FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/00FF/PHN/2014/0002**
Property	**:**	**Mount Pleasant Park and Westfield Park, Acaster Malbis, York Yo23 2UA**
Applicants	**:**	**Mr Robert M Atherton and Mrs C Atherton**
Respondent	**:**	**Flannigan Estates Limited**
Type of Application	**:**	**For determination as to proposed site rules**
Tribunal	**:**	**A M Davies, LLB** **P E Mountain, FRICS**
Date of Order	**:**	**5 March 2015**

DECISION

The new site rules proposed by the Respondent shall take effect as re-drafted by the Respondent following consultation save for rules 1.4, 2, and 8.3, which shall read as follows:

Rule no.	Text
1.4	Homes must be kept in a sound state of repair and clean condition. The external decoration must be maintained to a good standard and homes must be painted in their original colour(s) or in neutral or pastel colours.
2	2.1 The electrical, water and drainage systems of the home, and the connections with the Park supplies, are the sole responsibility of the Occupier after the initial installation. It is also the Occupier's responsibility to ensure that all electrical, solid fuel, oil and gas installations (where applicable) comply at all times with the various statutory requirements. 2.2 All external water pipes shall be lagged against frost by the Occupier, who will be liable for any loss of water due to the Occupier's failure to do so or from any other failure to maintain for which the Occupier is responsible. The Occupier shall not permit waste water to be discharged on to the ground. 2.3 The Occupier is responsible for maintaining the service pipes, wires and conduits within his pitch, as follows: 2.3.1 electricity: from the meter if the meter is situated on the Occupier's pitch and, if not, from the consumer unit; 2.3.2 gas: from the meter situated on the Occupier's pitch; 2.3.3 water: from the stopcock situated on the Occupier's pitch; and 2.3.4 sewerage: above ground level on the Occupier's pitch.
8.3	Occupiers will be held responsible at all times for the conduct of their visitors who must comply with these site rules while visiting the Park. Children must be supervised by an adult at all times to ensure their safety and to ensure that nuisance or annoyance is not caused to other residents.

REASONS

1. This application was brought by Mr and Mrs Atherton, who have for some 14 years been resident at 9 Cherry Tree Drive, on the Mount Pleasant Park at Acaster Malbis outside York. The Park is available for occupation by residents over the age of 50, and, along with the neighbouring park Westfield, has been expanded considerably by the Respondents, who bought it in or about 2009.

The Law

2. The Mobile Homes Act 2013 created a new section 2C in the Mobile Homes Act 1983 ("the 1983 Act"), which provides that existing site rules are to become ineffective on a specified date, and that new site rules will be effective only after consultation with the site residents, and on their being subsequently deposited with the local authority**.** By section 2C(2) of the 1983 Act, new site rules are to be made according to a procedure to be prescribed, and must relate to

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

3. The Mobile Homes (Site Rules) (England) Regulations 2014 ("the 2104 Regulations") came into force on 4 February 2014. These regulations require a site owner who wishes to propose new site rules to send a copy of them to the residents, inviting comments by way of consultation. The residents have 28 days in which to reply with their comments or counter-proposals. Within 21 days thereafter the site owner must decide whether to implement the proposed site rules (either as originally drafted or amended as a result of the comments received), and issue a consultation response document which explains the right of residents to appeal to the Tribunal if they are dissatisfied with the new site rules.

4. Paragraph 10 of the 2014 Regulations provides that a resident who has been consulted about the proposed site rules may apply to the Tribunal on grounds set out at sub-paragraph (2), which reads

"(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."

5. Paragraph 11 goes on to set out the Tribunal's powers on receipt of the application, which are to

(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 application

6. In the present case, the Applicants agreed that the Respondent had properly carried out the consultation procedure. None of the proposed site rules includes any of the prohibited matters set out at Schedule 5 of the 2014 Regulations.

7. On receipt of comments by residents, including the Resident's Association, the Respondent made a number of amendments to the proposed site rules. However the Applicants believed that further amendments were required and consequently made this application on 18 November 2014.

8. Directions were issued on 15 December 2014 without a hearing. The parties agreed that the Tribunal did not need to visit Mount Pleasant Park, the Tribunal members having inspected it on previous occasions. The application was heard in Leeds on 5 March 2015, when Miss Prendergast represented the Respondents, and Mr Atherton spoke for the Applicants.

9. The Applicants sought further amendment to 5 of the proposed rules, and requested an additional rule. These are dealt with in turn below.

10. As a preliminary point, in her written representations Miss Prendergast queried whether the application was properly brought under paragraph 10(2) of the 2014 Regulations. 10(2) (a) and (b) do not apply, and the application must therefore show that the Respondent's decision was unreasonable having regard, in particular, to one of the three grounds listed at (c) of that paragraph, cited above. The Tribunal determines that each of the issues raised by the Applicants relates to "the size, layout, character, services or amenities of the site", and therefore accepts the application.

The Site Rules

11. Rule 1.4, as proposed by the Respondent following consultation, reads

> "*Homes must be kept in a sound state of repair and clean condition. The external decoration must be maintained to a good standard and homes should be painted in neutral or pastel colours.*"
>
> The Applicants maintained that homes such as theirs which are in "Tudor" style and painted black and white, are not painted in "neutral or pastel colours", since black is neither neutral nor pastel according to some dictionary definitions. The Respondents considered the general understanding to be that black is a "neutral" colour**.**

12. The Tribunal agrees with the Applicants that since there is some uncertainty about the meaning of the word "neutral", then for clarity the rules should state that homes may be painted either in their existing colours, or in neutral or pastel colours.

13. Rule 2 deals with responsibility for service pipes and wires, a matter which would normally be set out in the contract between each resident and the Park owner ("the

Written Statement"). In this case, no copy of the Written Statement was supplied to the Tribunal. Both parties (and the residents previously consulted) have accepted that this provision is to be included in the site rules. Under the heading "*Service Connections*", the rule as proposed reads

> "*2.1 The electrical, water and drainage systems of the home, and the connections with the Park supplies, are the sole responsibility of the Occupier after the initial installation. The Occupier is responsible for the connection from the home up to the meter, unless the meter is sited away from the Pitch, whereby the Occupier is only responsible up to the connection with the Occupier's Consumer Unit. It is also the Occupier's responsibility to ensure that all electrical, solid fuel, oil and gas installations (where applicable), comply at all times with the various statutory requirements.*
> *2.2 All external water pipes shall be lagged against frost by the Occupier, who will be liable for any loss of water due to the Occupier's failure to do so or from any other failure on the section of the water service for which the Occupier is responsible, ie from the first stop cock connection under the home upwards. The Occupier is responsible for the sewage connection from ground level upwards and for electrical and gas connections from the meter housing unless the meter is sited away from the Pitch, whereby the Occupier is only responsible up to the connection with the Occupier's Consumer Unit. The Occupier shall not permit waste water to be discharged onto the ground.*"

14. The Applicants claimed that these paragraphs contained duplications and inaccuracies. They said that the wording should suggest the direction of flow of the services, so as to make it clear that, for example, the occupier is responsible only for electrical wires and connections <u>from</u> the point where his supply diverges from the Park's circuit <u>to</u> his home. The Respondent said that paragraph 2.1 had been intended to set out general responsibilities for maintenance of service media, whereas paragraph 2.2 was meant to reflect the arrangements for each type of service. Both parties agreed that, at Mount Pleasant Park, the electricity meters servicing some homes are located within the pitch on which the home is sited, whereas other meters are some considerable distance away. However all electrical consumer units, gas meters and stopcocks are within the boundaries of the pitch they serve. In every case, the park is responsible for sewerage arrangements below ground.

15. The Tribunal agreed with the Applicants that the wording of site rule 2 was confusing and slightly inaccurate, and has settled on more accurate wording by way of clarification of the parties' joint intentions.

16. Rules 3.8 and 8.8 both refer to the use of fireworks on site. The Respondent explained that on consultation they had received a number of concerns about the use of launched fireworks, which were capable of damaging property on the Park. The Applicants objected to the exception made for sparklers, claiming that sparklers themselves are dangerous and burn at very high temperatures, and should also be banned as a fire and health hazard.

17. After hearing the parties on this issue, the Tribunal determines that sparklers used under supervision are not so dangerous as to justify a ban from the Park.

18. Rule 8.5 provides that there shall be no noise which might cause a nuisance on the Park overnight. As proposed by the Respondents, this quiet period is to end at 8 am. The Applicants objected and wanted the period of relative quiet on the Park to continue until 9 am. After hearing the parties, it is clear that in the past there have been several versions of site rules at Mount Pleasant and that at least one of these has provided that the rule against noise should continue until 9 am.

19. The Tribunal heard evidence that the maintenance team at the Park start work at 8 am and that a significant proportion of residents (possibly as many as 20% - 25%) go to work in the mornings. Moreover some fuel deliveries and waste collections take place prior to 9 am. The Tribunal therefore determined that 8 am was an appropriate end time for the restriction on noise.

20. The Respondent's proposed Rule 8.3 refers to the behaviour of visitors, and reads

> "*Occupiers will be held responsible at all times for the conduct of their visitors. Children should be supervised at all times to ensure their safety and to ensure that nuisance is not caused to other residents.*"
>
> The Applicants complain that, especially during the summer months when they themselves wish to be able to sit quietly outside, the Park is used as a "playground" by children visiting other homes. They object to the noise and the potential disruption caused by ball games and similar activities. They asked the Tribunal to consider prohibiting all "*play activity (eg kicking, hitting or throwing a ball or such like object) from all areas of the Park, except the host's back garden*" in view of the nature of the Park as an estate for those over 50 years old. They also asked for a rule that children must be supervised at all time "*by a parent or their host*", to ensure their safety.

21. The Respondent, supported in this instance by Mr Keith Umpleby who was present at the hearing as chair of the Residents' Association, contended that such a restriction was overly prescriptive and would be hard to enforce. It would also be deeply unpopular among the grandparents on site, as the Applicants admitted. The Respondent said that a general rule against permitting children and other visitors to cause a nuisance would be sufficient.

22. The Tribunal agrees that it is neither necessary nor feasible to identify what types of games are to be banned at the Park, or to identify by whom supervision should be provided or in which gardens children should be allowed to play. However since playing outside the private gardens will necessarily involve being on or close to the roads on the Park, the Tribunal has amended site rule 8.3 to provide that supervision must be provided by an adult and to add, for clarification, the words "or annoyance".

23. The Applicants also proposed a new section in the site rules, entitled "Visitors", which would regulate the behaviour of visitors to the Park in some detail. However the site rules, having been created in accordance with the statutory procedure, are binding on residents. They have no contractual force in relation to those visiting the Park from time to time. The activities of visitors can only be regulated through the site rules by making the residents responsible for ensuring that their own

visitors behave considerately and safely. This obligation is, in the opinion of the Tribunal, now sufficiently imposed by its substituted wording of rule 8.3.

Additional rule against drones

24. The Applicants wished the Respondent to introduce an additional rule against the use of drones, defined by the Tribunal as remote controlled powered flying vehicles, whether used as toys or otherwise.

25. The possibility of including such a prohibition was not canvassed during the consultation process carried out in relation to the proposed new site rules, and has not therefore been the subject of a "decision" by the Respondent. Under paragraph 11 of the 2014 Regulations the Tribunal has jurisdiction only to confirm, quash, or vary the decisions made by the Respondent in response to consultation, or to substitute a rule for a rule decided upon by the Respondent. The Tribunal therefore has no jurisdiction to add a new rule against the use of drones at Mount Pleasant Park.