Officer of Shared Regulatory Services who told him that his department was not aware of this dispute and there was no reason for his department to become involved.
31. Mr Jenkins also said in evidence that he had sent a text message to Mr Maguire thanking him for speaking to him and saying that he was happy to provide details of the colouring and product details. He no longer has this text message since he says he deletes his texts fortnightly or monthly and at the time he was on a pay as you go Tesco mobile phone plan. He said that he did not receive any texts in return from Mr Maguire. It was also Mr Jenkins' evidence that he did not have itemised phone bills and so could not be certain about the dates and times of the phone calls that he claims to have made to Mr Maguire.
32. Mr Maguire also describes making a telephone call to Mr Jenkins after he had visited the property and seen the works. Mr Maguire says he told Mr Jenkins that the materials used were nothing like what he had explained and that he had not received any written request or samples as Mr Maguire had told him to do if he decided to go ahead with the works. Mr Maguire says that had he been sent samples then he would have denied Mr Jenkins request. Mr Maguire says that Mr Jenkins became quite heated and told him that he had already spent around £9000, adding that in a further telephone call some days later Mr Jenkins tried to convince Mr Maguire to allow him to keep the materials on his home and this time said that he had spent between £12-£13,000.
33. The tribunal also heard briefly from Mr Wayne Maguire (who we shall refer to as Mr Maguire senior to avoid confusion), and he had also provided a short written statement. However, this largely related to a difference of opinion as to the extent of his former communications with Mr Robson and this did not assist us with the central issue.

34. Mr Jenkins also provided a letter dated 1<sup>st</sup> October 2019 attached to his statement from, and signed by, Mrs Elaine Hall of 21 Heronstone Park. She says that Mr Jenkins asked her on 25 August 2019 if ‘we would write a letter saying that we were happy for the changed exterior of your home to remain’, and she says that she could not do that. She then says *“During this conversation you said that you had been given permission and I unthinkingly responded “yes Michael said”, and I stated that I had had a conversation with Mr Maguire on Tuesday 6<sup>th</sup> of August regarding the matter following his visit to your home on the Sunday prior. I had asked him why you had been allowed to use materials of a cladding nature, his response was that you had spoken to him prior to any work being carried out and he had given initial verbal approval based on the description you gave him, but continued saying that when he came to the home he was totally amazed at the appearance, and the material used did not appear to be what you (Mr Jenkins) had explained and he had expected the appearance to be similar to other homes, during this conversation Mr Maguire also stated that he had asked you to send samples.”* Mrs Hall says that this is a personal matter between Mr Jenkins and Mr Maguire, and she has provided the letter for the sake of remaining neighbours on friendly terms but does not wish to have any further involvement.
35. Mr Maguire had also included in his evidence a letter addressed to him dated 26 August 2019 from Mr and Mrs Hall. This letter complains about the appearance of Mr Jenkins home. Mr and Mrs Hall’s home looks down directly upon Mr Jenkins’, and in their letter they describe it as an “eyesore caravan” and they make it clear that they are not happy with its appearance and they also refer to rule 16 requiring written permission and all 17 in relation to UPVC cladding or similar products which are not to be used.
36. In Mr Maguire’s statement of 22 January 2020, he says that he had received more phone calls and letters of complaint about Mr Jenkins and some residents were saying that Mr Jenkins was trying to pressure them into writing letters of approval. He says that Mrs Hall had contacted him after Mr Jenkins had asked her to write a letter him stating that she had no issues with the materials used on his part home, and she went on to say that she felt she must write a letter to Mr Jenkins as he was being very forceful about it and she didn’t wish to spend the rest of her retirement on the park with a direct neighbour causing bad feelings towards her every day.

#### Analysis.

37. The tribunal was therefore faced with a stark conflict upon the facts as set out above. The respective accounts given by Mr Jenkins and Mr Maguire are wholly irreconcilable with regard to the central point as to whether or not Mr Jenkins was given oral permission to undertake the works. Mr Maguire is adamant that there was only one telephone call with Mr Jenkins before the works took place and that during that call he had said that samples of the material should be provided to him, and he denied that there had been a second call as described by both Mr Jenkins and Mr Robson.
38. Having very carefully considered the totality of the written and oral evidence, and having had the opportunity to see and hear from the witnesses, albeit by video link, the tribunal is of the unanimous opinion that it prefers Mr Jenkins’ account for the following reasons;

- a. there is some congruence between Mr Maguire and Mr Jenkins on the contents of the first conversation, for example both parties refer to Mr Maguire's misgivings about the proposed product because it had not been used in the UK for long enough to see if there are any adverse effects. Mr Jenkins sets out in detail what he said Mr Maguire told him, and Mr Maguire's statement confirms his concerns about insulating material. This conversation demonstrates that Mr Jenkins appraised Mr Maguire of the sort of product that he was proposing to use.
- b. Did the second telephone conversation, witnessed by Mr Robson, take place? Mr Maguire bluntly denied that there had been a second telephone call. The tribunal had the opportunity to listen to and assess the evidence being given by both Mr Jenkins and Mr Robson on this issue, both of whom were appropriately but robustly cross examined by Mr Mullan. Both Mr Robson and Mr Jenkins were clear that the purpose of the conversation was to obtain and confirm final permission from Mr Maguire who in effect said Mr Jenkins was to crack on with the project as he had no problems with it as Mr Robson put it. The tribunal finds therefore that this second telephone conversation did take place and the contents of it were as described by Mr Jenkins and Mr Robson, namely that Mr Maguire gave oral permission to Mr Jenkins to undertake the work that Mr Jenkins had described.
- c. In his evidence, Mr Jenkins said that he has requested matters orally in the past from Mr Maguire, for example permission for the shed and to install PV cells and he has said "no", and Mr Jenkins has accepted this. Mr Robson described Mr Maguire dealing with things orally. The tribunal found Mr Robson and Mr Jenkins to be reliable and truthful in their evidence.
- d. Mr Jenkins made the point that he would not have committed to significant expenditure without having permission to do so and that he had no reason to doubt Mr Maguire when he had given his verbal approval. The tribunal accept Mr Jenkins evidence upon this point.
- e. Mr Jenkins also gives details about the telephone conversation with Mr Maguire after the cladding had been fitted, when he says that Mr Maguire referred to the local Council stating that the cladding would have to be removed. Mr Jenkins told the tribunal how he had telephoned the Council as a result of this. In his oral evidence, Mr Maguire bluntly denied that this aspect of the conversation had taken place. The tribunal prefer Mr Jenkins evidence. Mr Jenkins was able to give the name of the licensing officer at the Council and a clear account of why he had telephoned the Council, we accept, on the balance of probabilities, that Mr Maguire did mention the Council as Mr Jenkins described.
- f. Mr Jenkins in his evidence, accepted when cross-examined by Mr Mullen, that he was aware of the park rules and that written consent should be sought under those rules. The tribunal find that Mr Jenkins had offered to send samples to Mr Maguire and to seek written consent but had been told by Mr Maguire that, in terms, he should get on with the work as Mr Maguire was familiar with the product and had given his oral permission.

39. The tribunal find therefore that the telephone conversations took place, and the content of those telephone conversations was as described by Mr Jenkins and Mr Robson. The tribunal do not accept that Mr Jenkins and Mr Robson have concocted all the details they have provided in an effort to mislead this tribunal, but they are giving a truthful and honest account.
40. Whilst the tribunal has reached its conclusions of fact upon the basis of careful consideration of the oral and written evidence of Mr Jenkins, Mr Maguire and Mr Robson, we find that support is given to our conclusions by the letter written to Mr Jenkins by Mrs Hall on 1st October 2019. Mrs Hall was not available for cross-examination by either party, but it is clear from the letter written by her and Mr Hall on 26th August 2019 that they were very unhappy with the appearance of the work undertaken by Mr Jenkins. Mrs Hall reasserts this in her letter to Mr Jenkins but gives a relatively detailed account of her telephone conversation with Mr Maguire on 6 August 2019 in which she recalls that Mr Maguire had admitted giving verbal approval for the work. The Hall's letter to Mr Maguire of 26 August 2019 refers to that telephone conversation on 6th August and records that Mr Maguire had said "*We were totally amazed at the appearance, and not what we had expected*". This is consistent with the letter written to Mr Jenkins.
41. Mr and Mrs Hall's letter of 26 August 2019 concentrates upon the need for written permission and does not mention that Mr Maguire had given verbal permission to Mr Jenkins. However, in recording that Mr Maguire had expressed his amazement and that the works were "*not what we had expected*", this clearly demonstrates that Mr Maguire had given permission for some works and had expected a particular appearance to result from those works. Mr Maguire had expected something, and this would not have been the case if he had never given any permission for any works at all. The tribunal bear in mind that this letter, in dealing with reported conversations, contains hearsay evidence, but the Hall's letter of 25<sup>th</sup> August 2019 is provided by Mr Maguire in his bundle of evidence to the tribunal and he sought to rely upon it rather than to challenge any part of its contents.

#### Decision.

42. The tribunal therefore finds that oral permission was given by Mr Maguire for the works as described by Mr Jenkins for the foregoing reasons. What is the effect of that finding of fact on the legal situation?
43. Mr Jenkins accepted that he was aware of the rules and that permission should be sought in writing. Mr Robson said the same. Mr Jenkins, when cross-examined by Mr Mullan said that he was aware that his proposed cladding was a contravention of the rules but that when he sought the guidance of the park manager Mr Maguire said "*I know exactly what it is mate, I work in the industry so get on with it.*"
44. The tribunal heard from Mr Jenkins that there had been other people upon the site who had used UPVC materials in contravention of the rules after being given oral permission to do so by Mr Maguire. Mr Jenkins also referred to work undertaken by his next-door neighbour Mr Dyche at number 37, who had also been requested to remove his external cladding by Mr Maguire upon the basis that no permission had been given only for Mr

Maguire to later retract this upon evidence being provided by Mr Dyche of an e mail exchange with Mr Maguire in which permission had been granted.

45. In relation to these other instances, Mr Mullan submitted that the tribunal should not be making a comparison with Mr Dyche or other instances where it may be said that other residents have used similar products but should be dealing with this individual case. Mr Mullan also submitted that the tribunal should not be seeking to assess whether the rules are proper, nor should the tribunal be tempted to form its own view as to the quality of the materials used. The tribunal agrees, and does not do so. The tribunal does not make any comment on the appearance or attractiveness or otherwise of Mr Jenkins' cladding and home and the tribunal did not have any technical or detailed evidence other than Mr Jenkins' assertions about the materials used by Mr Dyche and others. The tribunal accepts that the rules are entirely proper.
46. Mr Maguire provided the tribunal with three anonymous complaints about the appearance of Mr Jenkins' home, in addition to the letter of 26<sup>th</sup> August 2019 from Mr and Mrs Hall. One of these is dated 26<sup>th</sup> July 2019, the other two are undated. Such undated and anonymous complaints are of very little assistance to the tribunal, although they make points that have been made by Mr Maguire and Mr and Mrs Hall. Mr Jenkins too, supplied signed letters from his immediate neighbours on either side, indicating that they had no problem with the works that he had undertaken (albeit that the letter from number 39 appears to be erroneously dated in March 2019 before the works had commenced).
47. Mr Jenkins, who is not a lawyer, in page 4 of his written statement of 17<sup>th</sup> January 2020 said that "*written permission was waived [sic] by Mr Maguire.*" In his submissions to the tribunal, Mr Mullan said that even on Mr Jenkins' case, Mr Jenkins had 'the most wispy of consents' and that Mr Jenkins knew better than to make a written application which he knew would fail and that Mr Jenkins deliberately chose not to abide by the simple rule to seek written permission. The tribunal do not accept this. We find that Mr Maguire had given oral consent to the work and that, since Mr Jenkins had given details of the product and phoned again to check before ordering, that he was not trying to circumvent the rules but was relying upon what Mr Maguire told him.
48. Mr Mullan submitted that the tribunal should find that it was most unlikely that any oral agreement had been made, but this was on the basis of his client's instructions and evidence that there had been no second or subsequent phone call. We have, on the balance of probabilities, not accepted Mr Maguire's evidence on this issue.
49. Whilst Mr Mullan did briefly touch upon the question of there being some form of equitable estoppel were the tribunal to find that there was some form of oral agreement, he submitted that the purpose of rule 16 was to give protection against this. The tribunal did not hear detailed submissions upon the point. In the light of the tribunal's findings of fact, the tribunal consider that it is appropriate and fair to give both parties the opportunity to make further submissions upon the question of equitable estoppel and/or waiver, remedy and the tribunal's powers under section 230 (5A) of the Housing Act 2004 and costs before the final decision is promulgated.

DATED this 20<sup>th</sup> day of November 2020.

R. Payne

TRIBUNAL JUDGE