

Y TRIBIWNLYS EIDDO PRESWYL

RESIDENTIAL PROPERTY TRIBUNAL

Reference: RPT/0015/03/13/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. and Mrs. Bowe (owners of no 6, Morfa Ddu Park)

APPLICATION FOR LEAVE TO APPEAL BY MR. AND MRS. BOWE

1. On 4th 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 14th August 2013. This decision is in relation to an application for leave to appeal to the Upper Tribunal by Mr. and Mrs. Bowe made by letter dated 29th August 2013. The Tribunal convened to consider this application at the Sychnant Pass Hotel, Conwy on 10th 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. Mr. Bowe states he considers the manner in which the Tribunal was conducted to be unlawful and asks for permission to appeal or for the decision to be struck off and a date set for a new Hearing. The latter is not a procedure provided for the Residential Property Tribunal Procedure and Fees (Wales) Rules 2012 (the Regulations). As to the former, Mr. Bowe has to identify a ground coming within one of the categories set out in paragraph 3 above. He submits that a written statement produced by Ms. Prendergast at the Hearing should have been declared inadmissible. He states that he refused to accept this document, asserting it to be a crude attempt to obtain advantage. He complains that the Tribunal accepted a pathetic excuse from Ms. Prendergast and that the offer of an adjournment to consider the statement was an effrontery and that the Chair had lost control of the meeting. It was said that Flannigans did not have to present any verifiable evidence but the Respondents had complied with all the Tribunal's procedures. It is asserted that the organisation is incompetent and on this basis alone, the Applicant's case should have been dismissed and an order made for a new Hearing later in the year. It is asserted that by accepting this statement on the day, the Respondents were prevented from providing documentary evidence. Mr. Bowe complains that the Tribunal allowed the Applicant to put in an unsubstantiated fictitious statement on the day, which the Tribunal accepted, but the Chair had rejected photographs of the conditions existing on Morfa Ddu Park during 2012, indicating double standards.

4. As a party may give evidence at a Hearing and address the Tribunal on the evidence and on the law, Ms. Prendergast was 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 declined 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 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 in relation to 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. Wilde, allowed several residents to read out statements. These had not been submitted in advance either. As for the photographs, as there was an issue as to when the photographs had been printed, they could not be accepted as representing the conditions on site in 2012. In any event, the Tribunal had inspected the park prior to the Hearing.

5. Mr. Bowe also asserts that the Respondents were required to provide 5 copies of all documents and in not submitting the same instructions to Ms. Prendergast, double standards had been applied. This is not correct. The same instructions were issued to Flannigan.

6. Mr. Bowe then asserts Ms. Prendergast had clearly stated in her statement that Morfa Ddu Park had since its purchase in 2009 been in receipt of a full maintenance programme. It is true that Ms. Prendergast makes reference to maintenance works but she does not make the statement as claimed by Mr. Bowe. She accepted in evidence that there was no specific schedule for cleaning and no maintenance schedule. Mr. Bowe asserts that the fact that Ms. Prendergast was not able to produce job or work sheets for works carried out in 2012 is proof of the Respondent's case that there had been no works carried out to the main gates, kerbs and fencing and this was proof of the loss of amenity. Mr. Bowe considers that the Order accepted that a full programme of works had been in operation since 2009. This is not correct. 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. Indeed, this was the evidence given by Miss Withers and Mr. Petty at the Hearing. Mr. Shaw gave evidence of numerous occasions over 4 years with the main gate. Mr. Bowe's own letter dated 15th December 2011 makes reference to issues about the drainage system, kerbs and the road, fencing, lighting and the gates.

7. Mr. Bowe then says that the Chair had been unable to record accurately the proceedings and, in relation to the Tribunal's findings that that the condition of the site was not gradually deteriorating (paragraph 19 of the order) asserts it was never said by the Respondents that the site was gradually deteriorating. In fact, this statement was contained in a written submission by Miss. Wilde which she also read out at the Hearing. Mr. Bowe says this indicates that the Tribunal did not accept his version of events and that the Tribunal had accepted Ms. Prendergast's Statement that a full programme of maintenance was in place. Mr. Bowe asserts the lack of maintenance was a loss of amenity during 2012. This was not accepted by the Tribunal (see above).

8. In relation to the loss of gas supply for one day in December 2012, Mr. Bowe asserts that Ms. Prendergast had said that the fault was due to a telementary system fitted to the storage tanks which automatically registers gas levels to the park supplier and that Calor had confirmed to him that no such system had been fitted so Ms. Prendergast's statement was wildly inaccurate. However, Ms. Prendergast did not state such a system had been installed and failed, she stated she wanted to have such a system installed. In any event, Mr. Bowe did not raise this evidence about the call to the supplier at the Hearing.

9. Mr. Bowe asserts that instead of referring to section 20 of the Mobile Homes Act, section 22c of the Act should have applied. This was not a submission made to the Tribunal at the Hearing. In any event, section 20 refers to the presumption as to the amount of any increase in the pitch fee and the applications related to an increase in the pitch fee.

10. Mr. Bowe has not identified any matter coming within the practice direction. The Tribunal refuses leave to appeal.

Dated this 5th day of November 2013



Chairperson