



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

Case Reference : **CHI/43UD/PHN/2014/0003
CHI/43UD/PHN/2014/0005**

Property : **Surrey Hills and The Willows,
Guildford Road, Normandy,
Guildford GU3 2UB**

Applicants : **Mrs T Kerrison
Mr K Torrey**

Representative : **-**

Respondent : **Wyldecrest Parks (Management)
Limited**

Representative : **Mr D Sunderland**

Type of Application : **Application, by way of an appeal,
under Regulation 10 of the Mobile
Homes (Site Rules)(England)
Regulations 2014**

Tribunal Members : **Judge E Morrison
Judge D Agnew**

**Date and venue of
Hearing** : **16 June 2015 at Barnett Hill Hotel,
Wonersh, Guildford**

Date of decision : **24 June 2015**

DECISION

The Applications

1. On 15 September 2014 Mrs Kerrison appealed against the Respondent's decision with regard to proposed new site rules for Surrey Hills mobile home park, and Mr Torrey appealed against the Respondent's decision with regard to proposed new site rules for The Willows mobile home park.

Summary of Decision

2. Pursuant to Regulation 11 of the Mobile Homes (Site Rules) (England) Regulations 2014, the proposed site rules for Surrey Hills and The Willows are amended to the extent set out in the Schedule to this decision.

The Law and Jurisdiction

3. By virtue of amendments made to the Mobile Homes Act 1983 ("the Act") which came into effect on 26 May 2013, a site rule affecting a mobile home site protected under the Act is an express term of each agreement between the site owner and the occupier of a home on the site.
4. Section 2C(2) and 2C(8) of the Act provide:

(2) The 'site rules' for a protected site are rules made by the owner in accordance with such procedure as may be prescribed which relate to—

(a) the management and conduct of the site, or
(b) such other matters as may be prescribed.

(8) Regulations may provide that site rules ... are of no effect in so far as they make provision in relation to prescribed matters.
5. The Mobile Homes (Site Rules) (England) Regulations 2014 ("the Regulations") set out the procedure for the making, variation of deletion of site rules.
6. Regulation 4 provides:

(1) The matters prescribed for the purposes of section 2C(2)(b) are the matters set out in paragraph (2).
(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.
7. Pursuant to section 2C(8) of the 1983 Act, Regulation 5 provides that 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 the Regulations.

6. For the purposes of these applications the relevant paragraphs of Schedule 5 are as follows:
 - 2(a) ...any matter which is expressed to grant an occupier a right subject to the exercise of discretion by the [site] owner, except in relation to improvements to an occupier's plot*
 - 2(h) whether the owner should be allowed to reduce the size of a pitch or its orientation.*
7. Paragraph 4 of Schedule 5 provides that
 - (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.*
8. The Regulations set out the procedure for the making, variation and deletion of site rules -
 - (a) The site owner must consult every occupier and any qualifying residents' association on any proposal for the making, variation and deletion of site rules (Regulation 7) and must do by issuing to each consultee a 'proposal notice' in the form set out in Schedule 1 to the Regulations (or in a form substantially to the like effect), inter alia setting out the proposal for new site rules and the reasons for making the proposal and specifying a date by which representations made in response to the proposal must be received by the site owner (Regulation 8).
 - (b) The site owner must consider all responses to the consultation and send to each consultee a 'consultation response document' in the form set out in Schedule 2 to the Regulations (or in a form substantially to the like effect), setting out the decision of the site owner whether to implement the proposed site rules, with or without modification in response to the consultation (Regulation 9).
9. Regulation 10 confers on consultees a right to appeal to the First-tier Tribunal in relation the decision of the site owner. Regulation 10 provides:
 - (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, in particular to—*
 - (i) *the proposal or the representations received in response to the consultation;*
 - (ii) *the size, layout, character, services or amenities of the site; or*
 - (iii) *the terms of any planning permission or conditions of the site licence.*
- (3) *Where a consultee makes an appeal under this regulation, the consultee must notify the owner of the appeal in writing and provide the owner with a copy of the application made, within the 21 day period referred to in paragraph (1) above.*

10. Regulation 11 sets out the powers of the Tribunal. It provides:

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) *where the owner has failed to comply with the procedure set out in regulations 7 to 9, order the owner to comply with regulations 7 to 9 (as appropriate), within such time as may be specified by the tribunal.*

The Inspection

11. The Tribunal did not inspect the sites prior to the hearing, the tribunal members having previously inspected in connection with another matter in April 2015.

Background

12. Surrey Hills, The Willows and The Oaks are three adjacent mobile home sites operated by the Respondent. They share access roads and other facilities and have the outward appearance of a single site.
13. On 25 July 2014 the Respondent issued each occupier with a proposal notice setting out new site rules. A significant number of occupiers responded within the specified time-frame, which expired on 22 August 2014. On 27 August 2014 the Respondent issued a consultation response document for each site which made some amendments to the new rules as originally proposed but did not accept other amendments that the residents had proposed.
14. One occupier from each of the three sites subsequently appealed to the Tribunal in accordance with Regulation 10. On 19 November 2014 the

Tribunal heard an application to strike out the appeals on the basis that they had been made out of time. That application was refused. Subsequently the Respondent withdrew the proposed site rules for The Oaks, with the result that there are no longer any site rules in effect for that site.

15. Ms Kerrison, who lives on the Surrey Hills site, has appealed on the grounds set out in Regulation 10(2)(c)(i) and (iii) . Mr Torrey, who lives on The Willows site, has appealed on the grounds set out in Regulation 10(2)(c)(i) (ii)and (iii).
16. The documentation submitted by the Appellants indicates that the residents of 44 out of 75 occupied homes on Surrey Hills had responded to the consultation supporting the position taken by Mrs Kerrison, and that the residents of 23 out of 41 occupied homes on The Willows had responded to the consultation supporting the position taken by Mr Torrey. This was not challenged by the Respondent. There was no evidence that any resident had responded supporting the proposed rules.

Representation and Evidence at the Hearing

17. The Applicants had prepared a comprehensive Bundle in accordance with the Tribunal's earlier Directions, which included the documentation relied upon by the Respondent. They acted in person at the hearing. The Respondent was represented at the hearing by Mr David Sunderland, its Estates Director, who was accompanied by his assistant Mr Bond.
18. The Tribunal heard submissions on each rule in dispute, and was referred to supporting documentation, including the relevant site licences, where appropriate. As the proposed rules for each site were identical, they were considered together. Mrs Kerrison took the lead in setting out the Applicants' position, Mr Torrey making additional comments as he wished.

The rules in dispute

19. At the outset it emerged that in addition to rules 2, 3, 4, 9, 15, 19, 20, 21, 25 and 27 identified by the Applicants in their submissions, the Applicants also wished to raise concerns about rules 5 and 6. The Respondent did not object. The Tribunal stated it would also like to review the terminology of rule 26, which appeared to be in error.
20. In the course of the hearing the Applicants withdrew their objection to rule 20.

Proposed Rule 2 – *All residents will comply with the conditions of the Site Licence*

21. The Applicants' original stance was that they wished the rule to be expressed so as to place an obligation on the Respondent as well as on the residents to comply with the licence. At the hearing they stated they would also be content for the rule to be deleted in its entirety, on the basis that the conditions in the site licence apply directly only to the site owner, not the residents, and there is already an express term in residents' agreements that they must not do anything which might breach the conditions of the licence.
22. Mr Sunderland stated that although there was already an express term as indicated, many residents did not read their agreements, and including this as a site rule, on the site notice board, would assist in management of the sites and in achieving acceptable standards and community cohesion.
23. Determination: The Tribunal accepts that it is inappropriate for site rules to purport to govern the actions of the site owner. The rules are for the residents and the site owner's conduct, at least with respect to the site licence, is primarily a matter for the local authority. It is also accepted that a site rule is not objectionable simply because it mirrors an already existing term of the occupier's agreement with the site owner. However a rule requiring residents to comply with the site licence is not the same as a rule requiring them not to do anything which might breach the licence. The licence includes many requirements which are intended to and can apply only to the site owner. The rule will be amended as follows:

Residents must not do, or allow to be done, anything which might breach any of the conditions of the site owner's site licence.

Proposed rule 3 – *Occupiers are responsible for ensuring that both electrical and gas installations and appliances comply at all times with requirements of the Institute of electrical engineers and/or appropriate authorities.*

24. The Applicants' concern about this rule was that it appeared to make them responsible for electrical cabling etc. within their pitches connecting their homes to the mains supply. They considered that any electrical apparatus outside the home itself should be the responsibility of the site owner.
25. They relied on Implied Term 22(c) as set out in Schedule 1 Part 1 Chapter 2 of the Act, which they interpreted as making the site owner responsible for all services provided up to the point those services entered the home. The Respondent disagreed with this interpretation. However Mr Sunderland was prepared to amend the rule by adding the words "within the home", and the Applicants were content with this.

26. Determination: The Tribunal accepts the compromise and makes some additional stylistic amendments so that the rule will now read:

Occupiers are responsible for ensuring that electrical and gas installations and appliances within their homes comply at all times with requirements of the Institute of Electrical Engineers and/or appropriate authorities.

Proposed rule 4 - *Park home plots, each home shall occupy a plot, which shall be clearly defined by the management, up to and not exceeding 3 metres from the home.*

27. The Applicants' concern was that this rule might allow the Respondent to reduce the size of existing plots where the boundaries are more than 3 metres from the home. Reference was also made to the site licence which stipulates that "Every park home must where practicable be spaced at a distance of not less than 6 metres (the separation distance) from another park home which is occupied as a separate residence".
28. Mr Sunderland explained that many plots on Surrey hills and The Willows do not have the extent of their plots identified in the occupiers' agreements. Management might wish to define the plots. However he would agree to delete the words "up to and not exceeding 3 metres".
29. Determination: The Tribunal considers that this rule falls outside the scope of matters that may properly be covered by site rules. The site licence and/or the individual agreements should define the size etc. of the pitch. Furthermore, the rule as drafted could permit the Respondent to reduce the size of a pitch in those cases where there is no express term in the occupier's agreement that defines its extent. It therefore falls foul of Paragraph 2(h) of Schedule 5 to the Regulations and should be deleted in its entirety.

Proposed rule 5 – *The occupiers shall not carry out internal alterations that would take the home outside the requirement of BS3632 or any replacements thereof issued by the British Standards Institution.*

30. After brief submissions the parties agreed that the rule should be amended so as to delete reference to BS 3632 and to substitute a reference to the statutory definition of a caravan.
31. Determination: The rule will amended as follows:

The occupiers shall not carry out internal alterations that would take the home outside the definition of a "caravan" as set out in section 29 of the Caravan Sites and Control of Development Act 1960 as modified by section 13 of the Caravan Sites Act 1968.

Proposed rule 6 – *Decoration and external colour must be maintained to the satisfaction of the site management, no external alteration of or addition to the Mobile home or plot is permitted without prior written approval of the management.*

32. The Applicants stated that subjecting a resident's right to do something to the site owner's discretion was contrary to Para 2(a) of Schedule 5 to the Regulations.
33. Mr Sunderland suggested that the requirement of approval would be of benefit to the residents e.g. to prevent someone painting their home an objectionable colour. It was also necessary to ensure that residents did not make alterations that would be prohibited by the site licence.
34. Determination: As drafted the rule offends against the Regulations in that it gives the site owner a discretion over matters which may well not be "improvements". There is already a rule that prevents residents from doing anything in breach of the site licence. However it may well be the case that residents will not always know what the licence does/does not permit with regard to alterations/ additions to their homes. A sensible compromise is to require that residents give the site owner advance notice of intended works. This will give the owner an opportunity to warn the resident before works commence if the works would breach the licence. It would also be reasonable, in the interests of maintaining acceptable standards and community cohesion to have some control over external decorations. The rule will be amended as follows:

The decoration and external colour of homes must be maintained as close as practicable to existing. If a resident intends to make any external alteration or addition to the home or plot, not less than 14 days written notice must be given to the site owner before work commences.

Proposed rule 9 – *The occupier is responsible for the tidiness of the plot. It is also seen the resident is responsible for all amenities within the plot; all trees, electrical services, drainage and gas etc.*

35. The Applicants were unhappy with the second sentence of this rule, as they understood Implied Term 22 (c) and the requirements of the site licence to impose responsibility on the site owner, and not on them, for the maintenance of all services supplied within the plot but outside the home itself. They do not own the plot; it belongs to the site owner
36. The Respondent disagreed. The site owner had to arrange for the supply of services but Implied Term 22 (c) should not mean that the owner was responsible if, for example, a sewage pipe within the plot was blocked due to misuse by the occupier, or if a tree planted by the occupier caused damage to pipes or cables. Mr Sunderland accepted that the legislation was ambiguous as to responsibility in these sort of situations and said that the proposed rule was intended to cure that ambiguity by making it clear that the occupier should be responsible.

37. Determination: The Tribunal agrees with the Respondent that Implied Term 22(c), which states that the site owner is responsible “ for maintaining any gas, electricity, water, sewerage or other services supplied by the owner to the pitch or to the mobile home” is open to varying interpretations. It is unclear whether it means that the site owner’s responsibility can be limited to the point where the supply enters the pitch or that responsibility extends up to the point that the services enter the home. Furthermore, while the site licence requires the site owner to provide water, drainage and electricity, in most instances a third party is the actual supplier of the services.
38. There are serious implications for residents in placing on them responsibility for all services within their pitches. They do not own the land or apparatus through which such services pass. Some services passing through their pitches may service other homes. The Tribunal does not consider it the function of site rules to cure ambiguities of legislation, especially on such an important issue. However it would be reasonable to make it clear to occupiers that they must not do anything that might cause damage to any services. The rule will therefore be amended to read:

The occupier is responsible for the tidiness of the plot, and must not do anything which causes or may cause damage to any pipes, wires or other conduits serving the home or any other home.

Proposed rule 15 – *Car parking is restricted to a maximum of one space per home, vans and commercial vehicles are not permitted to use the site car parks unless delivering/providing a service of a temporary nature.*

39. The Applicants wished to amend the first part of this rule so that it provided that there should be a *minimum* of one car parking space per home. They said that this would be more in keeping with the site licence, which requires that the site owner provide a parking space on the park for at least one private car per park home (plus visitor spaces). As drafted the rule undermined that requirement. Many residents have more than one car per household, and while some pitches have no parking space, and therefore use the communal parking areas, other pitches have more than one space and park more than one car on their pitch. Residents should not lose a space as a result of this rule. Furthermore, due to the rural location of the park and lack of public transport, many households reasonably required two cars.
40. Mr Sunderland was asked to clarify the intention of the rule – was it intended to limit parking spaces on each pitch to a maximum of one, or to limit each household to one car wherever that car was parked? The latter was the case. The Respondent’s position was that although the rule would not be enforced at the present time, and that the management would use discretion, it could be used to deal with various problems such as abandoned cars, and in the future might be used if

the number of cars on the sites became unsustainable. However Mr Sunderland also stated that he couldn't stop some-one having two cars.

41. At the conclusion of these submissions all parties accepted that that part of the rule could simply be deleted.
42. Determination: The rule as drafted with respect to parking spaces is unacceptable as it is not in accordance with the requirements of the site licence. It is also more likely to undermine than to promote community cohesion. It is no answer to say that the rule would or might not be enforced. The Tribunal's view is that the number of cars on the site is more likely to be effectively controlled simply by the overall availability of parking spaces, and the rule should not permit the site owner to reduce the number of spaces below those required by the site licence. This part of the rule should therefore be deleted.
43. The remainder of the rule, relating to vans etc. is not objected to. In order to deal with the Respondent's concern about abandoned cars a clause will be added to cover this situation. The rule will now read:

Vans and commercial vehicles are not permitted to use the site car parks unless delivering/providing a service of a temporary nature. Unroadworthy or unlicensed cars must not be left in communal parking spaces.

Proposed rule 20 – *No fires are to be lit on the park.*

44. The Applicants asked that "fires" be amended to "bonfires" to make it clear that barbeques would still be permitted. The Respondent agreed to this.

Proposed rule 21 - *No fencing is to be erected on the site, no bushes or trees to be planted to the front or between plots without written permission from the Park Owner.*

45. The Applicants proposed that the rule be changed to so that only *new* fences, trees and bushes should be prohibited at the front of plots, as people who had pets needed to keep them in, and that there should be specific restrictions on the height of fences and hedges along other boundaries next to another home. They also objected to the requirement that permission from the site owner be obtained.
46. Mr Sunderland said that new fences could constitute an improvement, in which case Schedule 5 did not prohibit the site owner from exercising some control. He referred to the site licence which provides that fences and hedges, where allowed and forming the boundary between adjacent park homes, should be a maximum of 2 metres high, and that hedges must be regularly pruned to prevent them becoming a fire bridge. He wanted to ensure that new fences etc. complied with the site licence, but he did not agree to a rule that would limit the height of fences to 4 ft as proposed by the Applicants.

47. Determination: Paragraph 2(a) of Schedule 5 to the Regulations prohibits the exercise of the site owner's discretion, except in relation to improvements. It is not obvious that all new fences, hedges or trees would constitute an improvement. It is accepted that the site owner wishes to ensure that there are no new boundary features to the front of plots, but it is not reasonable to prohibit replacement of an existing fence or hedge once it reaches the end of its life. Furthermore many of the plots have front gardens. As drafted the rule would prevent planting in these gardens and there was no mention of why such a restriction would be appropriate. As for side and rear boundaries, the Tribunal sees no need for regulation beyond that set out in the site licence, or to impose the further restrictions suggested by the Applicants, with which the Respondent disagreed and to which some residents might also object. The residents are required not to do anything in breach of the site licence, and that is sufficient protection for the site owner. The rule will therefore be amended as follows:

No new fences or hedges, other than similar replacement of those already in existence, are to be erected or planted along the front boundary of a plot.

Proposed rule 25 - All bases must be insured by each individual resident.

48. The Applicants wanted this rule deleted. Implied Term 22 (c) places responsibility for repairing the base on the site owner, who owns the base. The Applicants had been told that they could not obtain insurance for the base itself in any event as they did not have an insurable interest in it. They were obliged by the express terms of their agreement with site owner to take out insurance for their homes which covered liabilities to other people and property, and this should be sufficient.
49. Mr Sunderland initially took the position that the proposed rule should be maintained, but after discussion he accepted that other substitute wording which simply made it clear that mobile home insurance should cover third party liability for damage to the base would be sufficient.
50. Determination: As drafted the rule suggested that there be a specific insurance policy taken out for the base, which the Tribunal considers unreasonable and probably impossible to obtain. It will be amended as follows:

All mobile homes must be insured, to include third party liability cover for damage to the base.

Proposed rule 26 – *The tenancy of each plot is granted expressly to the owner of the home, tenancies are not transferable expect[sic] by the terms of The Mobile Homes (Selling and Gifting) (England) Regulations 2013, the home owner shall not sublet.*

51. The Tribunal raised concerns about the terminology used by this rule. Occupiers of mobile homes do not have a “tenancy” and they cannot “sublet”. In addition, the references to the legislation on selling and gifting are incomplete. The rule will be amended as follows:

Sales and gifts of mobile homes are governed by the Implied Terms in the Mobile Homes Act 1983 as amended and The Mobile Homes (Selling and Gifting) (England) Regulations 2013. Occupiers must not rent out their home to anyone else.

Proposed rule 27 – *Park homes when sold shall only be sold to those of retirement age only; in any event, no home shall be sold to any person under the age of 50.*

52. The Applicants submitted that “retirement age” was ambiguous. Further the Respondent had sold homes to persons under the age of 50. There should be no requirement that residents be retired.
53. The Tribunal asked Mr Sunderland to clarify the rule. He said the intention was to prevent anyone moving onto the park who was under 50, to include individuals living with the buyer.
54. In response to the suggestion that an age limit would apply to any adult living on the park, and not just the buyer of the home, Mrs Kerrison stated she would never have purchased her home if her 25 year old daughter might not be able to live with her.
55. Determination: As drafted the rule is unclear and internally contradictory. However it appears that all are agreed that homes should only be sold to persons aged 50 or over, and that there is no requirement that a buyer should be retired. Insofar as Mr Sunderland sought to extend the rule to any adults living on the park, this was not in the proposed rule, and such a restriction would be inconsistent with rule 23 which simply states that children under 18 may not reside on the park. The rule will be amended to read:

No home may be sold to anyone under the age of 50 years.

Dated: 24 June 2015

Judge E Morrison (Chairman)

Schedule of amendments to Rules

2. *Residents must not do, or allow to be done, anything which might breach any of the conditions of the site owner's site licence.*
3. *Occupiers are responsible for ensuring that electrical and gas installations and appliances within their homes comply at all times with requirements of the Institute of Electrical Engineers and/or appropriate authorities.*
4. *[Deleted]*
5. *The occupiers shall not carry out internal alterations that would take the home outside the definition of a "caravan" as set out in section 29 of the Caravan Sites and Control of Development Act 1960 as modified by section 13 of the Caravan Sites Act 1968.*
6. *The decoration and external colour of homes must be maintained as close as practicable to existing. If a resident intends to make any external alteration or addition to the home or plot, not less than 14 days written notice must be given to the site owner before work commences.*
9. *The occupier is responsible for the tidiness of the plot, and must not do anything which causes or may cause damage to any pipes, wires or other conduits serving the home or any other home.*
15. *Vans and commercial vehicles are not permitted to use the site car parks unless delivering/providing a service of a temporary nature. Unroadworthy or unlicensed cars must not be left in the car parks.*
19. *No bonfires are to be lit on the park.*
21. *No new fences or hedges, other than similar replacement of those already in existence, are to be erected or planted along the front boundary of a plot.*
25. *All mobile homes must be insured, to include third party liability cover for damage to the base.*
26. *Sales and gifts of mobile homes are governed by the Implied Terms in the Mobile Homes Act 1983 as amended and The Mobile Homes (Selling and Gifting) (England) Regulations 2013. Occupiers must not rent out their home to anyone else.*
27. *No home may be sold to anyone under the age of 50 years.*

Appeals

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.