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RESIDENTIAL PROPERTY TRIBUNAL

Ref: RPT/0010/04/18

In the matter under the Mobile Homes (Wales) Act 2013 – Section 54(1)

In the matter of Erwporther Chalet Park, Happy Valley, Tywyn, Gwynedd, LL369HU

Applicants: Erwporther Chalet Owners Association

Respondents: Mr R M Lewis/Mr R D Lewis/Mr N A Lewis
DMPC

DECISION

1. On 23 April 2018 the tribunal received an application dated 17th of April 2018 from Mr Iain Anderson on behalf of the Erwporthor Chalet Owners Association asking for a determination in relation to a number of different questions under section 54 (1) of the Mobile Homes (Wales) Act 2013 ("the Act") The respondents were named as the landlords and owners of Erwporthor Chalet Park, Tywyn, Gwynedd, namely Mr RM, RD and N A Lewis.

2. The respondents are represented by Davis Meade Property Consultants Limited (DMPC). Mr Philip Meade wrote to the tribunal on 1 May 2018 suggesting that the Act does not apply to the park because it is a holiday site within the definition of section 2(3) of the Act. He also indicated that he did not believe that any of the chalets fall within the definition of "mobile home" as set out in section 60 of the Act. He asked for the tribunal to make a determination upon whether or not it had jurisdiction to hear the application.

3. Section 2(3) of the Act says that a holiday site "means a site in respect of which the relevant planning permission or the site licence for the site under the Caravan Sites and Control of Development Act 1960 –

    a. is expressed to be granted for holiday use only, or
    b. requires that there are times of the year when no mobile home may be stationed on the site for human habitation."

The Act does not apply to holiday sites as is made clear by section 2(1)(b) of the Act. The tribunal emailed the parties to this effect on 18 May 2018 indicating that if Erwporthor was a holiday site then the tribunal had no jurisdiction and ordered that DMPC were to provide a copy of the relevant planning permission or site licence for the site under the Caravan Sites and Control of Development Act 1960 by 30th of May 2018.

4. By email of 22nd of May 2018, Mr Meade supplied a copy of the relevant planning permissions dating back to 1968 in 1969. He pointed out that the planning permission was granted on 21 October 1968 for the direction of not more than 70 holiday bungalows. He also pointed out that permission for the revised layout dated 13th of October 1969 specifically stated that none of the chalets should be used for permanent residential accommodation and that every lease includes a covenant at clause 2(2) to the effect that the tenant shall only use the premises as a holiday dwelling. The tribunal wrote to the parties and to Mr Anderson (who is the secretary of the Residents Association) on 31 May 2018 and I indicated in the light of the email and enclosures supplied by Mr Meade as quoted above, that "this is a holiday site within section 2 (3) of the Mobile Homes (Wales) Act 2013 and that the Act does not therefore apply we do not have jurisdiction to consider this matter under the Act." I did indicate that if Mr Anderson and those whom he represents took a different view on jurisdiction than any legal submissions were to be sent to the tribunal by 11 June 2018. The chairman of the Residents Association, Mr Fitzgerald replied on behalf of Mr Anderson and sought further time to send in further information namely and this was granted.

5. On 18 June 2018 the tribunal received further submissions and documents from Mr Fitzgerald in support of the Residents' contention that the tribunal does have jurisdiction to consider this matter. These documents were a skeleton argument in an earlier 2006 case before the Leasehold Valuation Tribunal for Wales. This was a case that had been brought by a Mr John Moss and by Mr Fitzgerald challenging the payability of service charges at Erwporthor Chalet Park. The skeleton argument was prepared by Counsel Angus Burden of St Philips Chambers Birmingham and dated 7th of August 2006. Mr Fitzgerald also supplied the decision of the LVT for this case that had been heard on 7 November 2006 with the written decision being issued on 4 January 2007. I have carefully considered and read those two documents. It is clear that jurisdiction was an issue for the LVT in 2006. However the jurisdictional argument at that time was whether or not the tenancies of the chalets came within the definition of a "dwelling" for the purposes of the Landlord and Tenant Act 1985 and thus whether the tribunal had jurisdiction to consider and determine the reasonableness of the service charges.

6. The skeleton argument prepared by Mr Burden does not assist the applicants in this present matter at all. Indeed Mr Burden turns his mind to the question of whether the premises (the chalets) were used as a dwelling. It is clear that Mr Burden's opponent in 2006 had suggested that the right granted under the lease was to occupy the premises as a holiday dwelling and not for permanent residential occupation and that for the purposes of the 1985 Act the dwelling must be a place where "one makes one's home". His opponent suggested that this does not include a holiday property because permanent residential occupation cannot be made out for such property.[1]

7. Mr Burden argued that there was nothing in the statute which required the dwelling to be the only or principal or permanent residence and said that "further, it does not seek to exclude holiday homes from its ambit." Later he puts matters plainly namely "*Accordingly, it is submitted that a holiday home properly comes within the ordinary meaning of "dwelling"*

[1] Paragraph 7 of Mr Burden's skeleton argument.

for the purposes of the Act."[2] Mr Burden was at no stage arguing that the chalets were not holiday homes and in fact the contrary was the case. The 2007 decision of the LVT does not assist the current applicants since it was not concerned with whether or not the Act or its predecessor Act applied but whether or not the leases came within a different piece of legislation, namely the 1985 Act and its consequences for a service charge application.

8. Consequently, we accept the submissions of Mr Meade and the evidence that he has supplied as detailed above. The applicants have not provided any argument or evidence to gainsay the points made about the covenant at clause 2(2) to the effect that the tenant shall only use the premises as a holiday dwelling. It is clear from the planning permissions submitted and granted on 13 October 1969 and 25th of September 1969 that none of the chalets are to be used for permanent residential accommodation. Accordingly, Erwporthor is a holiday site and the Act does not apply. In the circumstances it is not necessary to separately consider whether or not the chalets come within the definition of mobile home under section 60 of the Act.

9. The tribunal does not have jurisdiction to consider this application.

Dated this 6th day of July 2018

CHAIRMAN

[2] Paragraph 13 of the skeleton argument.