

# **Y TRIBIWNLYS EIDDO PRESWYL**

## **RESIDENTIAL PROPERTY TRIBUNAL**

**Reference: RPT/0013/03/13/Morfa Ddu**

In the Matter of Morfa Ddu Park, St. James Drive, Prestatyn, Denbighshire

In the matter of an Application under Paragraphs 16(b), 17(4) and 17(8) of Chapter 2 of part 1 of schedule 1 to the Mobile Homes Act 1983 (as amended) (the Act)

**APPLICANT:** Flannigan Estates Limited

**RESPONDENTS:** Mrs. J Blackshaw (owner of no 3, Morfa Ddu Park)

### **APPLICATION FOR LEAVE TO APPEAL BY MRS. J. BLACKSHAW**

1. On 4<sup>th</sup> July 2013, the Tribunal heard the above application in relation to an increase in the pitch fees charged by Flannigan Estates Limited (Flannigan). The Tribunal's decision is dated 14<sup>th</sup> August 2013. This decision is in relation to an application for leave to appeal to the Upper Tribunal by Mrs. Blackshaw made by letter dated 27<sup>th</sup> August 2013. The Tribunal convened to consider this application at the Sychnant Pass Hotel, Conwy on 10<sup>th</sup> October 2013.

2. In considering this application, the Tribunal had regard to the principles contained in the Lands Tribunal's practice directions regarding appeals at paragraph 4.2. These provide that applicants must specify whether their reasons for making the application fall within one or more of the following categories:

- a) The decision shows that the Tribunal wrongly interpreted or wrongly applied the relevant law
- b) The decision shows that the Tribunal wrongly applied or misinterpreted or disregarded a relevant principle of valuation or other professional practice
- c) The Tribunal took account of irrelevant considerations, or failed to take account of relevant considerations or evidence, or there was a substantial procedural defect
- d) The points at issue is or are of potentially wide implication.

3. Mrs. Blackshaw says that she is appealing on the grounds that the Tribunal did not carry out procedures outlined in their Residential Property Tribunal document. She refers to the case officers, administrative staff dealing with correspondence and paperwork. She says the case workers should have been in touch with Ms. Prendergast to ask where her submission was and why the Regional Manager, responsible for the work of the case officers, did not query this.

4. The information booklet is produced for the general guidance of applicants. The Tribunal has regard to the Residential Property Tribunal Procedures and Fees (Wales) Regulations 2012. In any event, the only possible ground of appeal would be point c above (that there was a substantial procedural defect). The action, or lack of action, by administrative staff not under the direction of the Tribunal and not forming part of the Hearing or the decision cannot form the basis of an appeal to the Upper Tribunal.

5. Mrs. Blackshaw also submits that the Hearing should have stopped instead of allowing Ms. Prendergast to read out her statement. As a party may give evidence at a Hearing and address the Tribunal on the evidence and on the law, Ms. Prendergast would have been entitled to give her evidence without a statement, or the Tribunal could have adjourned the Hearing. The Tribunal, for the reasons given in the Order and because Miss. Wilde and Mr. Bowe (whom Mrs. Blackshaw had agreed would represent her in all matters relating to her application) had declined the offer of an adjournment, allowed Ms. Prendergast to read her statement. Paragraphs 21 and 22 of the order set out the evidence Ms. Prendergast gave. Paragraphs 32 to 33 set out the evidence relied upon by the Tribunal in arriving at its conclusions. The only evidence contained in the statement relevant to the Tribunal's decision was in relation to maintenance. As the major issue for the Respondents was the asserted lack of maintenance since 2009 either the Tribunal or Miss. Wilde and Mr. Bowe were likely to have asked questions of Ms. Prendergast as to maintenance and she would have given evidence about this. There could therefore be no substantial procedural defect in allowing Ms. Prendergast to read her statement. In any event, the Tribunal, at the request of Miss. Bowe, allowed several residents to read out statements. These had not been submitted in advance either.

6. Mrs. Blackshaw concludes that had the Tribunal had Ms. Prendergast's submission before the Hearing it would have been obvious when the Inspection took place that it would not be easy to put a 23<sup>rd</sup> home on the site. This was not an issue before the Tribunal and therefore cannot be the subject of an appeal to the Upper Tribunal. Mrs. Blackshaw also complains that grass cutting and gutter cleaning etc had been cleaned on 27<sup>th</sup> June 2013, the first time in 12 months. There was considerable flooding on the site and maintenance charges were included in the pitch fee but nothing was being done.

7. The issue for the Tribunal was to determine the amount of the pitch fee (see paragraph 30 of the Order) and that included a determination as to whether there had been any loss of amenity since the last review date. The evidence from the Respondents (see paragraph 24) was that there had been a lack of maintenance over the previous 12 months and that this constituted a loss of amenity. The Tribunal accepted that the issues raised in respect of roads and kerbs, drainage, fencing and general maintenance were issues the residents had had for some time, at least before the last review date so that there could be no loss of amenity since the last review date. Clearly Mrs. Blackshaw disagrees with the Tribunal's conclusion but that, of itself, is not a ground for an Appeal to the Upper Tribunal. Mrs. Blackshaw has not identified any matters coming within the practice direction. The Tribunal refuses leave to appeal.

Dated this 5<sup>th</sup> day of November 2013



Chairperson