

Y TRIBIWNLYS EIDDO
RESIDENTIAL PROPERTY TRIBUNAL

REFERENCE: RPT/0022/02/17

RE: MORFA DDU PARK, PRESTATYN, DENBIGHSHIRE

In the matter of an Application under Section 54(1) of the Mobile Homes (Wales) Act 2013.

APPLICANT: MR JOSEPH BOWE

RESPONDENT: DENBIGHSHIRE COUNTY COUNCIL

**TRIBUNAL: TREFOR LLOYD - LEGAL CHAIR
COLIN WILLIAMS - SURVEYOR MEMBER
EIFION JONES - LAY MEMBER**

VENUE: MELIDEN COMMUNITY CENTRE, MELIDEN, DENBIGHSHIRE

DATE: 20TH JUNE 2017

Decision

The Tribunal for the reasons as set out below dismiss the Application.

1. The Applicant, in an application dated the 14th February 2017 seeks a determination from the Tribunal as to whether or not the Respondent Local Authority has disregarded its own Site Licence Rules and Model Standards and a further ruling that if so such action is illegal.

Background

2. Morfa Ddu ("the site") is owned by Mr Anthony James Barney and consists of 22 pitches.
3. The site is a protected site under the provisions of the Mobile Homes (Wales) Act 2013 ("the Mobile Homes Act"). As a consequence the rights and obligations of mobile home owners and occupiers on the site, and the site owners are regulated by the Mobile Homes Act.
4. The Respondent is the Responsible Licensing Authority in respect of Morfa Ddu.
5. A Site Licence with conditions was issued to the owner by the Respondent Authority on the 22nd October 2015.

6. In accordance with Section 54(1) of the Mobile Homes Act the Tribunal has jurisdiction to determine any question arising (inter alia) under any agreement to which the Section applies. Having considered the question raised by the Applicant and the Order sought (as fully set out in paragraphs 12 and 13 of this Decision) the Tribunal considers by virtue of Section 54(1) of the Mobile Homes Act it has, and accordingly accepts, jurisdiction to determine the question raised by the Applicant as aforesaid.

Site Inspection

7. The Tribunal met at the site on the morning of the 20th June 2017, accompanied by the Applicant and on behalf of the Respondent Authority Ms Maureen White (Public Protection Officer) and Ms Sarah Edwards (Solicitor). The weather was warm, dry and bright.
8. The Tribunal members carried out an extensive inspection around the site and consideration was given to all matters which had been raised within the appeal documentation. The Applicant and the Respondent's representatives were provided with an opportunity to draw attention to any matters they considered relevant.
9. On site we saw 22 properties. The Tribunal noted that the site was well maintained with gardens being immaculate and all homes appearing to be of similar age and condition.

The Hearing

10. The Applicant represented himself at the hearing. The Respondent was represented by Ms Sarah Edwards (Solicitor).
11. In accordance with the directions, the Respondent Authority produced a paginated bundle. By way of a direction dated 31st March 2017 the Applicant was given an opportunity to reply and by way of a letter dated 1st May 2017 confirmed that documents already forwarded to the Tribunal Office would form the basis of his Application and that he did not wish to file any further documentation.
12. At box 5 of the Application Form the Applicant sets out the one question he would like the Tribunal to determine as follows:

"One question only - Is it within the remit of the R.P.T to make a determination on a Licensing Authority disregarding its own Site Licence Rules, also Model Standards 2008 document ignored".
13. Thereafter in the following box under the heading "The Orders you are asking the Tribunal to make"- the Applicant sets out the following:

Model Standards and Site Licence both state that in Section 11.Drainage and Sanitation, all works must be carried out to "current legislation and British or

European Standards". The Council have deleted this most important section from the Site Licence;

Finally in the last box under the heading "Why you Believe the Tribunal should make the Determination(s) and Order(s) Requested", the Applicant sets out the following:

This action is illegal and allows the Site Owner to carry out works to any standard he sees fit. Declare this action illegal.

14. In the circumstances the Tribunal is limited to determining the above issue, although for reasons set out below the Tribunal also considered other matters generally due to the nature of the evidence as it evolved.

Written Evidence before the Tribunal

15. The Tribunal had before it copies of all correspondence to the Tribunal from the Applicant including his Application Notice and also some correspondence between the Applicant and the Respondent Authority.
16. In addition the Tribunal had a paginated bundle produced by the Respondent Authority with a Witness Statement signed Glesni A Owen (Public Protection Business Manager) dated 17th March 2017, together with associated appendices.
17. At the hearing the Tribunal heard from the Applicant in person and Ms Glesni A Owen (Public Protection Business Manager), Mr Mark Turner (Principal Building Control Surveyor), Ms Maureen White (Public Protection Officer) and heard closing submissions from Ms Sarah Edwards Solicitor.
18. The Applicant, despite the nature of his application, opened his case on the basis of an allegation of an absence of any input into the design to the lighting or surface water provisions on the site. These two issues having been raised frequently in correspondence with the Respondent Authority as the two pivotal issues.
19. The Applicant went on to further elaborate in respect of lighting stating that in his view despite the Site Owner having erected lights they were more akin to garden lights from B&Q and that proper street lights should have been designed. Albeit he latterly thereafter accepted they served their purpose despite being of an inappropriate specification or design.
20. In relation to drainage, the Tribunal was told that the previous owner Mr Flanagan had sought to deal with the issue which was:
 - (1) Water standing at the entrance to the site looking from the driveway, and due to the camber of the drive water ran from right to left resulting in pooling on the left hand side in front of the even number properties;
 - (2) As a consequence the previous owner Mr Flanagan cut a channel in the Tarmac and sought to create soakaways that were wholly ineffective.

- (3) When the Park was sold to the current owner Mr Barney, part of issuing the new Site Licence was an agreement with the Respondent Authority that improvements would have to occur to the lighting situation, drainage and also a top coat Tarmacadam drive.
21. The Applicant then went on to further elaborate in relation to these two issues and did not concentrate at all on the specific questions raised in his Application Notice.
22. In relation to the latter issue of lighting, the Applicant repeated his comment as regards the lights being akin to garden lights and complained about the remedy used by the Site Owner which was to block off one side of the lights by painting with black paint in receipt of complaints that they were glaring into the windows of some of the properties.
23. In relation to the flooding, the Tribunal was told that further works had been undertaken, but the Applicant's view was that they were not sufficient for two reasons:
- (1) The drainage gulleys had a loading of 1.5 tonnes, which was not sufficient as refuse wagons travelled up and down the site. In addition, although one section of the drainage channel was constructed of an ACO rain drain B125, the remainder of the channels were inferior.
- (2) The drainage system was not working and there was still ponding along the left hand side due to, in the Applicant's view, the drain standing slightly proud of the Tarmac base coat and the base coat consisting of dips and hollows which made it difficult for water to flow into the drains.
24. In the Applicant's view a 50mm tarmac top coat was essential in order for the system to even start to work and he estimated some one-third of the road was covered with ponding water during high rainfall.
25. Following the lunch time recess the Applicant provided a photograph, which albeit only showing a very short section of grating in front of his own property, did seem to indicate ponding of standing water in sections where no grating at all had been installed.
26. The Applicant was cross-examined albeit briefly by Ms Edwards for the Respondent in relation to the request for a declaration as to the Authority's alleged illegality. At this point the Applicant referred to an email from Glesni Owen (copy undated in the bundle) but in evidence stated to be dated 24th October 2016 which asserted that British and European Standards did not apply. That email can be found at Document 1 of the Applicant's bundle.
27. Miss Edwards also put to the Applicant that the owner had consulted by virtue of the letter dated 16th September 2017 (Document 11, Respondent's bundle). The reply to this from the Applicant was that it was not a consultation but essentially a fait accompli and although the letter referred to further consultation, nothing else had occurred.

Respondent's Evidence

Glesni Owen

28. Glesni Owen told the Tribunal that there are 22 mobile homes on the site. The site Licence was "word for word the 2008 Model Standards" and the Licence had not been amended to eliminate any reference to British and/or European Standards.
29. A copy of the Licence can be found at page Document 2 in the bundle.
30. Her evidence both in her Witness Statement and also orally stated that the initial issue raised by the Applicant was Building Regulations and an allegation that the works carried out by the Site Owner did not comply with the same. As a result she consulted with Mr Mark Turner (Principal Building Control Surveyor) (whose evidence will be referred to below), who confirmed the Building Regulations did not apply on the site.
31. She also clarified that the drainage grating at the entrance to the site as installed was to Highway Specification as the Respondent Authority had a highway function which applied in that position. However, as the remainder of the driveway was private land the Highway Authority did not have any remit. Similarly, her evidence was that Building Regulations had no remit internally on the site.
32. In addition she said she would defer to her colleague Maureen White in relation to actual site visits, but her understanding was that all issues had been resolved.
33. Her evidence also was to the effect that since the last visit by Ms White on the 3rd April 2017 and/or completion of the works she had not received any further complaints from the Applicant until he raised the issues orally in his evidence.
34. The Chairman asked Ms Owen to explain the email (as referred to in paragraph 25 above) and in response she quite candidly admitted it was a mistake on her part. She had thought she was dealing with Building Regulation issues and nothing else, had sought advice on that point and the email was sent as a consequence of that specific advice. She thereafter again reiterated it was a genuine mistake on her part in respect of which is apologised.
35. In answer to a question from the Lay Member Mr Hywel Eifion Jones appertaining to Document 4, a letter addressed to her sent by email by the Applicant on the 3rd November 2016, which in the penultimate paragraph asked the question "*What Standards are you applying to Morfa Ddu Park?*", the answer she gave was "British and European Guidance would apply" and that the Respondent Authority would have regard to that and she had never suggested otherwise.
36. A further question was put to Miss Owen by the Tribunal relating to Document 2 in the Applicant's Bundle, being a letter from Graham H Boase (Head of

Planning and Public Protection), dated the 24th October 2016 where despite setting out the Mobile Home Licence Conditions relating to drainage, ie paragraphs 11.3 and 11.4 in the following paragraph he set out the following words:

“As mentioned by Glesni Owen in her Stage 1 letter, Building Regulations do not apply to this type of work and therefore we as the Licensing Authority, in the absence of any specific Standard or Regulations would discuss with colleagues in the Highway Service and any other relevant person. We have done this and considering the location of the drainage gully we considered the work undertaken to be suitable”.

37. Ms Owen again explained that in her view this reference to the absence of Standards was a reference to Building Regulations not applying and nothing else. Unfortunately, Mr Boase was not present at the hearing to personally explain the meaning of his letter.
38. The Tribunal then heard from Mr Mark Turner (Principal Building Control Surveyor) who confirmed that Building Regulations did not apply to the site. He also confirmed that the mobile homes on the park were not categorised as buildings and therefore Part H which related to drainage in respect of Building Regulations did not apply. He further explained that the relevant British Standard for drainage was BS EN 752 and confirmed he had not himself assessed the system on the site.

Evidence of Maureen White

39. Ms White stated she had ten years experience in dealing with the Mobile Home Park and referred to the Chronology which she handed out during the hearing setting out how many times she had met with the Site Owner etc.
40. In relation to lighting, she clarified the position that some Site Owners had requested minor relocations of lights outside their specific homes and this was done by agreement and as far as she was concerned the lighting was satisfactory.
41. In relation to the drainage matters, she recounted that the system had evolved. The system initially having been placed outside numbers six to eight and as that was not working it was replaced.
42. Unfortunately, however, despite having attended on the 3rd April 2017 when the extra and replacement drainage works were underway she did not see fit to return until the day of the hearing. Similarly, she had not visited the site during, for example, a period of heavy rainfall so as to assess whether in practical terms the works had been completed satisfactorily.
43. Her evidence was, however, that as she had seen some of the completed drainage works and was content that they were fit for purpose and made the comment that there had been no further complaints from the Applicant in that regard until the morning of the hearing.

44. The Applicant cross-examined Ms White upon the basis that the system installed was not in its entirety the ACO B125 system, but was a Clarke Drain which was not fit for purpose, in respect of which Ms White did not agree with.
45. At the end of Ms White's evidence the Tribunal adjourned at 1.20 pm for lunch and resumed at 2 pm to hear closing submissions.
46. Prior to closing submissions the Respondent Authority requested an opportunity to make two further points. The Tribunal agreed and these points were namely:
 - (1) Because of all the issues and complaints the Respondent Authority and specifically Ms White had spent far more time than was usual on this site.
 - (2) Following the most recent drainage works there had been no complaints whatsoever from the Applicant until today's hearing.
47. The Applicant was then given an opportunity to reply to the specific points to which he stated that in the past he had written to the Respondent in relation to drainage issues, but had been ignored.
48. The Tribunal then heard closing submissions from Ms Edwards on behalf of the Respondent Authority. Her submissions concentrated upon the Application the Authority was responding to. She submitted that:
 - (1) The Section 11 Drainage Requirements in the Site Licence had not been deleted and/or ignored insofar as British and European Standards did apply.
 - (2) The initial complaint raised was in respect of Building Regulations issues that were looked into, the Authority seeking advice from Mr Turner who confirmed the site was exempt from Building Regulations.
 - (3) Advice was also sought from the Health and Safety Department that confirmed the work, although unsightly, was not dangerous.
 - (4) There had been good progress and cooperation from the Site Owner and the Authority had not disregarded British and European Standards and had not acted illegally.
 - (5) The email from Glesni Owen dated 24th October 2016 was a mistake due to confusion over Building Regulation issues.
49. The Applicant then closed his case having been reminded by the Tribunal that we had heard all the evidence and he need not repeat all the points he had already made.
50. He concentrated on the issue of British and European Standards and submitted that although the Respondent Authority was issuing the Licence it did not know what the Standards meant.
51. He also said he would be satisfied if the ACO rain drains B125 were installed instead of the current ones, but again made the comment that they would not work unless a top coat was placed upon the driveway.

52. He referred to a letter from the Respondent Authority to the owner dated 7th December 2015, which by reference to roads, gateways and footpaths, Section 4 where the second sentence stated as follows:

“Existing roads shall be required to be upgraded to a suitable bitumen macadam or concrete finish with a suitable compacted base as and when they begin to fall into disrepair”.

Stating, that until that work was completed the drainage system even if replaced with the ACO125 would not work.

53. The Respondent Authority sought to interject at this state and having considered the matter, the Tribunal allowed this brief interjection, at which time Ms Maureen White (despite there having been no reference to this in any of her earlier evidence) stated that there was an agreement that the Site Owner would in due course put a top coat on the driveway and this was a requirement of granting the Site Licence.
54. Ms Glesni Owen also interjected at this stage and asked the Applicant directly if he would be satisfied if the drainage channels were changed to the ACO125, to which he confirmed he would be as long as they worked.

55. The hearing thereafter was concluded.

Decision on the Question Before the Tribunal

56. Having considered all matters and especially the evidence of Ms Glesni Owen and the fact that the Applicant initially was clearly raising issues in respect of Building Regulations, the Tribunal finds that that:
- (1) The email dated 24th October 2016 from Miss Owen to the Applicant was a genuine mistake and;
 - (2) The Tribunal accepts her evidence that Ms Owen considered all along she was dealing with Buildings Regulation matters.
 - (3) The site Licence as granted still stands and has in no way been amended by the Respondent Authority.
 - (4) Accordingly, the Respondent Authority has not acted illegally.
57. In the circumstances the Tribunal dismisses the Application upon the specific grounds as set out and detailed in the application.
58. Notwithstanding the above, the Tribunal feels that at best there has been a lack of communication and cooperation between the parties and by way of guidance sets out the following for the Respondent Authority to consider in respect of future matters that may arise:
- (i) An agreed protocol is set up as to how the Respondent Authority deals with issues raised by both Residents and the Park Owners.

- (ii) Such a protocol to include detailed information as to how complaints and queries (irrespective of whether raised by Residents or Park Owners) are dealt with.
- (iii) In addition there should be available detail as to the future sharing of information and the communication of any agreed works and/or terms upon which Site Licences are granted.

Dated this 14th day of July 2017

Trefor Lloyd

A handwritten signature in black ink, appearing to read 'Trefor Lloyd', written over a horizontal line.

Chairman