Y TRIBIWNLYS EIDDO PRESWYL

RESIDENTIAL PROPERTY TRIBUNAL

Reference: RPT/0014/03/13/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: Mr. & Mrs. Petty (owners of no 5, Morfa Ddu Park).

APPLICATION FOR LEAVE TO APPEAL BY MR AND MRS PETTY

1. On 4th July 2013, the Tribunal heard the above application in relation to an increase in the pitch fee charged by Flannigan Estates Limited (Flannigan). The Tribunal's decision is dated 14th August 2013. This decision is in relation to an application for leave to appeal to the Upper Tribunal by Mr. and Mrs. Petty made by Mr. Petty's letter dated 30th August 2013.

2. The Tribunal convened to consider this application at the Sychnant Pass Hotel, Conwy on 10th October 2013. 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.

3. 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.

4. Mr. Petty complains that procedures were not followed and that what he was saying in his letter he should have been given an opportunity to say at the Hearing.

5. Mr. Petty then says that Flannigan stated in their application to the Tribunal that the last review of the pitch fee was by agreement and he asks for a copy and disputed the last review was by agreement. The last application to the Tribunal had been turned down as it was out of time. Mr. Petty asks various questions about this.

6. The issue for the Tribunal was to determine the amount of the new pitch fee from January 2013. Nothing turned on the fact Flannigan had made a previous application. The issue had been raised by Mr. Bowe (the owner of No. 6) in a letter dated 12th June 2013 and he pointed out it was incorrect there had been an agreement. He referred to Ms. Prendergast's letter dated 22nd June 2012 accepting the pitch fee payment as the Tribunal had refused Flannigan's application as being out of time. This issue does not come within any of the categories in the practice direction.

7. Mr. Petty complains that Ms. Prendergast was allowed to read out her statement which had not been sent to the Tribunal or the Respondents in advance. The Tribunal's decision deals with this at paragraph 20 and refers to Regulation 30 of the Residential Property Tribunal Procedure and Fees (Wales) Regulations 2012. Miss. Wilde and Mr. Bowe, who had been appointed by all the Respondents to deal with all aspects of their dispute with Flannigans about the increase to the pitch fee, had been offered an adjournment and they had declined this. Even if the Tribunal refused to allow Ms. Prendergast to put in her written statement, she was entitled to give her evidence orally. The only evidence contained in the statement which was relevant to the Tribunal's decision was in relation to maintenance. As the major issue for the Applicants 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. The Order refers to the evidence given about maintenance. 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.

8. Mr. Petty then complains that Ms Prendergast was allowed to refer to more than one provision of the Act at the meeting, which he had been told they could not do. He complains the guidance procedure states an application to the Tribunal may refer to only one provision of the Act but Ms. Prendergast was allowed to refer to 2013. There has been no substantial procedural defect as the decision deals only with the loss of amenity.

9. Mr. Petty complains that Ms. Prendergast was not the site owner so should not have been allowed to attend the Inspection and he had not been asked whether she could be present. Mr. Petty was not asked as he had appointed Miss. Wilde and Mr. Bowe to deal with all aspects of his dispute with Flannigan about the increase to the pitch fee and as Ms. Prendergast is the operations manager of Flannigan, she was clearly allowed to be present at the Inspection. There cannot therefore have been a substantial procedural defect.

10. Mr. Petty complains he was not allowed to ask questions at the Hearing and he was allowed to make a statement at the end but he was put off by the Tribunal's question as to how long he would be. Mr. Petty was not allowed to ask questions for the reasons previously given (he had appointed Miss. Wilde and Mr. Bowe to speak on his behalf). The question from the Chair was to ascertain how much further Hearing time was needed (ie should the Hearing continue through lunch or adjourn). In any event, Mr. Petty was allowed to make his statement and his own representative, Mr. Bowe, at the end of the Hearing, asked everyone who wished to say any more to do so. A number of Respondents did make further statements, including Mr. Petty. Mr. Petty has not said how he has been prejudiced or what further evidence he needed to elicit from Ms. Prendergast.

11. Mr. Petty complains he could not hear Mr. Prendergast reading her statement but could not say so as he had been told he was not allowed to speak. Again, the statement had been give to Mr. Petty's representatives before it was read out and they declined an adjournment.

12. Mr. Petty complains that the Hearing had been postponed from 3rd to 4th July 2013 and he had not been consulted and he appears to doubt that the reason for the postponement was really due to a funeral as two weeks' notice is normally given of a funeral. The latter point is not correct and the request for a postponement was dealt with through Miss. Wilde and Mr. Bowe for the reasons previously given.

13. Mr. Petty complains he was not allowed to refer to the gates breaking down in 2013 but Ms. Prendergast was allowed to refer to harassment and abusive language in 2013. This is dealt with in paragraph 22 of the decision. In any event the only issue for the Tribunal was whether there had been any loss of amenity since the last pitch fee increase. The Tribunal based its findings substantially upon evidence given by the Respondents. As Ms. Prendergast was entitled to give her evidence orally, Mr. Petty has not been prejudiced by reason of her reading out a statement instead.

14. Mr. Petty complains that the Tribunal has failed to record submissions and questions asked at the Hearing. The Order dated 14th August 2013 is not the record of proceedings but the decision of the Tribunal on the evidence given. Not every point raised by the Respondents at the Hearing was relevant to the issue for determination by the Tribunal. No substantial procedural defect has been raised, save that it is said that the Chair refused to allow Ms. Wilde to ask questions of Ms. Prendergast. However, the evidence taken is referred to in the Order, from Ms. Prendergast, Miss. Wilde and Mr. Bowe and other residents. There has been no substantial procedural defect.

15. Mr. Petty has not identified any matters coming within the practice direction. The Tribunal refuses leave to appeal.

Dated this 5th day of November 2013

Chairperson