



**First-tier Tribunal
Property Chamber
(Residential Property)**

Case Reference : **CAM/00MA/PHN/2014/0004**

Site : **Warfield Park, Bracknell, Berkshire,
RG42 3RG**

Park Home Address : **22A The Larches**

Applicant : **Kenneth Edward La Garde**

Respondents : **Trustees of IRK McLaren Estate**
Representative : **Tozers, Solicitors**

Date of Application : **7th October 2014**

Type of Application : **To determine whether proposed new
site rules should be approved
(The Mobile Homes (Site Rules)
(England) Regulations 2014) (“the
Regulations”)**

Tribunal : **Judge JR Morris
Mrs HC Bowers MSc MRICS
Ms C St Clair MBE BA**

**Date and venue for
Hearing** : **7th January 2015 at
Hilton Bracknell, Bagshot Road,
Bracknell Berkshire RG12 0QJ**

Date of Decision : **11th February 2014**

DECISION & CONSENT ORDER

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Decision

The Tribunal determined that the Owner's decision in relation to Rule 34 be confirmed.

Consent Order

It is Agreed between the Parties that:

1. The Proposed Rules shall be amended to read as follows:

Rule 36 You must not tamper, interfere with or alter any of the electrical installation on the distribution side of the meter.
"Distribution side" means the connection from the Park Meter (i.e. the meters measuring the use across the Park as a whole) up to and including the Occupier's meter serving the Occupier's home.

Rule 38 Subject to Rule 38A, you are responsible for water pipes from the outgoing side of the meter or stopcock to your home.
External water pipes should be protected from frost damage.

Rule 38A Occupiers of homes when these Rules take effect (but not their successors) shall continue to enjoy the benefit of the following pre-commencement rule in place of Rule 38 above:
"All occupiers are responsible for water pipes from the ground level upwards. External water pipes should be protected from frost damage"

Rule 40 You must not tamper, interfere with or alter any of the water installation on the distribution side of the meter or stopcock or (in the case of those occupiers with the benefit of 38A) in respect of the installation for which you are not responsible.
"Distribution side" means the connection or pipes from the Park Meter (i.e. the meters measuring the use across the Park as a whole) up to and including the Occupier's meter or stopcock serving the Occupier's home or (in the case of those occupiers with the benefit of 38A) in respect of the installation for which you are not responsible.

Reasons

Introduction

1. This is an application challenging some of the new Park Home Site Rules proposed by the Respondent.
2. 'Site rules' are defined in section 2C of the **Mobile Homes Act 1983** as being "rules which relate to the management and conduct of" a park home site. The Respondent is using a process introduced as part of a

new approach to the administration of park home sites in the **Mobile Homes Act 2013** (“the 2013 Act”). The Regulations were made pursuant to section 9 of that Statute and came into force on the 4th February 2014.

3. The new scheme provides that site rules made by a site owner before 26th May 2013, i.e. 2 months after Royal Assent for the 2013 Act, shall cease to have effect after 4th February 2015 unless site rules have been introduced by the procedure laid down in the Regulations.
4. Regulation 4 says that:-

“(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 the occupiers;*
or
 - (b) *To promote and maintain community cohesion on the site”*
5. The Tribunal was provided with copies of:
 - The Respondent’s copy of the Applicant’s Written Statement of Agreement dated 19th June 1992 together with the completed Third Schedule recording the pitch fee reviews.
 - A copy of the Electricity Supply Agreement
 - A copy of the Park Rules in force at the time of the Agreement
 - A copy of the Park Rules dated 14th April 1994
 - A copy of the Park Rules dated July 2005
 - A copy of the Current Park Rules undated but probably circa 2010
 - A copy of the Proposed Park Rules
 - A copy of the documentation relating to the Consultation

Issue Relating to Documentation

6. Whereas the Applicant agreed that he had received a copy of the Written Statement of Agreement up to and including the Third Schedule in 1992 nevertheless he did not agree that he had received a copy of either the Electricity Supply Agreement or the Rules in force at the time of the Agreement.
7. Mr Kelly for the Respondent produced the original of the Respondent’s copy of the Agreement and the Tribunal noted that:
 - All the pages of the Agreement including the Electricity Supply Agreement or the Rules were numbered consecutively in like manner and in the same format and font.
 - There were indications that the pages of the Agreement and including the Electricity Supply Agreement had been stapled together at one time. It appeared the Park Rules had not been stapled with the Agreements.

8. The Applicant said that he was sure he had not received the Electricity Supply Agreement or the Rules in 1992 but agreed that it was a long time ago. He said that over the years he had lived on the Park he had been shown a copy of the Electricity Supply Agreement and various copies of the Park Rules by other Occupiers at the Park and was aware of their contents. However, he added that he had not officially received a copy of either the Electricity Supply Agreement or the Rules in 1992 nor had he officially received copies of the Park Rules dated 14th April 1994 or those dated July 2005 or the Current Rules. By officially receiving he said that he had not been given a copy and asked to sign to say he had received a copy.
9. Mr Sumner said that it was standard practice to provide copies of the Electricity Supply Agreement and the Rules to all Occupiers at the time they signed the Written Agreement and copies of the rules are available at the Park Office.
10. The Tribunal found that on the balance of probabilities the Applicant had received a copy of the Electricity Supply Agreement and Park Rules in 1992. Even if he had not, he said he was aware of both documents and had seen the copies provided to other Occupiers. In addition the Park Rules were referred to in the Written Agreement and as the law stood at that time the Tribunal considered that he could be expected to have obtained a copy, if he had not been provided with one in 1992 and therefore be deemed to have known of their contents. For the present case the Tribunal found that the Applicant had knowledge of the Park Rules.

New Site Rules Procedure

11. Under the new procedure the site owner must prepare the proposed site rules. A Proposal Notice must then be served on every occupier and any qualifying residents' association setting out certain prescribed information in a form set out in Schedule 1 to the regulations.
12. Once the consultation process has finished, the site owner must then send a Consultation Response Document to the same people. This explains that the Respondent has taken views into account and has modified the original proposals. It adds that if the recipient wants to appeal that decision, such appeal should be within 21 days and also notice must be given to the site owner 'of an appeal' within 21 days. The 'final' version of the proposed site rules is annexed.
13. This Tribunal is given the jurisdiction to hear these appeals and the regulations say that it can confirm, quash or modify the site owner's decision or substitute its own decision for that of the site owner.
14. The regulations say, "*where a consultee makes an appeal under this regulation, the consultee must notify the owner of the appeal in writing within the 21 day period referred to in Paragraph (1) above*".

15. In this case, it is not disputed that the consultation was carried out correctly.

Grounds of Appeal Against New Site Rules

16. Possible grounds of appeal are set out in regulation 10 (2) and are:-
- “(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.”*

17. Paragraph 4 of Schedule 5 is relevant to this case and states 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 in to 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.”*

Proposed Site Rules

18. In this case the Applicant objects to the following rules:

Electrical

Rule 34

You are responsible for all connections from the out-going terminals of the meter. This includes all circuits connected to the consumer unit that may serve external installations within the plot, i.e. shed, pond etc.

Rule 35

You must not tamper, interfere with or alter any of the electrical installation on the distribution side of the meter.

Water

Rule 38

You are responsible for water pipes from the out-going side of the meter or stopcock to your home. External water pipes should be protected from frost damage.

Rule 40

You must not tamper, interfere with or alter any of the water installation on the distribution side of the meter or stopcock

19. The grounds here are that:
 1. *“the owner’s decision was unreasonable having regard, in particular to... the services or amenities of the site. [Regulation 10 (2) (c) of the Regulations]*
 2. *(a) prior to the deposit of a site rule, the occupier of a site enjoyed a benefit; and (b) the effect of the coming in to force of the deposited site rule is that the enjoyment of the benefit by the occupier will be in breach of the deposited rule; [Paragraph 4 of Schedule 5 of the Regulations]*
20. The Consultation was not in issue.

Site Inspection

21. The Tribunal inspected the Park in the presence of Mr Kenneth La Garde, the Applicant, Mr Barry Sumner, Managing Director of Warfield Park Homes Limited and one of the trustees of the IRK McLaren Settlement, the Respondent, Mr James Sumner the Operations Coordinator of Warfield Park and Mr P Kelly of Tozers the Respondent’s Solicitors. The Tribunal’s inspection focused on the position of the electricity and water supply to the homes because the matter in issue was at what point the Occupier took over responsibility of the supply from the Site Owner.
22. Firstly, the Tribunal inspected 22A, the Larches, the Home occupied by the Applicant. It was noted that the electricity supply cable came from the Park Meter under the ground to the meter for the pitch, which was in the shed. The cable then passed under the ground and came up into the Home itself where it was connected to the consumer unit. A cable went from the consumer unit to the garage. The water supply pipe came from the Park’s main supply pipe to a stopcock on the pitch, which was situated in the front lawn. The supply then passed to the Home itself leaving the ground immediately adjacent the Home.

23. Secondly the Tribunal inspected 23 Forest Way. It was noted that the electricity supply cable came from the Park Meter under the ground to the meter for the pitch, which was on the garage. The cable then passed under the ground and came up into the home itself where it was connected to the consumer unit. The water supply pipe came from the Park's main supply pipe to a stopcock immediately adjacent to the Home. The supply then passed underground to the Home itself leaving the ground under the home.
24. Thirdly the Tribunal inspected 72 The Plateau where the electricity supply cable came from the Park Meter under the ground to the meter for the pitch, which was on the shed. The cable then passed under the ground and came up into the Home itself where it was connected to the consumer unit. The water supply pipe came from the Park's main supply pipe to a stopcock on the edge of the pitch next to the road. The supply then passed underground to the Home itself leaving the ground under the home.
25. Fourthly the Tribunal inspected 7A Wellingtonias where the electricity supply cable came from the Park Meter to a distribution point from which cables passed under ground to the nearby meter. This has not yet been connected but it is to be placed on the garage from which it will pass under the ground and come up into the Home itself where it will be connected to the consumer unit. The water supply pipe came from the Park's main supply pipe to a stopcock on the edge of the pitch next to the road. The supply then passed underground to the Home itself leaving the ground under the home.

The Hearing

26. Those attending the hearing were Mr Kenneth La Garde, the Applicant, and Mr Barry Sumner, Managing Director of Warefield Park Homes Limited and one of the trustees of the IRK McLaren Settlement, the Respondents, Mr James Sumner the Operations Coordinator of Warfield Park and Mr Paul Kelly of Tozers the Respondent's Solicitors. A Park Resident also attended.

Applicant's Case

27. The Applicant stated in a letter to the Tribunal dated 6th October 2014 that he challenged the Proposed Rules numbered 34 and 38. He said that these rules changed the existing rules by making Occupiers liable for the electrical and water installations. He submitted that the supply of these utilities and their related pipes and cables had been the responsibility of the Site Owner. He thereby raised Paragraph 4 of Schedule 5 of the Regulations as a ground for appeal.
28. He also challenged the Proposed Rules numbered 36 and 40 because they prohibited any interference with the water and electrical installation and so conflicted with the Proposed Rules numbered 34 and 38, which made occupiers responsible for those installations.

29. With reference to the electrical supply the Applicant submitted that the Site Owner was responsible for the supply to his Home.
30. With reference to the water supply he submitted that the Site Owner was responsible for the base and by extension was responsible for the pipes and cables that came from the base and connected to the Home and that the Occupier was only responsible when they exited the base. In particular he referred to the Current Park Rules in which Rule 15 states:
- “All occupiers are responsible for water pipes from the ground level upwards and external water pipes should be lagged against frost.”*
31. The Applicant further submitted that he did not know where the pipes and cables ran under his pitch. He said he did not know the route of the electrical cable from under the Home through the base to the garage. He stated that therefore he could not maintain cables and pipes the route of which he did not know. He said that there was a health and safety concern here and that it was unreasonable to expect him to maintain the pipes and cables. He thereby raised Regulation 10 (2) (c) of the Regulations as a ground for appeal
32. The Applicant stated that he had received advice to say that the rules justified an appeal. In support of his submission he referred to the Agreement with particular reference to Implied Term 22 Chapter 2 of Schedule 1 of the Mobile Homes Act 1983

Owner’s obligations

The owner shall—

- (c) *be responsible for repairing the base on which the mobile home is stationed and for maintaining any gas, electricity, water, sewerage or other services supplied by the owner to the pitch or to the mobile Mobile Home;*

It was noted that there might be some difference of opinion in the interpretation of this paragraph.

33. In respect of both rules 34 (electrical supply) and 38 (water supply) the Applicant considered that it was unreasonable for the Occupier to be responsible for cables or pipes that went under ground even if they were on the pitch. He considered that he should only be responsible for the electrical supply when it entered his Home. He submitted that the point of entry would be the distribution box (by which he meant the consumer unit as referred to in Part P of the Building Regulations 2010) from which he accepted he would be liable for the cables and installations serving the appliances. He considered that he should only be responsible for the water supply from the point when it left the concrete base.

34. He said that he had agreed to a stopcock being placed in the front lawn of the pitch because he understood that a meter was to be installed. In fact although stopcock was fitted no meter was installed, he did not anticipate that this was a precursor to his having additional responsibility for the pipe work.
35. The Applicant stated that it was not clear what the Respondents meant in the Proposed Rules 36 and 40 by the term "Distribution Side".

Respondent's Case

36. The Respondents denied that the Proposed Rules 34 and 38 are in breach of Implied Term 22 Chapter 2 of Schedule 1 of the Mobile Homes Act 1983. It submitted that the services of electricity and water are supplied to the pitch as required under the paragraph. The term does not attempt to define at what point along a wire or pipe the repairing obligation transfers from the Site Owner to the Occupier. It merely seeks to make it clear that it is down to the Site Owner to maintain what might be called the infrastructure of the Site, leaving it up to the Occupier to deal with matters within the Pitch which he occupies and within his Home on that Pitch. Some services may end at the Pitch, in this case electricity and water and others may end at the home for example cable television.
37. The Respondents submitted that the objection to the Proposed Rules 36 and 40 was misconceived and seemed to stem from a misunderstanding of the word "distribution". The Respondents submitted that the word was used because of a dictionary definition of distribution which included "the way in which something is shared out among a group or spread over an area". In this context it referred to the "electricity and water installations respectively in so far as they comprise wires and pipes which are distributed across the site and fall within the sphere of responsibility of the Site Owner to maintain".
38. The effect of Rule 34 was that Park Owner would be responsible for all the installations and cabling on the distribution side of the meter. This meant the cables and installations from the connection at the Park Meters at the gates (i.e. the meters measuring the use across the Park as a whole) up to and including the Occupier's meter serving the Occupier's home. The Owner would then be responsible from the meter for all the installations beyond that point.
39. The effect of Rule 36 was that Occupiers must not tamper, interfere with or alter any of the water installation on the distribution side of the meter. It did not refer to the Occupier's side of the meter.
40. The Respondents were concerned that the Tribunal may consider the Respondents' decision following the Consultation were unreasonable. Reference was made in the written statement of case to the statutory reasonableness test applied for many years to employer decision in unfair dismissal claims. Copies of the decisions were provided as

follows: *British Home Stores v Burchell* [1978] UKEAT 108,78, 2007, (1978] IRLR 379; *Post Office v Foley*; *Midland Bank Ltd v Madden* [2000] IRLR 82 with relevant passages marked. In addition reference was made to the commentary in Practical Employment Law.

41. The Respondents submitted that Rule 38 was the same for the water supply where the Park Owner would be responsible for all the installations and pipe work on the distribution side of the meter or stopcock and the provision in Rule 40 against tampering was the same.
42. The Respondents submitted that there was an analogy between the decision to be made by a Park Owner in respect of the consultation and subsequent decisions in respect of the rules and an employer in the manner in which an investigation into an employee's conduct and the subsequent decision whether or not to dismiss. Both required reasonable inquiry based upon which the owner or employer must make a reasonable decision.
43. Provided the inquiry was reasonable and the decision was reasonable, based upon the responses from the inquiry, then the owner's or employer's decision was reasonable. By reference to the cases it was said that a tribunal should not open up the inquiry again and substitute its own view of reasonableness.
44. The Respondents claimed that the Rules in relation to the electrical supply (Rules 34 and 36) had not altered and were the same as the Current Park Rules, which were the same as the previous rules. With regard to the water supply (Rules 38 and 40) they submitted that their decision regarding the proposed rules following the consultation was reasonable.
45. Mr Kelly for the Respondents stated that although the Rules in relation to the water supply had altered from the original rule the Proposed Rule was reasonable. It would bring the responsibility for all service cables and pipes in line with one another. The division of responsibility for the electricity cables had been the meter at least since 1976. A gas service had recently been installed and the agreement between the gas company, providing the gas, and the Occupiers stated that the company was responsible for the pipes and installations up to the meter and the Occupier was responsible from the meter onwards. The new rule relating to water would have the same effect.

Discussion on the Proposed Rules

46. At the Hearing the Tribunal addressed each of the new rules in turn.

Rules 34 and 36

47. With regard to Rule 34 the Tribunal considered the Respondent's claim that it was the same as the Current and previous Park Rules. The Tribunal noted as follows:

48. The Electricity Supply Agreement had applied since 1976, according to a copy of an agreement attached to the Written Agreement for 5 The Larches supplied by the Respondents, and since 1992 in respect of 22A The Larches according to the copy attached to the Respondents' copy of the Written Agreement. Rule 2 in both copies of the Electrical Supply Agreement stated:

"The meter, all wiring leading up to it and coin box (if any) are the property and responsibility of the Operator. Beyond this point the installation is the responsibility of the Occupier who shall not make any alteration or extension to the installation without the Operator's consent."

49. Rule 7 of the Park Rules for 14th April 1994, July 2005 and the Current Park Rules state, among other matters:

"The Occupier is responsible for all electrical connections from the meter box housing"

50. The Tribunal informed the parties that in the absence of evidence to the contrary it would find that the Rule was pre-existing and that it would find it was reasonable
51. The Applicant re-iterated his objections to the rule namely that he did not know where the cables ran on his pitch after entering the meter. The Tribunal was of the opinion that this did not justify the changing of the Rule.
52. The Tribunal informed the parties that in the absence of evidence to the contrary Proposed Rule 34 was a pre-existing rule and was reasonable. The Tribunal also informed the parties that taking into account the Respondents' explanation of what was meant by the "Distribution Side" it would find that Rule 36 was also reasonable.
53. No evidence to the contrary was submitted.

Rules 38 and 40

54. Secondly with regard to Rule 38 the Tribunal considered the Respondent's claim that, although it was a new Rule, it was reasonable.
55. The Tribunal agreed that the Proposed Rule was reasonable as it stood and would bring all the services in line. However, as the Proposed Rule was a new rule the Tribunal had to consider how it would affect the existing Occupiers and whether Paragraph 4 of Schedule 5 the Regulations would affect it.
56. The Tribunal considered the provision in respect of the Water Supply in previous versions of the Park Rules. The Tribunal found no reference to

liability in respect of water pipes in the Park Rules from 1976 to 1999. However:

- The Park Rules for 14th April 1994 state at Rule 14, which is, headed Service Responsibilities:
“All occupiers are responsible for water pipes from the ground level upwards and external water pipes should be lagged against frost.”
Occupiers are responsible for the sewage connection from ground level upwards. It is strictly forbidden for anyone to interfere with the Company’s service installations.”
 - The Park Rules for July 2005 at Rule 15 state:
“All occupiers are responsible for water pipes from the ground level upwards and external water pipes should be lagged against frost.”
Occupiers are responsible for the sewage connection from ground level upwards. It is expressly forbidden for anyone to interfere with the Company’s service installations.”
 - The Current Park Rules at Rule 15 state:
“All occupiers are responsible for water pipes from the ground level upwards and external water pipes should be lagged against frost.”
57. The Tribunal suggested to Mr Kelly, the Respondent’s Representative that the maintenance of the water pipes to the base (i.e. the pipes below ground level up to the point they before they emerged from the base) had until the Proposed Rule been the responsibility of the Respondent Owner. The Occupiers had only been responsible for the pipe from the ground level upwards. This was a benefit, which the existing Occupiers had enjoyed. The Proposed Rule would now make the Occupiers additionally responsible for the water pipes from the stopcock to the base and thence to the home. The Tribunal had noted on its inspection that this might be a distance from the edge of the pitch to the base, between the edge of the pitch and the base or adjacent the home to the base. If the Occupiers failed to maintain the pipe from the stopcock to the base they would be in breach of the Proposed Rule. The Tribunal expressed the view that, under Paragraph 4 of Schedule 5 of the Regulations, if the existing Occupiers failed to maintain the pipe from the stopcock to the base they would not be in breach of the Proposed Rule because they had enjoyed the benefit of the Owner doing so prior to the Proposed Rule.
58. Mr Kelly agreed that Paragraph 4 of Schedule 5 of the Regulations would affect the application of the Proposed Rule and suggested that the Proposed Rules should be amended to take account of this to avoid confusion in the future. He requested an adjournment over the lunch period when the Applicant and he would seek to prepare amendments, which could be the subject of a Consent Order by the Tribunal.
59. The Tribunal agreed to the adjournment following which an agreed draft of a new Rule of 38A was put before the Tribunal, which took account of the existing Occupier’s benefit. Mr Kelly stated that he

would check the wording and grammar and e-mail a fair copy to the Tribunal, which he did on the 21st January 2015.

60. Mr Kelly also requested that the Tribunal amend the Proposed Rules 36 and 40 with the addition of a definition of "Distribution Side" a draft of which he also provided which the Applicant had agreed.
61. The Applicant stated that he agreed the amendments but still considered that there should be an additional Rule 34A relating to the electrical supply.

Decision

62. The Tribunal determined that the Owner's decision in relation to Rule 34 be confirmed.

Consent Order

63. The Tribunal makes an Order by consent of the parties as follows:
 - That the Owner's decision in relation to Rules 36 and 40 should be modified and that the definition of "Distribution side" should be added to avoid confusion, the wording of which was agreed between the parties and is set out in the Consent Order prior to these Reasons.
 - That Owner's decision in relation to Rule 38 should be modified and Rule 38A added, the wording of which was agreed between the parties and is set out in the Consent Order prior to these Reasons.

Judge JR Morris