

**Y TRIBIWNLYS EIDDO PRESWYL**  
**RESIDENTIAL PROPERTY TRIBUNAL (WALES)**

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**Reference:** RPT/0004/04/18

**Property:** 5 Crossways Park, Howey, Llandrindod, Powys, LD1 5RD

**Applicant:** Hilary Harwood

**Respondent:** Edward and James Rafferty

**Tribunal:** Jack Rostron - Chairman  
David Evans - Surveyor  
Juliet Playfair - Lay Member

**Appearances for Applicant:** Richard Mullan of Counsel

**Appearances for Respondent:** James Rafferty of Respondent  
Gwendolen Penfold Previous site owner

**REASONS AND DECISION OF RESIDENTIAL PROPERTY TRIBUNAL**

1. This is an application by Hilary Harwood [the 'Applicant'] under section 49(5) of *the Mobile Homes (Wales) Act 2013*. It is made in respect of the property known as 5 Crossways Park, Howey, Llandrindod, Powys, LD1 5RD [the 'Property']. The Applicant seeks a determination of;

Firstly; the validity of the First Written Statement under the *Mobile Homes Act 1983* dated 27 July 2015; and

Secondly; applicable Pitch Fee.

2. The Law in section 49 (5) of the *Mobile Homes (Wales) Act 2013* is as follows;

49 (5) If the owner has failed to give the occupier a written statement in accordance with subsections (1) to (3) the occupier may, at any time after the making of the agreement, apply to the appropriate judicial body for an order requiring the owner-

(a) To give the occupier a written statement which complies with paragraphs (a) to (g) of subsection (1) (read with any modifications necessary to reflect the fact that the agreement has been made), and

(b) To do so not later than such date as is specified in the order.

3. The subject Property was inspected by the Tribunal at 10.00am on 22 August 2018 in the presence of James Rafferty and Gwendolen Penfold [the Respondent] and Hillary Harwood and Richard Mullan of Counsel [the Applicant]. It consists of a mobile home situated on a small park. The pitch fronts onto a service road and at the rear a field. On one side of the pitch is a hard standing for a car and a small new shed built on a pre-existing concrete pad foundation. Adjacent to the hard standing are located two large gas cylinders. On the other side of the mobile home is a path and fenced area. At the front of the pitch is a planter. The pitch is partly surrounded by a dwarf wall. The physical features inspected we understand existed prior to the Applicant taking possession of the Property in 2015 save for the shed which was erected subsequently.
  
4. The hearing started at 10.30am at the Metropole Hotel in Llandrindod. It was attended by the Applicant and her Counsel and the Respondent. The Applicants background to the case is described in her witness statement of 7 June 2018 which states *inter alia*...” On the 27 July 2015 I completed the purchase of 5 Crossways Park, LD1 5RD (“the Plot”) from the previous owner Sandra Fletcher. At the time of the purchase I was provided with a written statement dated 27 July 2015 (“the First Written Statement”). The first written statement contained the following key information:
  - a. The date of assignment between the previous owner and I was 27 July 2015;
  - b. The specification of the park home (34ft x 10ft);
  - c. The current pitch fee of £25.00 per week;
  - d. The pitch fee review date of 01 March each year;
  - e. The date the agreement of the written statement would start is 03 August 2015;
  - f. The date the pitch fee would become payable is 03 August 2015;
  - g. A plan showing the size, location and boundaries of the Plot; and
  - h. The site owner was Ms Molly Penfold.”
  
5. The salient points of the remaining witness statement are summarised below. The details of the first and third points were subsequently agreed between the parties and therefore are not considered further.

Firstly; the validity of the First Written Statement in terms of its execution and payments stemming from it;

Secondly, the plan of the demised Property attached to the agreement; and

Thirdly, new Written Statement dated 1 March 2018 provided by the Respondents.

6. The Respondent's case in essence consists of;

Firstly; the site had previously been managed entirely by oral agreements under the previous ownership of Gwendolen Penfold a close relative of the current owners [the Respondent] who acquired the site on 1 January 2017;

Secondly; that the day to day running of the site in terms of collecting the rents and maintenance was left in the hands of a warden who unfortunately did not have authority to sign the First Written Statement;

Thirdly; that the 10% commission owed had not been paid; and

Fourthly, the level of pitch fee payable.

Fifthly; the plan which is to be attached to the appropriate Written Statement.

The above first, second, third and fourth points were subsequently resolved by the parties and therefore need no further consideration by the Tribunal.

7. The Respondent stated at the hearing that the relevant plan which determined the boundary of the Property and the activities to which the land surrounding the mobile home could be used was that adduced at page 95 of the bundle. The plan is a drawing on blocked graph paper which is in a diagrammatic format that unfortunately does not clearly show its location or boundaries in relation to an ordnance survey base map. The 'proforma' New Written Statement says the plan should show: -

- a. the size and location of the pitch;
- b. the size of the base on which the mobile is to be stationed; and
- c. measurements between identifiable fixed points on the site and the pitch and base.

8. The plan adduced by the Respondent contains a superimposed coloured key which shows;

Black Base of Mobile Home

Red Boundaries

Blue Space we allow you to enjoy.

9. During the course of the hearing the Applicant and Respondent agreed that the Pitch Fee dispute had been settled. It being agreed that the Applicant owed the Respondent £17.15 up to 26 August 2018. The Tribunal considered the

settlement appropriate and was pleased the Applicant and Respondent had agreed this issue.

10. During the course of the hearing the Applicant and Respondent further agreed that the New Written Statement under the Mobile Homes (Wales) Act 2013 was acceptable to both parties save for the plan. The only issue in dispute which the Tribunal was asked to resolve therefore was whether the plan shown on page 93 or 95 should be included in the New Written Statement. The plan at page 93 being preferred by the Applicant and the plan at page 95 being prepared by the Respondent.
11. The Tribunal considered the plan produced by the Respondent to contain information in the coloured key to be nugatory. It came to this conclusion for the following reasons;
  - a. The inspection revealed a clear physical boundary which had existed before the Applicant acquired the pitch;
  - b. The inspection revealed a clear physical boundary that delineated clearly the limits of the demised Property;
  - c. The uses to which the land surrounding the mobile home formed a natural extension of the activities that would be associated with a mobile home such as; car parking, garden, storage shed and placement of gas canisters;
  - d. The area bounded in red being 1ft wide on all sides of the mobile home bore no relationship to that found on inspection;
  - e. The area bounded in red appeared to provide no meaningful demarcation in terms of any of the agreements adduced;
  - f. The area bounded in blue and identified as..."space we allow you to enjoy" appeared to offer no meaningful purpose and could lead to confusion as to its understanding; and
  - g. The cartography was inadequate in that it was purely diagrammatic and did not identify the location or relate to a fixed point on the site.
12. The Tribunal considered the plan produced by the Applicant and found it acceptable save that it was cartographically inadequate in that it was purely diagrammatic and did not identify the location or relate to a fixed point on the site.
13. The Tribunal whilst preferring the plan prepared by the Applicant required it to be redrawn on an ordnance survey base at a scale of 1:500, all measurements to be metric and meeting the requirements of the New Written Statement by showing;
  - a. the size and location of the pitch;

- b. the size of the base on which the mobile is to be stationed; and
  - c. measurements between identifiable fixed points on the site and the pitch base.
14. In terms of costs the Applicant had incurred considerable legal costs in retaining a firm of solicitors and counsel. Counsel considered that the Respondent had not acted reasonably in response to the application or in previous discussions with the Applicant.
15. The Respondent stated whilst not incurring the costs of legal representation he had incurred considerable travelling costs to attend the hearing.
16. The Tribunal considered that the conduct of neither party warranted application of Section 34 of *The Residential Property Tribunal Procedures and Fees (Wales) Regulations 2016*.

## **ORDER**

17. Following agreement between the Applicant and Respondent. The Tribunal orders that the New Written Statement be varied in accordance with paragraph 13 above. Within 28 days of the date of this order it is to become the operative agreement.
18. Either party may appeal this decision to the Upper Tribunal. An application for permission to appeal should in the first instance be made to this Tribunal within 21 days of the date upon which this decision was made.

DATED this 5<sup>th</sup> day of September 2018



CHAIRMAN *Jack Rostron*

## THE LAW & APPEAL TO THE UPPER TRIBUNAL

1. Section 231 of the Housing Act 2004 allows a party following a refusal to appeal from the Residential Property Tribunal to seek permission from the Upper Tribunal.
2. Regulation 37 of the *Residential Property Tribunal Procedures and Fees (Wales) Rags, 2016* explains the appeals procedure.
3. Part 3 of the *Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010 S.1. 2010 No. 2600 (L. 15)* as amended explains the process for making an application to appeal.
4. You must apply for permission to appeal in writing to be received by the Tribunal no later than 14 days after the date on which the tribunal that made the decision under challenge sent notice of its refusal of permission to appeal to the Applicant.

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