UPPER TRIBUNAL (LANDS CHAMBER)

UT Neutral citation number: [2019] UKUT 210 (LC)
UTLC Case Number: LRX/102/2018

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

PARK HOMES – SITE RULES – whether a rule that no person under the age of 45 may reside on a protected site may be introduced at the discretion of the site owner using the procedure in the Mobile Homes (Site Rules) (England) Regulations 2014 – whether such a rule capable of being introduced only by agreement – meaning of "management and conduct of the site" in section 2C(2), Mobile Homes Act 1983 – appeal dismissed

IN THE MATTER OF AN APPEAL AGAINST A DECISION OF THE FIRST TIER TRIBUNAL (PROPERTY CHAMBER)

BETWEEN:

MICHAEL MARK ANTHONY WHITE
MICHAEL THOMAS WHITE

Appellants

and

MRS MANDY SIMPSON
and others, members of the Westonhill Residents Association

Respondents

Re: Westonhill Chalet Park,
Bridge Lane,
Weston-on-Trent,
DE72 2BU

Martin Rodger QC, Deputy Chamber President

Derby Justice Centre

28 March 2019

Giles Gunstone, instructed by Tozers Solicitors for the appellants
Mrs Mandy Simpson, in person as representative of the respondents

No cases are referred to in this decision

Introduction

1. This appeal concerns the meaning and effect of the Mobile Homes (Site Rules) (England) Regulations 2014 ("the 2014 Regulations").

2. The Westonhill Chalet Park at Weston-on-Trent near Derby is a protected site under the Mobile Homes Act 1983. The origins of the site are said to pre-date the First World War, when a local farmer allowed visitors from Derby to build small chalets on part of his land for weekend and holiday use. After the Second World War the site evolved, and by about 1980 a variety of caravans and fixed chalets were in year-round occupation on the Park's 30 pitches. Until 2001 the site operated without any form of written agreements being provided by the site owners to the occupiers of pitches and without any site rules ever being formulated.

3. Ownership of the Park changed hands in 2007. It was acquired by the appellants, who are father and son and who operate a large number of protected sites around the country. In 2011 the appellants sought to introduce formal site rules but these were resisted by the members of the Westonhill Residents Association who are the occupiers of the chalets and caravans on the Park. The current members of the Association are the respondents to this appeal, and Mrs Mandy Simpson is their spokesperson.

4. The appellants' attempt to introduce site rules in 2011 is an important part of the background to this appeal. Whether that attempt was successful is a matter of contention, but it is common ground that any rules which were promulgated ceased to have effect on 4 February 2015 to the extent that they were "site rules" to which the section 2C, Mobile Homes Act 1983 and the 2014 Regulations applied. The 2014 Regulations provide a new statutory procedure for making site rules and caused pre-existing rules covering the same subject matter to lapse.

5. The appeal is against a decision of the First-tier Tribunal (Property Chamber) ("the FTT") made on 30 July 2018 on an application made under section 4 of the 1983 Act by members of the Association. The application sought a determination that the 1983 Act applied to their homes on the Park and a ruling on the effect of new site rules which the appellants had sought to introduce under the procedures in the 2014 Regulations.

6. The residents had initially objected to whole of the proposed new rules, but at the hearing before the FTT many of them were agreed. In its decision the FTT modified some of the rules in ways which are not now objected to, but it used its power under regulation 11 of the 2014 Regulations to quash one rule entirely. That rule had proposed that no person under the age of 45 could reside in a mobile home on the Park with the exception of the Park owner, warden or manager and their families.

7. The FTT granted permission to appeal its decision quashing rule 15. At the hearing of the appeal the appellants were represented by Giles Gunstone of counsel and the respondents were represented by Mrs Simpson. I am grateful to them both for their assistance.

8. The Tribunal had directed that the appeal would proceed as a review of the decision of the FTT which would be followed, if the appeal succeeded, by a rehearing of the application so far as it related to the introduction of the age restriction (which is the only rule remaining in

contention). In the event, I heard oral evidence from Mrs Simpson and from the second appellant, Mr Michael Thomas White.

The 2014 Regulations

9. Before a person enters into an agreement under which they are entitled to station a mobile home on a protected site, and to occupy it as their only or main residence, section 1(2) of the Mobile Homes Act 1983 requires the owner of the site to give the proposed occupier a written statement setting out, amongst other information, the express terms of the proposed agreement and the terms which will be implied by section 2(1) of the Act.

10. It has long been the practice of the owners of protected sites to publish site rules and standard forms of agreement often contain provision for changing or adding to rules. The Mobile Homes Act 2013 introduced a statutory procedure for the making of sites rules for the first time with effect from 26 May 2013. This is found in section 2C of the 1983 Act (which was inserted by section 9(1) of the 2013 Act) and in the 2014 Regulations made under powers conferred by section 2C(11). In the case of a protected site in England, section 2C(1) gives site rules the status of express terms of each agreement relating to a pitch on the site to which the Act applies.

11. For this purpose "site rules" are defined by section 2C(2), as follows:

> "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."

12. The power referred to in section 2C(2)(b) of the 1983 Act to prescribe "matters" other than those relating to the management and conduct of the site which may be the subject of site rules has been exercised by regulation 4 of the 2014 Regulations. Rather than identifying specific subjects about which rules may be made the drafter of regulation 4 has described the characteristics of permissible rules, as follows:

> "4.— Matters prescribed for the purposes of section 2C(2)(b) of the 1983 Act
>
> (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."

13. The new procedure for making, varying or deleting site rules began by sweeping away old rules. By section 2C(3) of the 1983 Act any rules made by a site owner before the

commencement of the section on 26 May 2013 "which relate to a matter mentioned in subsection (2)" ceased to have effect on 4th February 2015.

14. An entirely new procedure was then provided by regulations 7 to 9. In summary the new procedure requires a proposal to be notified to every occupier or qualifying residents association at a site to enable them to make representations within a limited time (regulations 7 and 8). A duty is then imposed on the site owner to take any representations received into account and to publish a response to the consultation notifying consultees whether they have decided to implement the proposal or not (regulation 9).

15. Certain prescribed matters may not be the subject of site rules (regulation 5); these include matters relating to the sale or gift of a mobile home and other detailed matters found in Schedule 5 to the 2014 Regulations. One such prohibited matter is any modification to the procedure for changing site rules laid down by regulations 7 to 13 (Schedule 5, paragraph 2(n)).

16. Consultees who are dissatisfied with an owner's decision notified to them under regulation 9 following consultation have the right to appeal to the FTT under regulation 10 on grounds specified in regulation 10(2). There are three possible grounds of appeal, namely that:

> (a) a site rule makes provision in relation to any of the prescribed matters in Schedule 5;
>
> (b) the owner has not complied with a procedural requirement imposed by regulations 7 to 9;
>
> (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. The FTT's powers when determining an appeal under regulation 10 are specified in regulation 11. It may (a) confirm the owner's decision, (b) quash or modify it, (c) substitute its own decision, or (d) order the owner to comply with the procedure in regulations 7 to 9 within a specified time.

The relevant facts

18. Perhaps because it was such a long-established site, the Park operated for many years without a site licence and without any form of written agreements or site rules. A caravan site operators licence was first obtained by the then owner of the Park, Mrs Hill, in 2001. According to the residents, before that time matters concerning the occupation of pitches were agreed orally at the start of any new occupancy between the incoming occupier and Mrs Hill or her father, Mr Evans, who had died in 1996.

19. At the same time as she obtained a site licence Mrs Hill appears belatedly to have become aware of the obligations on a site owner under section 1 of the 1983 Act to provide a written statement to each occupier setting out the express and implied terms of any agreement to

which the Act applies. In 2001 she offered written agreements to the occupiers of all the pitches on the Park. Some occupiers were reluctant to sign the agreements and the exact number entered into is not clear. Mr White gave evidence that he believed that 75% of the pitches were covered by written agreements.

20. The reluctance of some occupiers to enter into agreements under the 1983 Act may have been because they considered the Act did not apply to them. This was an issue raised before the FTT, which explained in its decision that, of the 30 pitches on the Park, there was doubt whether the structures on seven of them were mobile homes. The homes on those seven pitches appeared to be fixed chalets rather than mobile homes and, as the FTT correctly pointed out, the 1983 Act, applies only to agreements under which an occupier is entitled to station a "mobile home" on land forming part of a protected site.

21. One of those who did sign the written agreement offered by Mrs Hill was Mrs Simpson, who was formerly the chair of the Association. She confirmed that her agreement and, as far as she was aware, those signed by other occupiers was in a standard printed form, a copy of which was included in the appeal bundle. These are the same standard terms used in written statements on most protected sites, which incorporate the detailed implied terms required by the 1983 Act.

22. Among the express terms of the written statement, recorded in paragraph 2(j) of Part 4, the occupier undertook to comply with the Park rules from time to time in force, a copy of the current rules being said to be annexed to the statement. It is not suggested on either side that in 2001 there were any written park rules and none was attached to any of the written statements.

23. Paragraph 3B of Part 4 of the written statement contains a contractual procedure for the addition or amendment of Park rules. This procedure is part of a standard form and follows a pattern recommended by the Office of Fair Trading. It comprises an undertaking by the owner with the occupier not to add to or amend the Park rules (meaning the rules which are intended to be annexed to the written statement) except in accordance with the following provisions:

(1) The owner shall give 28 days notice of any additions or amendments he proposes either by displaying the same on the Park notice board or by supplying copies thereof to each occupier.

(2) If within such period of 28 days as a foresaid at least one third of the occupiers shall deliver to the owner a written request that a meeting shall be called to discuss the proposals then the owner shall either withdraw them or by giving reasonable notice convene a meeting of the occupiers to consider the proposals in detail and to vote upon the same, the issues to be determined by a simple majority of those occupiers voting.

(3) If no such written request is delivered to the owner within such 28 day period as a foresaid then a majority of the occupiers shall be deemed to have accepted them and they shall come into force immediately on the expiry of such 28 day period.

24. In 2007 the appellants purchased the Park from Mrs Hill. From an early stage, relations between the new owners and the occupiers of the Park were difficult. In October 2010 solicitors instructed by the Association wrote to the appellants on a number of occasions objecting to

changes which had been made at the Park, including the introduction of six additional pitches. They received no response.

25. A number of attempts were made by the appellants to introduce new site rules. On each occasion they were resisted by the occupiers. The only rules on which the appellants now place reliance as part of the background to the appeal are those said to have been introduced at the beginning of 2011, a copy of which was produced at the hearing. They are headed simply "Mobile Home Park Rules" and made no specific reference to the Park itself. They were posted on the Park notice board and took the form of a list of 37 rules covering the use of pitches and conduct on the site. They included a rule that no person under the age of 55 years was allowed to purchase a home and reside on the Park.

26. The 2011 rules contained no preamble referring to the procedure under paragraph 3B of Part 4 of the written statement, nor did they explain that any objections should be made in the form of a written request for a meeting. Apart from the rules themselves and the signature of Mr White on the document, the only additional information was a statement at the foot of the page that "I/we have received a copy of these Park rules which form part of our mobile home agreement under the Mobile Homes Act 1983 and agree to abide by them." That statement suggests that the rules were intended to be given to a new occupier when they entered into a new agreement.

27. What happened next is not seriously in dispute. I am satisfied on the evidence of Mrs Simpson that the occupiers made it abundantly clear to the appellants that did not agree to abide by the new rules by affixing notices of their own over the rules on the Park notice board. In response to this opposition the notice board was removed and re-positioned close to the warden's office where it could be observed, and a new padlock was fitted. The occupiers continued to deface the rules and to express their opposition to them. What the occupiers did not do was to deliver a written request for a meeting to be called to discuss the new rules, within 28 days of them appearing on the notice board, as paragraph 3B(2) of Part 4 of the written statement entitled them to do.

28. Whatever the status of the 2011 rules, it is common ground that they have effect after 4 February 2015 subject to section 2C(2) of the 1983 Act. As a result, any rules which are "site rules" within the meaning of that expression in section 2C(2) ceased to have effect. It will be remembered that "site rules" within that meaning are those which relate to the management and conduct of the Park (section 2C(2)(a)) or are necessary either to ensure that acceptable standards are maintained on the Park, which will be of general benefit to occupiers, or to promote and maintain community cohesion (regulation 4(2)).

29. The appellants remained convinced of the importance of including an age restriction in rules binding on the occupiers because they consider it makes the Park more attractive to those to whom they wish to market new pitches. Mr White explained that at the appellants' other sites the typical occupiers are retired or semi-retired people who wish to live in a community of people of similar age. It is apparent that the Park is not such a community and, as the occupiers emphasise, has never been a "retirement park"; Mrs Simpson, for example, acquired her home on the Park when she was in her early 30's and her son, who lives with her, is now in his teens. Other occupiers of different ages, including students and families with young children, have

owned homes on the Park at different times. The occupiers maintain that they wish to live in a mixed community.

30. With their own commercial preferences in mind, and despite the opposition of the residents, the appellants decided to implement the procedure for making new site rules provided by regulations 7 to 9 of the 2014 regulations. On 18 December 2017 they sent a proposal to each of the occupiers with a new set of rules informing them that they had until 16 January 2018 to make any responses.

31. The new rules included a prominent statement that none of them were to have retrospective effect. They were to apply only from the date on which they were confirmed and no occupier who was in occupation on that date was to be treated as being in breach as a result of circumstances then in existence which would not have been a breach of any previous rules. The proposed rules included rule 15, which stated that no person under the age of 45 may reside in a park home on the Park other than the owner, the warden and their families.

32. The owners received responses from the occupiers of 25 of the 30 pitches on the Park (two of which are either unoccupied or occupied by the owner) and from the Association. Details of these responses are contained in the owner's own consultation response prepared in compliance with regulation 9. Most occupiers simply returned a blanket objection, but Mrs Simpson, in her capacity as chair of the Association, explained the residents' objections at greater length in a letter of 4 January 2018. In the view of the Association the age limit rule would not promote community cohesion or ensure acceptable standards were maintained, as the appellants had argued, but would cause disruption to a vibrant mixed aged community. It would take away benefits already enjoyed by residents and make it much harder for them to sell their homes. Mrs Simpson suggested that she and her son would be put in breach of the rule. The latter point was based on a misconception and overlooked the explicit statement in the new rules that they were not to have retrospective effect. Nevertheless, it is apparent from the residents' objections that they valued the mixed character of the Park, both for the social advantages they saw it as bringing them, and because the considered it made the sale of their homes easier to achieve.

The FTT's decision

33. The relevant part of the FTT's decision is at paragraph 44. Since this appeal was brought on the basis that the FTT misdirected itself in law in that paragraph I will set it out in full:

> "Rule 15. The applicant stated that the park had never been a retirement park and children had always lived there. Mr Gunstone responded that the site owners had seen a market for a park where adults were over 45 and wished to adopt that model. There was no intention to evict children currently living on the site. He further stated, that under anti-discrimination legislation, an age limit provision is not discriminatory if the provision was reasonable and proportionate to a legitimate aim. When the site was bought most residents were over 45. He stated that surveys showed that parks welcomed an age limit. On being questioned he agreed, however, that no survey had been carried out on this specific site. The Tribunal looked at both the site's licence and a copy agreement that had been provided by the respondent. There was no reference to any age limit in either document. The Tribunal considers that on the basis of the inspection that it

> carried out and giving due weight to the representations received from the parties, that it is not necessary in the case of this particular site to have an age limit in order to ensure that acceptable standards are maintained on the site which will be of general benefit to occupiers nor is such a limit necessary to promote and maintain community cohesion on the site. At the inspection, with the exception of one resident who was clearly at odds with the aims of the Residents Association, the Tribunal were impressed with the community spirit apparent on site and the efforts of the Association to maintain and promote that spirit. The Tribunal finds the imposition of an age limit unreasonable and thus, quashes this rule."

34. Earlier in its decision the FTT had explained that the homes on seven of the 30 pitches on the Park appeared to be fixed chalets rather than mobile homes. As the FTT correctly pointed out, its jurisdiction under the 1983 Act applies only to agreements under which an occupier is entitled to station a "mobile home" on land forming part of a protected site and to occupy it as their only or main residence. Its determination therefore applied only to those residents of the Park who occupy mobile homes.

The appeal

35. The appellants' grounds of appeal, settled by Mr Gunstone, identified four separate issues.

36. First, the FTT was said to have adopted an improper approach to the residents' challenge to the new rule by asking itself whether the rule was reasonable, rather than by addressing the different question of whether the appellants' decision to introduce the rule was a reasonable decision.

37. Secondly, the appellants suggested that the FTT had not correctly followed the procedure for determining a challenge to new site rules, and had failed to give specific considerations to the factors identified in regulation 10(2)(c).

38. Thirdly, it was said that in deciding that the imposition of an age limit was unreasonable the FTT had failed to resolve an important issue of fact, namely whether the appellants had successfully introduced rules containing a similar restriction before the commencement of the 2014 Regulations.

39. Finally, it was said that the FTT had failed to give sufficient weight to various matters, namely: the appellants' wish to manage the Park as they saw fit, rather than see it run by the Association; their wish to market the Park to potential residents over the age of 55; and the appellants' evidence that no resident had purchased a home on the Park on the basis that they would be able to have children living with them.

Ground 1

40. Mr Gunstone advanced a general or overarching complaint that the FTT had demonstrated an impermissible "substitution mindset". By that he meant that the tribunal had substituted its own view of what was reasonable instead of asking itself whether the owner's decision was

unreasonable. The proper question, Mr Gunstone submitted, was whether the appellants' decision to introduce rule 15 was one which a reasonable park owner could have made; it was irrelevant, and therefore an error of law, for the FTT to consider whether it was a decision which it would have made.

41. The grounds on which an owner's decision to impose new site rules may be challenged are specified in regulation 10(2), and include, at (c), that the owner's decision was unreasonable having regard, in particular, to the proposal itself and the representations received in response to the consultation, the size, layout, character, services or amenities of the site, and the terms of any planning permission or conditions of the site licence (see paragraph 21 above). Mr Gunstone submitted that the right of appeal was, in effect, on grounds of rationality akin to a challenge to a decision of a public body on *Wednesbury* principles (cf. *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223).

42. For understandable reasons Mrs Simpson did not feel able to make submissions on this aspect of the appeal. I see force in Mr Gunstone's submission that the role of the FTT is to review the reasonableness of the decision of the site owner, rather than to consider whether it would have introduced the same rule if the decision had been left to it. Site rules may cover many different subjects and may be required in many different situations to which reasonable people might respond in different ways. There may therefore be a range of possible site rules dealing with specific situations, each of which may be perfectly reasonable. There is a strong argument that the question for the FTT on an appeal under regulation 10(2)(c) is not what rule it would make to deal with the contentious issue, or indeed whether it would have made any rule at all, but instead is whether the decision of the site owner was one which a reasonable owner could have made in the circumstances. In answering that question it would be necessary for the reasonable owner to take into account all relevant matters, in particular those matters referred to in regulation 10(2)(c) .

43. Although I see the force of Mr Gunstone's general submission on the correct approach to be taken on an appeal under regulation 10(2)(c), I do not need to decide it in this appeal, and given that only one side is professionally represented I prefer not to. That is because of the conclusion I have reached on a later ground of appeal.

44. I would add, however, that it is not clear to me that the FTT adopted a different approach from that which Mr Gunstone submits is required of it. It is important to read the decision as a whole, and not to focus exclusively on one sentence or expression. Having undertaken that exercise I am left in some uncertainty whether the FTT did consider the rationality of the appellants' decision to introduce the rule, rather than concerning itself only with whether the rule was objectively reasonable. While it is true that in paragraph 29 of its decision the FTT said that one of the questions in the application was "were the site rules reasonable", it was there simply repeating the way in which the occupiers had expressed their complaint, rather than directing itself on the approach it ought to take. It set out regulation 10(2) early in its decision and in paragraph 8 it recorded that the basis of the appeal was that the owners' decision was unreasonable. It expressed its own conclusion in paragraph 44 by saying it found "the imposition of an age limit" to be unreasonable. If it was the reasonableness of the imposition of the rule which the FTT was focussing on, i.e. on the owners' decision rather than on its own view of the rule, that would probably comply with the approach advocated by Mr Gunstone. If that is indeed what the FTT was doing it should have said so in paragraph 44 in more

unambiguous terms, but it should be remembered that this was one of 29 rules which the FTT had to deal with.

Ground 2

45. Mr Gunstone suggested the FTT had failed to have regard to the matters specified in regulation 10(2)(c). In my judgment the suggested failure involves reading the decision in compartments and applying an inappropriately stringent approach. It is true that, when dealing with the age restriction in paragraph 44, the FTT did not make findings about the factors to which it was specifically required to have regard. Nevertheless, the proposal and the responses to it were both referred to in paragraphs 5 and 6 of the decision. The grounds of the occupiers' appeal referred to the relevant factors and these were recited in paragraph 8 and referred to again in paragraph 16. The FTT must therefore be understood to have had the need to take those factors into account well in mind. The character of the site (one of the matters identified in regulation 10(2)(c)(ii)) clearly was taken into account, as were the conditions of the site licence, and matters such as the size and layout of the site would have been apparent from the inspection to which the FTT referred. When it dealt with individual rules it referred to the relevant objections of the occupiers and in paragraph 44 it stated in terms that it was "giving due weight to the representations received".

46. There is nothing in Mr Gunstone's suggestion that, had it focussed in more detail on the responses to the consultation, the FTT would have concluded that the occupiers simply objected to all rules as a matter of principle, and had no rational objection to any individual rule, and in particular to the age restriction. That submission ignores Mrs Simpson's letter of 4 January 2018 which she wrote in her capacity as chair of the Association and which explained why the age restriction was considered to be contrary to the established character of the Park.

Ground 3

47. The appellants' third ground of appeal seems to me to have more substance. Mr Gunstone submitted that the FTT's decision was flawed because it failed to resolve an important conflict of evidence concerning the effect of the previous rules introduced by the owners in 2011. It was the owners' case that the new 2018 age restriction was simply a reintroduction of a similar restriction first imposed in 2011 using the contractual procedure for rule changes contained in the standard form of pitch agreement. That restriction was said to have had lapsed automatically in February 2015 together with all other site rules through the operation of section 2C(3), but it was the appellants' case that any assessment of the reasonableness of their decision to introduce or, as they would say, to re-introduce, an age restriction under the new procedure in the 2014 Regulations had to have regard to the previous rules.

48. It is a fair criticism of the FTT's decision that it did not grapple with the circumstances surrounding the attempt to introduce comprehensive rules in 2011. It said that it found no age restriction in either the site licence or the form of agreement, and it must therefore be taken to have regarded the existence of a previous rule as a potentially material consideration. It was shown a copy of the 2011 rules, which it referred to as "the old site rules", and in paragraph 5 it recorded that the residents disputed that those rules had been agreed. It also noted that the old site rules had been automatically disapplied on 4 February 2015. What it did not do was resolve

the dispute over the status of the 2011 rules before that date; nor did it consider what significance, if any, the inclusion of an age restriction in the old site rules (assuming they were binding) might have for the outcome of the residents' appeal against the introduction of rule 15. Had it done so, and had its conclusion been that the 2011 rules were effective, and only ceased to apply through the operation of section 2C(3), as the appellants suggested, the FTT's assessment of the reasonableness of the appellants' decision to introduce rule 15 might have been different.

49. When a tribunal is required to exercise a discretion, or to make an assessment of the reasonableness of a course of action, it must have regard to all relevant considerations. If, by omitting to resolve a disputed question of fact highly relevant to its determination, the tribunal overlooks a matter which may be of significance, its decision will be flawed and will be set aside. For that reason, I am satisfied that the appeal should be allowed and the decision of the FTT set aside. It is therefore unnecessary for me to consider the final ground of appeal.

The re-hearing

50. As the Tribunal had previously directed, and as I indicated at the start of the hearing of the appeal, I will not remit the residents' original appeal against the imposition of rule 15 to the FTT for a further hearing, but will re-determine the issue in these proceedings. Before doing so it is relevant to refer to a point which emerged during the course of exchanges between the Tribunal and Mr Gunstone on the proper approach to an appeal against the introduction of a site rule under regulation 10(2).

51. In paragraph 44 of its decision the FTT recorded its view that it was not necessary to have an age limit at the Park in order to ensure that acceptable standards were maintained on the site which would be of general benefit to occupiers; nor was such a limit necessary to promote and maintain community cohesion. Although it did not refer to regulation 4 the FTT's discussion of whether the age restriction rule was "necessary" was couched in terms of the criteria in regulation 4(2). That discussion appears in the middle of the paragraph in which the FTT concluded that the imposition of the age restriction was unreasonable. It is possible that the tribunal was considering two separate issues in the same paragraph, but it is also possible it regarded the issue of necessity as relevant to the question whether the appellants' decision was unreasonable.

52. Mr Gunstone submitted that consideration of whether an age restriction was necessary was irrelevant to the question whether the imposition of the rule was unreasonable. I agree, and I take this opportunity to make some further observations on the sequence of issues which may arise in an appeal against the introduction of new site rules under the 2014 Regulations.

53. The purpose of section 2C(2) of the 1983 Act is to define "site rules" and to delimit those matters which may be the subject of site rules imposed by an owner using the new statutory procedure. Only a rule which is within the scope of section 2C(2) may be introduced using regulations 7 to 9 of the 2014 Regulations. It follows that any rule which does not fall within one or other limb of section 2C(2) cannot be imposed, and may only become binding either by agreement between the owner and the occupier, or by the use of a contractual rule making power which survives the effect of section 2C(3).

54. Section 2C(2) classifies site rules into two groups. The first, in sub-paragraph (a), covers any rule which "relates to the management and conduct of the site". The second group, in sub-paragraph (b), comprises rules which relate to "such other matters as may be prescribed".

55. The power to prescribe "other matters" which may be the subject of site rules has been exercised by regulation 4(1) of the 2014 Regulations, and the prescribed matters are those set out in regulation 4(2) (see paragraph 12 above). In summary this provides that "a site rule must be necessary" to ensure acceptable standards are maintained on the site, which shall be of general benefit to occupiers, or to promote and maintain community cohesion on the site.

56. The opening words of regulation 4(2) ("a site rule must be necessary …") might cause the unwary to think that all site rules must be necessary for the stated purposes. That is not so, because regulation 4(2) is concerned only with the second group of rules permitted by section 2C(2). A site rule within the first group of rules, those in section 2C(2)(a) which relate to the "management and conduct of the site", is not required to satisfy the conditions in regulation 4(2). Those conditions are only applicable to rules dealing with "other matters", and they limit the sort of other matters which may be made the subject of site rules.

57. Does a rule which imposes an age restriction relate to the management and conduct of the site? I have not found the answer to this question an easy one. The FTT did not address it (nor was it addressed on it by the parties) but it is fundamental to the residents' challenge to the introduction of the rule.

58. A significant obstacle to determining the status of an age restriction is the absence of any clear boundary between the two categories of rules. The task of classifying a particular rule with any confidence is made difficult by the fact that one category is defined by reference to an activity (management and conduct of the site) while the other is described by reference to the purpose or motivation for imposing the rule (ensuring the maintenance of acceptable standards, and promoting community cohesion). The imprecise and aspirational terms used in the second category also make the practical application of the scheme more difficult. Some rules are likely to fall readily into both categories. For example, the first rule introduced by the appellants prohibited the storage of flammable substances underneath residents' homes. Such a rule might arguably relate to the management and conduct of the site while also being necessary for the maintenance of acceptable standards (of safety).

59. If an age restriction does relate to management and conduct, so that it falls within section 2C(2)(a), it is irrelevant whether it is or is not necessary to maintain standards or for reasons of community cohesion. If it does not, then for it to be a site rule at all (within the meaning of section 2C(2)) it must satisfy the necessity requirement in regulation 4(2). For that reason, the proper approach to determining the status of a particular rule is first to ask whether it relates to the management and conduct of the site. If it does, then it is not necessary to consider whether it also falls into the second category. If it does not, then the next question is whether the rule is necessary to achieve either of the specified purposes. If the answer to that question is also negative, the rule is not a "site rule" within the meaning of section 2C or the 2014 Regulations.

60. "Management and conduct of the site" is a composite expression in which the main components appear to be synonyms; the Shorter Oxford English Dictionary includes "leadership,

command, or management" as one meaning of "conduct", and it is in that sense that it appears to be used here. An alternative meaning is "behaviour" or "manner of conducting oneself", but the management and conduct concerned is "of the site", which suggests that the latter is not the sense in which the word is used. One possible interpretation of the composite expression may therefore be that it is concerned with the activities of the site provider, the person who manages and conducts the site and the way in which they do it, rather than with the conduct of individuals on the site.

61. On the other hand, consideration of the general purpose of site rules makes a focus on the way in which the site is managed and conducted a slightly surprising subject for such rules. The more natural purpose of site rules is to regulate the behaviour of the occupiers of the site. That would point to a broader meaning of "management and conduct of the site". So too would the fact that site rules are made by the owner, and may be changed by the owner acting reasonably, both of which would suggest that the conduct of the owner is not what is to be regulated by the site rules. Additionally, since any rule may be objected to if it was not imposed reasonably, it might be said that it is not appropriate to give a narrow construction to "management and conduct", and that a more general concept ought to be taken to have been intended, extending to the conduct of residents and to the regulation by the owner of all aspects of living on the site.

62. In whatever sense the expression "management and conduct" is understood, it is far from obvious whether an age restriction rule falls into this category. A generalised concept of management and conduct of the site by the owner might be said to extend to the owner's policies about permitted classes of occupiers. On the other hand, if site rules are taken to be intended to regulate acceptable standards of behaviour by occupiers, the personal characteristics of those occupiers, including their age, may be thought to have nothing to do with their behaviour.

63. A test of necessity is a high threshold. If the age restriction must satisfy the necessity test in regulation 4(2) the FTT was entitled to conclude that the test was failed and that an age restriction rule does not fall within the second category of permissible site rules. Acceptable standards can be maintained and community cohesion can be promoted perfectly successfully without such a rule, as the FTT's own assessment of the Park illustrated.

64. If it does not relate to the management and conduct of the Park, and if it is not necessary for the stated purposes, an age restriction would not then be a permissible site rule at all. That might be said to be a surprising outcome for a rule which is very commonly encountered (it was Mr White's evidence that all the examples of site rules deposited with the local authority in the area of the Park include such a restriction; that was doubted by Mrs Simpson, but it is undeniable that age restrictions are a common feature of mobile home parks). Parliament may be expected to have had in mind all the usual sort of site rules as being "site rules" to which the new procedure would apply rather than having only a restricted class of rule in mind and leaving it to regulations to add other permissible subjects.

65. None of these considerations points with particular force in one direction or the other, but I have concluded that a restriction on the age of residents does not relate to the management and conduct of the site. In my judgment it is more consistent with the language and structure of section 2C(2) for "management and conduct of the site" to be taken to require a close connection between the proposed rule and the site itself, and as not covering an age restriction. Rules having

to do with the physical environment of the site, such as parking restrictions, separation distances, the storage of dangerous substances, refuse disposal, and (perhaps) the keeping of pets would all fall within this limited class. Rules about matters which do not have an impact on the condition of the site, including rules about personal behaviour or conduct, fall outside this category and are left to be dealt with by express agreement when a new pitch agreement is entered into, unless they relate to the "other matters" to be prescribed by regulation. In the 2014 Regulations the Secretary of State has chosen to prescribe a narrow class of other matters, including only those which are "necessary" for the specified purposes, but the power could have been used (or could be used in future) to prescribe a more generous menu. The restrictive way in which the power has been exercised in regulation 4(2) is not a reason to give a wider meaning to section 2C(2) or to extend it to allow the site owner to regulate the characteristics of those who are permitted to reside on the site.

66. I do not regard it as improbable that the amendments to the 1983 Act which introduced section 2C were intended to restrict the subject matter of site rules and to exclude some which might commonly have been encountered in the past (the trend of all park homes legislation is to limit the control which site owners have formerly been able to exercise over those who live on protected sites). The fact that site rules are capable of being changed without the agreement of both parties, and the fact that rules which relate to the management and conduct of a site can be introduced or changed whether they are necessary or not, are strong considerations in favour of giving a limited meaning to "management and conduct".

67. It also seems to me to be improbable that Parliament can have intended that site owners, through their power to make site rules, should be able to restrict the classes of people who may occupy a home on a protected site. Residents of mobile homes on such sites are typically people of modest means, whose home is likely to be their most significant asset. A power to limit those to whom a mobile home may be sold or gifted by means of an age restriction would significantly limit the freedom of residents to dispose of their home as they might wish; such a restriction might also reduce that value of the home, by limiting the market into which it could be sold. There is, of course, no reason why such an age restriction could not be introduced as an express term of a new pitch agreement when it was being negotiated between the site owner and a prospective new occupier but in my judgment it would require much clearer language for so important a restriction on the rights of occupiers to dispose of their property to be capable of being introduced through rules coming into force after the pitch agreement had been entered into.

68. For these reasons I have concluded that a rule limiting the age of the occupiers of a protected site is not a rule which relates to the management and conduct of the site, within the meaning of section 2C(2) of the 1983 Act.

69. As I agree with the FTT that an age restriction is not necessary either to ensure that acceptable standards are maintained on the Park or to promote and maintain community cohesion, the consequence is that the age restriction in rule 15 is not a site rule within the meaning of section 2C or the 2014 Regulations. It follows that it cannot be introduced using the statutory procedure and that the appellants attempts to do so by their proposal of 18 December 2017 was unsuccessful.

70. My conclusion that a rule restricting the age of occupiers of pitches on the Park is not a site rule within the meaning of section 2C at all, has another important consequence. As described above, the new statutory procedure for making site rules began by sweeping away any existing rules which relate to matters mentioned in section 2C(2) (i.e. which relate to the management and conduct of the site, or which satisfy the regulation 4(2) necessity test). Any rule validly made by the owner of a site before 4 February 2015 which did not fall within the scope of the new procedures was unaffected by section 2C(3) and continues to bind all those who were bound by it before that date.

71. Whether any such rule was validly made for the Park, and in particular whether a previous age restriction rule was validly made, depends on the question which the FTT did not resolve, namely the effect of the events of 2011 when new rules were posted on the Park notice board, then defaced by the residents, but without a request being made by anyone for a meeting to discuss and vote on their introduction. The appellants say those events were effective to bring the 2011 rules into force under the contractual procedure in the occupiers' pitch agreements (see paragraph 23 above). I heard evidence about those events and I am satisfied that the resolution of that issue is within the scope of the respondents' original application to the FTT under section 4 of the 1983 Act.

72. The facts concerning the appellants' 2011 Park rules, as I have found them in paragraphs 25 to 27 above, must be considered in the light of the contractual provisions contained in the standard form of written statement which had been offered by the previous Park owner and accepted by most of the residents in 2001. These required the owner to give 28 days notice of any additions or amendments proposed to be made to the Park rules (I interpret this as including the introduction of new site rules where there had been none before). Notice was to be given either by displaying the additions or amendments on the Park notice board or by supplying copies to each occupier. No form of notice was specified, but on ordinary principles the form chosen needed to be sufficient to cause a reasonable person receiving notice of the new rules or reading them on the notice board to appreciate that the owner was invoking the contractual procedure agreed between the parties for the making of rules. Any form of notification which did not satisfy that minimum requirement would be of no effect.

73. The approach taken by the appellants made no reference to the procedure for making new rules in the 2001 written statement. It might be said that the written statement was alluded to at the end of the new rules where there appeared the words: "I/we have received a copy of these Park rules which form part of our mobile home agreement under the Mobile Homes Act 1983 and agree to abide by them." But those words purported to record an agreement by an individual to abide by the new rules, which was not the contractual procedure at all. A reasonable person reading them would not know that the document on which they appeared was intended to be a proposal. Nor did the new rules mention the period of 28 days which the contract allowed for residents to object. The impression was that the new rules were being introduced with immediate effect. They did not give 28 days notice of anything.

74. I do not consider that it was necessary for the appellants to inform the Park residents that, if they wished to object, they must do so in writing by requesting a meeting at which there could be discussion and a vote. The residents can be taken to have been aware of the terms of the written statements which they had signed in 2001. But it was essential that it be made clear to them that the owners were themselves intending to follow that procedure. In my judgment the

new rules displayed on the notice board entirely failed to make that intention clear, and the appellants' attempt to make use of that procedure accordingly failed.

Conclusions

75. My conclusions on the respondents' appeal against rule 15 are therefore as follows:

1. No rules restricting the age of residents (or on any other subject) were introduced in 2011 under the contractual provisions in the written statement.

2. Section 2C(3) of the 1983 Act did not cause any such rules to cease to apply, because there were none on which that provision could bite.

3. The appellants are not entitled to introduce such a restriction using the procedure in the 2014 Regulations, because an age restriction does not relate to the management and conduct of the Park and because, as the FTT found, it is not necessary for any of the permitted purposes.

4. If they wish to secure a restriction on the age of residents the appellants must do so by negotiation and agreement with current and future residents.

Martin Rodger QC
Deputy Chamber President

3 July 2019