



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

Case Reference:	CHI/24UP/PHN/2021/0001
Premises:	Ideal Park Homes, Bishopstoke Lane, Brambridge, Hampshire SO50 6HY
Applicant:	Various pitch holders
Representative:	Mr Nigel Evans
Respondent:	The General Estates Co Ltd
Representative:	None
Type of Application:	Application under Regulation 10 of the Mobile Homes (Site Rules) (England) Regulations 2014 – Proposed variation of site rules
Tribunal Members:	Judge A Cresswell
Hearing:	On the Papers
Date of Decision:	23 November 2021

DECISION

The Application

1. On 3 July 2021, the Applicant pitch occupiers made an application to the Tribunal for the determination of whether a site rule was reasonable.

Summary Decision

2. The Tribunal finds in favour of the Applicant for reasons which it has explained below and quashes the proposed new rule. Rule 14 (and its Notes) should, accordingly, be amended so as to exclude any reference to pitch occupiers/homeowners being entitled to keep any dog or dogs.

Directions

3. Directions were issued on various dates. These directions provided for the matter to be heard on the basis of written representations only, without an oral hearing. No objection was received to this proposal.
4. The Tribunal directed that the parties should submit specified documentation to the Tribunal for consideration. This determination is made in the light of the documentation submitted in response to those directions.

The Law

5. The applicable provisions are found in Mobile Homes Act 1983 as amended (“the Act”) and the Mobile Homes (Site Rules) (England) Regulations 2014 (“the 2014 Regulations”).
6. Section 2C of the Act reads as follows:

2C Site Rules

(1) In the case of a protected site in England..... for which there are site rules, each of the rules is to be an express term of each agreement to which this Act applies that relates to a pitch on the site (including an agreement made before or one made before the making of the rules).

(2) The “site rules” for a protected site are rules made by the owner in accordance with such procedure as may be prescribed which relate to-

(a) the management and conduct of the site, or

(b) such other matters as may be prescribed.

(3)

(4) Site rules come into force at the end of such period beginning

with the first consultation day as may be prescribed, if a copy of the rules is deposited with the local authority before the end of that period.

.....

(7) Regulations may provide that a site rule may not be made, varied or deleted unless a proposal to make, vary or delete the rule is notified to the occupiers of the site in question in accordance with the regulations.

7. In respect of the 2014 Regulations, the relevant parts read:

Matters prescribed for the purpose of section 2C(2)(b)

4. (1) (2)

The matters prescribed for the purposes of section 2C(2)(b) are the matters set out in paragraph (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.

Requirement to consult on a proposal

8. An owner must, in relation to the protected site concerned, consult-

(a) every occupier; and

(b) any qualifying resident's association, on a proposal in accordance with regulations 8 and 9.

Notification of proposal

9. (1) The owner must notify each consultee of a proposal, by issuing a proposal notice ("the proposal notice")

(2) The proposal notice must-

(a) clearly set out a proposal;

(b) contain a statement of the owner's reasons for making a proposal; (c)

(d) Contain a list of the matters prescribed by regulations 4 and 5 and statement confirming that a proposal complies with the requirements of these provisions;

Owner's response to the consultation

10. (1) Within 21 days of the last consultation day, the owner, having taken into account any representations received from the consultees, must-

(a) decide whether to implement the proposal (with or without modification) ("the decision"); and

(b) send a document, to be known as “the consultation response document”, to each consultee, notifying them of that decision.

(1) The consultation response document must also-

(a) Give details of the consultation carried out under regulations 7 and 8, including the first consultation day;

(b) give details of the representations received, the owner’s response to the representations and such modifications as were made to the proposal (if any) as a result of the consultation;

Right to appeal to tribunal in relation to the owner’s decision

11. (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) 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 on the site; or

(iii) the terms of any planning permission or conditions of the site licence

Appeal procedure

12. 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.

13. The Tribunal has had regard to the decision of the Upper Tribunal in *White v Simpson* [2019] UK UT 0210 (LC) and the Supreme Court in *BP Shipping Ltd V Braganza* [2015] 1 WLR 1661, which lead it to the view that a reasonable decision in relation to the implementation of site rules requires:

i) the site owner to have properly considered the rules appropriate to the site, taking account of all relevant circumstances, including but not limited to the three sets of factors to have particular regard to set out in regulation 10(2)(c) before proposing such rules;

ii) the site owner to have embarked on a reasonable consultation process, including providing to the residents such information as may be appropriate information as to the basis of the site owner's consideration of matters and any documents that have been or ought to have been taken account of;

iii) once the residents have been able to properly engage in the consultation with the benefit of all the appropriate information, the site owner to take appropriate account of the responses received and to again give appropriate consideration to- and there ought to be evidence of it- all of the relevant matters- of which the consultation responses are one relevant factor.

The Site Rule

The Applicant

14. The Applicant reports that the Respondent, by letter of 26 April 2021, communicated a proposed change to the site rules.
15. The consultation period was said to be 28 April 2021 to 26 May 2021.
16. *The General Estates Co Ltd proposes to make the site rules attached to this proposal notice to allow one dog to reside in each home.*
17. The reason given for the proposed change was: *General Estates feel that the health benefits and advantages of owning a*dog would benefit the Residents of Ideal Park both physically and mentally.*
18. The section on Pets was to read as follows (including spelling errors):
Pets
*14. You must not keep any pets or animals except the following:
not more than one domestic cat. You must keep any cat under proper control and must not permit it to frighten other users of the park, or to despoil the park.
not more than one dog (other than any of the breeds subject to the Dangerous Dogs Act 1991 which are not permitted at all). You must keep any dog under proper control, and you must not permit it to frighten other users of the park. You must keep any dog on a leash not exceeding In in length and just not allow it to despoil the park:
those animals that are housed in a cage, aquarium or similar and remain at all times within your home.*

Note

The express terms of a homeowner's agreement contain an undertaking on the part of the homeowner not to allow anything which is or becomes a nuisance, inconvenience or disturbance to other occupiers at the park and this undertaking extends to the behavior of pets and animal. A similar requirement not to cause a nuisance applies to tenants and again this includes the behavior of pets and animals.

A new homeowner may come onto the park with not more than two dogs which they already own but shall not be permitted to replace the animal at its passing as to then comply with rule 14 above.

Rule 14 does not apply to pets owned by the park owner or the park warden and their families who reside in the park home.

15. Nothing in rule 14 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.

19. By letter of 8 May 2021, residents of 17 homes on the site wrote to object to the new rule, expressing the view that the rule was proposed not for the reason given by the Respondent but rather: *We know, and you are aware, that it is a lot easier to sell new homes if dogs are permitted, and this is the real reason for the change.*

20. The letter gave the following reasons for resisting the change:

If the person /persons both work, it would be inhumane to both the dog and owner to leave the animal trapped inside the home, especially in the summer when these homes get very hot, also not having any doors or windows allowed to be left open, in case the animal escapes, only makes the matter worse.

There could also be a noise issue to nearby neighbours, from barking and whining from the animal, at present we all enjoy the quietness of the country living we chose when we decided to live here.

Also if the dog is allowed to use the garden as a toilet area, I would not like the aroma/smell drifting across to my garden ruining my outside enjoyment.

Most of the homes on this site do not have securely enclosed gardens, so it could easily be escaped causing injury or an accident.

The fence Height is insufficient height [900mm], which cannot be increased because of Fire Regulations to stop a dog from jumping it, to escape or to chase cats that freely roam the park which again could cause an accident,

If dog fouling takes place on any part of the park, will you be regularly maintaining and cleaning the said areas.

Lastly, I signed an agreement, partly because of the NO DOGS rule, if you change this now, I feel that you have broken that agreement we had.

21. By letter of 14 June 2021, the Respondent wrote to occupiers to inform them that the consultation was over and that in relation to the proposed rule *To allow one dog to reside in each home, Proposal to be implemented and dogs to be allowed to reside on park.*

22. The letter recorded:

Representation made by one homeowner stating that a dog should be allowed.

No representation from 8 homeowners

Representation made by 17 homeowners (one letter) stating that dogs should not be allowed.

23. The Reason given was *Park owner states that dogs should be allowed to reside on Ideal Park for documented physical and mental health benefits and given the*

Governments decision which was published on 28" January 2021 that responsible tenants in England will be able to secure tenancies when they own a dog.

24. The Schedule 2 Consultation Response Document records that *The Site Owner has decided to implement the proposal with one modification To Allow one dog in each home.*
25. The only modification appears to be the removal of the words "to reside" from the original proposal.
26. By undated letter, the residents of 17 homes wrote to appeal on the following grounds:

(i) The proposal or representation received in response to the consultation. (ii) The size, layout, character, services or amenities of the site.

The site as you are obviously aware is situated along an unlit and unpaved lane that has become extremely busy thanks to the increased traffic created by a large housing estate that was recently built, cars are driven at very dangerous speeds and in some cases recklessly, and there are many places where the lane narrows making it almost impossible to get two cars through at the same time. This lane would be the only area to take dogs out for exercise, the Park Home site is totally impractical, there is not enough area to be able to exercise dogs safely and without causing inconvenience to other home owners, the gardens are not big or secure enough and there is a farm with livestock adjacent to the site. If dog owners allowed their pets to use their garden area as a toilet it wouldn't be long before offensive smells started to become a health issue. There is also the issue of possible damage caused by uncontrolled dogs that could occur to neighboring properties, will General Estates be willing to pay for any damage? Who will be on site to enforce any new rules that come with allowing dogs onto the site? We have no park managers and not everyone has access to the internet and email.

27. The residents of 17 homes signed to say they were willing to be represented in these proceedings. The objections to the new rule are as follows:

28. **Objection 1 - Containing Dogs to Plots**

A majority of the park home plots are open plan and not fenced adequately, or not at all to retain, or stop dogs from escaping or keeping them escaping into other residents plots or gardens.

This could also lead to dogs straying onto the main road, which could not only be a danger and hazard to the dog but also to any motorist using the lane.

If a dog cannot be retained in its own plot it would be wrong to tether it to stop it from escaping or straying. This could not only cause problems for the welfare of the dog but also cause a noise disturbance due to barking and whining.

29. **Objection 2 - Lane Access to Park Entrance & Park Roads**

The below pictures show the narrow access road, not only into the park but also the lane, which is the only form of access into the Ideal Home Park site. There are no foot paths or footpath lanes marked out in either the lane or the park which means the dog walker and dog are actually walking on the road. This lane has a 60mph speed limit.

This is not only hazardous and a danger to the dog walker and dog but also motorists.

Ideal Park Homes site is situated in a rural area. If you do not own a car there is no bus service because of the rural location.

If you wanted to take your dog for exercise you would have to walk the lane to find a suitable place to exercise to let the dog loose. The dogs could not be let off the leash along the lane as this again could cause danger to the dog and motorists.

30. Objection 3 - Wildlife

In the below pictures you can see that some of the properties back onto the open fields which frequently hold livestock throughout the year from the local farm.

The area is also home to a large volume of wildlife such as deers, foxes, partridges, and pheasants to name a few.

There are concerns that should a dog escape it could injure or kill any of the above or scare the wildlife from their natural environment.

The Respondent

31. The Respondent declined to take part in these proceedings.

The Tribunal

32. The Tribunal has concentrated only on the objections raised by the Applicant.
33. The Tribunal notes that the Respondent gave 2 reasons for the proposed change to the rules. The first was given for the proposal, namely *General Estates feel that the health benefits and advantages of owning a*dog would benefit the Residents of Ideal Park both physically and mentally.*
34. This was augmented by the Decision stage as follows: *Park owner states that dogs should be allowed to reside on Ideal Park for documented physical and mental health benefits and given the Governments decision which was published on 28" January 2021 that responsible tenants in England will be able to secure tenancies when they own a dog.*
35. The Respondent has never explained how it came to the conclusion that there would be benefits to the particular site occupiers either by themselves owning a dog or by other occupier(s) owning a dog. On the other hand, the occupiers of 17 residences have explained how annoyance and disturbance could be caused to them by others owning dogs on the site.

36. The second reason, newly paraded at the time of the Decision, is not applicable to park home sites. It actually refers to the new Model Agreement for an Assured Shorthold Tenancy announced by government on 28 January 2021, which has no relevance to park homes.
37. The Respondent appears to have completely disregarded the objections of the vast majority of residents, recording that only 1 “homeowners” had voted in favour of the proposed rule and that 8 had not voted and 17 voted against. No reason is given as to why the clear views of the vast majority, some 94% of those taking part in the vote, should be defeated by 6% of the vote, when no reasons for the view of the sole supporter are recorded. No comment is made by the Respondent about the representations made by the majority.
38. In the absence of any response by the Respondent to these proceedings and given the above, the Tribunal can only conclude that the proposed rule is unreasonable both in respect of the proposal and the representations received in response to it.
39. The Occupiers also gave reasons as to why the rule was unreasonable having regard to the size, layout, character, services, or amenities on the site. There is cogency to those reasons insofar as they relate to the size, layout, character, services, or amenities on the site (such as the open plan nature of the site, the lack of footpaths and the resultant need to exercise a dog on a fast road and the consequent danger to drivers and the presence nearby of livestock) and the Respondent has chosen not to challenge any of them.
40. **The Tribunal** finds in favour of the Applicant for reasons which it has explained and quashes the proposed new rule. Rule 14 (and its Notes) should, accordingly, be amended so as to exclude any reference to pitch occupiers/homeowners being entitled to keep any dog or dogs.

Costs

41. If the Applicant wishes to pursue an application for its costs, it should make an application to the Tribunal within 21 days of the date of this Decision, setting out each and every element of those costs and sending a copy also to the Respondent.
42. If the Applicant does make an application for costs, the Respondent may, within 21 days of receiving such application, make written submissions to the Tribunal (copied also to the Applicant) if it wishes to resist that application.

APPEAL

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. Where possible you should send your application for permission to appeal by email to rpsouthern@justice.gov.uk as this will enable the First-tier Tribunal Regional Office to deal with it more efficiently.
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.