



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

Case Reference : **MAN/16UB/PHN/2014/0005**

Property : **21 Millbanks Court, Bridgefoot, Workington,
CA14 1WB**

Applicant : **Nepgill Park Residents Association**

Representative : **Joan Bowes**

Respondent : **Acrebind Ltd.**

Type of Application : **Under regulation 10(1) of the Mobile Homes
(Site Rules) (England) Regulations 2014**

Tribunal Members : **P Forster**
J Platt FRICS
K Usher

Date of Decision : **1st April 2015**

DECISION

© CROWN COPYRIGHT 2015

Decision

1. The Tribunal has modified the new site rules proposed by the Respondent. A copy of the approved rules is attached to this Decision. For purposes of clarity only the amendments are shown in bold type.

Background

2. This is an application under regulation 10 of the Mobile Homes (Site Rules) (England) Regulations 2014 (“the Regulations”) made by Joan Bowes on behalf of the Nepgill Park Residents Association (“the Applicant”). Mrs Bowes is the owner of a park home, 21 Millbanks Court, Nepgill Park, Bridefoot, Workington, CA14 1WB. Mrs Bowes is the secretary of the Residents Association and she has made the application in a representative capacity. Acrebind Ltd. (“the Respondent”) is the owner of Nepgill Park (“the Park”).
3. The Park is a residential park home site, located at Bridgefoot near Workington, Cumbria. It is a “protected site” within the meaning of the Mobile Homes Act 1983 (“the Act”). The agreements for the stationing of the park homes are subject to the Act. The development of park homes and their physical standards are regulated through the planning system by the grant of planning permission and by the site licencing system contained in the Caravan Sites and Control of Development Act 1960. In this case, the licencing authority is Allerdale Borough Council.
4. The site licence permits a maximum of 64 park homes. At present, 51 of the park homes are occupied by their owners. There are 4 empty pitches. There is also an unoccupied show house and one of the park homes is used as an office. There are two caravans on the site let under assured shorthold tenancies but they are not governed by the 1983 Act. In addition, there are five flats and three cottages. They are located on the site but they are not covered by the site licence. Mr & Mrs Morgan, who are directors of Acrebind Ltd., live in one of the cottages and two of the cottages are being renovated and are unoccupied. Three of the flats are let under assured shorthold tenancies and two are empty.
5. Under the 2014 Regulations which came into force on 4 February 2014 all existing park home rules on residential parks in England ceased to be effective on 3 February 2015. If a site owner wished to continue to have rules after that date, it needed to follow the procedure set out in the Regulations to introduce new rules. The Respondent issued proposed new rules to the Applicant and to the other residents and followed the statutory consultation process.
6. In the application received by the Tribunal on 5 December 2014 the stated grounds are that the Respondent had not complied with the prescribed procedure set out in the Regulations and that the Respondent’s decision was unreasonable having regard to the proposal and the size, layout, character, services or amenities on the site.

7. The Hearing was held on 2 March 2015 at Workington Magistrates Court, Workington. The Applicant represented herself and the Respondent was represented by Mrs Morgan. An inspection was not held because all the members of the Tribunal had previously visited the Park when deciding an earlier unrelated application and therefore they were familiar with the site.

The Applicant's Case

8. The Applicant accepted that the Respondent had satisfied the technical requirements of the Regulations that provide for the consultation process with the park home owners. However, she stated that the Respondent had not complied in the sense that it had not taken sufficient account of the submissions that were made by the residents and had not incorporated the residents' amendments to the proposed new rules.
9. The Applicant made two main points. Firstly, that all the rules should apply to all the residents on the site including Mr & Mrs Morgan and the tenants of the two caravans, the flats and the cottages. Secondly, there should be an age restriction so that only people aged 50 and above should be permitted to reside on the Park.
10. In response to the Respondent's proposed new site rules the Applicant on behalf of the Residents' Association submitted their own proposed rules. These amended and added to the Respondent's proposals. The consultation process was concluded by the Respondent issuing a Consultation Response with a second version of the proposed new rules incorporating some of the residents' submissions. For the sake of clarity, during the hearing reference was made to that second version. The Applicant was invited by the Tribunal to comment on each paragraph and she was also asked to raise any other outstanding issues.
11. Referring to the numbering in the second version of the proposed rules, the Applicant objected to the definition of "occupier" and to paragraphs 6; 12; 17; 18; 23; and 27.

The Respondent's Case

12. The Respondent stated that the rules could only be applied to those homes that come under the jurisdiction of the 1983 Act. The residents of the five flats and three cottages are tenants. The residents of the two caravans are also tenants. Copies of the site rules are given to tenants and they are expected to abide by them.

13. The Park is not exclusively a retirement park and never has been. Several residents are in full time employment.
14. In respect of the Residents' Association's proposed rules, the Respondent made the point that many of the objections and amendments were to the words used rather than to the substance of the rules. The Respondent had drafted the proposed new rules based on legal advice.
15. The Respondent relied on the second version of the new rules which it asked the Tribunal to confirm.

The Law

16. The relevant provisions of the Mobile Homes (Site Rules) (England) Regulations 2014 are set out below:
 4. (1) The matters prescribed for the purposes of section 2C(2)(b) [of the Mobile Homes Act 1983] 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.
 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.
 10. (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.
17. 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.

The Decision

18. The Applicant accepted that the Respondent had complied with the technical requirements of the Regulations which set out the procedure to be followed by a site owner. The Tribunal found that the consultation process was followed correctly.
19. The Applicant was disappointed that the proposed new rules put forward by the Residents' Association had not been accepted and adopted by the Respondent. Mrs Bowes said that was "not democratic". The consultation exercise is not a democratic process. The site owner sets the rules for the site. Previously, that was done without the requirement to consult the residents. The 2014 Regulations provided that all existing site rules ceased to have effect and imposed a duty on the site owners to consult with residents about new rules. Site owners must give proper consideration to submissions made by residents but they are not obliged to adopt those proposals. The correct procedure must be followed. The safeguard for residents is the right to appeal to a First-tier Tribunal.

20. The Tribunal when considering matters must have regard to regulation 4(2) which provides that a site rule must be necessary to ensure that acceptable standards are maintained on the site, which will be of general benefit to occupiers; or to promote and maintain community cohesion on the site.
21. An unusual feature of the Park is that the alongside the park homes there are also 2 caravans; 5 flats and 3 cottages. The 1983 Act does not apply to those because they are let on assured shorthold tenancies, or would be if they were all occupied. They are not occupied under pitch agreements. It follows that the 2014 Regulations and the site rules do not apply to them and to the tenants.
22. The Respondents sought to give a wide definition to "occupier". The new site rules as drafted by the Respondent gives the following definition:

““Occupier” means anyone who occupies a park home, whether under an Agreement to which the Mobile Homes Act 1983 (as amended) applies or under a tenancy or any other agreement”.

23. Strictly, unless occupied under the 1983 Act, a home on the Park is not a "park home". Therefore, for the purposes of clarity the Tribunal has amended the definition clause to read as follows:

““Occupier means anyone who occupies a home on Nepgill Park, whether under an Agreement to which the Mobile Homes Act 1983 (as amended) applies or under a tenancy or any other agreement”.

24. That enables the Respondent to issue the same rules to everyone on the Park. The force that the rules have will depend upon the status of the occupier, be they park home owner or tenant.

25. Until fairly recently, Mr & Mrs Morgan lived in one of the park homes. They now live in one of the cottages. They are employees of Acrebind Ltd. and are not tenants. However, they accept that they are subject to the site rules. When drafting the new rules the Respondent made express provision as follows:

*“These rules also apply (for so long as they live on the park **which includes for these purposes the five flats and the three cottages**) to the park owner and their family and any employees, with the exception of the following rules:- 13; 14; 18; 24; 27; 28 and 36(b).”*

26. It is clearly the intention to include Mr & Mrs Morgan. For the sake of clarity the Tribunal added the words in bold type.
27. The Respondent gives a copy of the site rules to the tenants of the caravans, the flats and the cottages and they are told that they must comply with the rules as a condition of their tenancies.
28. The Applicant and the other residents can draw some comfort from the broad definition given to “occupiers” and the intention, so far as possible, to include those whose homes are not subject to the 1983 Act.
29. Mrs Morgan explained the history of the Park. The land was originally owned by a Mr Smith who worked at the steelworks in Workington. In 1951, he allowed one of his fellow workers to site a caravan on the land. Over the years more caravans were added. In the 1970’s Mr Smith sold the land to Mr Morgan’s brother Philip. The site was occupied by working men and their families. Philip Morgan got a licence from the Council for 64 pitches. The original Neggill was developed to be followed by what is known as Millbanks where the Applicant now lives. As time went by, the profile of the residents changed. Mortgages were not available to buy a mobile home, as they were then known, and the pitches were taken by older people who had sold properties elsewhere to come and live in a quiet rural location. The average age of the residents increased.
30. Mrs Morgan said that the intention was never that the Park should be exclusively for older people. She said that seventeen of the thirty park homes on the older part of Neggill are occupied by people who work or have recently retired. Seven of the homes on Millbanks are occupied by residents who worked but have now retired.
31. The Applicant’s case is that the Park should be exclusively for people aged 50 years or more who are retired or semi-retired. The Applicant is concerned to preserve the lifestyle of the residents on the Park. She and other members of the Resident’s Association said that when they were considering buying a park home on Neggill Park they were told by the site owner that the Park was intended only for residents aged 50 or above. The Tribunal has no jurisdiction to decide whether or not such representations were made and by whom, at the time the Respondent did not own the site, nor can it decide what, if any, contractual effect they may have. The Applicant occupies her park home under an agreement dated 8 August 2003 made between Mr & Mrs Crawford and Mr & Mrs Morgan, who then owned the site. Mrs Bowes and her late husband took an assignment of the agreement on 5 November 2004. The agreement does not expressly include a restriction on the age of residents. The Tribunal was informed that the other residents occupy under agreements in the same terms.

32. The Applicant sought to rely on a copy of a letter dated 2 October 2002 from the owners of 5 Millbanks Court to Mr & Mrs Morgan. There is reference to a “youth of 18” who was coming to live on Millbanks Court with his parents. Mr & Mrs Morgan are asked if there has been a change of “philosophy and policy” about the age restriction on the Park. In a longhand note at the foot of the letter it is recorded that Mrs Morgan had confirmed that Millbanks Court “is still a semi-retired – retired park. There are no youths coming to live here”. It is also noted that “Acrebind are not accepting under 50 years in future”.
33. The Applicant accepted that there are semi-retired people living on the Park. She did not dispute Mrs Morgan’s evidence that several homes on the older part of Nepgill Park are occupied by people who work or who have recently retired. The Applicant’s concern seemed to be for the future and with the possibility of younger people coming to the Park who might have different lifestyles to the current residents. Mrs Bowes was unable to cite any recent or current problems experienced by her or other residents caused by any younger or working residents.
34. S. 9 of the Mobile Homes Act 2013 inserts a new s.2(c) and a new s.2 (D) into the 1983 Act. Every site rule will now be an express term of the pitch agreement between the site owner and the park home occupier. Therefore, the Tribunal must be cautious before incorporating into the agreement by way of a new rule something as fundamental as an age restriction that effects the legal relationship between the site owner and the park home occupier. The primary purpose of site rules is to ensure that acceptable standards are maintained on the site, which will be of general benefit to occupiers. A park home owner’s right to occupy a pitch is based upon the pitch agreement. The way in which that right is exercised is subject to the site rules.
35. There is no express age restriction in the pitch agreements. There was evidence that in the past younger working people have resided on the Park. The Applicant did not identify any current unacceptable behaviour or reduction in standards on the site caused by younger residents that would be addressed by the inclusion in the site rules restricting residents to the age of 50 or above. The evidence was that current standards on the site are acceptable and that there is good community cohesion. The Tribunal decided that it was not necessary to impose an age restriction into the site rules in order to maintain acceptable standards or cohesion. The Tribunal did not accept that there was necessarily a direct link between the age of the residents and the standards on the site.

36. The Tribunal then considered the particular paragraphs in the proposed new site rules to which the Applicant objected:

- 6 In addition to external fires and incinerators, the Applicant also wished to exclude the use of barbecues. The Tribunal decided that would be too restrictive and that barbecues should not be expressly prohibited and that it was sufficient to require that barbecues should be kept at a safe distance from all park homes as well as being subject to other relevant site rules. The exclusion of barbecues was not necessary to maintain acceptable standards or community cohesion on the site.
- 12 In the Applicant's view it was not necessary to expressly state that occupiers should be required to deposit all household, recyclable and garden waste in the appropriate approved containers provided by the local authority. The Respondent's view was that it was useful to have such a rule because some residents do not deposit items in the correct bin. The Tribunal decided that a rule requiring residents to use the appropriate bin was reasonably necessary to maintain acceptable standards on the site.
- 17 The Applicant wished to prohibit residents from keeping any pet or animal on the site. Rule 15 already prohibits residents from keeping dogs and cats. The Tribunal decided that an absolute ban was too restrictive subject to any pets or animals being kept in a cage or aquarium or similar housing. Such would be sufficient to prevent nuisance to other residents and was reasonable to maintain acceptable standards on the site.
18. The Applicant wished to amend the proposed rule prohibiting residents to adults aged 18 years and over to anyone younger than 50 years. For the reasons given above the Tribunal decided that restricting residents to 50 years old and above was not reasonably required to maintain acceptable standards on the site. The Applicant and the Respondent both accepted that a rule restricting residents to 18 years and above was reasonable. Neither of the parties opposed such a rule and without any submissions to the contrary the Tribunal decided not to amend the rule put forward by the Respondent. The Tribunal accepted that the arguments for restricting residents to adults of 18 or more were different to those advanced in respect of an age limit of 50 years.
23. The Applicant objected to a prohibition against using hoses where the water was not separately metered. The issue arose in connection with the use of hose pipes by residents to wash their cars on the car park. The Tribunal decided that such a rule was too restrictive because none of the pitches has a separate water meter. The residents pay an equal proportion of the water charge irrespective of actual water usage.

25. The Applicant objected to the proposed rule that parking was not permitted on roads, pavements or grass verges. The rule would effectively prevent residents or their visitors from parking outside their park homes. The Tribunal decided that a rule was necessary to regulate parking on the Park but that it should prohibit parking on pavements or grass verges and not on the roads so as to cause a nuisance or obstruction.
27. The Applicant objected to the proposed rule that all vehicles on the site must be taxed and insured and be roadworthy and that all drivers on the Park must hold a current driving licence. That would apply to vehicles not in use but stored on a pitch. The Tribunal decided that was too restrictive and that adequate protection is afforded by the general law. The proposed rule was struck out.
37. The Tribunal has attached to this Decision a copy of the amend site rules as approved by the Tribunal.

PARK RULES FOR NEPGILL PARK

In these rules:

- "occupier" means anyone who occupies a **home on Nepgill Park**, whether under an Agreement to which the Mobile Homes Act 1983 (as amended) applies or under a tenancy or any other agreement
- "you" and "your" refers to the home-owner or other occupier of a park home

These rules are in place to ensure acceptable standards are maintained on the park, which will be of general benefit to occupiers, and to promote and maintain community cohesion. They form part of the Agreement by which home-owners occupy the pitch in accordance with The Mobile Homes Act 1983 (as amended).

These rules also apply to any occupiers of park homes who rent their home with the exception of Rule 1 about the colour of the exterior of the home, as someone renting their home would not be responsible for exterior maintenance.

None of these rules is to have retrospective effect. Accordingly :

- *they are to apply from the date on which they take effect, which is 4 February 2015; and*
- *no occupier who is in occupation on that date will be treated as being in breach due to circumstances which were in existence before that date.*

*These rules also apply (for so long as they live on the park **which includes for these purposes the five flats and three cottages**) to the park owner and their family and any employees, with the exception of the following rules:- 13,14,18,24,27,28 and 36(b).*

1. You must maintain the outside of your park home in a clean and tidy condition. Where the exterior is repainted or recovered you must use reasonable endeavour not to depart from the original exterior colour-scheme.
2. No alterations of or additions to the pitch is permitted without submitting a written request on the standard form together with a plan (written approval will not be withheld unreasonably).
3. No holes are to be dug on the pitches or posts or spikes hammered into the ground before discussing the action with the park owner and examining park plans to prevent damage to existing underground services.
4. For reasons of ventilation and safety, you must keep the underneath of your home clear and not use it as a storage space.
5. Fences are not allowed within the separation space between park homes. Low fencing not exceeding 60cms high may be permitted elsewhere with the approval of the park owner (which will not be withheld unreasonably). Any hedging within the separation space between park homes must not exceed 90cms high. You must position fences and other means of enclosure so as to comply with the park's site licence conditions and fire safety requirements.
6. You must not have external fires, including incinerators. However, barbecues are permitted and when in use you should keep them at a safe distance from all park homes.
7. You must not keep inflammable substances on the park except in quantities reasonable for domestic use.
8. You must not keep explosive substances on the park.

9. You must not use or store guns, firearms and offensive weapons (including crossbows) on the park.

10. A storage shed is not permitted on pitches that have a garage. Only one storage shed is permitted on each pitch where the park home has no garage on the pitch. The design, size and standard of the shed must be approved by the park owner in writing, (approval will not be withheld unreasonably), and so positioned so as to comply with the park's site licence and fire safety requirements. The footprint of the shed shall not exceed 35 sq. ft.

11. You must ensure that any shed or other structure erected in the separation space between park homes is of non-combustible construction and positioned so as to comply with the park's site licence and fire safety requirements. The separation space is the space between your park home and any neighbouring home.

12. You are responsible for the disposal of all household, recyclable and garden waste in approved containers through the local authority service. Containers must not be over-filled and you must place them in the approved position for the local authority collections.

13. You must not deposit any waste or rubbish other than in local authority approved containers on any part of the park (including any individual pitch).

14. You must not use the park home, the pitch or the park (or any part of the park) for any business purpose and you must not use the park home or the pitch for the storage of stock, plant, machinery or equipment used or last used for any business purpose. However, you are at liberty to work individually from home by carrying out any office work of a type which does not create a nuisance to other occupiers and does not involve other staff, other workers, customers or members of the public calling at the park home or the park.

15. You must not keep any cat or dog at the park home or on the pitch.

16. Nothing in the previous rule of these Park Rules prevents you from keeping an assistance dog if this is required to support your disability and Assistance Dogs UK or any successor body has issued you with an Identification Book or other appropriate evidence.

17. You may keep any pet or animal **except a cat or dog** which is housed in a cage, aquarium or similar and remains at all times within your home.

18. Permanent residents must be adults of 18 years and over.

19. Residents will be responsible for visiting children who will not be permitted to play in or around public buildings, other park homes, on car parks or areas around the park entrance.

20. Bicycles are not to be ridden along the pathways or roadways around the park by children. Games involving kicking or throwing of a projectile are strictly forbidden in the immediate area around park homes, flats, public buildings or car parks.

21. Children must be accompanied around the park and recreational areas for their safety and to prevent disturbance or damage to the designated wild life areas.

22. You must not play musical instruments, all forms of recorded music players, radios and other similar appliances, sound your horn or use motor vehicles so as to cause a nuisance to other occupiers, especially between the hours of 10.30pm and 8.00am.

23. **Fire point hoses must only be used in the case of fire.**

24. You must not discharge waste water onto the ground but place it down soil grids provided and you must not discharge toxic chemical waste liquid into surface water or soil waste water drains.
25. You must protect all external water pipes from potential frost damage. You are responsible for the section of water service from ground level upwards.
26. You are not permitted access to vacant pitches. Building materials, equipment and/or plant must be left undisturbed.
27. For the occupiers' safety, trees and shrubs on the park belonging to the park owner are inspected regularly for any hazards by a qualified arboreal inspector and must not be felled, removed or damaged in any way. The cutting or trimming of these trees will be carried out by a qualified, certificated tree surgeon employed by the park owner.
28. You must drive all vehicles on the park carefully and within the displayed speed limit.
29. You must not park on the **pavements or grass verges and not on the roads so as to cause a nuisance or obstruction.**
30. You must not park anywhere except in the permitted parking spaces, your own driveway or the designated car parks.
31. As required by law (Road Traffic Acts and any replacement legislation):
- a. all vehicles used on roads on the park must be taxed and insured and be in roadworthy condition;
 - b. all drivers on the park must hold a current driving licence for the category of vehicle driven on the park.
32. Only home owners vehicles of up to 7 seats are to be parked in the authorised parking spaces on the park.
33. All commercial vehicles, vans, motor homes, minibuses, or caravanettes must be parked in the designated car park.
34. Disused or unroadworthy vehicles must not be kept anywhere on the park. The park owner reserves the right to remove any vehicle which is apparently abandoned.
35. You must not carry out the following works or repair on the park:
- a. Works that involve discharging motor oils and other fuels of that nature into the drains or onto the roads or car parks;
 - b. Any major mechanical maintenance work.
36. All minor mechanical maintenance and repair work must be carried out at the garages provided.
37. All park homes must be equipped with a fire extinguisher or blanket which conforms to the relevant British Standard.

