



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

Case reference : **CAM/00KC/PHR/2023/0002.**

Property : **Nook Park, Willow Road, Great Harwood, Bucks, MK17OQJ**

Applicant : **Silk Mill Leisure Limited**

Representative : **Joe Burns**

Respondents : **Buckinghamshire Council**

Representative : **Asitha Ranatunga**

Type of application : **Appeal against a finding that the Applicant is not a fit and proper person made pursuant to paragraph 9 of Schedule 4 The Mobile Homes(Requirement for Manager of Site to be a Fit and Proper Person) (England) Regulations 2020**

Tribunal : **Judge Shepherd
Mary Hardman FRICS**

Date of Decision : **20 May 2024**

Decision

1. This is an appeal against a finding that the Applicant is not a fit and proper person made pursuant to paragraph 9 of Schedule 4 The Mobile Homes(Requirement for Manager of Site to be a Fit and Proper Person) (England) Regulations 2020 (“The regulations”). The relevant decision was dated 22nd September 2023. Thereafter the Applicant, Silk Mill Leisure whose Director and representative is Joe Burns applied to the Tribunal. He represented the Applicant at the Tribunal. The Respondents, Buckinghamshire County Council were represented by Asitha Ranatunga of Counsel.
2. Nook Park is a protected mobile home site in Buckinghamshire. The Applicant purchased the site in 2021 and a site license was granted by the Respondent on 19th November 2021.
3. The regulations came into force on 1st October 2021. The government guidance on the regulations required a Local Authority to adopt a policy determination and to set a fee level. The Respondent’s policy was formally adopted on 20th October 2021.
4. The Applicant proposed that Joe Burns was a Fit and Proper person on 26th April 2022. Mr Burns was interviewed on 16th January 2023. A preliminary decision was made on 29th June 2023 to the effect that Mr Burns was not a fit and proper person for the following reasons:
 - a) Mr Burns could not provide effective management of the site and does not meet the standard of competency required.
 - b) There had been a breakdown in relations with residents on the site. There had been other proceedings in the Tribunal with complaints about interference with plots and Mr Burns had used incorrect procedures to increase the pitch fee. The proceedings in the Tribunal relate to encroachment on pitches during development works – see *Waller v Silk Mill Leisure* CAM/OOKC/PHC/2022/0010 and *Philips v Silk Mill Leisure* CAM/00MX/PHC/2023/0006.
 - c) There was no evidence of funding of the proposed development or the financial standing of the company.
 - d) The company’s management structure was not clarified in relation particularly to reporting “out of hours issues”. Also the company structure was not clear as to who would deal with issues when Mr Burns was away.
 - e) A company management plan for the site had not been supplied to deal with issues including staffing arrangements; maintenance arrangements; refuse and recycling and maintenance and complaints procedure.
 - f) There was no redevelopment plan for the works taking place at the site. The proposed plan for 29 units would breach the current license conditions which restricts the number of units to 25.
 - g) No written instruction had been provided for the instruction of solicitors to give specialist legal advice.

- h) Mr Burns was being investigated for breaches of Planning and Environmental law in relation to damage to protected trees, removal of hedgerows and the installation of new drainage.
5. The Applicant was invited to make representations. These were provided in a letter from Ibraheem Dulmeer a barrister at Normanton Chambers dated 7th July 2023. Taking each of the points above and using the same numbering the representations were as follows:
- a) Mr Burns had been working with Richard Harley of Villa Park Homes as a consultant and had been using Tozers solicitors. Mr Burns had transferable skills from his work in Property Management for which had obtained awards.
 - b) There had been issues with residents but Mr Burns was seeking to resolve these. He would hold a meeting with residents and produce a complaints policy.
 - c) Mr Burns would provide an undertaking that the site was owned debt free. He would show his funding arrangements for the site. Clarification was sought as to these.
 - d) The management structure was outlined with Mr Burns the managing director, Charmain Sitton running day to day operations, Bob Tester dealt with day to day maintenance and Barrie Fettes was the onsite project manager. Mr Burns also used a number of independent contractors.
 - e) A formal company plan could be provided, maintenance was dealt with by Barry Fettes, refuse collection was done by Aylesbury Vales DC. A draft complaints procedure was provided.
 - f) Planning permission had been given for 50 units. Once the site had been developed an application would be made to vary the license.
 - g) Tozers had been instructed and Ibraheem Dulmeer was also available for advice.
 - h) Mr Burns was not in breach of planning laws.
6. In a further letter from the Respondent dated 28th July 2023 the Applicant was invited to provide any further evidence by 29th August 2023. This prompted further submissions by Mr Dulmeer on 5th September 2023. He attached evidence of managerial experience, including the complaints policy which had been distributed and more detail about Mr Burns' experience in the real estate industry. He also provided documents which he said demonstrated relationship reparations. A formal undertaking was given confirming the site was owned debt free; there were adequate funds in place to provide maintenance and the site's development. A maintenance plan was also provided. Further detail was provided in relation to personnel involved. A revised development plan for 25 units was provided. Also, it was repeated that advice would be provided by Mr Dulmeer and he would provide a course for Mr Burns and others.
7. The final determination which is the decision under challenge was made by Amy Stansmore CEnvH MCIEH the Respondent's Environmental Health

Manager on 22nd September 2023. In summary the decision confirmed the Respondent's view that the Mr Burns was not a Fit and Proper person to manage the site. The letter highlighted the following issues:

- a) Whilst Mr Burns had experience in managing commercial and residential property he lacked experience of managing mobile homes sites. The fact he was attending future training indicated a shortfall of knowledge and/or competence and there was no indication that this would be addressed imminently.
- b) The complaints procedure was ambiguous and inconsistent.
- c) The RPT had made determinations against the company confirming that there had been breaches of the covenant of quiet enjoyment. There were 12 other applications to be considered by the RPT which indicated the extent of dissatisfaction.
- d) No accounts or other financial records had been provided to support the assertions made regarding the adequacy of funds to manage and develop the site. The balance sheet from the unaudited accounts for the company for 2022 did not provide assurance. A caution rating had shown on a liquidity ratio based on unaudited accounts for the company. Then maintenance plan did not show any contingency fund for emergency works. There was no evidence of finance available from a funding institution and the undertaking given by Mr Burns did not address this issue.
- e) Although a company management plan had been provided there was no evidence of the training or competence of the two persons to whom site safety and maintenance had been delegated.
- f) It was not accepted that planning permission had been given for 50 mobile homes. The resubmitted plan of development did not reflect the work that was taking place on site.
- g) The council were allowed to take into account the fact that Mr Burns was facing investigations into planning breaches even if the breaches had not been proven.

The hearing

8. The hearing took place on 4th March 2024 at the Cock Hotel in Milton Keynes. Mr Ranatunga of Counsel represented the Respondent and Mr Burns represented the Applicant.
9. Mr Ranatunga went through the chronology of events and the relevant law. He then called evidence from Amy Starsmore. She had made 2 statements which she confirmed. She had 25 years experience and had been trained in the relevant legislation. She was cross examined by Mr Burns who was told that this was the first case involving the Respondent where the Applicant had failed the Fit and Proper Person test. Mr Starsmore stressed that the law and policy of the council set down what had to be taken into account. The planning complaints

were just part of the case. There was a whole suite of concerns. She said there was no evidence to back up statements made by Mr Burns about financial standing. The undertaking was not sufficient. She said there was a distinction between the granting of the site license and the Fit and Proper Person test. A different member of her team had granted the license.

10. Mr Burns said he had not been asked to provide specific information and if he had done he would have provided it. He said he had a better understanding of the process of management now. He had experience in construction and development.
11. In closing Mr Ranatunga said there was a concern about Mr Burns' lack of experience. The evidence provided as to the training planned was sketchy as was the evidence on legal advice. There was no evidence of an ongoing commitment to provide training. Construction and development experience was not the same as the site management of a park home. The complaints procedure was poorly drafted and was not independent. The Tribunal decisions had found that Mr Burns had managed the site and development of the site badly. The management structure lacked any proper detail. There was no description of the reporting structure. There was no evidence of their experience in managing park homes or health and safety qualifications for example. There was no summary of their duties. The funding arrangements for the long term maintenance of the site were supported by the barest of assertions in an undertaking. There should have been a statement from a legal lender for example. The council had only been provided with a one- year maintenance program when the current assets did not support that expenditure. There was no sinking fund for emergencies.
12. Mr Burns said his staff had experience of managing Silk Mill Leisure properties. The business had an income of £1million. He said there had been no planning breaches other than the removal of hedgerows which he had replanted.

The Law

13. Under Reg 4 of the Regulations the Respondent is required to be satisfied that the manager of a protected site is a fit and proper person.
14. Under Reg 7:

(1) In making a fit and proper person assessment in relation to land that is used, or is proposed to be used, as a relevant protected site, a local authority—

(a) must have regard to the matters specified in paragraphs 2 to 4 of Schedule 3;

(b) may have regard to the conduct of any person associated or formerly associated with the relevant person (whether on a personal, work or other basis) if it appears to the authority that that person's conduct is relevant to the question of whether the relevant person is a fit and proper person to manage the relevant protected site or proposed relevant protected site (as the case may be); and (c) may have regard to any evidence as to any other relevant matters.

15. Paragraphs 2-4 of Schedule 3 state the following:

2.— Ability to secure the proper management of the site

(1) Whether the relevant person is able to secure the proper management of the site.

(2) For the purposes of sub-paragraph (1)—

(a) "proper management of the site" includes, but is not limited to, securing—

(i) compliance with the site licence; and

(ii) the long-term maintenance of the site; and

(b) in considering whether the relevant person is, or would be, able to secure the proper management of the site, the local authority must (among other things) have regard to—

(i) whether the relevant person has a sufficient level of competence to manage the site; and (ii) the management structure and funding arrangements for the site or proposed management structure and funding arrangements.

3.— Other considerations – relevant person

(1) Whether the relevant person—

(a) has committed any offence involving fraud or other dishonesty, violence, arson or drugs or listed in Schedule 3 to the Sexual Offences Act 2003 (offences attracting notification requirements);

(b) has contravened any provision of the law relating to housing, caravan sites, mobile homes, public health, planning or environmental health or of landlord and tenant law;

(c) has contravened any provision of the Equality Act 2010 in, or in connection with, the carrying on of any business;

(d) has harassed any person in, or in connection with, the carrying on of any business;

(e) is, or has been within the past 10 years, personally insolvent;

(f) is, or has been within the past 10 years, disqualified from acting as a company director;

(g) has the right to work in the United Kingdom; and

(h) is a member of any redress scheme for dealing with complaints in connection with the management of the site.

(2) Where any other local authority has rejected an application for the relevant person to be included in a register, the local authority's reasons.

4.— Other considerations – responsible persons

(1) Sub-paragraphs (2) and (3) apply where the relevant person is not an individual.

(2) Whether any person who is a responsible person—

(a) has committed any offence involving fraud or other dishonesty, violence, arson or drugs or listed in Schedule 3 to the Sexual Offences Act 2003 (offences attracting notification requirements);

(b) has contravened any provision of the law relating to housing, caravan sites, mobile homes, public health, planning or environmental health or of landlord and tenant law;

(c) has contravened any provision of the Equality Act 2010 in, or in connection with, the carrying on of any business;

(d) has harassed any person in, or in connection with, the carrying on of any business;

(e) is, or has been within the past 10 years, personally insolvent;

(f) is, or has been within the past 10 years, disqualified from acting as a company director;

and

(g) has the right to work in the United Kingdom.

(3) Where any other local authority has rejected an application for the responsible person to be included in a register, the local authority's reasons.

(4) In this paragraph, "responsible person" means a person in relation to whom the applicant is required to provide information under paragraph 10(2) or (5), 11 or 12 of Schedule 2.

16. Paragraph 9 of Schedule 4 states the following:

9.— Appeals

(1) A person on whom a final decision notice is served may appeal to the First-tier Tribunal against—

(a) any decision to include the relevant person on the register for an effective period of less than 5 years;

(b) any decision to include the relevant person on the register subject to conditions; and

(c) any decision to reject the application.

(2) A person on whom a notice of action is served may appeal to the First-tier Tribunal against—

(a) any decision to remove the relevant person from the register;

(b) any decision to impose a condition on the inclusion of the relevant person in the register;

and

(c) any decision to vary a condition.

(3) No compensation may be claimed for loss suffered, pending the outcome of the appeal, in

consequence of the local authority—

(a) making a final decision; or

(b) taking an action mentioned in regulation 8(1)(a), (b) or (c).

Decision

17. We are required to consider the matter afresh. We consider that Mr Burns is not a Fit and Proper Person to manage a protected site for the following reasons.

Reasons

18. From the outset we would say that we have no criticism of the manner in which the Respondent dealt with this case. This is a new piece of legislation which they have responded to well. They have produced a policy which is sound. The Tribunal were impressed by Ms Starsmore's evidence. We do not accept the criticisms made by Mr Burns that further steps could have been taken to obtain information from him. He had plenty of opportunity to make submissions. It was plainly obvious that the Respondent was seeking reassurance in regard to better financial information which for whatever reason was not provided and had still not been provided at the date of the hearing.
19. The focus in this case was on Regulation 2 of the Regulations. Whilst there was some reliance by the Respondent on the allegations of planning breaches which may have brought into play the other regulations had they been proven they were peripheral to the Respondent's concern. By way of reminder Regulation 2 states the following:

2.— Ability to secure the proper management of the site

(1) Whether the relevant person is able to secure the proper management of the site.

(2) For the purposes of sub-paragraph (1)—

(a) "proper management of the site" includes, but is not limited to, securing—

(i) compliance with the site licence; and

(ii) the long-term maintenance of the site; and

(b) in considering whether the relevant person is, or would be, able to secure the proper management of the site, the local authority must (among other things) have regard to—

(i) whether the relevant person has a sufficient level of competence to manage the site; and (ii) the management structure and funding arrangements for the site or proposed management structure and funding arrangements.

20. The Tribunal has already dealt with two cases against the Applicant: *Waller v Silk Mill Leisure CAM/OOKC/PHC/2022/0010* and *Philips v Silk Mill Leisure CAM/00MX/PHC/2023/0006*. In each case the Applicant was found to have

breached the covenant of quiet enjoyment by encroaching on the plots of individual home owners when carrying out development works. One particular concern from those cases was the failure by Mr Burns to recognize that residents had the right to live on a site without undue disturbance. This does not preclude development works taking place but in this case there was a distinct absence of any regard for existing residents rights. No proper notice had been given of coming onto the resident's plot never mind removing parts of it. In both cases the Tribunal found that there had been encroachment. In Waller damages were awarded and some efforts were made by the Applicant to reinstate the site. In Philips the encroachment has gone too far to permit reasonable reinstatement and submissions on damages have been invited. Both of these cases demonstrate poor rather than proper management of the site and a lack of competence by Mr Burns to manage the site.

21. A further concern has to be the lack of proper financial information which would reassure the Respondent that the Applicant had appropriate funding arrangements in place to properly manage the site. The undertaking given by Mr Burns counts for nothing, is self – serving and reactive. What was required was confirmation from an independent party such as a lender that the finances in relation to the site were sound. The only public information provided was reviewed by the Respondent's finance department and found to be a cause for concern. The financial standing of the Applicant in particular in relation to Nook Park remains completely unclear.

22. Of less concern but still relevant was the lack of proper procedures and management structure. The complaints policy was self- serving because the ultimate decision maker was Mr Burns when one suspects that a lot of the time the complaints would be about his actions and decisions. In any event the production of the policy was reactive because the Respondent had identified its absence. It was not properly thought out. The management structure is probably similar to many small park homes where there are a few known individuals running the day to day management. Of more concern was the fact that there was no proper maintenance plan in place. The plan only dealt with the next 12 months. If the development is completed the site moves from a small site to a medium sized site. It is essential that proper maintenance planning and indeed financial planning is put in place. We have no confidence that Mr Burns has the inclination or indeed capacity to do this properly. He is clearly a busy business man who has a number of financial interests. He is a proven successful developer. This does not mean he is a good manager. He would be well advised to employ a manager that is experienced and meets the fit and proper test.

Judge Shepherd

20th May 2024

RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the

First-Tier Tribunal at the Regional office which has been dealing with the case.

2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.