



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

Case reference : CHI/OOHX/PHN/2023/0001

Property : Kingsdown Caravan Park, Swindon,
Wiltshire, SN25 6PG

Applicant : Andrew Foley

Representative : None

Respondent : Oaklands Property Developments Limited

Representative : Shaun Gorman, Director

Type of application : Application under Regulation 10 of the
Mobile Homes (Site Rules) (England)
Regulations 2014 – Proposed variation of site rules

Tribunal members : Mrs J Coupe FRICS
Mr M Woodrow MRICS
Mr M Jenkinson

Date of hearing : 26 March 2024

Date of written decision : 14 June 2024

DECISION

Decision of the Tribunal

The Tribunal determines that the two rules, as proposed, are unreasonable and are therefore quashed.

Introduction

1. The Applicant is the occupier of 7 Kingsdown Caravan Park, Swindon, Wiltshire, SN25 6PG. The Respondent company is the registered Licence Holder of Kingsdown Caravan Park, Swindon, Wiltshire, SN25 6PG ('the Site') and, in these proceedings, was represented by company Director Mr Shaun Gorman.
2. Following formal consultation with the occupiers of the site, the Site Rules for Kingsdown Caravan Park came into effect on 12 September 2014.
3. On 6 April 2023, pursuant to the Mobile Homes (Site Rules) (England) Regulations 2014, the Respondent served Notice on the Applicant of two proposed changes to the existing park rules. The deemed date of service of notice, that being the first consultation day, was 7 April 2023. The date by which any responses were due to be received was 8 May 2023.
4. The proposed rules were:

- i. Not more than two dogs (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 1m in length and must not allow it to despoil the park.

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 behaviour of pets and animals. A similar requirement not to cause a nuisance applies to tenants and again this includes the behaviour of pets and animals.

These rules do not have retrospective effect. If the keeping of the pet complied with the previous rules, an occupier will not be treated as being in breach when these rules take effect. However, when the pet dies or leaves it can only be replaced if this would comply with these rules.

- ii. Other than for delivering goods and services - you must not park or allowing [sic] parking of commercial vehicles of any sort on the park, including:
 - Light commercial or light goods vehicles as described in the vehicle taxation legislation and

- Vehicles intended for domestic use but derived from or adapted from such a commercial vehicle

With the exceptions [sic] of commercial vehicles operated by the park owner and their family, the park warden etc.

5. Paragraph 2 of the proposal notice gave the reasons for the proposed changes as:
 - “The site rules are proposed because they are necessary to ensure that acceptable standards are maintained on the site, which will be of general benefit to occupiers, and because they will promote and maintain community cohesion on the site”.
6. By an application dated 17 May 2023, Mr Foley applied to the Tribunal under Regulation 10 of the Mobile Homes (Site Rules) (England) Regulations 2014 (‘the Regulations’) for a determination by the Tribunal that the Respondent’s decision was unreasonable having regard, in particular, to the proposal or the representations received in response to the consultation.
7. The Tribunal received a hearing bundle extending to 37 pages, comprising the Applicant’s statement of case (issued in the name of Kingsdown Caravan Park Residents Association, Chairman Mr. A. Foley); the existing Park Rules; Schedule 1 Proposal Notice; the Applicant’s response to the consultation document; consultation response document; and various correspondence between the parties.
8. It was established at the hearing that the application was brought in the name of Mr Foley, as an owner-occupier, and not in his capacity as Chairman of the Kingsdown Caravan Park Residents Association.

The Law

9. The applicable provisions are found in the Mobile Homes Act 1983 as amended (“the Act”) and the Regulations.
10. Section 2C of the Act provides:

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 commencement 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.*

...

(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.

(8) Regulations may provide that site rules, or rules such as are mentioned in subsection (3), are of no effect in so far as they make provision in relation to prescribed matters.

(9) Regulations may make provision as to the resolution of disputes—

(a) relating to a proposal to make, vary or delete a site rule;

(b) as to whether the making, variation or deletion of a site rule was in accordance with the applicable prescribed procedure;

(c) as to whether a deposit required to be made by virtue of subsection (4), (5) or (6) was made before the end of the relevant period.

(10) Provision under subsection (9) may confer functions on a tribunal.

...

11. In respect of the Regulations, the relevant parts provide 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.

7. Requirement to consult on a proposal

An owner must, in relation to the protected site concerned, consult—

(a) every occupier; and

(b) any qualifying residents' association,

on a proposal in accordance with regulations 8 and 9.

8.— Notification of proposal

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

...

(4) The proposal notice may contain more than one proposal, and in such cases, this regulation and regulations 9 to 17 shall apply in relation to those proposals collectively as if they were a single proposal.

9.— Owner’s response to the consultation

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

...

10.— Right to appeal to tribunal in relation to the owner’s decision

(1) Within 21 days of receipt of the consultation response document a consultee may appeal to a tribunal on one or more of the grounds specified in paragraph (2).

(2) The grounds are that—

- (a) a site rule makes provision in relation to any of the prescribed matters set out in Schedule 5;*
- (b) the owner has not complied with a procedural requirement imposed by regulation 7 to 9 of these Regulations;*
- (c) the owner’s decision was unreasonable having regard, in particular to—*

- (i) the proposal or the representations received in response to the consultation;*
 - (ii) the size, layout, character, services or amenities of the site;*
- or*
- (iii) the terms of any planning permission or conditions of the site licence.*

(3) Where a consultee makes an appeal under this regulation, the consultee must notify the owner of the appeal in writing and provide the owner with a copy of the application made, within the 21 day period referred to in paragraph (1) above.

11. Appeal procedure

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.*

12. In making its determination, the Tribunal also had regard to the decision of the Upper Tribunal in *White v Simpson* [2019] UKUT 0210 (LC) in which the Deputy Chamber President, Martin Rodger KC, stated at paragraph 65:

“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.”

13. The validity of the consultation process undertaken by the Respondent was not challenged by the Applicant.
14. The Applicant submitted written representations in response to the consultation notice. No other responses from occupiers were received.
15. The proposed rules were implemented on 16 May 2023.

The Hearing

16. The application was listed for final hearing on 26 March 2024. The hearing was conducted as video proceedings from Havant Justice Centre. The Applicant appeared in person and the Respondent was represented by Mr Gorman. Following some technical difficulties at the outset, the hearing proceeded uninterrupted.

Site Inspection

17. Neither party requested a site inspection and nor did the Tribunal consider it necessary or proportionate to the matter before it. The Chairman and Mr Jenkinson were familiar with the site having conducted a site visit on an unrelated application in 2023. The layout of the site was viewed by all Tribunal members courtesy of publicly available online platforms.

Existing Site Rules

18. The site rules relating to the subject of this challenge read as follows:

Pets

Rule 13. In order to promote and maintain community cohesion, we do not permit dogs to be kept on the Park.

Vehicles

Rule 15. You must drive all vehicles on the Park carefully and within the displayed speed limit, with consideration for pedestrians.

Rule 16. Vehicles on the Park must be taxed, insured and roadworthy.

Rule 17. We reserve the right to remove any vehicle apparently abandoned.

Rule 18. You must not carry out major repairs to a vehicle on the Park.

Rule 19. A second and subsequent vehicle levy will apply – this is necessary to promote less congestion on the Park, and help ensure good access for Emergency Services, Ambulances, Fire Services etc, & is for the General Benefit of occupiers.

Parties Submissions and Evidence

19. **First proposed rule:** *‘Not more than two dogs (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 1m in length and must not allow it to despoil the park.’*
20. The Applicant sought to argue that the Respondent was seeking to vary the existing Rule 13 as opposed to introducing a new rule, a proposed rule that he said lacked clarity. The Applicant argued that the variation had been ill-thought out and was presented to occupiers without due consideration of the implications and unintended consequences. In response to the consultation, the Applicant wrote that the rule has “not been properly considered and should be re-presented with a new proposal date once it has been clarified.”
21. The Applicant explained that the site is relatively small, comprising 40 pitches. The new rule has the potential to permit 80 dogs on site, a number he argued to be unreasonable.
22. The Applicant stated that many home occupiers, including his wife who is frightened by dogs, were attracted to the site as it specifically prohibits dogs.
23. A petition opposing both proposed rules and stated to be signed by 20 consultees was submitted in support of the objections. However, the bundle copy of the petition was indecipherable. Post-hearing, and at the request of the Tribunal, a legible version was provided. The exact number of residents qualified to sign the petition was disputed by the Respondent.
24. The Applicant suggested that the introduction of both rules was in retaliation for the occupiers forming a Residents Association. The Applicant accepted that the Respondent had invited dialogue on the proposed changes which was declined pending the outcome of these proceedings.

25. In response to a question from the Tribunal, the Applicant confirmed that, in his capacity as Chairman of the Residents Association, he had not received any complaints from residents in relation to any dog(s) currently on site.
26. The Respondent drew to the Tribunal's attention a Tribunal determination handed down in 2023 which found that a homeowner was not in breach of her Agreement by keeping a dog. The Respondent reminded the Tribunal that, in that particular matter, 31 residents including the Applicant's wife, had signed a petition in support of the dog.
27. Having accepted the Tribunal's determination in that matter, the Respondent explained that the proposed rule variation arose in response to the overwhelming support shown by the majority of home owners during that matter for dogs to be permitted. The Respondent stated that the proposed rule afforded adequate protection as any dog was to be kept under control, on a leash not exceeding 1m and was to be prohibited from causing fright or defecating the park.
28. The Respondent stated that many mobile home sites within the Swindon Borough now permit dogs and that potential buyers had expressed such an interest.
29. The Respondent considered that two dogs per home was a sensible proposition having regard to the social nature of dogs.
30. The Respondent accepted that, with the exception of the resident involved in the previous determination, no other residents had sought permission for a dog.

The Tribunal's Decision

31. The Tribunal carefully considered all the submissions and evidence presented both in the bundle and at the hearing. The Tribunal is grateful to both parties for the manner in which proceedings were conducted.
32. The Tribunal finds that the consultation process in regard to both rules has been correctly undertaken and that the Applicant raises no challenge against such.
33. The Tribunal reminds itself that 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 site.
34. Turning now to the first proposed rule, that being permission for two dogs per home.
35. The Applicant relies upon a petition signed by a number of residents opposing the rule variation. Although the number of qualifying occupiers signing the petition was disputed, it was common ground that the petition

comprised a significant number of consultees. However, the Tribunal finds that the petition was not backed by witness statements from any of the residents and, with the exception of Mr Foley, none of the petitioners participated in the proceedings. The Tribunal therefore attributes little weight to the petition.

36. The Tribunal makes no findings, and nor could it as no evidence was adduced, as to the Applicant's suggestion that the rule variations were proposed in direct retaliation of them forming a Residents Association.
37. The Respondent relies upon the Tribunal's decision in 2023 in the matter of 40 Kingsdown Park whereby the home owner was found not to be in breach of her Agreement by keeping a dog. The Tribunal reminds the Respondent that the decision in that matter was fact specific, the details of which are in the public record and need not be rehearsed herein. The Tribunal does not find that any precedent has been set by that decision nor that such decision is binding on similar applications.
38. The Tribunal accepts the Respondent's argument that future marketability of units on the site may be enhanced by the proposed variation. However, this is not a relevant consideration in this matter.
39. The Tribunal finds that the Respondent has failed to demonstrate that the variation of a site rule to permit two dogs per unit is necessary either to ensure that acceptable standards are maintained on the site, which will be of general benefit to occupiers, or to promote and maintain community cohesion on site.
40. Based on the submissions from both parties, the Tribunal finds that, having regard to the matters set out in regulation 10(2)(c), the Respondent's decision was unreasonable. The proposed rule is therefore quashed.

41. Second proposed rule:

Other than for delivering goods and services - you must not park or allowing [sic] parking of commercial vehicles of any sort on the park, including:

- *Light commercial or light goods vehicles as described in the vehicle taxation legislation and*
- *Vehicles intended for domestic use but derived from or adapted from such a commercial vehicle*

With the exceptions [sic] of commercial vehicles operated by the park owner and their family, the park warden etc.

42. In oral submissions the Applicant argued that the proposed rule would adversely impact a number of residents including those with works vehicles, campervans, motorhomes and the parking of a charity minibus onsite. The Applicant relied upon the same petition as advanced in objection to the previous matter but, as before, no witness statements were submitted.

43. The Applicant disputed the Respondents' claim that delivery or emergency vehicles were having difficulty navigating the site and stated that no such complaints had been made to the Residents Association.
44. The Applicant summarised his objection to the proposed rule in his response to the consultation with "the rule has no merit and is rejected by the majority of residents".
45. The Respondent stated that the proposed rule was necessary in order to ensure that the one-way access roads were kept clear from obstruction in case of emergency or to enable site deliveries. Mr Gorman argued that there was insufficient room for large vehicles on individual pitches which was resulting in these vehicles being parked on access roads. He also argued that commercial vehicles, and potentially their contents, were a fire risk. The proposed rule, he said, would improve aesthetics, access and safety for all residents.
46. In oral submissions Mr Gorman suggested that the charity bus could remain onsite if parked appropriately. Further discussion between the parties ensued including as to whether additional existing light vehicles could be excluded or whether the proposed rule should apply to future occupiers. No consensus was reached but the Tribunal was encouraged that the parties were willing to enter into dialogue on the matter.

The Tribunal's Decision

47. As regards the second proposed rule regarding vehicles, the Tribunal disagrees with the Applicant that the rule is without merit. However, in the absence of any evidence or compelling argument, the Respondent failed to satisfy the Tribunal that the new rule was necessary. The Tribunal was unconvinced that emergency vehicles or delivery drivers experienced difficulty in navigating the site as no evidence, either by way of witness statements or dated photographs, was submitted.
48. The rationale of the proposal was also undermined by the Respondent excluding any "*commercial vehicles operated by the park owner and their family, the park warden, etc.*" The Tribunal considered such exceptions to be wide ranging and the inclusion of "etc" suggested a discretion which was open to interpretation and ambiguity.
49. Based on the submissions from both parties, the Tribunal narrowly finds that the Respondent's decision was not necessary for the purpose of either Regulation 4 (2)(a) or (2)(b) and that, having regard to the matters set out in regulation 10(2)(c) the Respondent's decision was unreasonable. The proposed rule is therefore quashed.

Footnote

50. Despite both rules, in this instance, being quashed, the Tribunal did find merit in both proposals. The Tribunal encourages the parties to engage in meaningful dialogue in response to any future proposed rule change.

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 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.
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.