

Y TRIBIWNLYS EIDDO PRESWYL

RESIDENTIAL PROPERTY TRIBUNAL (WALES)

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Reference: RPT/0015/05/18

Property: 14 Rover Way, Tremorfa, Cardiff, CF24 2RX

Applicant: Cardiff County Council

Respondent: Ms Jamie James

Tribunal: Jack Rostron
Mark Taylor MRICS
Carole Calvin-Thomas

Appearances for Applicant:

Richard Grigg Solicitor
Margaret Sousa – Lima Trainee Solicitor
Anthony Melhuish Site Manager
Ian Ephraim Supported Accommodation Outreach Manager

Appearances for Respondent:

Ms Jamie James

REASONS AND DECISION OF RESIDENTIAL PROPERTY TRIBUNAL

The Tribunal refuses permission to appeal to the Upper Tribunal.

Permission to appeal will only be granted where:

- (a) The Tribunal has wrongly interpreted or applied the law;
- (b) The Tribunal has wrongly applied or misinterpreted or disregarded a principle of valuation or professional practice;
- (c) The Tribunal has taken account of irrelevant considerations or failed to take account of relevant considerations or evidence or there was a substantial procedural defect;
- (d) The point or points at issue is/are of potentially wide implication.

BACKGROUND

1. An application dated 22 May 2018 was made by site owner Cardiff County Council for determination of new level of pitch fee under the provisions of the *Mobile Homes (Wales) Act 2013*. The application relates to a pitch 14 Rover Way Caravan Site, Tremorfa, Cardiff, CF24 2RX.
2. The Respondent objected to the proposed increase because *inter alia*: - the pitch was not maintained adequately especially the cracks in the concrete, boundary wall, lop sided level of the pitch, general lack of maintenance etc.
3. Following a site inspection and hearing on 15 November 2018 the Tribunal decided the proposed increase in pitch fee dated 2 April 2018 be reduced by 50p to £82.44per week.
4. The Applicant applied for permission to appeal to the Upper Tribunal. The application was received by the Tribunal on 24 December 2018.
5. The Applicant has cited the reasons for their application in two paragraphs numbered 1. a) b) c) d) and 2. a) b) c). The Tribunal's reasons for refusing permission to appeal are dealt with against each of these sub-paragraphs as follows.
6. Regarding 1 a). it is suggested the Tribunal wrongly interpreted the relevant law. The relevant law was provided by the Tribunal in its decision at paragraph 9. It is further suggested the Tribunal took into consideration the condition of the site on the day of the inspection without considering the amenity of the site at the last review date. The results of the inspection are recorded in the decision at paragraphs 10 – 13. Concerning the amenity of the site at the last review date the Tribunal heard evidence from both parties at the hearing regarding the state of the site in previous years including the previous review date. Neither party provided, nor could reasonably be expected to provide, a precise description of the level of amenity at the previous review date. However, sufficient oral, written and physical evidence was available for the Tribunal to take a view on the decline in amenity since then. The Respondent at paragraph 7 provided written evidence regarding amenity on the site supplemented by oral evidence at the hearing. As a finding of fact, the Tribunal determined that there had been some decline in amenity since the last review date and reduced the proposed increase in pitch fee appropriately. The relevant paragraphs from the decision are 19 – 22.
7. In terms of 1 b), which says the Tribunal found the cracks in the concrete unacceptable but did not have evidence of when the cracks appeared and it did not compare it to the last review date. The cracks in the concrete surface at the inspection were considered by the Tribunal to represent an unacceptable level of amenity. The written evidence of the Respondent at paragraph 7 of the decision letter supplemented by oral evidence at the hearing suggested the cracks had continued to widen over several years including widening since the last review date. The width of the cracks had caused the Respondent to

stumble. The Tribunal accepted the evidence of the Respondent and decided there was a decline in amenity since the last review date.

8. Concerning 1 c), which suggests the crack in the boundary wall did not represent a decline in amenity. The Tribunal heard evidence at the hearing that the crack in the boundary wall existed at the last review date. This is confirmed by the Applicants structural survey which recommended at paragraph 6.2..." The cracking in the boundary wall should be repaired by repointing and the coping re-bedded...". The Tribunal considered that as a finding of fact the lack of implementation of the site owners own recommendation constituted a decline of amenity including the period since the last review date and had probably widened since that date because of lack of maintenance.
9. Reason 1 d), argues that it is the amenity of the site that the Tribunal has to consider rather than the pitch. This reason for appeal simply fails in terms of the law and the application that was before the Tribunal for determination of the level of pitch fee. The law is clearly stated in paragraphs 9 of the decision. In particular sections 47 (1), 48 (1) and 50 (1) all explicitly refer to determining the level of pitch fee. Similarly, the application was for a determination of the level of pitch fee.
10. Paragraph 2 a) suggests that the Tribunal did not take account of the structural inspection report from May 2014 with regard to the cracks in the boundary wall and it did not make a comparison of the condition of the wall compared to the date of inspection. The Tribunal did take account of the existence of the crack in the boundary wall both prior to and after the last review date. Whilst the Tribunal was not presented with any scientific or technical measurement of the worsening of the crack since the last review date which would have been the only way to objectively measure its widening or spreading, the oral evidence of the Respondent as to the worsening of the crack was accepted by the Tribunal. resulting in declining amenity of the pitch.
11. Reason 2 b) largely repeats the logic dealt with in reason 1 d). Without scientific measurement from appropriate instrumentation placed on the cracks in the concrete slab or indeed the boundary wall it is not possible for anyone to objectively determine the widening that has occurred since the last review date. However, the written and oral evidence of the Respondent that the cracks has continually widened from a time before and after the last review date was accepted by the Tribunal. It therefore concluded that this represented a decline in amenity since the last review date. The structural report referred to essentially dealt with the allegation by the Respondent that the lop-sided level of the pitch had resulted in damage to the mobile home which is mentioned in paragraph 5 of the determination. The structural report was not considered by the Tribunal to be relevant to the widening cracks observed outside the footprint of the mobile home.
12. Reason 1 c) suggests the Tribunal failed to take into account that the amount spent on maintenance has increased over the last two years. The Tribunal did take account of the maintenance expenditure pattern and indeed requested further information on this from the Applicant. The Tribunal also considered the

quality of maintenance resulting from the site owner's expenditure. It concluded that there had been a marginal increase in expenditure over the last two years but a considerable decline from previous years. The Tribunal found as a finding of fact that the expenditure had not prevented a decline in amenity. However, it did have sympathy with the difficulties faced by the Applicant as discussed in paragraphs 19 – 22 of the decision.

13. For the reasons discussed above the Tribunal decided to refuse permission to appeal to the Upper Tribunal.

DATED this 10th day of January 2018

A handwritten signature in black ink, appearing to be 'Jack Rostron', written in a cursive style.

Jack Rostron
CHAIRMAN