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

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| **Case Reference** | : | CHI/43UD/PHN/2014/0003<br>CHI/43UD/PHN/2014/0004<br>CHI/45UD/PHN/2014/0005 |
| **Property** | : | 39 Homestead Drive, Surrey Hills GU3 2AZ<br>3 The Oaks, Normandy, Guildford GU3 2AZ<br>19 The Willows, Normandy, Guildford GU3 2AZ |
| **Applicants** | : | Ms T Kerrison<br>Mr K Witham<br>Mr K Torrey |
| **Representative** | : | |
| **Respondent** | : | Wyldecrest Parks (Management) Limited |
| **Representative** | : | Mr D Sunderland |
| **Type of Application** | : | Application to strike out |
| **Tribunal Member(s)** | : | Judge D. Agnew<br>Judge E. Morrison |
| **Date and venue of hearing** | : | 19th November 2014 at The Mandalay Hotel and Conference Centre, Guildford |
| **Date of Decision** | : | 2nd December 2014 |

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**DECISION**

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## Summary of decision

1. The Tribunal declines to strike out the Applicants' cases for the reasons set out below. Further directions for bringing the case to a hearing will be issued separately.

## Reasons

## Background

2. The Applicant Ms Kerrison is the owner of a mobile home situated on the Surrey Hills Park Home site at Normandy near Guildford, Surrey. An adjoining Park Home site is The Oaks and the Applicant, Mr Witham, is the owner of a mobile home on this site. Another adjoining Park is The Willows where the Applicant, Mr Torrey has his mobile home. The site owner of all three Parks is the Respondent, Wyldecrest Parks (Management) Limited.

3. All three Parks have the same site rules which have been in effect since before the Mobile Homes Act 2013 ("the Act") came into force in 2013. Those site rules cease to have effect on 3rd February 2015. Regulations made under the Act set out a procedure for the adoption of new site rules to take effect when the former site rules cease to apply. This involves a consultation on proposed new rules with Park Home residents. If the residents are unhappy with the proposed new rules they can appeal to this Tribunal.

4. The Applicants were unhappy with the site owner's response to their representations on the proposed new rules for their sites and so appealed to the Tribunal. The three applications are essentially the same. Those made by Ms Kerrison and Mr Torrey are dated 10th September 2014 and that by Mr Witham is dated 12th September 2014 but they were all received by the Tribunal on 15th September 2014.

5. Before any action on the applications could be taken a letter dated 17th September 2014 was received by the Tribunal the following day which contended that the Applicants had failed to comply with the procedure for appealing to the Tribunal as laid down in the relevant regulations and that the applications should therefore be dismissed.

6. The Tribunal decided that the Respondent's letter should be treated as an application to strike out the Applicants' cases and that the matter should be decided after a hearing. The hearing took place at the Mandolay Hotel and Conference Centre on 19th November 2014. The three Applicants appeared in person and the Respondent was represented by Mr D. Sunderland of the Respondent company. He was accompanied by his assistant, Mr Bond.

## The Respondent's case

7. Mr Sunderland contended that the Applicants had failed to follow the procedure laid down in Regulation 10(3) of the Mobile Homes (Site Rules) (England) Regulations 2014. This requires a consultee to the consultation procedure, if he or she wishes to appeal to the Tribunal, to undergo a two stage process. Within 21 days of receipt of the Consultation Response document which the site owner is obliged to send to the consultees a mobile home owner who wishes to appeal must, first, lodge his or her application with the Tribunal and secondly notify the site owner in writing and send the site owner a copy of the application made. This means, Mr Sunderland submitted, that the mobile home owner can only send a copy of the application to the site owner after the application has been received at the Tribunal office as before that date the application will not have been "made". He cited the Court of Appeal case of *R oao Lester v London Rent Assessment Committee [2003] EWCA Civ 319* and the Upper Tribunal case of *11 Scatterdells Park, Chipperfield, Hertfordshire [2014] UKUT 0351 (LC)* as authority for his proposition. In the instant case, however, the applications to the Tribunal were dated 10th and 12th September 2014 and were received on 15th September by the Tribunal. The notice and a copy of the application form was sent to the site owner on 13th September 2014, which was before the application was received by the Tribunal and so the notice given was not of the application "made".

8. Furthermore, Mr Sunderland pointed out that all that had been sent to the site owner by the Applicants was a copy of the application form in each case without any of the documents which accompanied the application form when these were sent to the Tribunal. He submitted that the "application made" must include all the documents which comprised the application. As the Applicants had omitted to send all the documents comprising the application this was another reason for saying that the regulation had not been complied with.

9. Mr Sunderland submitted that the result of the failure to comply with the statutory procedure was that the applications were invalid and that they should be dismissed.

## The Applicants' case

10. The Applicants denied that they had failed to follow the correct procedure. They confirmed that although the application forms were dated in the case of Mr Witham the 12th September 2014 and in the other two cases the 10th September 2014 they were all sent to the Tribunal office on the 13th September 2014 in the same envelope and at the same time notice was posted to the Respondent with a copy of the application forms in each case. The accompanying letter to the Respondent stated: "Please be advised that I have sent an appeal to the tribunal regarding this proposed rule change for [Surrey Hills Park]". The Applicants confirmed that none of the documents which accompanied their application forms to the Tribunal office were sent to

the Respondent but they did not think they were required to do so. They said that nowhere in Regulation 10(3) or in the prescribed form at Schedule 2 to the Regulations (the Consultation Response document) or in the letter received from the site owner enclosing the Consultation Response document does it make it clear that a copy of the application should be sent to the site owner only after the application has been received by the Tribunal, if that be the case. What was important was that the site owner should know within 21 days of the Consultation Response document being received by the home owners that an application was being made to the Tribunal so that the site owner would know not to deposit the new rules with the local authority. The site owner would otherwise have to do this within the window of 28 days to 42 days after service of the Consultation Response document. The Applicants considered that the Respondent was trying to get their case dismissed on a technicality thereby depriving them of their right to challenge the new site rules and unfairly deprive them of a remedy.

## The statutory provisions

11. The Regulations, which came into force on 4th February 2014, set out the rules governing proposals to make, vary or delete a site rule or rules. In short, the site owner is required to notify occupiers of their proposal and to consult upon those proposals. Within 21 days of the last consultation day the site owner, having taken into account the representations made, must send a Consultation Response document to the consultees. The Consultation Response document must be in the form set out in Schedule 2 to the Regulations. Paragraph 6 of that form states as follows:-
*"6. Right of Appeal*
*You may appeal to the tribunal within 21 days of receipt of this consultation document, on one of the grounds set out in regulation 10.....*
*You must notify me of an appeal made to the tribunal within 21 days of receipt of that consultation document. In the case of an appeal any rules or deletion notice will not be deposited with the local authority until after the appeal has been disposed of, determined or abandoned, as set out in regulation 12(2)"*

12. Regulation 10(1) of the Regulations set out the right to appeal the site owner's decision with regard to proposed new rules within 21 days of receipt by the consultee of the consultation response document. Paragraph 10(3) of the Regulations states:-
*"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."*

## The Tribunal's decision

13. This application to strike out the Applicants' case rests primarily on the construction of paragraph 10(3) of the Regulations. Is it necessary for

the mobile home owner seeking to appeal the site owner's decision with regard to new site rules to wait until after their appeal to the Tribunal has been received by the Tribunal before giving notice of the application and sending a copy of the application to the site owner as the site owner in this case contends, or is it permissible for the mobile home owner to send the notice and copy of the application form to the site owner at the same time as he sends his application off to the Tribunal provided this is done within the 21 day period, as the mobile home owners in this case argue? A secondary point for the Tribunal to decide is whether it is necessary for all documents lodged at the Tribunal with the application form must also be sent to the site owner within the 21 day period from service of the consultation response document, or is it only necessary for the site owner to be sent the application forms themselves as the Applicants did in this case?

14. The Tribunal firstly considered the natural and ordinary meaning of the words in paragraph 10(3). The Tribunal considered that the wording of this Regulation did not make it clear as to whether the site owner's or mobile home owner's interpretation of the wording was correct. The words were capable of being construed either way, as Mr Sunderland fairly accepted. That being the case, the Tribunal considered what is the purpose of Regulation 10(3). It decided that the purpose is to make the site owner aware that an appeal is being pursued in time to know that he should not deposit the new rules with the local authority in the period between 28 days and 42 days from service of the Consultation Response document. The letter sent to the Respondent on 13th September 2014 enclosing a copy of the application did just that. The fact that the letter is dated 10th September and one of the applications was dated 12th September 2014 is not material as the letter was not posted until 13th September 2014, the same time as the applications were posted. The content of the letter was correct at the time of posting: an appeal had been "sent" to the Tribunal at the same time and would have certainly been "sent" by the time that letter was received by the Respondent. Thus, the Respondent would know at least 7 days before it could possibly have deposited the new rules with the local authority that an appeal was being made.

15. Furthermore, the Schedule 2 document, which is a prescribed form under the same regulations simply requires a home owner to "notify me [the site owner] of an appeal made to the tribunal within 21 days". It says nothing about sending the site owner a copy of the application or when this must be done. The impression given by this wording is that all that needs to be done is to notify the site owner within 21 days that an appeal is being pursued.

16. The Respondent's point, however, is that unless the appeal has been made in the sense that it has been received by the Tribunal, it cannot know with certainty that the application has been made and that it is therefore prejudiced because it does not know for certain that it should not deposit the new rules with the local authority. Alternatively, if the site owner acts upon a statement from a mobile home owner that it has

appealed to the Tribunal and thus refrains from depositing the new rules with the local authority before 42 days from service of the Consultation Response document when in fact no application has been made again it will have been prejudiced. The Tribunal does not accept that argument. The fact of the matter is that unless the site owner receives from the Tribunal itself a copy of the application date stamped with the date of receipt, they are never going to be completely sure that an appeal has been received by the Tribunal. On receipt of notification and a copy application form from a mobile home owner, whether date stamped or not, a prudent site owner will always check with the Tribunal that an appeal has been received. The site owner has plenty of time to do so. Once the 21 days is up, they have a further 21 days in which to check the situation with the Tribunal.

17. In reaching the construction of Regulation 10(3) that it has, the Tribunal must deal with the authorities cited by the Respondent in support of its arguments. Both the Lester case and the 11 Scatterdells Park cases can be distinguished from the case in hand. In Lester what was being construed by the court was the word "refer" in the context of a notice of rent increase being "referred" to a rent assessment committee. The Court of Appeal decided in that case that a notice was not "referred" until it was received by the rent assessment committee. First, this case can be distinguished because the word "refer" is not the same as "made" in Regulation 10(3). Secondly, the Court of Appeal pointed out that it was not until the rent assessment committee had received the reference that its statutory duty to determine the rent arose. It was then up to the committee to inform the landlord because, unlike in the instant case, there was nbo obligation on the tenant to do so.

18. With regard to the 11 Scatterdells Park case, again the wording being construed is different. That case concerned the procedure laid down enabling a site owner of a mobile home Park to apply to a Tribunal for a refusal order preventing a mobile home owner from selling their mobile home and assigning the benefit of the Mobile Homes Act agreement to the purchaser. A mobile home owner has the right to do so unless two conditions apply. The first, which is the only relevant condition to the instant case, is that within 21 days of the site owner receiving a notice of the proposed sale he receives a notice that the site owner "has applied" (emphasis added) to a tribunal for an order preventing the sale. The Deputy President of the Upper Tribunal (Lands Chamber) held that the natural meaning of the wording was that the site owner must have actually applied to the Tribunal before the notice of the application is given to the mobile home owner. Again, the wording is different in that it is the words "has applied" that are being construed rather than "the application made". Furthermore, the context in which the words are used is wholly different. Scatterdells concerned a refusal order. The imperative in such cases is speed because an application for a refusal order will serve to block, at least temporarily whilst the application is proceeding, a sale of the mobile home. The risk is that the home owner loses the sale. Consequently, the regulations are drafted to

enable the home owner to proceed with their sale unless they receive a notice that an application for a refusal order has been made. It would defeat the object of the regulations if a site owner could give a notice that an application has been made for a refusal order, which frustrates the sale for a period, if the truth of the matter is that an application has not in fact been made. In the case of a refusal order, therefore, the purpose of that particular provision pointed to the construction of the wording in that particular case. In the instant case, the situation is quite different because the consequences of a false notice being given are different and less serious as the site owner has sufficient time to check the situation before he needs to act in the light of the notice given.

19. The Scatterdells Park decision left open the question as to whether a notice given when an application has actually been sent to the Tribunal even if it has not yet been received would comply with the regulations. The Deputy President thought that this ought to be permissible but refrained from coming to a conclusion on the point and preferred to wait until there was an appeal involving the precise point. Finally, the Deputy President felt that it might have to be considered on some future appeal as to whether, if there had been substantial compliance with the regulations, that a defect in procedure could be overlooked. The authority for such an argument is the Court of Appeal decision in the case of *R v Secretary of State for the Home Department ex parte Jeyeanthan [200] 1 WLR 354*. The Tribunal considered that there had been substantial compliance with the regulations in the instant case, that no prejudice has been caused to the Respondent and that in circumstances where the Schedule 2 form was misleading as to what was required from the Applicants it would be unfair to deprive them of their right to appeal the terms of the new site rules. Accordingly, even if the Tribunal has reached the wrong conclusion as to the proper construction of Regulation 10(3) such non-compliance as there may have been by the Respondents should not deporive them of their right to appeal.

20. Turning now to the subsidiary point, that not all the documents that accompanied the application form were sent to the Respondent within the 21 day period, the Tribunal considered that this was not necessary. It was clear from the Application forms submitted by the Applicants that they had sent to the Tribunal with the application forms a copy of the consultation response document and correspondence sent or received in connection with the site owner's obligation to provide a consultation response document because the applicants had ticked those boxes on the application form indicating that they were enclosed with the application form. Those documents are either the Respondent's own documents or are already in the Respondent's possession. The application form states that "If and when any further evidence is needed you will be asked to send it separately." The usual directions issued by the Tribunal include provisions for the service of full statements of case by the parties. The Tribunal considers that providing a copy of the application form only was sufficient to achieve

the purpose of the regulation, namely to notify the site owner of the application and to advise him of the ground upon which the appeal is being made.

21. For all the foregoing reasons the Tribunal refuses to strike out the Applications and the case may proceed.

22. After the hearing it came to the Tribunal's attention that new regulations concerning these procedures had been made the previous day which will come into effect as from 19th December 2014. They are the Mobile Homes (Site Rules) (England) (Amendment) Regulations 2014. The amendments remove the necessity for a copy of the application made to be served on the site owner by removing the words "and provide the owner with a copy of the application made" from Regulation 10(3) of the Regulations. Had these amendments been in force when the Applicants made their appeal there would have been no doubt that their application to the Tribunal was valid. The fact that this amendment has been made so soon after the Regulations came into effect is a recognition that the original wording caused some uncertainty as to the validity of appeals to the First-tier Tribunal as acknowledged in the "Explanatory Memorandum" to the Regulations. This states, further, that it is not considered that the proposed change to the regulations will prejudice the site owner because "a) they will be served with a copy of the application by the tribunal (if one is made) and b) as the time limit for application to the tribunal is strict, the site owner would be able to make enquiries of the tribunal whether appeals had been made by those who advised their intention to do so, shortly after the end of the 21 day period." This accords with this Tribunal's view as to the lack of prejudice to the Respondent in the instant case if the existing regulation is construed in the way the Tribunal has done. It would be manifestly unjust if simply because this application has been made before 19th December 2014 there should be a different outcome for the Applicants than that which would have applied had the application been made after that date, particularly where the situation has arisen from an admitted error in the original wording of the Regulation and Schedule 2 form.

Dated the 2nd December 2014.

Judge D. Agnew

## Appeals

1. A person seeking permission to appeal this decision must make a written application to the Tribunal for permission to appeal.
2. An application must be in writing and must be sent or delivered to the Tribunal so that it is received within 28 days of the date that the Tribunal sends these reasons for the decision to the person seeking permission to appeal.
3. The application must –

(a) identify the decision of the Tribunal to which it relates
(b) state the grounds of appeal; and
(c) state the result the party making the application is seeking.

4. If the person seeking permission to appeal sends or delivers the application to the Tribunal later than the time required in paragraph 2 above or any extension of time granted by the Tribunal –

(a) The application must include a request for an extension of time and the reason why the application was not received in time; and
(b) unless the Tribunal extends time for the application the Tribunal must not admit the application.