



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

Case Reference : CHI/00HE/PHN/2015/0002

Property : 44, little Trelower Park, Trelowth,
St Austell, Cornwall PL26 7DU

Applicant : Mr Roger William Smith

Representative :

Respondent : Wyldecrest Parks Management Limited

Representative : Mr David Sunderland

Type of Application : Site rules

Tribunal Members : Judge D Agnew

**Date and venue of
determination** : On paper on 19th June 2015
The Tribunal office, Chichester

Date of Decision : 19th June 2015

DECISION AND REASONS

Decision summary

1. **The Tribunal determines that the new site rules as proposed by the Respondent in the proposal dated 27th January 2015 are confirmed save that the words “alteration or addition” in proposed Rule 1 shall be replaced with the word “improvement”; and in proposed Rule 28 the words “and for electrical connections from the meter housing” shall be deleted.**
2. **For the avoidance of doubt the rules shall now read as follows:-**
“Rule 1. Homes must be kept in a clean and sound condition. Decoration and external colour must be maintained. Wheels must not be removed nor the home repositioned. No external improvement to the home or pitch is permitted without prior written permission of the park owner.”

“Rule 28. All external water pipes shall be lagged against frost by the occupiers i.e. from the underground stopcock and ground level upwards. The occupier is responsible for the sewage connection from the ground level upwards.”

Reasons

Background

2. The Applicant is the owner of a mobile home at 44, Little Trelower Park, Trelowth, St Austell, Cornwall PL26 5DU. (“the Park”). The Park is a Protected Site under the Caravan Sites Act 1968 and the rights and obligations of the mobile home owner and the site owner are regulated by the Mobile Homes Act 1983 as amended (“the 1983 Act”). The Respondent is the site owner of the Park.
3. On 25th March 2015 the Applicant applied to the Tribunal appealing the Respondent’s decision to implement its proposal for new site rules for the Park. The ground of appeal stated by the Applicant was that the site owner’s decision to implement the new site rules without any change from the original proposal was unreasonable having regard, in particular, to the proposal, or the representations received in response to the consultation with home owners. There was no challenge to the procedure that the Respondent had adopted in seeking to implement the site rules change.
4. Directions were issued by the Tribunal dated 26th March 2015 providing for the matter to be dealt with on the basis on written representations without an oral hearing under Rule 31 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 unless either party objected within 28 days. Neither party did object.
5. The Directions also provided for the application form and accompanying documents to stand as the Applicant’s statement of case and for the Respondent to serve and file a statement of case in response. This was duly

done.

6. The matter came before the Tribunal for determination on 11th June 2015. The determination was not finalised until the parties were given the opportunity of responding to some questions of the Tribunal that had arisen from the paperwork and the cases as submitted. Prior to the determination, the Applicant wrote to the Tribunal to withdraw his objection in part to one of the proposed new rules.

The Applicant's case

7. The matters that remained for the Tribunal to determine concerned two proposed site rules. The first of these proposed rules is Rule 1. This states as follows:-

"Homes must be kept in a clean and sound condition, decoration and external colour must be maintained. Wheels must not be removed, nor the home repositioned. No external alteration or addition to the home or pitch is permitted without prior written permission."

The Applicant's objection to this rule is that it is already contained in the terms implied into all Mobile Homes Act agreements by paragraph 21(c) and (d) of Schedule 1 Part 1 of the 1983 Act .

8. The second proposed rule opposed by the Applicant is Rule 28. This provides as follows:-

"All external water pipes shall be lagged against frost by the occupier i.e. from the underground stopcock and ground level upwards. The occupier is responsible for the sewage connection from the ground level upwards and for electrical connections from the meter housing."

The Applicant's objection to this rule is similar to that in connection with Rule 1, namely that it is already provided for by the implied term set out in paragraph 22(c) of Schedule 1 Part 1 to the 1983 Act and is therefore unnecessary.

The Respondent's case

9. The Respondent says that when it proposed the new rules it simply took the existing rules and removed any rule which was no longer permitted under Schedule 5 of The Mobile Homes (Site Rules) (England) Regulations 2014. It had received only 3 objections to Rule 1 and 5 objections to Rule 28 from Owners of homes on the Park. It agrees that the proposed Rules 1 and 28 are covered by the Implied Terms but says that they are still beneficial and, indeed, necessary to draw the residents' attention to the Implied Terms under the Act. As the Applicant accepts that the said Implied Terms are incorporated into his agreement and he must abide by them anyway, there is no reason why

they should not also be site rules, argues the Respondent.

The relevant legal provisions

10. Under section 2C(2) of the 1983 Act “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.”
11. The prescribed matters referred to in section 2C(2)(b) above are set out in regulation 4(2) of the Mobile Homes (Site Rules) (England) Regulations 2014. This states that:-

“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.”
12. The implied term set out in paragraph 21(c) and (d) of Schedule 1 Part 1 to the 1983 Act is as follows:-

“The occupier shall –

 - c keep the mobile home in a sound state of repair;
 - d maintain –
 - (i) the outside of the mobile home, and
 - (ii) the pitch, including all fences and outbuildings belonging to, or enjoyed with it and the mobile home, in a clean and tidy condition.”
13. The implied term set out in paragraph 22(c) of Schedule 1 Part 1 to the 1983 Act is as follows:-

“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 home.”

The Tribunal’s decision

14. As proposed, Rule 1 confers on the site owner a discretion as to whether to permit any external alteration or addition to the home or pitch, whether or not that alteration or addition is an “improvement”. Rules which provide the site owner with such a discretion are prohibited by paragraph 2(a) of Schedule 5 to The Mobile Homes (Site Rules) (England) Regulations 2014. If the new Rule 1 is to be permitted at all, therefore, it must be amended so that the words “alteration or addition” are replaced with the word “improvement”.
15. The Applicant’s objection to this rule, however, is that it is unnecessary to include it as it is already an implied term by virtue of paragraph 21(c) and (d) of the 1983 Act. However, the proposed new rule is more extensive than the implied term. The latter only refers to keeping the mobile home in a sound state of repair and maintaining the outside of the home and the

Dated the 19th day of June 2015

Judge D. Agnew

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.

pitch, including fences and outbuildings, in a clean and tidy condition. It says nothing about retaining the colour of the home, retaining the wheels in position, and not repositioning the home. Further the implied terms at paragraph 21 of Schedule 1 to the Act does not deal with improvements to the exterior. It cannot be said, therefore, that the proposed new rule is covered by the implied terms and the Applicant's objection on that ground, therefore, fails.

16. The Applicant's objection to the proposed new Rule 28 is that it makes the home owners responsible for "electrical connections from the meter housing". The Applicant says that his meter housing is situated on another home owner's pitch. The Respondent is not sure whether this is correct in the Applicant's case but accepts that there are indeed some homes on the Park where the electricity meter is positioned on another home's pitch. The Applicant says he has no right to go onto that pitch to repair or maintain the electrical wiring from the meter to his pitch. The proposed rule is, therefore, unreasonable. It is also unnecessary as paragraph 22(c) to Schedule 1 to the Act implies a term that the site owner is responsible for the supply of electricity to the home.
17. The Tribunal agrees with the Applicant that it is unreasonable to make the home owners responsible for the electrical wiring from the meter housings where those meter housings are positioned outside their own pitch. The proposed new rule cannot therefore stand as drafted. The Tribunal has, however, had some difficulty in construing paragraph 22 (c) of Schedule 1 to the Act. Where the obligation is on the site owner to provide the supply of services to the pitch **or** the home (as is the case under paragraph 2(c)) does this mean that the site owner has the option of supplying the services just as far they reach the plot; or does it mean that where there is a mobile home on a plot it is the responsibility of the site owner to provide the supply to the actual home itself? In the Tribunal's view, this particular paragraph is unclear and is open to interpretation either way. However, the Tribunal does not consider that it is the function of site rules to try to interpret this provision in any particular way, particularly where the site rules are proposed by the site owner and the interpretation proposed would be in the site owner's favour. Nor does it consider it appropriate for the Tribunal on an application under the site rules to attempt to construe the paragraph in question, not least because there has not been full argument on the point. The Respondent in an email to the Tribunal dated 12th June 2015 in response to a query from the Tribunal acknowledges the problem with regard to meter housings sited "off pitch". It suggests that for clarity the Tribunal may wish to consider the rule providing that the home owner is responsible for the supply of electricity from the meter when this is on their home. The Tribunal is, however, reluctant to agree this suggestion as Park Rules should be rules applicable to all home owners on the site. In all the circumstances the Tribunal has decided that the best course of action is to delete all reference to "electrical connections" in proposed Rule 28. Should there be any dispute in the future as to who is responsible for the repair of the electrical supply to any particular home on the site an application to the Tribunal can be made under section 4 of the Act (the determination of any question arising under the 1983 Act or any agreement to which it applies).