Y TRIBIWNLYS EIDDO PRESWYL

RESIDENTIAL PROPERTY TRIBUNAL

Reference: RPT/0013/11/16

In the Matter of 45, Lighthouse Park, St Brides, Newport NP10 8SL

And in the Matter of y Deddf Cartrefi Symudol (Cymru) 2013/the Mobile Homes (Wales) Act 2013

APPLICANT Mr Norman James Lawrence

RESPONDENT Berkeley Leisure Group Ltd

TRIBUNAL David Evans LLB LLM
Kerry Watkins FRICS
Juliet Playfair

PENDERFYNIAD / DECISION

BACKGROUND

1. Lighthouse Park (the Site) is a residential mobile home park owned by the Respondent and located at St Brides, Wentloog on the outskirts of Newport, Gwent. Under the terms of y Deddf Cartrefi Symudol (Cymru) 2013/the Mobile Homes (Wales) Act 2013 (the Act), the Site is a protected site, regulated by the Act, the stated aim of which is "to reform and restate the law relating to mobile home sites in Wales". Part 4 of the Act makes provisions about the terms of agreements for stationing mobile homes on protected sites and Chapter 2 of Schedule 2 to the Act sets out various terms and conditions which are to apply to all agreements for mobile homes in Wales except for those on local authority Gypsy and Traveller sites.

2. The Applicant is, jointly with his wife, the occupier of one of the pitches on the site, generally referred to as Plot 45. They do so by virtue of an agreement dated the 24th April 1979 which was on the 25th November 2011 assigned by the then occupier, Mr John Thomas, to the Applicant and Mrs Lawrence subject to the terms and conditions set out in a Statement provided under the Mobile Homes (Written Statement) Regulations 1983 which were annexed to the Assignment.

3. Home owners are required to abide by Site Rules issued from time to time by the Respondent "for the management and conduct of the Site" (see s 52 (2) (a) of the Act). By virtue of s 52(1) of the Act, each of the Site Rules is an express term of each agreement. If a site owner wishes to vary any of the Site Rules, the Mobile Homes (Site Rules) (Wales) Regulations 2014 (the Regulations) set

out a procedure which must be adopted by a Site Owner. However, such changes are not retrospective in their operation so that if prior to a new site rule coming into effect, the occupier of a pitch has enjoyed a benefit and the effect of the coming into force of the new site rule is that the enjoyment of the benefit by the occupier would be in breach of the new site rule, the occupier will not be in breach of that new site rule for the period that the benefit continues to subsist. On the cessation of that benefit, the occupier will be bound by the new site rule (see paragraph 4 of Schedule 5 of the Regulations).

4. There are currently 155 owner occupied homes on the Site. Many of the occupiers have been in occupation for several years and have experienced at least one change of the Site Rules, the most recent being in 2016 following an application to this Tribunal by the Applicant and Mr R Williams of Plot 115.

5. One of the significant changes in site rules brought about by the Regulations is the restriction on an owner's ability to exercise its discretion in granting or refusing an occupier certain rights or concessions except where it is to accommodate an occupier's disability (see paragraph 2(a) of Schedule 5 of the Regulations). The site rules can therefore no longer contain anything, other than in respect of an occupier's disability, which "is expressed to grant an occupier a right subject to the exercise of discretion by the owner, except in relation to improvements to an occupier's plot".

6. The effect of the changes is to create different classes of occupiers: those occupiers who have acquired certain rights or privileges under the old rules either because such rights or privileges were not prohibited under the old rules or because they were given permission to exercise them; and those occupiers who have acquired their homes since the change in the Site Rules or who acquired their homes before the change in the Site Rules but either did not avail themselves of the opportunity to exercise such rights or privileges before the change or did not obtain permission to do so. That distinction is, essentially, at the root of the issues which we were asked to determine.

THE ISSUES

7. The Applicant asked us to deal with 2 questions:

   (a) Whether the Respondent has allowed the inconsistent application of the Site Rules
   (b) Whether there has been incompetence by the Respondent and/or its Site Manager.

   There is an accompanying explanatory note which we need not go into at this point.

8. In his letter of the 3rd December 2016, the Applicant is more specific:

   (a) The Respondent is failing to enforce Rule 21 which restricts occupiers to one vehicle per home. The Applicant refers to the occupiers of Plots 2, 11, 14, 20, 58, 66 "and others".

(b) The Respondent has failed to enforce Rule 24 which precludes occupiers from parking commercial vehicles on the Site. The Applicant specifically refers to Plot 113.
(c) The Respondent failed to discipline its Manager (who is also a resident) for not keeping her dog under control.
(d) The Respondent has allowed the occupier of Plot 20 to lay a tarmac drive whereas everyone else has been required to lay a brick paviour drive.
(e) The Respondent and its Site Manager have been incompetent in the management of the Site. The Applicant asks whether disciplinary action should be taken against the Site Manager.
(f) The Respondent has exercised a discretion waiving compliance with the Site Rules and/or turning "a blind eye" to breaches of the rules. In particular, the Applicant complains that he was refused permission to keep a camper van on the Site when 2 other occupiers kept camper vans permanently on the Site.
(g) The Respondent has failed to apply the new rules;
(h) The Respondent has failed to apply the new rules alleging that they cannot be applied retrospectively when the same rules applied previously.

JURISDICTION

9. It has been recorded on many occasions both by this Tribunal and others that the Tribunal is a creature of Statute and therefore its jurisdiction and powers are limited to those given to it by Parliament and by the Senedd either in the form of statutes or regulations. The Tribunal cannot exceed that jurisdiction or those powers. It cannot create for itself a new or wider jurisdiction or new or wider powers. Although it is responsible for applying the law and dispensing legal judgments and determinations, it must itself act within the law. In determining the questions raised by the Applicant, we must therefore ensure that we do not go beyond the scope of what (in this case) the Senedd has empowered us to do.

10. The Tribunal's jurisdiction is derived from section 54(1) of the Act. It reads as folllows:

(1) A tribunal has jurisdiction—
(a) to determine any question arising under this Part or any agreement to which it applies, and
(b) to entertain any proceedings brought under this Part or any such agreement, subject to subsections (2) to (6).

Sub-sections (2) to (6) relate to the jurisdiction of the Court and the effect of arbitration agreements. "This Part" is Part 4 of the Act which deals with agreements to station mobile homes and occupy them as residences, the written statements, express and implied terms, the power to amend implied terms, site rules (including the Tribunal's jurisdiction in relation to the making, varying or deleting of any rules) and succession. Although the expressions "any question" and "any proceedings" appear at first glance to be couched in very wide terms, they are very much restricted by the words which follow.

11. Our jurisdiction is therefore limited to dealing with one or more of those issues set out in Part 4 or an issue which arises out of the agreement itself. This will undoubtedly include questions as to whether there has been a breach of the agreement or of the "statutory" rules and regulations relating to those issues. It will not, in our view, give us power to involve ourselves in the day to day management of a site or the employment contracts of employees on a site or neighbour problems, no matter how disturbing or upsetting those issues may be.

12. Indeed, the Courts in Wales and England have traditionally been reluctant to become involved in the day to day management of organisations without specific statutory authority requiring them to do so. In Co-operative Insurance Society Ltd v Argyll Stores (Holdings) Ltd [1997] 2 WLR 898, the House of Lords, in a somewhat different context, made clear its views on the subject. Lord Hoffman observed that "if the defendant is ordered to run a business, its conduct becomes the subject of a flow of complaints, solicitors' letters and affidavits. This is wasteful for both parties and the legal system." We accept that the issues affecting tenants in an arcade of shops may not be the same as those affecting the owners of mobile homes, but the principle is the same. Courts and Tribunals should be slow to intervene in management issues except where the management is conducted in such a way as to be indicative of an infringement of a party's rights or where the issues are themselves, individually or cumulatively, a breach of a contractual or "statutory" obligation on the part of the owner or manager.

13. We raised this point with the Applicant at the start of the hearing. The Applicant's view was that we were entitled to make a declaration that the Respondent was incompetent in its management of the Site, that the Site had not been managed professionally, that the Respondent had not been applying the rules fairly and, in some cases, not at all. He considered that it was for the Tribunal to decide whether it had power to order the Respondent to enforce the rules although he accepted that it would not be able to discipline the Site Manager. When we expressed doubts that we had the power to make the declarations that he wished us to do, he referred us to a letter from our late President dated the 25th August 2016 the last paragraph of which reads: "you can apply to the Tribunal if you consider that the owner is in breach of its obligations to you under the site rules or under the Act." We pointed out to the Applicant that the letter referred to the Respondent's "obligations under the site rules or under the Act". The Applicant was unable to direct us to any express obligation on the Respondent's part to enforce the rules but stated that there was a moral obligation to do so.

14. Whilst we appreciate the points made by the Applicant, he did not persuade us that the powers given to us by the Senedd extended beyond the contractual and statutory obligations of the parties. The day to day management of the Site is a matter for the Owner and in our view we would need clear and express authority from the Senedd before we undertook the sort of exercise which the Applicant wished us to do. We did, however, invite him to approach his case from the point of view of whether the Respondent's actions, or lack of action, constituted a breach of its contractual or statutory obligations and in particular

the obligation by implied by paragraph 15 of Part 1 Chapter 2 of Schedule 2 to the Act which reads: “The occupier is entitled to quiet enjoyment of the mobile home together with the pitch during the continuance of the agreement, subject to paragraphs 14 and 16” (the exceptions relate to re-siting and re-entry.)

QUIET ENJOYMENT

15. Appreciating that neither party was represented and concerned that the issue of “quiet enjoyment” might be pertinent, we had written to the parties prior to the hearing inviting them to consider a number of authorities, or at least summaries of them, which they would be able to look at on line. Neither party in fact made any reference to them. However, as it was possible that these decisions might inform our thinking on the issue, we had felt that both parties should have the opportunity to consider them, and if they felt the need to do so, to obtain legal advice.

16. The term “enjoyment” in this legal context has nothing to do with pleasure or happiness, but arises from a tenant’s (or in this case, the occupier’s) right to receive and exercise – i.e. enjoy - the benefits given to him or her as part of his or her tenancy or occupation of the particular property. As the experienced Chairman Martin Davey succinctly puts it in a case before the Northern Tribunal (as it then was): “The term “quiet enjoyment” is not defined in the Act but is one that has long been used in the law of landlord and tenant where a landlord’s covenant for quiet enjoyment means that the tenant shall enjoy quiet possession of the property without interruption by the landlord or a person claiming under the landlord.” (Wood -v- Don Amott Parks (MAN/32UC/PHC/ 2011/0002)(Wood)). The Tribunal took the view, with which we concur, that “although the relationship between the parties in the present case is not that of landlord and tenant the principle involved is the same”.

17. Clearly if a landlord or owner takes some action which has the effect of depriving a tenant or occupier of a particular entitlement, e.g. blocking off an allotted parking space, the landlord or owner could find himself or herself breaching the tenant’s or occupier’s entitlement to quiet enjoyment. Matters become more complex where the offending party is not the landlord or owner, but another tenant or occupier. If the acts complained of take place in areas over which the landlord or owner has direct control – e.g. the common areas - then the landlord or owner may be in breach of his or her obligation to afford the tenant or occupier “quiet enjoyment” if he or she fails to take steps to rectify the situation (see Hilton -v- James Smith & Sons (Norwood) Ltd [1979] 2EGLR 44) and Page Motors Ltd -v- Epsom BC [1982] JPL 572.)

18. However, where the acts complained of take place on property tenanted by or occupied by someone other than the landlord or owner, then unless, as the Northern Tribunal explained “the acts complained of are …unlawful acts (e.g. such as to amount in law to a trespass or nuisance) the landlord will only be liable under the covenant for quiet enjoyment if he has actively authorised those acts. He is not liable under the covenant for quiet enjoyment for a nuisance caused to one of his tenants by another of his tenants in a neighbouring property merely because he knows about it and has taken no

steps to prevent it. The remedy of the tenant disturbed is to bring proceedings against the tenant at fault."

We shall now proceed to deal with the issues raised by the Applicant, but before doing so we shall record a few observations on the evidence.

THE DOCUMENTARY EVIDENCE

19. The Respondent has provided a hearing bundle, tabbed and paginated as directed. The Applicant had raised an objection to the bundle as prepared, but whilst the Applicant was correct in pointing out that the photocopies of the Applicant's photographs were not of good quality, they were adequate for the purposes of illustrating the points which the Applicant was making and we did not consider that the Applicant was prejudiced as a result. The Applicant also complained about the positioning of the photographs within the bundle and the fact that the explanatory notes were not next to the relevant photographs. Again, the Applicant was correct in his observation, but we considered that it would be disproportionate to require the Respondent to redo and repaginate the bundles when all that was required was to cross reference the pages of the photographs with the pages of the relevant explanations.

20. The bundle helpfully contained the written statements of the Respondent's witnesses - Mrs Julie Lloyd, the Operations Assistant (p 128), Mr David Curson, the Operations Director (p 226) and Mrs Lynda Lovett, the Park Manager (p 232). There is also a statement by Mr John White, the maintenance man, who was not called to give evidence (p 312). During the course of the hearing, the Applicant provided the Respondent and ourselves with written comments and questions for the Respondent's witnesses. He also provided a copy of his closing statement.

21. An issue arose with regard to one of the documents - an e-mail dated the 1st November 2016 from a Mrs Helen Western of Plot 117 (p 225) who objected to the Applicant taking a photograph of a neighbour's van which she thought was "extremely creepy". She also referred to an incident "last year" (presumably some time in 2015) when she saw the Applicant "coming from my back gate". For the purposes of this Decision, we place no reliance upon this e-mail. The Applicant was certainly taking a photograph of the van outside Plot 113 as we have a copy of the result (p 69) but in evidence he categorically denied he was the person seen coming from Mrs Western's back gate. It is unclear when the incident was supposed to have occurred. It took at least 11 months, possibly up to twice as long as that before Mrs Western recorded it. Further the e-mail was written to Mr Curson after being prompted by Mrs Lovett - "I have been asked by Lyn to put a recent complaint about a resident in writing". With respect to Mrs Lovett, it would have been obvious why the Applicant was taking a photograph of a commercial vehicle parked outside Plot 113. She could have explained the problem and there would have been no issue. This e-mail, if anything, reflects more on Mrs Lovett than it does on the Applicant.

THE INSPECTION

22. We inspected the Site at 9.30 on the morning of the 6th February. The weather was cold but fine and we were able to walk around much of the site. We were accompanied by the Applicant and Mrs Lloyd, Mr Curson, Mrs Lovett and Mr White from the Respondent. There were two interruptions from residents, one by Mr Wilsher of Plot 39 who produced a letter for us to read. We invited the representatives from the Respondent to look at the letter before we did. They had no objection to our looking at it. The letter explained why he and his wife would not be attending the hearing. The other issue did not appear to involve any of the issues we were being asked to consider and we therefore removed ourselves from the discussion.

23. The Site is constructed on a low lying level area of land close to the Bristol Channel known as the Gwent Levels. It is protected by a sea wall and is criss-crossed by narrow streams or reens some of which date from Roman times. There is a single entrance to the Site which is sometimes referred to as being divided into the older part (the more northern section) and the newer part. In the older part, the pitches are arranged alongside two principal avenues. Only a few of the pitches have private parking on them but the avenues do provide communal parking. It appeared from our inspection that in the older area, parking could be an issue if all residents wished to park their cars close to their homes. The newer area is arranged in closes and there is ample parking available, particularly as the majority of occupiers have created parking areas on their own pitches. From our observation, there is in total an adequate supply of communal parking, but it is easy to see that at times, it might be difficult to find one of the communal parking spaces close to one's own home. Human nature being what it is, we can readily accept that in such circumstances some residents may become unhappy, if that happens on a regular basis, particularly if there are residents with more than one vehicle.

24. During our walk around the Site we were shown the locations of many of the photographs contained in the Bundle. We were also shown the Site Office (external view only), the Site Manager's home with its set of two gates (again the external view only), the workshop, which we were able to look inside, and the communal grassed area alongside the workshop. We were also able to view the locations of the homes about which there were issues, e.g. Plot 20 where there was a tarmac drive (and also one on Plot 150), Plot 113 where a commercial vehicle was allegedly parked on a regular basis and the location of the alleged dog biting incident. We shall refer to these in more detail later.

THE WITNESSES

25. In cases such as this where there are a number of issues involved and particularly where, as here, there is a depth of feeling involving some of the witnesses, it is helpful for us to assess the credibility of those whose evidence we are required to consider.

26. We considered the Applicant to be genuine in his belief that there are issues regarding the Respondent's management of the Site. Unfortunately, he has allowed his genuine concerns about the management to descend into a personal campaign against Mrs Lovett. Some of his remarks do him no credit. We recognise, however, that his attitude to a large part stems from his frustration at the lack of progress in rectifying what he perceives to be the unfairness in the way the Site is managed. In our assessment of the evidence, we must separate what the Applicant says from the way it is said. Sometimes, of course, personal attacks are used to hide a lack of evidence, but that is not the case here. The Applicant's evidence was supported by the photographs he had taken. We are satisfied that his evidence was reliable and where it conflicted with the evidence of, for example, Mrs Lovett, we preferred his account. He would occasionally try to avoid answering an awkward question, but when pressed he would provide an answer which was not entirely favourable to his argument. We are not suggesting that the Applicant's attitude towards the Respondent is justified, but we can well imagine that in a close knit community such as this, differences in the way various issues are handled can cause resentment and accusations of favouritism. Unfortunately, the Applicant identification of a number of problems relating to the management of the Site and the perceived lack of progress in dealing with them and this has developed into a battle of wills between the Applicant and the Site Manager which does not reflect well on either of them.

27. Mrs Lloyd's evidence was largely uncontroversial. However, we regret to say that we did not regard Mr Curson as a reliable witness. There were a number of areas where his statement (p 226) was at variance with what he has said previously. For example, he says in paragraph 8 of his statement (p 228) that "we have a number of potential Tribunal applications but are hoping the situation will be resolved before that is necessary", yet in his letter of the 12th October 2016 (p 199) he states that "we are about to make three applications to the Tribunal for breaches of the Park Rules". In evidence he conceded that as of the 12th October 2016, the Respondent was in no position to make any application to the Tribunal as it had not served any notices of breach. With regard to the issue of the commercial vehicle parked on the Site, on the 4th November, Mr Curson wrote (p 26): "as you say it is inconceivable that we would give consent for a red commercial van to stay on site given the Park Rules and can assure you that we have not done so". Again, in his letter of the 15th November 2016 (p 215), Mr Curson says that "in respect of Plot 113 we can confirm we have not given consent for the red van which we understand is coming onto the park from time to time while the park home is being refurbished, however, they have not been given consent and will be reminded that the van will not be kept on the park". This is not correct. Mrs Lloyd (paragraph 13 at p 131) explains that Mrs Lovett had spoken to the occupier of Plot 113 and "had previously advised the home owner that commercial vehicles were not allowed on the Park in accordance with the Park Rules…" She "advised him not to park the van overnight but did not object to the van being on the park for the purpose of transporting materials during normal working hours during the day…" Mrs Lovett had not notified Mr Curson about the issue as she had been able to deal with it herself. Mr Curson said in evidence that in his letter of the 4th November 2016, he had meant to say that

that it was inconceivable that the Respondent would give permission for the van to stay on the Site "overnight" and could have explained the position more clearly. It is difficult to reconcile this statement with Mrs Lloyd's evidence (supported by Mrs Lovett's oral evidence) that the issue had been dealt with at a local level by the Site Manager and with the terms of his letter of the 15th November, 2016 (p 215).

28. In paragraph 10 of his statement (pp 228/229), Mr Curson explains that the owner of Plot 20 had been given consent for a paviour driveway, not a tarmac driveway. However, in his letter of the 12th October 2016, he clearly states "we did give permission for a tarmac driveway". In evidence, it transpired that the occupier had asked if he could use tarmac to complete the driveway. Mr Curson had not checked the original consent and had indicated that if the original consent was for tarmac, then it was in order to use tarmac. Unfortunately for Mr Curson, the occupier disputes the terms of that conversation and claims that he gave consent for the tarmac finish. It seems to us to be remarkable that Mr Curson did not check his facts before giving the occupier a conditional response and before writing the letter of the 12th October 2016. Another example of Mr Curson's failure to check things is in connection with an advertisement for Sandtex which the Applicant placed on the Residents' notice board. Mr Curson wrote to the Applicant on the 17th May 2016 (p 298) informing him that "it is our understanding that the masonry paint which you are advertising is not suitable for park homes". He does say that the Applicant should check with the paint manufacturer or the park homes manufacturer. In a further letter of the 8th June 2016 (p 302), Mr Curson tells the Applicant about the Respondent's "reservations with regard to your particular advert" and "doubts over its accuracy". With all due respect to Mr Curson, if he is going to make pronouncements of this nature, he should first research the issue. The Applicant's evidence, which accords with our own knowledge as was disclosed at the hearing, is that it depends on the surface to which the paint is to be applied. In his evidence, Mr Curson admitted that he had not checked the position before writing the letter of the 17th May 2016 (p 298). We regret that this lack of care does not reflect well on Mr Curson's evidence.

29. Mr Curson's credibility was also called into question by the Applicant. He was asked in the earlier Tribunal hearing dealing with the new Site Rules, about a camper van located at Caerwnon Park (another Home Park owned by the Respondent). He was shown a photograph (numbered 18 in the bundle at p 72). He told the Tribunal that he knew nothing about it. In his letter of the 8th November 2016 (at p 212) the Applicant points out that Mr Curson must have known about the camper van because he had written to the chairman of the Residents' Association at Caerwnon Park asking if the Association had any objection to the occupier retaining the van on the Park. Mr Curson's letter of the 15th November 2016 does not answer the point directly but refers the Applicant to "consideration of disability issues" in the literature and guidance provided by the government. In his statement (at p 229) Mr Curson says that the wife of the occupier of the pitch had a disability which required the use of a camper van. After consulting with the Residents' Association he had not objected to the camper van being kept on the Site but did not give "formal consent". He had

not had advance warning of the photograph and had not recalled the particular case. In evidence, Mr Curson told us that he did not know how many camper vans were on their sites. The Respondent had not been giving consents for camper vans. He had not seen a picture of the camper van previously. He had had no recollection of it at the hearing. He had remembered soon afterwards. We appreciate that at times witnesses can become confused in the unusual and rather stressful situation they find themselves in at a Tribunal hearing and occasionally give incorrect answers to questions. We also acknowledge that Mr Curson is responsible for 50 Parks with hundreds of park home owners to deal with. However, we find it surprising that he did not recall what must have been an unusual case. It was not a chance conversation. He had gone to the lengths of consulting the Residents' Association. Whether it was a deliberate lie or a failure to recollect a significant relaxation of the rules, it reinforces our view of Mr Curson's lack of reliability as a witness.

30. There are undoubtedly issues between Mrs Lovett and the Applicant. It may well be six of one and half a dozen of the other as Mr Curson suggested in his closing remarks. A manager's role is not an easy one. He or she has to be all things to all people - fair but firm, maintaining compliance with the rules and regulations governing the Site whilst making the occasional allowance when special circumstances require. Mrs Lovett is no doubt a forceful personality. Her approach will find favour with some, but will upset or annoy others. It may be that being a resident as well as a Site Manager can sometimes make it difficult to be objective at all times. She told us that she knew the identity of the person who kept taking down the Applicant's advert for Sandtex. She said she asked the culprit not to do so, but to no effect. We have little doubt that if she had set her mind to it, she could have stopped what became a running sore without too much difficulty. She will have known that each time the notice was taken down, the more irritated the Applicant became. However, this in no way justifies the Applicant's remarks or his personal attacks on Mrs Lovett.

31. The same applies with regard to the incident with Mrs Lovett's dog. An immediate apology, an offer to repair damage and a conciliatory tone - even when faced with an upset Applicant - would have taken some of the heat out of the situation. Confrontation is never the answer. As we later discuss, we did not find her account credible. We were also not impressed by the fact that at initial meetings with occupiers, she deliberately misrepresented the effect of the Site Rules telling occupiers that permission would not be granted for trailers when there was no rule prohibiting trailers. What is more when she was giving evidence she refused point blank to answer the questions which the Applicant had written down for her to answer in lieu of cross examination. It is true that some questions were not relevant and some were not well phrased, but it was left to the Chairman to ask the relevant questions from the Applicant's list.

Before we consider the 8 issues which the Applicant has asked us to deal with, it will be helpful if we set out the relevant rules to which they refer.

THE SITE RULES

32. The new Site Rules (p 15) came into force on the 2nd February 2016. In the preface to the new rules it clearly states:

> *"no occupier who is in occupation on that date will be treated as being in breach due to circumstances which were in existence on that date and which would not have been a breach of the rules in existence before that date."*

The rules also make it clear that "these rules also apply (for so long as they live on the park) to the park owner and any employees…"

Rule 12 reads:

> *"You must not use the park home, the pitch or the park (or any part of the park) for any business purpose…" The occupier can, however, "work individually from home by carrying out any office work of a type which does not create a nuisance to other occupiers and does not involve other staff, other workers, customers or members of the public calling at the park home or the park."*

Rule 15 reads:

> "…*You must keep any dog under proper control and you must not permit it to frighten other users of the Park…"*

Rule 21 reads:

> *"Parking is only permitted for one vehicle per park home"*

Rule 24 reads:

> *"Other than for delivering goods and services, you must not park or allow the parking of commercial vehicles of any sort…" The rule exempts the park owner and its employees.*

Rule 25 reads:

> *"You must not park Boats, Camper Vans, Motorhomes, Touring Caravans or Trailers of any sort on the park".*

33. The old rules (p 77) (ie those in force prior to the 2nd February 2016) include the following:

Old Rule 7 reads:

> *"No commercial enterprise or business activities may take place on the Park without prior written permission of the Company…"*

Old Rule 10 reads:

> *"Pets where permitted at the Company's discretion must be kept under proper control…Existing pets may not be replaced without prior written permission from the Company".*

Old Rule 13 reads:

"(b) Vehicles must keep to authorised parking spaces and the Company is only obliged to provide one car parking space per household. Occupiers with more than one vehicle and visitors may be obliged to park their vehicle off the Park".

"(d) In certain circumstances, at the discretion of the Company and the Council, vehicles may be parked within the confines of the Occupier's plot in designated positions"

"(g) Commercial vehicles, Boats, Touring Caravans, and Motorhomes of any size may only be parked on the Park with prior written permission from the Company." It is noted that there is no reference to trailers in this rule.

THE ISSUES IN DETAIL

34. Occupiers parking more than one vehicle per home on Site contrary to rule 21;

(a) The Applicant specifically refers to Plots 2,11,14,20,22,58,66 "and others". In evidence he drew our attention to various photographs (which we shall refer to as Ph followed by the relevant number.) The photographs were in the main taken in November 2016:

- Plot 2 - Ph 1 (p 63) shows a BMW and a Jaguar parked on Plot 2. Following the Applicant's complaint about this, the Jaguar was moved to a communal parking place (Ph 2 (p 63) and Ph 15(p 70)). Subsequently, Ph 13 (p 69) shows that the occupier of Plot 2 now has a VW parked on the plot and Ph 19 (p 125) shows a Land Rover parked there with the VW parked in the communal area (Ph 20 at p 125). The Applicant comments (at p 124) that the occupier of Plot 2 regularly changes his/her cars.

- Plot 11 - Ph 7 (p 66) shows a white vehicle on the drive belonging to Plot 11 with a blue car, also owned by the occupier of Plot 11, alongside.

- Plot 14 - Ph 3 (p 64) and Ph 12 (p 68) shows a BMW sports car and a black Chrysler both owned by the occupier of Plot 14. The occupier of Plot 14 subsequently disposed of the BMW sport car and replaced it with a yellow Renault. (Ph 21 p 127).

- Plot 20 - Ph 8 (p 66) shows a silver vehicle and a black vehicle both owned by the occupier of Plot 20.

- Plot 58 - Ph 5 (p 65) taken in October 2015 shows a red car and a blue car parked on the driveway of Plot 58 whilst Ph 6 (p 65) shows that in 2016, there are now 2 white cars parked there.

- Plot 66 - Ph 16 (p 70) shows two cars parked at the rear of Plot 66.

There is a reference to Plot 22 in the narrative (p 59), but we were not directed to any evidence relating to it.

(b) The Applicant is concerned that whilst overall there may be an adequate number of parking spaces on the Site, there are areas, particularly on the older part of the Site, where the communal parking is sometimes full. This means that occupiers may have to park their cars 50 or 100 metres away. Ph 4 (p 64) is an example of this happening. The Applicant has his own driveway.

(c) For the Respondent, Mrs Lloyd explained that there are more than an adequate number of parking places on the site sufficient for one car per park home with additional places for visitors. Although Ph 4 shows one communal area as full, there would have been other parking areas with available spaces. The occupiers of Plots 11, 14, 20, 58 and 66 all owned 2 cars before the change in the rules. The old rules did not prohibit 2 cars. Old Rule 13(b) merely states that the second car may have to be parked off Site. The Respondent had maintained that the old rule only applied to the particular cars owned by an occupier prior to the rule change, but some occupiers were arguing that the old rule enabled an occupier to bring two cars onto the Site, not two specific cars. Therefore if an occupier changed his/her car, the Respondent could not prevent that occupier from bringing the new car onto the Site in place of one of the previous cars.

(d) The Respondent was, however, pursuing the occupiers of Plots 2 and 22. The Respondent had written to the occupier of Plot 2 on the 25th August 2016 and the 31st October 2016. A notice of breach had been served on the 19th December 2016. As far as Plot 22 was concerned, the Respondent had served 4 notices of breach. The occupier had had 2 dogs, 2 cars and an under 50 year old resident. The occupier was claiming that he/she had 2 cars before the rule change.

(e) Since the Respondent is not allowed to intervene when a park home is being sold, it is sometimes the case that new occupiers are not aware of the one car rule. When they are told of the rule, they feel aggrieved. Some occupiers simply “hide” their vehicles on other parts of the Site. As the occupiers are not required to register their vehicles with the Respondent, it may be a while before the breach is discovered particularly as the vehicles are often on Site only outside the hours when the Site staff are working. It is therefore difficult to police. It might be possible to request occupiers voluntarily to provide details of their cars, but not everyone would agree to do so. The Respondent is “catching up” with occupiers who breach the “one car” rule. Before the rule change, the Site Owner exercised its discretion as there was plenty of parking available on Site. The Respondent did, however, write to all residents on the 23rd June 2016 (p 168) reminding them of the rule and pointing out that the effect of a breach “would affect the ability of residents to have guests and visitors to their homes.”

(f) According to Mr Curson, the procedure adopted is as follows

- The Park Manager will approach an occupier where it considered that there has been a breach of the Site Rules, pointing out the breach;
- A little time is allowed for compliance;
- If the occupier does not respond, the Site Manager may approach the occupier once more, or may write a locally produced letter;
- If the occupier has become entrenched, Head Office will write informing the occupier of the breach seeking resolution;
- If this fails, a notice of breach may be served preparatory to an application to the Tribunal.

Mrs Lovett confirmed that if there was a breach, she would generally speak to the occupier. If the breach persisted, depending on the particular occupier and the nature of the breach she might speak to the occupier again or she might contact Head Office.

Conclusion

(g) We are satisfied that there is a small but significant number of people who have two cars at the Site. We are also satisfied that some of these, as identified by Mrs Lloyd in evidence, have had two cars on the Site since before the rule change in February 2016. We accept her argument that where it is established that this is the case, the "one car rule" cannot be applied to them. Where it is less clear is where there has been a change of car as has occurred in a few cases. Mrs Lloyd expressed the hope that we might rule on this but before any ruling could be made, those affected by such a decision would need to be a party to the proceedings and must have the opportunity to present their arguments. It is sufficient for our purposes to accept that enforcement of the "one car rule" where there has been a change of vehicle would not be straight forward and might involve further Tribunal proceedings for the matter to be determined.

(h) We accept the Applicant's point, however, that residents who do not have their own driveways have to have access to the communal parking areas which the Respondent is obliged to provide under the terms of its Site Licence. In the older part of the Site, the parking is limited and at times, and we accept the Applicant's evidence on this point, certain parking areas can be full. Ph 4 (p 64) illustrates this. Our inspection of the Site also confirmed that certain "clusters" of park homes have limited parking close by, one or two of which had few vacant parking slots even at 9.30 in the morning. We can accept that in the evening the pressure on these areas is problematic, made worse if too many occupiers have a second car to park. We can also accept the argument that it is not reasonable that a resident has to park his/her car 50 or 100 yards away on another stretch of the internal road or in another close because another resident has brought a second car onto the Site.

(i) We appreciate that some residents have enjoyed the ability to park a second car on the Site. We accept that overall there are enough car parking spaces on the Site (including those on driveways) to accommodate one car per home. We also accept that some occupiers play "cat and mouse", hiding their second cars away from their homes in order to avoid detection. We are also satisfied that some new occupiers are not aware of the "one car rule" when they take over the pitch and become upset when the management informs them that they have to remove one of their cars. However, whilst we accept that there may be occasional problems in establishing the ownership of some cars, we do not consider it to be too difficult a task. After all, the Park Manager lives on the Site. She has done so for many years. We doubt that there is much that goes on that she is not aware of. It will not take her long to ascertain if a resident has brought a second car onto the Site.

(j) It is understandable that the management will want to deal with breaches on an informal basis at first, but as far as Plot 2 was concerned, the first letter was sent on the 25th August 2016, no doubt after the informal process had failed. It was over 2 months later (31st October 2016) before there was a follow up letter and nearly another 7 weeks before formal steps were begun (19th December 2016). The slowness in the follow up is surprising and creates enforcement difficulties. Occupiers can be lulled into believing that no action will be taken. They may even believe that they have unofficially been given consent, leading to legal arguments relating to waiver and estoppel. Such arguments will understandably make a prudent owner or manager hesitate before embarking on a time consuming and in some cases expensive legal battle.

(k) However, once it is clear that the breach is not being remedied, there needs to be a more rigorous approach to enforcement in fairness to the overwhelming majority of occupiers who abide by the rules. The lack of effective follow-up can lead to a belief that certain occupiers are "getting away" with breaches which is what has happened here. That is of course a management issue.

(l) Where an occupier has a right to park a car on a communal parking space and that right is significantly impeded as a result of a breach of the Site Rules by another occupier, the first occupier's right to enjoy the benefits of occupation is interfered with by the second occupier. If the owner fails to take steps to put an end to the second occupier's breach of the rules and the first occupier has suffered some significant impediment as a result, the owner may find that such failure constitutes a breach of quiet enjoyment (see Hilton v James Smith & Sons (Norwood) Ltd (cited above)). In this case, the evidence is that the Applicant has constructed his own parking space on his pitch. He is not personally inconvenienced as a result of the Respondent's failure to pursue those cases where there is a clearly identifiable breach. He did not provide any evidence that his visitors were unable to park on the Site. We are satisfied on the evidence that there are times, particularly in the evening, when on a localised basis some parking areas are full. We are also satisfied that, on occasions that will be

contributed to by the parking of second cars in breach of the Site Rules. However, the Applicant is not affected personally as he has his own driveway for parking his car and we have insufficient evidence to satisfy us that the scale of those instances identified as breaches are such that we can in this case make a finding that the Applicant's right to the quiet enjoyment of his pitch has been breached.

35. An occupier has been allowed to park a commercial vehicle on Site contrary to rule 24;

(a) Both parties accept that the occupier of Plot 113, parked his red van in the communal parking area as shown in Ph14 (p 69). It was parked there for a period of "at least 2 months" (according to the Applicant) while the occupier refurbished his home. Plot 113 is some way from the Applicant's home, but this breach of the rules was drawn to his attention by another occupier. The Applicant would not have objected if the vehicle had belonged to a tradesman who had taken his van off the Site at night. The Applicant wrote to Mr Curson in a letter dated the 29th October 2016 (at p 202) referring to this. In his letter of the 4th November 2016 (at p 209), Mr Curson responded that consent had not been given (see above). The Applicant's own letter of the 8th November 2016 refers to a conversation which he had had with the owner of Plot 113. He told us in evidence that he had been with another person. It was that person who explained that the occupier of Plot 113 had been given permission and the occupier had then confirmed this to be the case. The occupier of Plot 113 did not have another vehicle at the time. The occupier had not mentioned Mr Curson, nor did he say that it was Mrs Lovett who had given him permission. However, in his letter of the 8th November 2016 (p 211) the Applicant reports that Mrs Lovett was seen talking to the occupier, but he does not say when. The van was eventually removed in November 2016 shortly after the Applicant had issued these proceedings.

(b) According to Mrs Lloyd (paragraph 13 of her statement at p 131) the matter was dealt with by Mrs Lovett without bringing it to the attention of Head Office in the first instance. The Applicant accepted that refurbishment takes time. In evidence, Mrs Lovett told us that she spoke to the occupier of Plot 113 and told him that he could not park overnight as that was a breach of the rules. It could be on the Site between 8am and 6pm. The occupier had said that would not be a problem; he would move the van. His wife had been seriously ill. Initially the van had been there overnight, but it had not been there every day. After her conversation, the van was taken off every night. However, in her written statements, she "cannot quote the exact dates of events". The issue had been resolved by the time of the Applicant's letter to Mr Curson (29th October 2016 at (p 202)) (see her statement at p 233). Although she records the times and dates of some conversations with occupiers, "over the years one learns which conversations need to be placed in writing".

Conclusion

(c) There is no doubt that the red van was parked as shown in Ph 14 (p 69) for a period of time. The Applicant was not challenged over his statement that this was over 2 months. Again there is no issue that initially the red van was parked there overnight. We accept the Applicant's evidence of the conversation he had with the occupier of Plot 113 who was clearly under the impression that he had been given permission to park the red van on the Site. We also accept that at some point, Mrs Lovett spoke to the owner of the van. Prior to that point, she conceded that the van was staying overnight. We do not find it credible, however, that an experienced manager, realising that she was speaking to an occupier about a breach of the Site Rules did not regard that as something she needed to record "for future use" (p 233). The failure to record that conversation and note the date makes it difficult to work out when that conversation took place. The conversation between the Applicant and the occupier of Plot 113 and the third party did not refer to the occupier having to remove the van at night, merely that he had been given permission to bring the van onto the Site. We would have thought that if it was a requirement to move the van at night, in the context of the conversation, it would have been mentioned. At the time of her conversation with the occupier, Mrs Lovett was either aware or made aware that the van had been staying overnight.

(d) On balance we accept the Applicant's account. We also accept that Mr Curson was not aware of the issue until he received the Applicant's letter of the 8th November 2016. It was nonetheless careless of him to deny that permission had been given when on the basis of the evidence of both the Applicant and Mrs Lovett some sort of permission had been given.

(e) The question for us to determine, however, is not so much whether there had been a breach of the rules. Even on Mrs Lovett's account, the van had been parked overnight prior to her conversation with the occupier and she had spoken to him regarding the breach of the rules. However long the breach, it was, as both parties agree, remedied by the middle to the end of November. As the van had been parking on the Site without permission for a period of time, it was taking up a space which could have been used by another occupier or visitor. However, Plot 113 is in a different part of the Site from the Applicant's pitch and so the lack of parking in the area of Plot 113 in no way affected the Applicant or his visitors. From our recollection of the area there was more than adequate parking available in that locality. We cannot see that the Respondent's failure to enforce the "no commercial vehicle rule" in respect of Plot 113 affected the Applicant in any way and it cannot therefore constitute a breach of the Respondent's agreement for quiet enjoyment.

(f) However, the Applicant raises a further issue, namely giving an occupier permission to do something which is expressly forbidden in the Site Rules. In Wood (see paragraph 16 above), a Mrs Dyas was using her park home as a holiday home in breach of the Site Rules. The site owner did not enforce the rule. At paragraph 14 of the decision the Northern Tribunal commented: "the fact that (a) Mrs Dyas might be in breach of a term of her agreement (if it is correct that her agreement is identical to that of Mrs Wood) with the Respondent by not occupying her home as her sole or main residence or (b) that the Respondent might be able to seek approval from the court to terminate that agreement if it so wished, does not mean that the site owner has a duty to Mrs Wood or any other occupier to take action against Mrs Dyas. That is a matter between the site owner and Mrs Dyas. The fact that the Respondent permits the neighbouring property to be used as a holiday home does not automatically entail a breach by the Respondent of any obligation in its agreement with Mrs Wood." Putting it in the context of this decision, as there is no obligation on the part of the Respondent to enforce the Site Rules, the fact that the Respondent permits a breach of a Site Rule by the occupier of Plot 113, does not automatically entail a breach by the Respondent of any obligation in its agreement with the Applicant. We do not have the power to grant the Applicant any relief for the Respondent's waiving of a breach of the Site Rules by the occupier of Plot 113.

36. The Respondent's failure to discipline Mrs Lovett for failing to keep her dog under control contrary to rule 15;

(a) On Saturday the 12th December 2015, the Applicant and his wife were walking through the Site to view the Christmas decorations put up by another resident. They were walking along the narrow footpath (1.5 metres wide, according to the Applicant's description of the event (p 105)) when they came across Mrs Lovett who was leaning in through the passenger side window of a car and speaking to the driver. They did not notice that Mrs Lovett's dog was beside her, as it was obscured from view by Mrs Lovett's presence. The Applicant had to pass close to Mrs Lovett and as he did so, the dog made a noise and caught hold of the Applicant's coat and as he attempted to brush the dog away with his arm, the dog caught the Applicant's "lower arm". The Applicant moved his arm but the dog had caused red marks on the skin and a tear in the coat. After walking on 5 or 6 metres, the Applicant spoke to Mrs Lovett and there followed an altercation.

(b) The Applicant informed the Police and on the 13th December 2015, the Applicant wrote an e-mail to Mr Curson informing him of the incident (p 111). On the 22nd December, Mr Curson replied relating to an "alleged incident" and enclosing a report setting out Mrs Lovett's version of what occurred (p 112). In it she makes no mention of the actual incident concentrating on the exchange which followed. She stated that the 3 red marks on the Applicant's finger "did not look fresh" and "it was difficult to see" the alleged damage to the jacket. She reports in some detail, however, the strong and abusive language which she says was used by

the Applicant during the course of that exchange. In evidence, the Applicant alleged that it was Mrs Lovett who used the bad language.

(c) The Applicant accepted that the Police regarded the incident as a "civil matter" and, no doubt encouraged by them, on the 7th January 2016, Mrs Lovett wrote a letter of apology (p 181). The apology is couched in vague terms. Mrs Lovett became aware that her "dog began to bark". She claimed that when she turned around the Applicant and Mrs Lawrence were "50 to 60" yards away. She "cannot confirm exactly what happened" refers to "three small marks" on the Applicant's finger and a "rip on the side of your jacket". She states that she is "not in a position to comment as to whether or not these have been caused by my dog as I did not see the incident" but "if they were, then I sincerely apologise". She adds that although the dog was on a short leash she "did not feel her pulling or straining at the lead at any stage". Mr Curson has not apologised.

(d) The Applicant's case is that the rules apply to the Respondent as much as they apply to the Applicant. He felt the apology was not genuine - if it had been, he would not have raised the matter. He would like to see the dog muzzled. He did not want to see the dog put down. There was some issue as to whether delivery of the letter of the 22nd December from Mr Curson was deliberately timed to arrive on Christmas morning - Mrs Lovett said she put it in the outside letter box at 16.45 on Christmas Eve. We do not consider this to be relevant to our decision and make no finding on the issue.

Conclusion

(e) We are satisfied that the incident occurred substantially as the Applicant described. We cannot see that he would go to the trouble of reporting the matter to the Police if it had been otherwise. We do not find Mrs Lovett's account to be credible. It is possible that she was so engrossed in her conversation with the driver of the car that she did not notice the dog's movement. In our view it is more likely that she did not appreciate its significance. The Applicant stated that the dog "started growling and snarling" (p 179) and Mrs Lovett remarked that the dog "began to bark" (p 181). It is unlikely that the dog waited until the Applicant and Mrs Lawrence were 50 or 60 yards away before barking, growling or snarling. She would have made her presence felt at the time she perceived the potential danger, when the Applicant and Mrs Lawrence were close by, not waiting until they were 50 or 60 yards away.

(f) We understand that employers frequently feel the need to defend their staff when faced with a complaint. To do otherwise would diminish the employee's authority. We also understand the imperative of not admitting liability in case there is a potential civil claim and the insurance may be compromised as a result of the admission. However, the Respondent's attitude on this issue has only served to make a bad situation worse. If it had been handled differently, then, as the Applicant said in evidence, the matter would not have been raised.

(g) The new Site Rules make it clear that they apply to employees of the Respondent just as much as they do to the residents. As Mr Curson said in evidence, managers are the eyes and ears of the owner. They have to be available even outside normal working hours in case of emergencies. As the Site Rules are in effect part of the contract between the owner and the occupier, the owner as well as the occupier, has to comply with them. The actions of a manager are in most cases the actions of the owner and the owner will therefore be liable for a manager's breach of the Site Rules.

(h) The position is not so clear under the old rules. There is no reference to compliance by the Respondent. Mrs Lovett is an employee who just happens to live on the Site and as an occupier she is presumably subject to the same rules as any other occupier. Of course, if Mrs Lovett had been acting in the course of her duties or if there were a "close connection" between what she was doing and her responsibilities as a manager, the Respondent could well be regarded as responsible for her actions (see Lister v Hesley Hall Ltd [2001] UKHL 22) but it was after 5.25 on a Saturday evening in December. There is no suggestion that she was carrying out some task as part of her employment - a tour of inspection would have been unlikely at that time of day as it would have been dark. We cannot see that Mrs Lovett's failure to keep her dog under control on this occasion can be laid at the door of the Respondent.

(i) We consider that an apology and an offer to pay for the repair was the appropriate way of dealing with the issue. Mr Curson says in his statement (paragraph 27 at p 143) that Mrs Lovett was spoken to at length and it was decided that further disciplinary action was not necessary. His letter of the 3rd February 2016 (p 186), prompted by the Applicant's reminder e-mail (p 185) is a little confusing as it states that the Respondent "will be addressing this matter" (our underlining) with Mrs Lovett but is able to assure the Applicant that "the matter has been dealt with and concluded" (again, our underlining).

(j) As we have mentioned with regard to the issue of the red van (see paragraph 35(f) above) there is no obligation on the Respondent to take action against another occupier. If it chooses not to do so, that is a matter for the Respondent. It is a management issue and not a legal one. Mrs Lovett has made an offer of compensation. We do not see that we have power to take the matter any further even if we were minded to do so, which we are not.

37. The Respondent's permitting the occupier of Plot 20 to lay a tarmac drive;

(a) We have referred to this issue briefly above (paragraph 28). In 2013, the occupier of Plot 20 asked if he could construct a driveway on his pitch. Sometime earlier, the policy had been to allow paviour driveways or tarmac driveways. Most people constructed paviour driveways. At some point the policy had changed and from then on, consent was only given for paviour driveways to be constructed in accordance with, what was referred to as, the Respondent's Standard detail . With regard to Plot 20,

consent was given for a paviour driveway in accordance with that standard detail. Work had been started and granite chippings had been laid which according to Mr Curson, in evidence, looked unsightly. The Respondent asked the occupier to complete the job. The occupier asked if he could put down a tarmac finish. Unfortunately, Mr Curson failed to check the permission which had been given and informed the occupier that if permission had been given for a tarmac driveway, then he could do so. It was subsequently discovered that the permission had been for a paviour driveway, not tarmac. The Respondent considers the occupier of Plot 20 to be in breach of the Site Rules. However, the occupier is now alleging that Mr Curson gave permission for the tarmac. The issue is unresolved, but the Respondent is reluctant to proceed because it is Mr Curson's word against the occupier's.

(b) The tarmac driveway is shown in Ph 9 (p 67). The Applicant is concerned that no enforcement action has been taken. He had applied in 2012 to construct a driveway and he, like the occupier of Plot 20, had been sent the Standard detail. It would have been £250 to £270 cheaper for him to lay tarmac. He had asked Mrs Purnell at the Site Office if he could use tarmac and she had told him that it was not an option. Everyone else was using paviours. He conceded that paviours looked better and aesthetically, it was better to have conformity. If he had applied for tarmac, the request would have been refused. The Applicant's own permission is at p 84.

Conclusion

(c) This a problem of the Respondent's own making. Mr Curson concedes that he should have checked the permission and his failure to do so has led those advising the Respondent that it may not succeed in enforcing the terms of the original permission. Whilst this is undoubtedly evidence of inefficient management, it is again difficult to see what we as a Tribunal can do about it. In the absence of an agreement on the part of the Respondent to enforce the obligations of other occupiers, the question of whether the Respondent takes action against another occupier is a matter for the Respondent (see paragraph 35(f) above).

(d) The Applicant suggested that he had lost the sum of £250 to £270 because he had had to put down paviours rather than lay tarmac. We do not accept this. He applied for permission to use "red block pavers" (p 85). He was granted permission to construct the driveway in accordance with the annexed specification (p 87). He told us that he was informed that If he asked for permission to lay tarmac it would be refused. The Respondent was entitled to set out its requirements. The Applicant complied. The fact that it cost more to construct a paviour driveway than a tarmac one does not mean that the Applicant has lost money. He was not allowed under the permission to construct a tarmac driveway. The fact that the Respondent exercised its discretion in a way which involved the Applicant constructing a more expensive but, as the Applicant conceded, visually more pleasing driveway, does not give rise to a claim.

(e) Nor does the construction of a tarmac drive on Plot 20 give rise to a claim for breach of quiet enjoyment. The tarmac driveway on Plot 20 does not affect the Applicant's ability to enjoy the privileges associated with his occupation of his pitch. The Applicant's rights are not affected. There is no act of trespass or nuisance or anything actionable occurring on Plot 20 caused or encouraged by the Respondent which affects the Applicant's pitch (see paragraph 18 above).

38. Incompetence on the part of the Respondent and/or the Site Manager requiring disciplinary action;

General complaints about administration

(a) The Applicant considered that Mrs Lovett is well versed in her administration duties, but the management side of the Site is not good. Ph 17, taken in November 2016, (p 71) shows a vacant pitch (Plot 43) and according to the Applicant, it was much worse than the photograph showed (see p 122). A skip was placed on the site only a couple of weeks previously in order to clean up the pitch (we were told that it was the 23rd January 2017). The ground is sodden due to the high water table. The clay sub-soil does not allow the water to drain away quickly. The pitch has been like this for 9 months. The Applicant had written to Mr Curson on the 19th May 2016 referring to this issue (p 191). People are coming onto the Site wanting to buy a home, but are put off by the look of the pitch. We were informed that there was surplus top soil beneath the sheeting and that John White, one of the Respondent's employees had been asked to spread it.

Conclusion

(b) Paragraph 22(1)(d) of Schedule 2 Part 1 Chapter 1 of the Act states that the owner must "maintain in a clean and tidy condition those parts of the protected site…which are not the responsibility of any occupier…" This includes vacant or undeveloped pitches. We accept that where a pitch, as here, remains undeveloped for a lengthy period of time, residents will understandably become irritated at the lack of progress. We also accept that a fenced off undeveloped pitch is not attractive but we can understand that the Respondent would be reluctant to leave it unfenced as residents would soon come to regard it as open space which may lead to problems when the Respondent begins to develop it. We cannot say, however, that the pitch was not "clean and tidy". There is only the Applicant's hearsay evidence, presumably gleaned from other residents that prospective purchasers were being put off. There is no detailed evidence. We are not satisfied on the evidence that we have, including our own inspection that the Respondent is in breach of its obligation to keep those parts of the Site not the responsibility of the residents in a clean and tidy condition. Nor can it be said that the condition of the pitch affects the Applicant's quiet enjoyment of his home. It may irritate the Applicant but we do not consider, on the evidence that the condition of the

pitch is such that it can be said to constitute a breach of the Respondent's obligation for quiet enjoyment.

Complaint about the lack of a ramp for persons with disability at the Site office

(c) The Applicant drew our attention to Ph 22 (p 127). He referred to his comment at p 126. Whilst professing concern about health and safety issues, the Respondent has failed to put in a ramp for the benefit of persons with disabilities.

Conclusion

(d) Health and Safety are important issues, but they are regulated by other relevant authorities, not this Tribunal. We have no evidence of what the Respondent has been required to do. There is nothing by way of evidence that the Applicant or his wife or any visitors to his home have suffered any disadvantage as a result of the lack of a ramp. In such circumstances we cannot find that the Respondent has breached his obligations to the Applicant by failing to provide a ramp.

Complaint about the Notice Board

(e) Near to the entrance to the Site is a notice board which is used by the residents to place advertisements. In about April 2016, the Applicant put a notice on the board offering to sell 4 x 5 litre tins of magnolia masonry paint at £15 per tin instead of the cheapest advertised price of £20 per tin. He had applied external wall insulation to his home and had painted it using the Sandtex and these four tins were surplus to his requirements. The notice was taken down. He also received a letter from Mr Curson dated the 17th May 2016 saying that he was "disappointed to read the note that [the Applicant] put up on the notice board at Lighthouse Park which refers to some Sandtex Masonry Paint" (p 189). Mr Curson goes on to say that his understanding was that this paint "is not suitable for park homes" although this was something which the Applicant would need to check. The Applicant's reply dated the 19th May 2016 (p 190) points out the obvious discrepancy between Mr Curson's understanding that the paint is not suitable with the qualification that the Applicant should check. The Applicant also alleges that the Respondent had a financial interest in recommending Resitex, an alternative paint product as, he states, according to the manufacturers, it receives a rebate for every litre of Resitex sold on its recommendation. This was denied by Mr Curson. The Applicant also asks that Mrs Lovett, whom he rather insultingly refers to as Mr Curson's "tame Rottweiler", does not remove the notice. The notice was removed. It was replaced and the replacement was also removed. In all five notices were put up and removed. On the 6th June 2016, the Applicant wrote to Mrs Lovett (p 301) asking Mrs Lovett to put a note in with the invoices for pitch fees telling residents not to interfere with notices. Mr Curson's reply of the 8th June 2016 (p 302) assures the Applicant that no member of staff had removed the notice but generally denies any responsibility for the notice board as it was put up by the

Residents' Association: "it is for the residents to resolve any issues with regard to the notice board". The notices became more provocative with the Applicant's reference to the person taking the notice down as "brain dead".

(f) The Applicant told us that he was a paint specialist and had in fact checked with the paint manufacturers. Resitex is good quality paint but is more expensive. Referring to the provocative nature of the notices, he said he was trying to shame the culprit. In his letter of the 6th June 2016 to Mrs Lovett he had not accused her of removing the notices. He refers to an "unknown person" removing the notices and the letter is asking residents not to do so. It took about 4 months before he found a buyer. As soon as the Sandtex had been sold, someone put up an advert for Resitex on the notice board.

(g) Mr Curson conceded in evidence that he had not checked before writing his letter of the 19th May (p 190). He accepted that he could have researched the matter before writing and he could have written the letter in a better way. He wanted to ensure that what the Applicant was selling was suitable for the homes. He was not aware that Sandtex had been used on many homes. Mrs Lovett said in evidence that she knew who was removing the notices. It was a resident who had felt slighted at some remarks made in the previous case. She had asked the resident not to remove them. She had contacted Stately Homes who had told her that Sandtex was not suitable. She did not accept that the Applicant believed that someone other than herself was responsible for taking the notices down despite the terms of the letter of the 6th June 2016 (p 301).

(h) Our surveyor member informed the parties that Sandtex was an acceptable product to use depending upon the surface to which it was being applied. For some surfaces it would not be suitable and a different product such as Resitex might well be suitable.

Conclusion

(h) The issue reflects well on neither party. Whilst we can well understand the Applicant's annoyance at someone taking down his notices, his response in making insulting and provocative remarks in the later notices was bound to make matters worse. On the other hand, Mr Curson's "rush to print" before researching the issue illustrated a serious lack of judgment on his part particularly knowing that there were problems between Mrs Lovett and the Applicant. Mrs Lovett's own response to the problem was inadequate. She appeared to us to be a forceful personality. We accept that she spoke to the culprit. However, we have no doubt that she could have prevailed upon that resident to stop if she had really been determined to do so.

(j) Whilst we accept that this and the other issues referred to in this section raise certain shortcomings in the Respondent's management of the Site, we are not satisfied that they constitute a breach of any of the Respondent's legal obligations.

39. The Respondent's exercising its discretion and/or turning a blind eye;

(a) The Applicant's argument is that the evidence in respect of the other issues illustrates this point. He also mentioned that there are two camper vans on the Site. One is very old but the other was brought onto the Site in 2014. The occupier just brought it onto the Site. The Respondent wrote to him, but the occupier ignored the letters. The occupier, who is a friend of his, told him. The Applicant had wanted a small camper van and so asked for permission to bring one onto the Site. He would have sold his car and just had the camper van. The Respondent refused permission for him but the two occupiers are able to keep their camper vans even though they do not have permission. The rules are not being enforced.

(b) During her evidence Mrs Lovett explained that one was very old and had been there so long that the occupier claimed that the Respondent was unable to enforce the rule. One has been changed to an American motorhome but this had now been sold. In her view, the Respondent does take steps to enforce the rules.

Conclusion

(c) There is little we can add to the comments we have already made. Under the old rules, the Respondent and any predecessor had a discretion whether or not to allow certain things to be done. If permission was granted, the Respondent is not able to put a stop to it even though what is being done is a breach of the new rules. The same applies if the old rules were silent on a particular issue and an occupier did something which was not a breach of the old rules but has since become prohibited under the new rules. There are instances where an occupier has done something which is in breach of the old rules as well as the new rules (eg the camper van issue) but the occupier claims that the rule has been waived. It is a matter of judgment for the Respondent whether or not to challenge that claim. We cannot say it is wrong if it decides not to pursue enforcement action in such cases. There are also instances where there are breaches which the Respondent has decided not to enforce. Again that is a matter of judgment for the Respondent and provided there is no effect on the Applicant's ability to enjoy the benefits of his home, in the absence of an agreement by the Respondent to enforce the obligations of other occupiers, we have no power to intervene. Finally, there are instances where enforcement action is being taken. Our only comment is, as mentioned above, that the lack of focus on the enforcement process can endanger the process itself and give other occupiers the impression that nothing is being done. That is a management matter and as long as the Applicant's "quiet enjoyment" is not interfered with (and we have no evidence that it has), we are not able to intervene.

40. The Respondent's stance that the new (2016) Rules cannot be applied retrospectively;

    The Respondent's failure to apply the new rules in respect of a breach even though the occupier's action was a breach of the old rules as well.

It is convenient to deal with these issues together.

(a) In 2011, when the Applicant and his wife took over the pitch, they were told by Mrs Lovett that they were not allowed to have a trailer. They had a camping trailer which they then sold. Mr and Mrs Wilsher were told the same thing. It was true that they were given a copy of the rules but naively believed what they were told. They had not realized that there was in fact no ban on trailers in the old rules. The occupier of Plot 7 owned a trailer which had been on the Site. An anonymous letter dated the 9th June 2016 (p 40) refers to the occupier being warned by Mrs Lovett that Mr Curson was going to be visiting the Site and the trailer was then hidden in the Site workshop. The Applicant drew Mr Curson's attention to the issue in a letter dated the 27th September 2016 (p 37) referring not only to Plot 7 but also Plots 20 and 44. In response, Mr Curson explained (p 35) that if the trailers came on Site before the change in the rules, the Respondent would not be able to take action. The Applicant's reply is based upon his assumption that what he had been told about trailers not being permitted under the rules was correct. Mr Curson's letter of the 4th November 2016 (p 25) merely states that the Respondent has not given consent to the trailer being parked or hidden in the workshop.

(b) In evidence, the Applicant told us that Mr Wilsher had seen the trailer in the shed. It was normally kept there as to leave it outside was a security risk. He had asked John White, the maintenance man, about the trailer. He had told him that the trailer was parked in the workshop. He had not seen this himself. He accepted that what he had been told by Mr White may have been a slip of the tongue and that Mr White's written statement (p 312) confirmed that the trailer had been stored on a grassed area behind a fence alongside the workshop. For the Applicant, however, the issue was that the trailer was on the site.

(c) Ph 9 and Ph 10 (p 67) show trailers on pitches 20 and 7. In his letter of the 27th September 2016 (p 196), the Applicant refers to trailers on Plot 20 which alternate between a double axle trailer and a single axle trailer in connection with the occupier's business. He also mentions a trailer on Plot 7 which at that time was "hidden" in the workshop and a golf buggy mounted on a trailer on Plot 44. The occupier of Plot 44 has "a disability blue badge" but the Applicant considers that the trailer has nothing to do with the occupier's disability. On the 12th October 2016 (at p 199), Mr Curson requested more information which the Applicant provided on the 29th October 2016 (p 201). In his reply of the 4th November 2016, (p 208), Mr Curson makes the general point that there was no restriction on

trailers before February 2016 when the new rules came into effect. All three occupiers had trailers on Site before that date. The Respondent would not be able to require their removal. He deals with the three Plots as follows:

- Plot 20 – Mr Curson asked the Applicant whether the trailers were swapped around before the change in the rules. If they were, it is doubtful whether the Respondent would succeed in any action against the occupier;

- Plot 7 – consent was not given for the trailer to be stored in the workshop;

- Plot 44 – as the occupier had the trailer before the rule change and because she was registered disabled, the Respondent had no intention of taking the matter further.

(d) The Respondent's case is that the trailers were on Site before the change in the rules. There was nothing in the old rules which prevented the occupiers from bringing trailers on Site. Mrs Lovett confirmed that she used to tell new occupiers at an introductory meeting that the owner would not give permission for a motorhome or a trailer. She conceded that the rules did not say anything about trailers. She accepted that the Applicant and Mr Wilsher would have been told that there would be no permission granted for a trailer. She appeared unconcerned that she had been giving inaccurate information and that some of the occupiers accepted her word instead of checking the rules for themselves. The trailer belonging to the occupier of number 7 had not been stored in the workshop. She visited the workshop. The trailer was never in it. Mr White had a ride on mower with a trailer which was kept in the workshop. It was not practical to put another trailer inside the workshop. On our inspection, she showed us where the trailer had been kept on a grassed area alongside the workshop but hidden from the road way by a fence.

(e) Mr White's statement (p312) confirmed that during the summer of 2016 he became aware that the trailer had been stored at the side of the workshop. He had not put it there nor had he authorised it to go there. He mentioned it to Mrs Lovett who had told him that she knew about it.

Conclusion

(f) On her own admission, Mrs Lovett indulged in a deliberate policy of misleading new occupiers concerning the content of the old rule 13(g). There is no reference to trailers in the rule and there is no issue that the Applicant and Mr Wilsher were both told that permission would not be given for trailers. That may not have been untruthful, but it was undoubtedly intended to make new occupiers believe that trailers would not be allowed on the Site. Mrs Lovett's lack of concern that occupiers would take her word as preventing them from taking a trailer onto the Site

again rather than checking the “small print” does not reflect well on her credibility.

(g) However, the position is clear. Changes in the Site rules cannot operate retrospectively. If an occupier enjoyed a benefit before the change, he/she is allowed to retain that benefit even though exercising that benefit would now constitute a breach. There was no prohibition in respect of trailers before February 2016. Occupiers who brought trailers onto the Site before February 2016 remain entitled to do so.

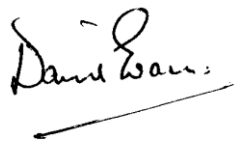
(i) The issue of whether or not the trailer belonging to the occupier of Plot 7 was in the shed is something of a red herring. On balance, we are inclined to the view that the trailer was stored on the land next to the workshop where it would not be seen by a casual passer-by. The Applicant accepted that he did not see it in the workshop and was relying on conversations with others. We accept the evidence that all three occupiers had their trailers before the rule change. The Respondent is correct. These occupiers are entitled to retain that benefit even though occupiers who have not taken advantage of that gap in the old rules and new occupiers are not allowed to do so. The Respondent cannot enforce the “no trailer” rule against these occupiers as their possession of trailers is not a breach of the old rules. We can understand the Applicant’s annoyance because he was certainly misled by Mrs Lovett. However, there is no substitute for checking the rules. We have no evidence concerning the “swapping” of trailers by the occupier of Plot 7 before the change in the rules but we can appreciate that the Respondent would not wish to litigate the point without evidence.

(i) In any event, the presence of trailers parked on the pitches of other residents does not affect the Applicant’s ability to enjoy the benefits of the occupation of his home. It is not an act of trespass or nuisance. There is no evidence to suggest that the use of the trailers by the occupiers of these pitches has in any way impeded the Applicant’s ability to use the Site roads or for his visitors to park a vehicle on the communal parking areas. We do not consider that the issues raised give rise to any breach of the Respondent’s obligation to allow the Applicant quiet enjoyment of his pitch.

SUMMARY

41. The powers given to this Tribunal by the Senedd are limited by the Act and the Regulations and do not extend beyond dealing with the contractual and statutory obligations of the parties. They do not extend to the general day to day management of the Site for the reasons we have expressed above. Whilst we have noted a number of concerns about the way that the Respondent has dealt with certain issues, we do not consider that those issues which we have found to have been established are sufficient for us to conclude that the Respondent is in breach of its obligation to keep those areas of the Site for which it is responsible in a clean and tidy condition or of its obligation to allow the Applicant quiet enjoyment of his home and pitch.

DATED this 29th day of March 2017



CADEIRYDD/CHAIRMAN

Footnote:

After the Tribunal had considered its decision, the Tribunal was informed of an exchange of e-mails involving the Applicant and the Respondent. The Applicant suggests that the issue of the trailer and buggy on Plot 44 should not have been raised by Mr Curson in cross- examination as it did not form part of his case as set out in his letter of the 3rd December 2016 (p 59). The Respondent points out that the Application included the Applicant's letter of the 29th October 2016 (p 31) in which the Applicant refers to Plot 44. We should perhaps mention that Plot 44 is also referred to in an earlier letter of the 27th September 2016 (p 37) as an example of the Respondent not "enforcing the rules", which is point 6 in the Applicant's list (p 60 – "turning a blind eye".)

During the hearing, the Applicant engaged with Mr Curson on the issue and raised no objection to its being discussed. At no time did he suggest that he was no longer regarding the issue of the trailer and buggy on Plot 44 as being part of his case.

We saw no reason, therefore, to review our decision before it was issued.