



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

Case Reference : CHI/24UL/PHN/2014/0006

Property : Brookside Park, Hawley Lane, Farnborough,
Hampshire. GU14 9AZ

Applicant : Mr A Allum

Representative : ---

Respondent : Farnborough Caravan Sites Limited

Representative : Mr R C Mourton

Type of Application: Application, by way of an appeal, under Regulation
10 of the Mobile Homes (Site Rules)(England)
Regulations 2014 (“the 2014 Regulations”) to
determine new site rules – Section 2C of the
Mobile Homes Act 1983 (as amended)(“the 1983
Act”)

Tribunal Members : Judge P.J. Barber
Mrs H C Bowers BSc(Econ) MRICS MSc Surveyor
Member
Judge M Tildesley OBE

Date and venue of 26th February The Casa Hotel, Handford Lane,
Hearing : 2015 Yateley, Camberley, Surrey
GU46 6BT

Date of Decision: 10th March 2015

DECISION

© CROWN COPYRIGHT 2015

Decision

- (1) The Tribunal determines the Applicant's appeal in regard to the Respondent / Owner's decision concerning proposed new park site rules, in accordance with the provisions of the Schedule below.

Reasons

INTRODUCTION

1. The Respondent served, by letter dated 27th August 2014, upon the Applicant and other occupiers of the park homes site at Brookside Park, 121 Hawley Lane, Farnborough, Hampshire GU14 9AY ("the Site"), a formal notice pursuant to Schedule 1 of the 2014 Regulations, proposing new site rules for the Site, and calling for consultation responses from the occupiers, to the proposed new site rules, such responses to be given by 24th September 2014.
2. By letter to Mr Howard of the Respondent dated 21st September 2014, including an attachment signed by approximately 33 occupiers, various representations from the occupiers of the Site, were set out and explained in regard to the proposed new site rules. The Applicant indicated the reasons for the representations; in some cases there were no real objections, subject to the wording of the proposed new site rules being improved, but in other cases more serious reservations were expressed.
3. By letter to the occupiers, including the Applicant, dated 14th October 2014, the Respondent indicated that it had taken into account any representations received and attached a formal consultation response pursuant to Schedule 2 of the 2014 Regulations, setting out its decision, being in broad terms to implement all the proposed new site rules, save for an amendment to the proposed new rule 16, relating to pets and animals.
4. On 1st November 2014, the Applicant submitted an application in this matter to the Tribunal in respect of the Site, by way of appeal under rule 10(2)(c)(i) of the 2014 Regulations. Accordingly the application is for the Tribunal to determine, pursuant to rules 10 and 11 of the 2014 Regulations, whether the Respondent's decision was unreasonable regarding the proposed new site rules, with particular reference to the representations received in response to the consultation. Directions were issued by the Tribunal in the matter dated 26th November 2014.
5. The Tribunal has been provided with a bundle of documents which include copies of the application, the proposed new site rules, the occupiers' representations and the Respondent's decision.

INSPECTION

6. The Tribunal inspected the Site immediately prior to the hearing in the presence of Mr Allum and Mr Mourton, the Respondent's site manager. The Site comprises approximately 69 homes and is located in close proximity to the M3 Motorway; there is a main access road which is tarmac surfaced, leading from the entrance to a large central, communal car parking area with approximately 40 parking spaces, and through to the exit via a one-way traffic arrangement; there

are various short tarmac surfaced spur roads which provide access from the main site road to individual homes on the Site. The homes are of varying ages, styles and designs, but most pitches were delineated by low fencing or walling, enclosing private individual garden areas. Some of the pitches, but not all of them, included individual parking bays. The access roads were relatively narrow and with no separate pavements.

7. It appeared that the Site may have been created in or about the 1950s and was originally much larger, but split when the M3 Motorway was constructed in or about the 1970s. During the course of the inspection, the Tribunal noticed liquid propane gas in course of being delivered, although the homes appeared to be reliant on various different heating sources. There was a small fenced grass area adjoining the car park, incorporating a tree. This area is apparently the only play or amenity area now remaining on the Site. The Tribunal were advised that there had been a childrens` play area adjoining No. 52 Brookside Park, but that subsequently two new homes had been installed in that location, now known as 52a & 52b Brookside Park. The Tribunal noted a small white panel van parked adjacent to No. 36 Brookside Park and also evidence of childrens` play items, namely a swing and small bicycle in the garden of No. 34 Brookside Park.

THE LAW

8. Regulation 4(2) of the 2014 Regulations provides that:

“4(2) A site rule must be necessary-

(a) To ensure that acceptable standards are maintained on the site, which will be of general benefit to occupiers; or

(b) To promote and maintain community cohesion on the site.”

Regulation 5 of the 2014 Regulations provides that:

“5. A site rule is of no effect in so far as it makes provision in relation to any of the matters prescribed in Schedule 5 to these Regulations”

Regulation 10(1) & (2) of the 2014 Regulations provide that:

“10(1) Within 21 days of receipt of the consultation response document a consultee may appeal to a tribunal on one or more of the grounds specified in paragraph (2).

(2) The grounds are that-

(a) A site rule makes provision in relation to any of the prescribed matters set out in Schedule 5;

(b) The owner has not complied with a procedural requirement imposed by regulation 7 to 9 of these Regulations;

(c) The owner`s decision was unreasonable having regard to –

(i) The proposal or the representations received in response to the consultation;

(ii) ...

(iii) ...

Regulation 11 of the 2014 Regulations provides that:

“11. On determining an appeal under regulation 10 the tribunal may-

- (a) confirm the owner`s decision;*
- (b) quash or modify the owner`s decision;*
- (c) substitute the owner`s decision with its own decision; or*
- (d)*

Paragraph 4 to Schedule 5 of the 2014 Regulations provides that:

4. (1) Where-

(a) prior to the deposit of a site rule, the occupier of a site enjoyed a benefit; and

(b) the effect of the coming into force of the deposited site rule is that the enjoyment of the benefit by the occupier will be in breach of the deposited rule;

the occupier will not be in breach of the deposited site rule for the period that the benefit continues to subsist.

(2) On the cessation of the benefit, the occupier will be bound by the deposited site rule

HEARING & REPRESENTATIONS

9. The hearing was attended by Mr Allum, and also Mr Hobson of No. 60 Brookside Park; Mr Mourton attended for the Respondent company. Councillor Gratton from Rushmoor Borough Council attended as an observer. By way of preliminary clarification, Mr Allum and Mr Mourton each confirmed that the consultation mechanism was not in dispute and that the only issue was in regard to the 25 new sites proposed, although there was some measure of agreement on at least some of these. The Tribunal indicated to the parties that under rule 11 of the 2014 Regulations, it has a broad scope in determining the appeal, to confirm the owner`s decision, to quash or modify it, or to substitute its own decision in regard to new site rules. Similarly the Tribunal reminded the parties of the broad requirements arising under rule 4 of the 2014 Regulations, to the effect that a site rule must be necessary to ensure that acceptable standards are maintained on the Site of general benefit to occupiers, or to promote and maintain community cohesion on the Site.
10. In regard to the details of the proposed new site rules, the Tribunal heard from the parties on a rule by rule basis, starting with proposed new site rule number 2, and addressing proposed new site rule number 1, after all the others, on the basis that proposed site rule number 1 might prove to be the most contentious. Accordingly, submissions were made as follows:-
 1. Age Limitation – *Submissions deferred*
 2. Space underneath homes – Mr Moreton said that the new rule was similar to the old rule; Mr Allum said that the words “You must” appeared somewhat

overly assertive, but that he accepted it was for each pitch owner to comply in any event.

3. Fencing or enclosure – After some discussion, Mr Allum indicated that he was willing to concede on new rule 3 in the form as proposed by the Respondent.
4. External fires or incinerators – Mr Mourton said that external fires cannot be allowed for safety reasons, although he had no objection to occupiers using patio heaters, barbeques or chimineas. In was his view that the Applicant's proposed wording does not exclude these types of external fires. Mr Allum said that a lot of residents do use the above items and that he felt the wording of the proposed new rule did need altering so as to make it clear that they may be so used.
5. Sheds – Submissions were made by both Mr Allum and Mr Mourton. Reference was made to the saving provisions of Paragraph 4 to Schedule 5 of the 2014 Regulations, which provide in effect that an occupier will not be deemed to be in breach of a new rule if the effect of it, is that a benefit currently being enjoyed by him, would breach such new rule. On that basis, Mr Allum agreed to accept this new rule.
6. Non-combustible constructions – Various submissions were made particularly in regard to residents being able to erect temporary gazebos or similar structures. Mr Mourton accepted that the provisions of the express terms at Page 14 of his bundle, at paragraph (g), precluded various structures although he said he wanted the new rules to be more specific. Mr Allum submitted that the residents simply wanted some clarity as to items such as gazebos, which Mr Mourton said the Respondent would not wish to prevent on a temporary basis.
7. Waste disposal – After some discussion, Mr Allum indicated that he was willing to concede on new rule 7 in the form as proposed by the Respondent.
8. Waste water system – Mr Allum conceded on the new rule.
9. Vehicles – Mr Mourton said that years ago there were less cars owned by residents, but increasing ownership required more regulation; he said that the access roads are narrow and that people with a provisional licence may pose a greater risk to others by driving on such roads. Mr Allum said he felt it was unreasonable for residents to have to “swap” a learner driver and supervising passenger after leaving and before re-entering the Site.
10. Parking – Mr Mourton said that parking on the Site had to be regulated; Mr Allum said the new rule would be acceptable if the word “resident” was substituted for “occupier”. Mr Mourton said he had no objection to this.
11. Roads – Mr Allum conceded on the new rule.
12. Unroadworthy vehicles – Mr Allum conceded on the new rule.
13. Commercial vehicles – Mr Mourton said that the Respondent seeks to prevent any commercial vehicles from parking on the Site save for deliveries, given the narrow access roads and problems encountered on the Respondent's other sites. He accepted however that there have been occasions when verbal consent has been given by the Respondent to an occupier on the Site to allow a small commercial vehicle to be parked.

14. Motor homes & caravans –Mr Mourton felt that motor homes should simply not be allowed on the Site; however Mr Allum felt that daytime parking of such vehicles by visitors should not be precluded and he pointed out that not all motor homes are excessively large.
15. Vehicle repairs – Mr Mourton expressed concerns about vehicle repairs on the Site, leading to oil spillage and marking of the surfaces of the access roads and communal parking area, but he said there was no objection to such activity by residents on their own individual parking bays within their own pitch, where such parking bays exist. Mr Allum said that several residents do not have a parking space on their pitch and use mobile service engineers in the communal parking area.
16. Pets & Animals – Mr Mourton said the new rule was necessary to prevent occupiers having large numbers of dogs or other animals, although he had no objection to multiple animals being kept in cages by occupiers, within their homes. Mr Allum questioned the detail of the new rule including the specified length of dog leads and also the practicality of enforcing regulation of cats.
17. Assistance dogs – Mr Allum conceded on the new rule.
18. Musical instruments – Mr Mourton felt that the additional words requested by Mr Allum were covered by provisions in express term in any event.
19. Business Use – Mr Allum conceded on the new rule.
20. No entry to vacant plots – Mr Allum conceded on the new rule.
21. Guns or weapons – Mr Allum conceded on the new rule.
22. Clean & tidy condition – Mr Mourton said that the Respondent wanted to avoid loud and garish colours; Mr Allum said the residents merely want some flexibility; it was pointed out that Mr Allum`s version may actually assist the Respondent in achieving its objective, although Mr Mourton seemed not to accept the point.
23. Pipes & frost damage – Mr Allum conceded on the new rule.
24. Permission for additions – Mr Allum conceded on the new rule.
25. Visitors – Mr Mourton said in regard to Mr Allum`s amendment, that the regulation of visitors` conduct is for the occupiers to address so far as the site rules are concerned, not the Site owner.

Site Rule 1 (Previously deferred) - Mr Mourton said that the Respondent proposed a minimum age provision of 45 years, as a new rule; he said that the effect of recent legislation was that the site owner had less control than previously in regard to selection of new residents and that the owner received most enquiries from more mature people. He said that there is a minimum age of 50 years in force for each of the owner`s other three sites respectively at Sevenoaks, Basingstoke and Chertsey and added that it was felt that 45 years is an acceptable age. Mr Allum said that there had not been an age restriction before and that when the Respondent had first acquired the Site, it had suggested introducing an age limit, but residents had been opposed to it. Mr Allum referred to the views of various residents expressed in the copy documents attached to his application and which he said, had all been in favour of keeping the Site as a family park, without any age restriction. Mr Allum said he had been 26 years old, when he

- first became a resident and that there is at least one child still living on the Site, although there used to be more. Mr Mourton said there were several residents who are in favour of introducing the age limit as proposed, although he accepted that he had not included any evidence from such residents on this point in his bundle. Mr Allum said that he and other residents wish to be able to sell their homes freely, without the available pool of buyers being limited and controlled by reference to age. Mr Allum accepted however that the effect of Paragraph 4 Schedule 5 to the 2014 Regulations, would be that he could sell his home to a person under 45 years of age, although any such buyer would not be able to do so.
11. In closing, Mr Mourton said that some residents had signed Mr Allum`s petition in regard to the new rules without even reading it, adding that the Respondent was simply trying to put necessary rules in place, as a result of legislation and that the main issue is the age restriction. Mr Allum said in closing, that he had in fact ensured that anyone who signed the petition knew what was in it; he said one person had subsequently chosen to withdraw, but others remained supportive of his position. Mr Allum added that his proposals were in the main intended to make the rules more workable, and to avoid future misunderstanding.

CONSIDERATION

12. The Tribunal have taken into account all the oral evidence and those case papers to which we have been specifically referred and the submissions of the parties.
13. In regard to the proposed minimum age, the Applicant had produced supportive evidence in regard to the views of various residents, whilst the Respondent had not provided any evidence by way of statements from any residents supportive of the proposed minimum age. There had evidently previously been children and persons under the age of 45 years living on the Site and indeed they still do so; no evidence was tendered as to persons younger than 45 years of age causing difficulties or problems on the Site. In regard to rule 4 of the 2014 Regulations, the Tribunal considers that the introduction of a minimum age requirement would neither obviously serve to promote and maintain community cohesion on the Site, nor ensure acceptable standards of general benefit to occupiers. Accordingly the Tribunal determines that the Respondent`s decision to implement proposed new rule No. 1, is quashed.
14. The Tribunal notes the concessions made by Mr Allum and records that the Respondent`s decision in regard to proposed new rules 3; 5; 7; 8; 11; 12; 17; 19; 20; 21; 23 and 24 is confirmed.
15. In regard to rule 2, Mr Allum had accepted that his proposed changes were relatively pedantic and accordingly the Tribunal confirms the rule proposed by the Respondent.
16. In regard to rule 4, the Tribunal is persuaded that the final sentence of Mr Allum`s version would be helpful to clarify the position for residents, given that Mr Mourton had said he had no objection to patio heaters, chimineas and barbeques. Accordingly, the rule as proposed by the Respondent is confirmed, subject however to the addition of the words "Patio heaters, chimineas and barbeques may be used responsibly, and shall not be left unattended at any time".
17. In regard to rule 6, the Tribunal considers that there is some uncertainty both in regard to the Respondent`s and the Applicant`s proposed wording but that since the purpose in effect appeared to be for the Respondent to ensure that the

requirements of clause 3(g) of the express terms on Page 14 of the bundle, are uniformly applied to all residents, the following rule 6 shall be substituted “Not without the written consent of the owner to carry out any building works or erect any porches sheds garages outbuildings fences or other structures on the pitch.”

18. In regard to rule 9, the Tribunal considers that it is not unreasonable for residents with a provisional driving licence to drive on the Site, bearing in mind that they must in any event by law be accompanied and supervised by a driver with a suitable full driving licence. Accordingly the Tribunal determines that Mr Allum`s proposal shall apply, save that the final sentence is deleted – since it forms proposed new rule 12 and there is no particular reason why it should be moved.
19. In regard to rule 10, the word “occupier” might be taken to mean collectively all and any residents in any given home, however many they may be. Accordingly the Respondent`s proposed rule is confirmed save that the word “resident” shall be substituted for the word “occupier”.
20. In regard to rule 13, the Tribunal considers it not unreasonable for residents to park light commercial vehicles on the Site, although it accepts that the Respondent should retain an element of control. Accordingly Mr Allum`s version of rule 13 shall be substituted for the version proposed by the Respondent, save that the words “light commercial vehicle” shall be substituted for “small commercial vehicle” and also the following words added at the end – “and subject to consent being given by the park owner, not to be unreasonably withheld.”
21. In regard to rule 14, the Tribunal accepts that motor homes or similar could be detrimental on the Site given the narrowness of the access roads and accordingly the Respondent`s proposed rule 14 is confirmed.
22. In regard to rule 15, the Tribunal noted that the Respondent does not object to vehicle works being carried out on parking bays located within individual pitches and accordingly confirms the Respondent`s proposed rule 15 subject to the words as follows being added “but this provision does not apply to such work or repairs carried out on parking bays located within individual pitches”.
23. In regard to rule 16, the Tribunal considers that on a park site where residents live in close proximity to one another and with limited circulation space, it is not unreasonable to qualify and limit numbers of pets permitted, and accordingly the Respondent`s version of rule 16 is confirmed.
24. In regard to rule 18, the additional words proposed by Mr Allum are not necessary, given that such conduct is already subject to the express terms in pitch agreements and the criminal law. Accordingly the Respondent`s version of rule 18 is confirmed.
25. In regard to rule 22, the Tribunal was persuaded by Mr Allum`s submissions and consider that if interpreted properly, the Respondent`s version could be counter-productive so far as the Respondent is concerned since if the original colour scheme could not be reasonably replicated, it would actually then leave it open for residents to use any other colour or potentially garish design. Accordingly the Applicant`s version of rule 22 is substituted for the Respondent`s version.
26. In regard to rule 25, the Tribunal considers that the Respondent`s proposed rule is sufficiently clear and appropriate, and accordingly confirms the Respondent`s decision in regard to that rule.

27. In view of the number of amendments where the Tribunal has agreed, or at least partly agreed the position of the Applicant, and in particular in relation to the proposed age restriction, the Tribunal considers that the application has been necessary and justified and in those circumstances it orders that the Respondent shall re-imburse the application fee of £155.00 to the Applicant, but allows 28 days from the date of this decision for either party to submit any written submissions to the contrary, to the Tribunal.
28. The Tribunal draws the attention of the parties to the saving provisions of paragraph 4 to Schedule 5 of the 2014 Regulations, broadly to the effect that where an occupier enjoyed a benefit prior to new site rules being deposited, then he may continue to enjoy that benefit, even though it may technically be in breach of such new rules.
29. We made our decisions accordingly.
- Judge P J Barber

SCHEDULE

Decision on Appeal under Regulation 10

1. The Tribunal quashes the Respondent owner`s decision in regard to the Respondent`s rule numbers 1
2. The Tribunal confirms the Respondent owner`s decision in regard to the Respondent`s rule numbers 2; 3; 5; 7; 8; 11; 12; 14; 16; 17; 18; 19; 20; 21; 23; 24 and 25.
3. The Tribunal substitutes those rules as numbered below, for the corresponding rule numbers as proposed by the Respondent:-
 - Rule 4** - You must not have external fires, including incinerators nor must you keep any inflammable substances on the park except in quantities reasonable for domestic use. Patio heaters, chimineas and barbeques may be used responsibly, and shall not be left unattended at any time.
 - Rule 6** - Not without the written consent of the owner to carry out any building works or erect any porches sheds garages outbuildings fences or other structures on the pitch
 - Rule 9** - Any vehicle driven on the Park must comply with displayed speed limits, be fully insured and have a current MOT Certificate (if applicable) and the driver must hold a valid driving licence.
 - Rule 10** - One vehicle belonging to each resident of a home may be brought onto the park. Where a parking bay is installed adjacent to a home this must be used for one vehicle only and any second vehicle must be parked in the main car park. (Written approval for on plot parking bays will not be unreasonably withheld).
 - Rule 13** - Other than for delivering goods and services, large commercial vehicles should not be brought onto the park. Any light commercial vehicles owned by or used by a resident may be brought onto the park provided that it

fits within a standard parking space and complies with rule 8 above and subject to consent being given by the park owner, not to be unreasonably withheld.

Rule 15.- You must not carry out the following works or repairs on the park :
(a) Major vehicle repairs involving dismantling of part(s) of the engine or (b) Works which involve the removal of oil or other fuels but this provision does not apply to such work or repairs carried out on parking bays located within individual pitches.

Rule 22 - Home owners must maintain the outside of their park home in a clean and tidy condition. Where the exterior is repainted or recovered, homeowners must endeavour not to depart from the original exterior colour scheme without obtaining permission from the Park Owner in writing (which will not be unreasonably withheld).

PERMISSION TO APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office, which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.