First-tier Tribunal
Property Chamber
(Residential Property)

Case Reference	:	**CAM/22UN/PHN/2014/0005**
Park Home address	:	**12A The Spinney, Sacketts Grove Residential Park, Jaywick Lane, Clacton-on-Sea, Essex CO16 7JB**
Applicant	:	**Dennis Wood**
Respondent	:	**Tingdene Parks Ltd.**
Represented by	:	**Mr. Keith Ryan, solicitor advocate**
Date of Application	:	**8th 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	:	**Bruce Edgington (lawyer chair)** **David Brown FRICS** **Chris Gowman BSc MCIEH MCMI**
Date and venue for Hearing	:	**19th January 2015 at The Esplanade Hotel, Marine Parade East, Clacton-on-Sea, CO15 1UU**

DECISION

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1. The proposed rules are approved subject to the deletions and amendments detailed below.

2. The Respondent shall prepared a set of site rules including all these deletions and amendments within 14 days of the date of this decision which shall be distributed to all the occupiers on the site.

Reasons

Introduction

3. This is an application challenging some new Park Home site rules proposed by the Respondent. '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.

4. 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.

5. 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*

The Required Process for New Site Rules

6. 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. In this case, the Respondent's submission is that the notice is at pages 116-121 in the hearing bundle which the Applicant agrees he received.

7. Once the consultation process has finished, the site owner must then send a Consultation Response Document to the same people and this is in the bundle at pages 10-23. 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. Again, the Applicant does not dispute that he received this second notice.

8. 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.

9. The regulations say "*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) within the 21 day period referred to in Paragraph (1) above*". The words in brackets were no longer a requirement as from 19th December 2014.

Grounds of Appeal

10. Possible grounds of appeal are set out in regulation 10 and, in so far as they are relevant, they provide that grounds for an appeal are:-

"(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"*

11. In this case, the Applicant confirmed that proposed rules 3, 4, 8, 9, 11 and 13 are agreed. He objects to the remainder in whole or in part.

Site Inspection

12. The Tribunal inspected the site. The chair and one member met the Applicant's wife who said that her husband was in hospital. She did not know whether the case would still proceed and asked whether the Tribunal would consider an adjournment. The Tribunal chair said that he would speak to the other members and the other party and said that there was a good chance that it would be adjourned.

13. All the Tribunal members then looked around the site which is in generally good order with neat and tidy pitches and well maintained park homes. It was noted that some pitch boundary fences were also boundary fences for the site. There is a car park which is limited in size but not many parking places on pitches. There did not appear to be many, if any, vegetables patches within the gardens on the pitches.

The Hearing

14. Those who attending the hearing were Mr. Keith Ryan, solicitor for the Respondent, together with Jeremy Pearson and Paul Spriggins who are directors of the Respondent. The first matter to consider was whether the hearing should be adjourned in view of the Applicant's very unfortunate admission to hospital. A call to the Tribunal office revealed that he had in fact telephoned on Saturday 17th January and left a message that he was being admitted to hospital. Significantly, he made no suggestion of, or request for, an adjournment.

15. The Respondent requested that the hearing proceed in view of the considerable journeys which had been made by the Tribunal members and the Respondent's solicitor and directors. The Tribunal carefully considered the question of an adjournment and decided not to adjourn the hearing for the following reasons i.e. (a) the fact that the Applicant had not actually asked for an adjournment, (b) the fairly tight timescale for the Respondent to conclude the preparation of the site rules for them to be deposited with the local authority (c) the ongoing uncertainty for the other occupiers on the site (d) the fact that the Applicant is clearly able to put forward his points in writing thoroughly and clearly and that everything said by the Respondent in its statements has been replied to and (d) the considerable cost of an adjournment and the uncertainty of the Applicant's medical situation

which would obviously have an effect on when the case could be re-listed.

16. The objections, the submissions and the Tribunal's conclusions can perhaps best be dealt with as follows:-

    Rule 1 – rule 1(b) says that extensions or alterations to a park home may require planning permission or building regulation approval and the occupier must deal with this. The objection seems to be that this is already covered in the statutory provisions setting out the terms of an occupation agreement and should not be included. The Respondent agrees to the objection and the removal of this rule.

    Rule 2 – rule 2(b) says that garden trees are to be a maximum of eave height and vegetable gardens are not permitted. The objection is that the consultation reveals that the maximum height restriction only applies to new trees. Again it is said that the consultation reveals that vegetables can be grown in tubs. The Respondent agrees an amendment to make it clear that it shall maintain 'mature, established trees', whatever that may mean, and to permitted the growing of vegetables in tubs. In a subsequent letter of the 24th December 2014, the Applicant now states that he wants the restriction on growing vegetables to be removed.

    As far as the height of trees was concerned, the Tribunal felt that in view of the varying heights of 'eaves' there should be stated height which was agreed at 3 metres. This should be a general rule save for the existing trees which must be identified on a plan to be annexed to the rules. As far as vegetables were concerned, the Tribunal could not see that there was any justification for any mention of vegetables as the rule already says that the gardens must be ornamental only.

    The rule is therefore varied to read "*Gardens must be of an ornamental nature only and trees must not be higher than 3 metres save for those existing trees marked on the attached plan*".

    Rule 2(c) says that an occupier is responsible for the maintenance of a hedge or fence which forms part of the boundary of a pitch. The objection is that the statutory terms of the occupation agreement state that the site owner must maintain the site boundary fences and trees and that some pitches include these. It is suggested that this needs to be clarified and the Respondent partly agrees to the extent that it agrees to say specifically that it will maintain 'mature trees' either on communal areas or on pitches with annual inspections by a tree surgeon. At the hearing, the Respondent broadly agreed with the proposed amendments.

    The rule is varied to read "*The occupier shall be responsible for the trimming and maintenance of any boundary hedge and fence which forms a boundary to the pitch to such maximum height as may be directed by the local authority. For the avoidance of doubt this obligation does not extend to boundary fences and hedges which also*

mark the site or communal parts boundaries or to the mature trees marked on the attached plan which the park owner will maintain with the assistance of annual inspections by a tree surgeon".

Rule 2 (e) says that litter must not be allowed to accumulate on the access roads and paths. As tree debris is said to be a common problem, objection is raised because it is the site owner's responsibility to maintain the site in a clean and tidy condition save for the pitches themselves. The Respondent says that tree debris is not litter. At the hearing, the Respondent agreed to a slight amendment suggested by the Tribunal to meet the Applicant's point. The Tribunal agreed that tree debris cannot be described as 'litter'.

The second sentence is varied to read "*The occupier must not drop litter on the accessways and paths on the site*".

Rule 2(f) says that permitted 'on pitch' parking must be concrete or block paving. The objection is that because these are non-permeable, this will exacerbate flooding. It should allow permeable materials. The Respondent agrees to the removal of this rule.

Rule 2(g) prohibits the planting of new hedges on the site. The objection is that replacing damaged plants in existing hedges must be expressly permitted. The Respondent agreed.

This rule is varied to read "*The planting of new hedges is not permitted on the park save for the replacement of plants in existing hedges*".

Rule 2(i) says that where the exterior of a park home is to be re-painted, it should be in the original colour or as close as possible. The objection, in effect, is that changes should be permitted but restricted to pastel shades or a choice from an agree colour range. The Respondent agreed with the sentiments as expressed by the Applicant and a compromise was agreed which took those sentiments into account.

This rule is varied to read "*Where the home exterior is repainted, reasonable endeavours must be used not to depart from the original colour scheme. In the event that this is not possible, any repainting must be of a pastel colour approved by the park owner in writing and in advance*".

Rule 5 – rule 5(c) provides that the occupier cannot sublet or part with possession of the whole or any part of the pitch or park home. It is suggested that this is contrary to the regulations on gifting and sale of homes. The Respondent says that the Applicant has misunderstood the gifting and sale regulations which do not cover occupiers who simply allow others to have possession of all or part of a pitch or park home. The Tribunal agreed with the Respondent.

However, there was clearly some confusion and this rule will be varied by adding these words "*For the avoidance of doubt this rule does not*

relate to the act of selling or the gifting of a park home which would be the subject of the regulations governing those transactions".

Rule 6 – rule 6(c) provides that pets causing a nuisance or deemed to be dangerous can be removed by the site owner on 7 days' notice. The objection is that there should be an arbiter e.g. a person qualified in animal welfare. The Respondent agrees to the removal of this rule.

Rule 7 – rule 7(d) provides that vehicles must be taxed and insured as required by law. The objection is that the rule makes no provision for vehicles complying with the Statutory Off Road Notice provisions where insurance is not required. The Respondent does not agree because of the words 'as required by law' which would permit SORN vehicles. The Tribunal agrees with the Respondent's interpretation of the rule and it will remain as drawn.

Rule 7(e) states that the site owner can remove any vehicle which is apparently abandoned. The objection is that there should be some attempt to contact the owner. The Respondent did not basically object to clarifying this but felt that the rule was sufficient.

This rule is varied to add "*For the avoidance of doubt the park owner will make every endeavour to identify the owner of the vehicle and give notice to that person before removal*".

Rule 7(f) seeks to limit ownership of vans by occupiers to 'of a car derivative'. The objection is that all vehicles were originally of a car derivative and the site owner should not be able to dictate the personal transport of occupiers. Having said that, the Applicant then suggests a limitation by weight. Once again, the Respondent had no great objection to the sentiments behind the Applicant's case. The Tribunal was satisfied that the existing rule's descriptions of "private light goods vehicles" and "car derivative" covers the point.

Rule 7(i) prohibits motor homes and touring caravans save for 24 hours at a time for loading and unloading. There seems to be a difference between the site owner and Tendering Council about whether such a vehicle would affect the licence as being a 'mobile home'. The number of mobile homes on the site is restricted. The Respondent comments that it does not understand the objection. Having looked at the site and having noted the limited parking facilities, the Tribunal takes the view that motor homes and touring caravans could have a considerable detrimental effect on the amenity of the site. If parked in the car park, they would take parking spaces away from other occupiers.

On balance, the Tribunal agreed with the rule as written.

Rule 10 – rule 10(b) provides that hand held hoses are permitted if there is a 'gun' attachment and 'for a direct water supply and a meter'. The objection to this is not clear. It was explained to the Tribunal that the cost of water is split between the occupiers equally. Thus, if people used sprinklers or left their hoses on and unattended, they would be

using more water than others which would be unfair. This was the point of rule 10 as a whole.

The Respondent therefore agreed to a variation which would hopefully allay the Applicant's concerns. This rule is varied to "*Hand held water hoses are permitted but only for use where a 'gun' attachment is fitted and such hose is not left on and unattended*".

Rule 12 – rule 12(c) makes it clear that occupiers must make the obligations under the rules known to guests and visitors and indemnify the site owner from any breach caused by them or their guests and visitors. The objection seems to amount to a statement that the Applicant does not understand the obligation.

Neither the Respondent nor the Tribunal can see the point being made by the Applicant. All the rule is saying is that both the occupier of each pitch and his or her fellow householders, visitors and guests have to abide by the rules. As the only contractual relationship is between the park owner and the occupier, it is up to the occupier to make sure that the other people mentioned know of and abide by the rules. In any event, the occupier must indemnify the park owner. This is the same sort of arrangement as exists between landlords and tenants. There will be no change.

Conclusions

17. The Tribunal hopes that the Applicant will understand these amendments and deletions and agree that all of his comments and arguments have been properly considered and taken into account. As he will see, most of his points have either been accepted or determined in his favour.

18. If, because of his absence from the hearing, he considers that points have not been understood, the Tribunal will carefully consider any ground put forward in any application for permission to appeal. It now has the power to review its decision and it will give careful consideration to exercising such power if satisfied that there has been an injustice.

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Bruce Edgington
Regional Judge
21st January 2015