



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

Case Reference : CHI/29UK/PHN/2015/0004
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Subject Property : 1, 41 & 34 East Hill Farm Park,
East Hill Road, Knatts Valley
Sevenoaks
Kent,
TN15 6YD

Applicants : Mrs Gillian Mary Roberts (Plot 41)
Mr John Canning, Mr and Mrs
Muncey (Plot 1)

Respondent : Mrs J Gilman

Type of Application : Application under Regulation 10 of
the Mobile Homes (Site Rules)
(England) Regulations 2014 with
regard to the proposed making,
varying or deletion of a site rule or
rules

Tribunal Members : Judge S.Lal
Mr R Athow FRICS

Date of Inspection : 7th January 2016

Date of Decision : 11th January 2016

DECISION

Introduction

- 1 This is a decision on an application made to the First-tier Tribunal (Property Chamber) (Residential Property) under regulation 10 of the Mobile Homes (Site Rules) (England) Regulations 2014 ('the 2014 Regulations') for a determination that the new site rules proposed for East Hill Farm Park ('the subject property') are unreasonable having regard, in particular, to the proposal, or the representations received in response to the consultation.

- 2 The Applicants are Ms Gillian Mary Roberts, Mr John Canning and Mr and Mrs Muncey the owner/occupiers of park homes at 34, 41 & 1 of the subject premises. The Respondent is Mrs J Gilman the owner of the subject property. The subject property is a protected site for the purposes of the Mobile Homes Act 1983. It is licensed by Sevenoaks District Council.

Statutory regime

- 3 The statutory regime which applies to protected sites and which regulates the content of site rules and the procedure for the making, variation and deletion of site rules has recently been amended by the 2014 Regulations. The new regime came into effect on 4 February 2014. Site rules created before 26 May 2013 will automatically ceased to have effect on 4 February 2015; and site owners are now preparing to introduce new rules.
- 4 The new regime is to be found in the Mobile Homes Act 1983 ('the 1983 Act'), as amended by the 2014 Regulations and in the 2014 Regulations themselves.
- 5 In relation to the *content* of site rules, section 2C(2) and 2C(8) of the 1983 Act provide (so far as relevant to the present application):
 - (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.

Regulation 4 of the 2014 Regulations provides:

- 4.(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.

Pursuant to section 2C(8) of the 1983 Act, Regulation 5 provides:

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

And paragraph 2(a) of Schedule 5 refers to

- (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.

- 6 The 2014 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 so 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).
- 7 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.
- 8 Regulation 11 sets out the powers of the Tribunal. It provides:
- (11) On determining an appeal under regulation 10 the tribunal may—
 - (a) confirm the owner's decision;
 - (b) quash or modify the owner's decision;
 - (c) substitute the owner's decision with its own decision; or
 - (d) 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.

Factual background

- 9 In August 2015 the Respondent proposed to replace the existing site rules. In August 2014, in accordance with Regulations 7 and 8 of the 2014 Regulations, the Respondent sent a proposal notice (in the form set out in Schedule 1 to the 2014 Regulations) to each of the occupiers of the subject property.
- 10 The objection seemed to focus on the proposed site rules 16, 22 and 18. The proposed new Rule 16 stipulated that “you must not park on the roads or grass verges” and the Proposed new Rule 22 stipulated that “ you must not carry out the following works or repairs on the park:- (a) Major vehicle repairs involving dismantling of parts of the engine (b) works which involve the removal of oil or other fuels. The proposed Rule 18 stipulated that there is to be no parking in front of the garages.
- 11 In summary, the objections of the Applicants were that the effect of not being allowed to park on the pitches (Rule 16) would be difficult for them. For example Mr Canning has a Blue Badge and the distance to the specified car park would be difficult. In respect of the proposed Rule 22, those residents who used a mobile car servicing firm would not be allowed to change their oil and thus this would cause a huge amount of inconvenience. In addition Ms Roberts raised the issue that she has parked her car in the area by the garages area (adjacent to no 42 and 12) in respect of the proposed new Rule 18. She made the point that the garages themselves are too small for anything other than a small compact vehicle
- 12 Pursuant to their right of appeal set out in Regulation 10 of the 2014 Regulations, the Applicants sent an application to the First-tier Tribunal (using form PH15), appealing against the Respondent’s decision to implement its proposed new site rules on the ground that the Respondent’s decision was unreasonable having regard, in particular, to the proposal, or the representations received in response to the consultation.
- 13 On 10th September 2015 the Tribunal issued Directions for an inspection of the subject properties and a determination on the papers only was scheduled in the period of 4 weeks from 14th December 2015.
- 14 On 30th September 2015 Mr Canning submitted his written response in respect of the proposed Rule 22 and 16. On 1st October 2015, Ms Roberts submitted a written response in which she addressed the proposed Rule 18 (the garages issue) and proposed Rule 22.
- 15 On 23rd October 2015, Mrs Gilman submitted her Response. In this she stated that it had never been the position that parking on the pitch had been permitted

- 16 However in light of the references by Ms Roberts to her disability it was proposed that Rule 18 be amended so that the area outside no 42 became 6 parking spaces for disabled Blue Badge Holders. Amendments to Rule 22 were proposed so as to allow minor repairs which included the changing of oil but with proper disposal of the same. In respect of the area outside no 12 (adjacent to no 42), it was noted that the Site Licence does not allow parking within 3 metres of the home to prevent the spread of fire and therefore this could not be allowed
- 17 Ms Roberts replied with her formal acceptance of the new proposed Rule 18 and Rule 22 dated 26th October 2015. Mr and Mrs Muncey did likewise in respect of No 1 by way of letter dated 28th October 2015 as did Mr Canning after some further clarification.
- 18 The matter seemingly having been resolved in the terms above, the Tribunal received a letter on 19th November 2015 from Mr Roskilly and Mr Ellis (no's 32 and 36) objecting to the proposed new changes as agreed. They raise what they perceive as the 6 metres gap point. The matter is not further elaborated and it is not clear whether the authors have been privy to the entirety of the correspondence between the Applicants and the Respondent leading to the agreed amended rules. In fact the authors support Mrs Gilman and may not be aware of the process of negotiation referred to above. The Tribunal wrote to both individuals on 30th November 2015 notifying them that the Tribunal was not going to forward their letter as they had not applied to be joined to the proceedings. No one else has applied to be joined to the application.

Inspection and hearing

- 19 The members of the Tribunal inspected the subject property 7th January 2016. The inspection was also attended by Mr Gilman, the son of Mrs Gilman. Ms Roberts and Mr Canning were seen but they were content for the Tribunal to inspect the site in their absence.
- 20 The site is in a rural setting close to the far end of a 'No through road'. There are no local shops, or schools although there is a public phone box and a bus stop at the entrance to the site. The site has existed for many years and currently comprises 41 pitches. There is a circular site road, at the far end of which is further land with a holiday park caravan site which, it is understood, is in the same ownership
- 21 As the Tribunal were leaving the site they were approached by a man who identified himself as a Mr Young who indicated his unhappiness with aspects of the management. He felt aggrieved that Ms Roberts had not acted for a number of other residents as had been his earlier belief. He was informed by the Tribunal that it would not receive evidence at an inspection from an individual who was not a party to the proceedings. He confirmed that he was not a party to the present application before the Tribunal.

Determination of the Tribunal

- 22 In determining the issues in dispute between the parties the Tribunal took account of all relevant evidence and submissions presented by the parties.
- 23 It was apparent to the Tribunal upon reading the papers that both sides had, as their statements of case developed, been prepared to modify their respective positions. Prior to the inspection the Applicants had agreed to the proposed further amended rules. The Tribunal noted the contact with other owners but it also noted that no one else had applied to the join this current application. The Tribunal can only determine that which is within its jurisdiction to determine. In so far as the Applicants are concerned the Tribunal confirms the terms of the amended site Rules 18 and 22 as signed and dated by Mrs Gilman on 23rd October 2015.
- 24 The Tribunal makes no further order.
- 25 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. 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.
- 26 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.
- 27 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.

Judge S.Lal.....