



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

Case Reference : CHI/24UN/PHM/2024/0001/LC

Property : 25 Elmstead Park, Wiremead Lane, East Cholderton, Andover, Hampshire SP11 8LU

Applicant : Wyldecrest Parks (Management) Limited

Representative : Mr David Sunderland

Respondent : The Estate of Mr W Leishman

Representative : Angela McGuigan (Executor)

Type of Application : Application by owner of a Park Home site for a refusal order Paragraph 7B of Chapter 2 of Part 1 of Schedule 1 Mobile Homes Act 1983 (as amended)

Tribunal Member : Regional Judge Whitney

Date of Decision : 10 June 2024

DECISION

Order

- 1. I make a Refusal Order.**
- 2. I make no order as to reimbursement of fees.**

Background

1. The Applicant applied for a refusal order preventing the occupier from selling the park home and assigning the agreement to the proposed occupier. This application was received on 29 May 2024.
2. The Applicant submitted a copy of the site rules and a copy of the Schedule 2 Notice of proposed sale. The grounds of the application are that were the sale of the park home to go ahead, the proposed occupier would be in breach of the site rules, as dogs are not permitted on the site.
3. The Tribunal records that on 29 May 2024 email correspondence was sent from the Applicant providing evidence of service upon the Respondent.
4. Directions were issued on 30th May 2024 requiring the Respondent to send in any evidence relied upon and listing the matter for a hearing on 10th June 2024.

Hearing

5. The hearing took place remotely by video on 10th June 2024 with the Tribunal sitting at Havant Justice Centre. The hearing was recorded and the below is a precis of the hearing.
6. The Tribunal had copies of all the documentation supplied by the parties.
7. Mr Sunderland appeared for the Applicant. Miss McGuigan appeared as the Executor of the Estate of Mr Leishman. She had provided a copy of the Grant of Probate appointing her. Mr and Mrs Blackburn the proposed occupiers also attended.
8. Mr Sunderland stated that the Applicant had received a Notice of Proposed Sale with the signatures of Mr and Mrs Blackburn dated 24th May 2024. It appears an earlier notice was served and then withdrawn prior to this notice. The Notice refers to the proposed occupiers intending to keep two French bulldogs at the home.
9. Mr Sunderland referred to the site rules which came into effect on 18th November 2014 and in particular Rule 15 which states:

“15. No new residents may move onto the park with pets. No poultry or other animals allowed to be kept on the Park. Dogs must be kept on a lead at all times whilst on the Park, and must not be allowed to foul the Park.”

10. Mr Sunderland submitted the proposed occupiers would be in breach of this Rule and so it is appropriate for a Refusal Order to be made given that it is appropriate to grant a refusal order when a person wishes to keep animals at the home which would be in breach of a site rule.
11. Mr Sunderland did not understand the relevance of the reference to the Upper Tribunal decision in 11 Scatterdells Park LRX/33/2014.
12. When questioned as to the transcript of the conversation with Miss Elizabeth Best Mr Sunderland explained he had not discussed this with her as he had only just returned to the office following the death of a family member. His PA was on holiday who had dealt with the day-to-day communications with the Respondent and proposed buyers. In his view this was irrelevant as it related to a different site and he was responsible for legal and compliance.
13. Mr Sunderland sought the reimbursement of the fees paid by the Applicant of £330 as in his submission they had no choice but to apply to the Tribunal. In his submission he had no option but to make application to the Tribunal.
14. Miss McGuigan felt the situation was unfair. She believed other home owners on the site had been allowed to move in with dogs. She had not directly approached any for statements as she did not want other home owners to have repercussions. She referred to being pressured to withdraw the first notice but had resubmitted when she learnt the process was to come to the Tribunal. She believed Wyldecrest could use its discretion. She accepted the Rules referred to were the site rules for this site.
15. Mr and Mrs Blackburn relied on the documents filed (which included a transcript of a conversation with Miss Elizabeth Best). They believed there were dogs on the site and this was why they looked at this site. They referred to a home on this current site which they believe was sold a year ago by Wyldecrest to people who had a german shepherd dog. The rules on the other site, Cranbourne Hall were similar, and yet on that site Miss Best indicated the purpose was different, being to monitor numbers not actually prevent people coming on to the site with dogs. Miss Best made clear they may be able to purchase a home notwithstanding their dogs.
16. Mr Blackburn believed the 11 Scatterdells decision was relevant in showing a situation where Wyldecrest had incorrectly applied the process.

17. In reply Mr Sunderland reminded the Tribunal all present accepted the Rules and that these prevented dogs residing on the site. He stated that the Site Owner is not allowed to have discretionary rules. Further he suggested if it was being said the Applicant could not encourage people to withdraw notices to avoid tribunal proceedings this supported his claim for reimbursement of the fees paid.

Decision

18. Firstly the Tribunal expresses its condolences to Mr Sunderland, as did all parties at the hearing.
19. I have considered all the evidence and submissions given, whether at the hearing or in writing.
20. I am satisfied that the application was made within 21 days of the Notice of Proposed Sale. Further I am satisfied that notice of the proceedings was given to the Respondent and the proposed occupier.
21. The Notice refers to the proposed occupier intending to reside on the site with two dogs. I am satisfied that this is a breach of Rule 15 of the site rules which is set out in full above. All parties appeared to accept these facts.
22. I have no reason to doubt the evidence of the proposed occupier as to their conversation with Mesdames Vincent and Best in respect of purchasing a home on another Wyldecrest site Cranbourne Hall. Certainly it appears that representations were made by Miss Best to encourage Mr and Mrs Blackburn to consider purchasing a home on that site, notwithstanding that dogs may not be permitted under the Site Rules. Site Owners and those employed by them should ensure all enquirers are made fully aware of the site rules which they should ensure are observed.
23. Notwithstanding the above I find under the Mobile Homes Act 1983 I must make a Refusal Order and do so.
24. The site Rules are clear that persons taking an assignment of an existing agreement should not intend to reside with dogs in the home. Mr and Mrs Blackburn do intend to reside with their two French bulldogs and I find this would be a breach of Rule 15 of the Site Rules.
25. I turn now to the question of the reimbursement of fees. Decisions as to reimbursement of fees are matters within the discretion of the Tribunal.

26. It is often said that there is a presumption that when an Applicant is successful, as here, they should recover the fees paid to the Tribunal. However the Tribunal retains discretion. I am satisfied that in this instance case on the evidence before me I should exercise my discretion and not make an order for reimbursement of fees.
27. I do so taking account of all the evidence adduced by the Respondent and the Proposed Buyer. In particular the transcript of the conversation with Mesdames Vincent and Best. It seems clear that the Applicant by its servants and agents leads would be purchasers in some circumstances to believe rules relating to pets will not be enforced.
28. It is for the Applicant to apply and enforce such rules and it is inequitable for them to suggest otherwise. It is such actions which lead to persons looking to purchase homes on sites for which there circumstances mean they are not suitable. Taking account of all the above I exercise my discretion to make no order as to reimbursement of fees.
29. Finally I have great sympathy with the situation the Proposed Buyers find themselves in having paid a substantial deposit for a home they are not allowed to purchase as a result of this decision. I would urge them to take independent legal advice.

RIGHTS OF 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 by email to rpsouthern@justice.gov.uk
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.