



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : CHI/00HE/PHC/2014/0004

Property : 36, Manor Park, Resugga Green,
Penwithick, Cornwall PL26 8YP

Applicant : Hills Leisure UK Limited

Representative :

Respondent : Mr and Mrs Roalfe

Representative : Crosse + Crosse Solicitors LLP

Type of Application : Refusal order under the Mobile Homes Act
1983 (as amended)

Tribunal Member(s) : Judge D. Agnew

Date and venue of CMH :

Date of Decision : 4th June 2014

DECISION

Background

1. The Applicant is the site owner of a protected Park Home site at Manor Park, Resugga Green, St Austell, Cornwall PL26 8YP. The Respondents are the current owners of a mobile home on a pitch at Manor Park and numbered 36. The Respondents have agreed to sell their mobile home and to assign the Mobile Homes Act agreement in respect thereof to Captain and Mrs Misske. The Applicant objects to the proposed sale on the ground that Captain and Mrs Misske own a dog which they propose to have live with them in the mobile home and the Applicant says that this would be against the site rules for Manor Park.
2. On 17th April 2014 the Respondents' solicitors, Crosse + Crosse, sent to the Applicant a "Schedule 2" Notice on the form prescribed by The Mobile Homes (Selling and Gifting) (England) Regulations 2013 informing the Applicant that the Respondents were the legal owners of the mobile home at 36 Manor Park which they were proposing to sell to Captain and Mrs Misske, that they had supplied the proposed purchasers with a copy of the Site Rules, that the buyers confirmed that they had read and understood the said Rules and that they were able to comply with them. The notice went on to say that they intended to keep a dog at the property and that it was one small dog of the Bichon Frise breed. The form also stated that the Misskes intended to park one car on site and that their ages were 58 years (Captain Misske) and 55 years (Mrs Missk) although these factors are not relevant to this case. The Notice was signed by both Mr and Mrs Roalfe as well as by Captain and Mrs Misske and dated 11th April 2014 in the case of the Misskes and 16th April 2014 in respect of the Roalfes. This Schedule 2 Notice was sent by the solicitors by email and by guaranteed delivery through the post.
3. The Applicant's application to the Tribunal for a refusal order preventing the proposed sale to the Misskes was dated 1st May 2014 and was received at the Tribunal office on 6th May 2014. On 1st May 2014 the Respondent wrote to the Respondent Mr Roalfe (but not to Mrs Roalfe) acknowledging receipt of the Schedule 2 notice and saying "We have made an application to the Residential Property Tribunal (sic) to refuse permission for this sale on the grounds that they [the Misskes] have a dog." The letter also states that "no permission is being granted for further pets for the time being on the park so they would be in breach of the site rules."
4. The Tribunal issued Directions on 8th May 2014 requiring the Respondents to file and serve their statement of case by 28th May 2014 together with any witness statements, the Application form being taken to be the Applicant's case. The Directions also stated that the Tribunal proposed to determine the application on the basis of written representations and without a hearing under Rule 31 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 unless either party objected within 28 days of receipt of the Directions. The Applicant's representative acknowledged receipt of the Directions and

asked that she be allowed until 23rd May 2014 to respond on this point. In the event, the Applicant did not object to the Rule 31 procedure being adopted and the Respondents consented to it.

5. The Respondents filed and served their statement of case together with the witness statements of both Mr and Mrs Misske, a submission from Crosse + Crosse to supplement the factual evidence and a small bundle of legal authorities. The solicitors confirmed that they had sent these documents to the Applicant on 21st May 2014. There were no further submissions from the Applicant or any request to be permitted to respond further to the Respondents' case.

The Applicant's case

6. The Applicant's case is very straightforward. It says that the Schedule 2 Notice clearly states that it is the Misske's intention to keep a dog on the Park, that the site rules give the site owner an absolute discretion to refuse to allow "new pets" onto the site without the site owner's permission and that "for the time being" no such permission is being given. Thus the Misskes would be in breach of the site rules if they were allowed to purchase the Respondent's mobile home and take an assignment of the Mobile Homes Act agreement. This is a ground allowing the site owner to apply for a refusal order under the Mobile Homes Act 1983 (as amended) ("the Act") thus preventing the sale to the Misskes.

The Respondents' case

7. The Respondent's case is far more complicated. They first of all seek a declaration that the Applicant has failed to comply with the statutory requirements of paragraph 7B of Schedule 1 of the Act in that the notification that the site owner had applied to the Tribunal was addressed to only one of the occupiers, namely Mr Roalfe, when it should have been addressed to both Mr and Mrs Roalfe. They are joint owners of the property, the assignment of the Mobile Homes Act agreement is to both of them and they both gave the Schedule 2 Notice to the Applicant. This failure to address the notification to both Mr and Mrs Roalfe, say Crosse + Crosse, is a fatal defect in the procedure which means that the Applicant is not entitled to the order they seek. They ask that this be dealt with as a preliminary point such that if they succeed on this point there is no need for the Tribunal to consider the merits of the case further, although the Tribunal may wish to do this in the alternative.
8. The next point that the Respondents make is that there is in fact no site rule in place as relied upon by the Applicant because it has frequently and consistently been ignored by the Applicant not only in respect of homes on the site which the Applicant owns and rents out on short term lets but also on a recent sale by the Applicant of a home on the Park where it was advertised on the basis that pets were allowed. A

copy of the sales advertisement to was exhibited to Mrs Roalfe's statement. She estimates that since the start of 2013 18 dogs have been allowed to come on site including a Husky and three Staffordshire Bull Terriers. The Respondents say that site rules should apply to owner/occupiers and renters alike. She says that of the 58 homes on the Park, 36 are "owner occupied" and the remainder, they believe, are owned by the site owner.

9. In her statement Mrs Roalfe states that the site rules were different when she and her husband bought their property in July 2007 and that there has been no consultation as to any change in the rules since that time. She does not say, however, what the rule about keeping pets was when she purchased and no copy of the former rules was contained in the evidence before the Tribunal.
10. The next point raised by the Respondents is that the Rule with regard to the keeping of pets offends against several of the terms of the Unfair Terms in Consumer Contracts Regulations 1999. In view of the Tribunal's determination on the previous points made by the Respondents it is unnecessary for the Tribunal to set out their arguments on this point in any detail.
11. Next, the Respondents argue that an implied term to the effect that the Applicant's consent to the keeping of pets on the Park is not to be unreasonably withheld should be read into the rule. They cite the case of *Shirlaw v Southern Foundries (1926) Limited 1939 2All ER 113* in support.
12. Finally, the Respondents cite *Socimer International Bank Limited (in liquidation) v Standard Bank London Limited (2008) EWCA Civ 116* as authority for the proposition that where a contract confers an absolute discretion on one party, that party must exercise its discretion honestly, in good faith and not arbitrarily, capriciously, perversely or irrationally. They say that this is what the Applicant is trying to do here. They ask the Tribunal to refuse the Applicant's application.
13. Witness statements were provided by Captain and Mrs Misske exhibiting pictures of their dog which is evidently a very small toy dog. They say she is two years old weighing less than 10kg fully grown. They say she is affectionate and obedient. She would be kept indoors save for one daily walk of about 30 minutes. She would be no trouble on site and they would ensure that she was kept on a lead when outdoors.

The Law.

14. Paragraph 7B of Part 1 Schedule 1 to the Act as amended by the Mobile

Homes Act 2013 provides as follows:-

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

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

(b) the first or second condition is satisfied.

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

(3) The second condition is that –

(a) within the 21-day period –

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

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

(b) the tribunal rejects the application

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

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

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

(7) An application for a refusal order may be made only on one or more of the grounds prescribed in regulations made by the Secretary of State.

15. By Regulation 7 (1) of The Mobile Homes (Selling and Gifting) (England) Regulations 2013 it is stated that “The grounds prescribed for the purposes of paragraph 7B(7) of Chapter 2 of Part 1 of Schedule 1 to the 1983 Actare that, if the proposed occupier were to become the occupier, the proposed occupier or a person intending to reside with the proposed occupier would breach a pre-commencement rule or site rule –

(a) [not relevant]

(b) by keeping animals that are of a description specified in the rule.

Relevant provisions of the agreement and the site rules

16. The site rule that the Applicant seeks to impose is as follows:-
“No new pets without the park owner’s permission and all owners are responsible for their current pets’ behaviour”
17. An express term of the Mobile Homes Act agreement is that the occupier undertakes “not to become a nuisance or cause annoyance, inconvenience nuisance or disturbance to the owner or other occupiers on the park..... “
18. The owner undertakes as an express term of the agreement not to add to or amend the park rules except in accordance with provisions which include the giving of notice of any proposed amendments and giving the occupiers the opportunity of seeking a meeting to consider the proposals and vote upon them.

The Tribunal’s decision

19. The Tribunal determines the preliminary point in favour of the Respondents. Section 7B of the Act requires that notice of the application for a refusal order is sent to the occupier within the period of 21 days from the date of receipt by the site owner of the occupier’s notice of proposed sale. Both Mr and Mrs Roalfe are occupiers. The Applicant’s notification should have been addressed to both of them. Without the notification having been addressed to Mrs Roalfe as well as Mr Roalfe it cannot be said that notification was given to her. Accordingly, she did not receive notification within the 21 day period and the first condition set out in paragraph 7B(2) is satisfied meaning that the sale can proceed without the site owner’s consent under paragraph 7B(1)(b). This is re-inforced by paragraph 7B(4) which says that if the owner applies to a tribunal for a refusal order within the 21-day period but the occupier does not receive notice of the application from the owner within that period then the application is to be treated as not having been made.
20. It may be said that Mrs Roalfe has never denied that the notice came to her attention within the 21-day period and that notice to her husband was therefore effective notice on her as they live at the same address. However, the content of and rules concerning the service of notices are usually regarded as requiring strict compliance unless some latitude is specifically given that minor defects may be disregarded. No such latitude is given in the Act or the Mobile Homes Act 2013 or the Regulations thereunder. The Tribunal concludes therefore that as an occupier Mrs Roalfe should have been sent either separately or in a notice addressed to Mr and Mrs Roalfe, a notice that the application for a refusal order had been made within the 21-day period. Without it, the application to the Tribunal must be regarded as not having been made (Regulation 7B(4)) and so the application must be refused on that ground alone.

21. There is arguably a further reason why the notification to Mr Roalfe of the application to the Tribunal is not valid, although this was not a point raised by the Respondent's solicitors. The point is that the notification was sent to him on 1st May 2014 which is the same date that the Applicant signed the application form and sent it to the Tribunal. The date stamp on the application form shows that the application was received by the Tribunal office on 6th May 2014. It is trite law that an application is not made until it is received by a court or tribunal office. Thus, the application was not made until 6th May 2014. The notice to Mr Roalfe dated 1st May 2014, however, states that the site owner has made an application to the Tribunal, which, on that date he had not. Although not binding on this Tribunal, the decision in the Tribunal case of 11 Scatterdells Park Ref CAM/26UC/PHE/2013/0005 is to the effect that the wording of the condition requires the application to have been made before the notification is given to the occupier. This Tribunal respectfully agrees with that construction of the statute. The Respondents' solicitor has advised the Tribunal that he believes that decision to be subject to an appeal but unless or until it is overturned on appeal, that decision stands. This Tribunal has independently come to the same conclusion as the Tribunal in the Scatterdells Park case and is an additional reason why the Tribunal should reject the application for a refusal order. Although not a point raised by the Respondent, the Tribunal considers it right to raise the matter itself as it is a point that goes to the jurisdiction of the Tribunal to make a refusal order.
22. In case the Tribunal is wrong in having so determined, it has proceeded to consider the merits of the application. In this regard it should be borne in mind that the Tribunal had no evidence before it from the Applicant that disputed the Respondents' evidence concerning the Applicant's disregard of the purported rule concerning the keeping of animals not only in relation to mobile homes owned by the Applicant and rented out by them but also in relation to owner occupied mobile homes. The Tribunal has therefore accepted the Roalfes' evidence concerning the number of dogs that have been allowed on the Park recently.
23. The Tribunal accepts the Respondents' argument that site rules apply to all mobile homes on site. The whole purpose of them is to create a certain character to the Park so that those living there know and accept compliance with an agreed set of standards. It would defeat that object if the site owner could disregard the rules either when it suited him or in respect of mobile homes owned by him and rented out particularly where it owns a significant proportion of the mobile homes on the site.
24. It is, however, necessary to look carefully at the purported rule. This states "No new pets without the site owner's permission". In its reasons for seeking a refusal order the site owner stated that no permissions were being granted for the time being. The rule that the site owner is purporting to uphold, therefore, is different from the rule contained within the site rules. It is saying, in effect, that at least for the time being the rule against new pets is absolute whereas the site rules give

the site owner a discretion to allow them. The Tribunal finds that this amounts to a change in the rules for which the procedure as set out in the Mobile Homes Act agreement has not been followed and cannot therefore be relied upon by the site owner.

25. If the Tribunal is wrong in so finding it would have agreed with the Respondents that the wholesale disregard of the purported rule by the site owner would amount to saying that the rule no longer applied and that it would not be a valid reason for opposing the sale to the Misskes.
26. Finally, if the Tribunal is wrong in all its findings as set out above and that the rule with regard to pets as stated in the site rules does still apply, the Tribunal finds that it would be necessary for the site owner actually to apply its mind to the case before it in order properly to exercise its discretion. In the *Socimer International Bank Limited* case, which was one of the authorities cited by the Respondents' solicitors, Lord Justice Rix said at paragraph 66:-
"It is plain from these authorities that a decision-maker's discretion will be limited, as a matter of necessary implication, by concepts of honesty, good faith, and genuineness, and the need for the absence of arbitrariness, capriciousness, perversity and irrationality". In the sense that there has been on the Roalfe's unchallenged evidence a wholesale disregard of the purported policy to refuse permission for "new pets" save for their proposed sale to the Misskes the Tribunal concludes that this is evidence of arbitrariness, capriciousness and/or perversity in the exercise of the discretion and that this was therefore not a valid exercise of the discretion that is a constituent part of the written site rules.
27. In view of the Tribunal's findings as set out above, the Tribunal does not consider it necessary to decide whether the rule breaches the Unfair Terms in Consumer Contracts Regulations 1999 or to consider whether an implied term that consent should not reasonably be withheld should be imported into the rule in question. Had it been necessary to do so, however, the Tribunal can indicate that it would have been slow to find that the importation of such a term would have been right as this would have entailed interfering with the contractual terms as agreed between the parties.

Conclusion

28. For all the reasons stated above the Tribunal refuses to make a refusal order which means that the Respondents are now free to sell their mobile home and assign the Mobile Homes Act agreement to Captain and Mrs Misske.

Dated the 4th June 2014

Judge D. Agnew

Appeals

1. A person seeking permission to appeal this decision must make a written application to the Tribunal for permission to appeal.
2. An application must be in writing and must be sent or delivered to the Tribunal so that it is received within 28 days of the date that the Tribunal sends these reasons for the decision to the person seeking permission to appeal.
3. The application must –
 - (a) identify the decision of the Tribunal to which it relates
 - (b) state the grounds of appeal; and
 - (c) state the result the party making the application is seeking.
4. If the person seeking permission to appeal sends or delivers the application to the Tribunal later than the time required in paragraph 2 above or any extension of time granted by the Tribunal –
 - (a) The application must include a request for an extension of time and the reason why the application was not received in time; and
 - (b) unless the Tribunal extends time for the application the Tribunal must not admit the application.



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(RESIDENTIAL PROPERTY)**

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Property : 36, Manor Park, Resugga Green,
Penwithick, Cornwall PL26 8YP

Applicant : Hills Leisure UK Limited

Representative :

Respondent : Mr and Mrs Roalfe

Representative : Crosse + Crosse Solicitors LLP

Type of Application : Refusal order under the Mobile Homes Act
1983 (as amended)

Tribunal Member(s) : Judge D. Agnew

Date and venue of CMH :

Date of Decision : 18th July 2014

**DECISION ON REVIEW AND ON APPLICATION FOR PERMISSION
TO APPEAL**

SUMMARY OF DECISION

- 1. The Tribunal has reviewed its determination of 4th June 2014 in the light of the representations on behalf of the Applicant and witness statement of Mr Hill dated 30th June 2014 and the Applicant's application for permission to appeal the Tribunal's determination of 1st July 2014 and has decided to take no action. The determination of 4th June 2014 therefore stands unaltered.**
- 2. The Tribunal gives permission to appeal the decision of 4th June 2014 such permission being limited solely to the Tribunal's finding that failure to give notice specifically to Mrs Roalfe that the Applicant had applied to the Tribunal for a refusal order meant that the first condition set out in paragraph 7B(2) of the Mobile Homes Act 1983 (as amended) ("the Act") had not been satisfied.**
- 3. Permission to appeal is refused in respect of all other grounds of appeal contained in the Applicant's application for permission.**

Background

- 4. The background to the determination of the application for a refusal order dated 4th July 2014 and to the decision to review that determination was given in paragraphs 3-5 of the determination and paragraphs 1-3 of the decision to review respectively.**
- 5. Following the decision that the Tribunal would carry out a review the Respondents filed and served a skeleton argument in respect of the review and a second witness statement of Mrs Roalfe which firmed up the contents of her first statement. The Applicants first sought an adjournment of the hearing fixed for the review on the ground that the Applicant's director, Mr Hill, had a pre-existing commitment on the proposed date which he could not re-arrange. That request was refused on the basis that this was an urgent matter, that the final determination of the case had already been delayed largely as a result of the Applicant's failure to submit its reply to the Respondent's case in a timely manner and that no explanation had been given that only Mr Hill could give the necessary evidence or conduct the case on behalf of the Applicant. The Applicant, in response, asked the Tribunal to proceed on the basis of the written material it had already submitted. Following receipt of the Respondent's further witness statement and skeleton argument the Applicant stated that "as Mr Hill is unavailable at present" it was "not in a position to respond to the evidence at this late stage".**
- 6. At the hearing on 18th July 2014 the Respondents were represented by**

their solicitor, Mr Selley. The Applicants were also present as were Captain and Mrs Misske. As they had previously advised the Tribunal, there was no appearance on behalf of the Applicant.

Decision on review

7. The Tribunal first undertook a review of its decision in the light of the Applicant's submissions submitted under cover of its letter of 30th June 2014, Mr Hill's witness statement of the same date and the "Notice of Appeal" dated 1st July 2014. The Tribunal was not persuaded by any of the arguments put forward by the Applicant and had they been before the Tribunal at the time it made its determination on 4th June 2014 it would not have affected its decision in any respect. The Tribunal therefore decided that it would take no action pursuant to the review.
8. The Tribunal then proceeded to decide whether or not to grant permission to appeal the decision of 4th June 2014. As mentioned in its decision to review of 3rd July 2014 the question as to whether or not the site owner is required to give notice to each and every occupier that it has applied for a refusal order in order to comply with paragraph 7(2) of Schedule 1 to the Act is arguable and is a point of importance to both site owners and occupiers upon which there is no authority as far as this Tribunal is aware and upon which a ruling from the Upper Tribunal would be helpful. Whether or not, in the light of the effect of the rest of the Tribunal's decision with regard to permission to appeal, the Applicant decides to proceed with an appeal on this limited ground is a matter entirely for the Applicant.
9. The Tribunal refuses permission to appeal its finding that paragraph 7(B)(2) of Schedule 1 to the Act requires the application for the refusal order to be made before notice that it has been made is given to the occupier. On construing the wording of that paragraph the Tribunal finds that it is clear from the use of the past tense in the words "has applied" that the Act requires the application to have been made before notification and that it is not made until received at the Tribunal office. The Tribunal does not accept, therefore that there was any error of law in finding as it did.
Any procedural irregularity in not having given the Applicant the opportunity of responding to this point has been cured by the Applicant having now made its submissions on the point.
10. The Tribunal refuses permission to appeal on the ground that it wrongly made findings of fact in the absence of any rebuttal evidence from the Applicant. The Tribunal made its findings of fact on the evidence before it. If the Applicant wished to adduce rebuttal evidence it was incumbent upon it on receipt of the Respondents' witness statements without delay to either seek a variation of the directions order to allow for such rebuttal evidence to be given or to file and serve it anyway (which is, in fact what they did but only after a delay of almost six weeks). The Applicant would have been aware that under the directions as they stood they were at risk of the case being decided at any time on the papers

before it after the Respondents submitted their case to the Tribunal. The fact that the Applicant did not feel constrained by the Directions is evidenced by the fact that they did make submissions and file a witness statement (albeit after the Tribunal had already decided the case) without any further application to the Tribunal. The fact that the Applicant chose not to go into detail to rebut the factual evidence provided by the Respondents was their choice. They could have given a detailed rebuttal but they did not do so relying on the assertion that the Tribunal could not make findings of fact on a paper determination. The Tribunal does not accept that assertion. If the Applicant had made a detailed rebuttal then it is likely that the Tribunal would have reconsidered its decision to decide the case without an oral hearing. As it is the Applicant has still not provided any detailed rebuttal of the Respondents' factual evidence save the assertion that the Respondent's evidence is challenged despite the fact that the Tribunal stated that on reviewing its decision it was prepared to hear oral evidence

11. With regard to Grounds 3 to 6 of the Applicant's application for permission to appeal any procedural irregularity in failing to give the Applicant the opportunity of challenging the point has been cured by the review process where the Applicant's submissions on the point have now been received and considered by the Tribunal and an opportunity has been given to the Applicant to present oral evidence if it wished to do so. In the absence of a detailed rebuttal of the Respondents' evidence the Tribunal was entitled to reach the decision it did as set out in paragraphs 22 to 26 of its determination of 4th June 2014.
12. In that determination the Tribunal gave a number of reasons why it refused to make the refusal order requested by the Applicant. In respect of only one of those reasons a limited permission to appeal has hereby been granted. The other reasons for refusing the order still stand unless the Upper Tribunal gives permission to appeal those reasons. Consequently, the decision to refuse to make the refusal order still stands unless it is overturned on appeal by the Upper Tribunal. In those circumstances the Tribunal is not minded to grant a further stay of the effect of the order pending any further application to the Upper Tribunal and does not do so.

Dated the 21st July 2014

Judge D. Agnew

Appeals

1. In accordance with Section 11 of the Tribunals, Courts and Enforcement Act 2007 and rule 21 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010, the Applicant/Respondent may make a further application for permission to appeal to the Upper Tribunal (Lands Chamber). Such application must be made in writing and received by the Upper Tribunal (Lands Chamber) no later than 14 days after the date on which the First-tier Tribunal sent notice of this refusal to the party applying for permission to appeal.