

Y TRIBIWNLYS EIDDO PRESWYL  
RESIDENTIAL PROPERTY TRIBUNAL  
LEASEHOLD VALUATION TRIBUNAL

References: RPT/0012/03/13/Morfa Ddu  
RPT/0013/03/13 Morfa Ddu  
RPT/0014/03/13 Morfa Ddu  
RPT/0015/03/13 Morfa Ddu  
RPT/0016/03/13 Morfa Ddu  
RPT/0017/03/13 Morfa Ddu  
RPT/0018/03/13 Morfa Ddu  
RPT/0019/03/13 Morfa Ddu  
RPT/0020/03/13 Morfa Ddu  
RPT/0021/03/13 Morfa Ddu  
RPT/0022/03/13 Morfa Ddu  
RPT/0023/03/13 Morfa Ddu  
RPT/0024/03/13 Morfa Ddu  
RPT/0025/03/13 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. Withers (owners of no 1, Morfa Ddu Park)  
Mrs. J Blackshaw (owner of no 3, Morfa Ddu Park)  
Mr. & Mrs. Petty (owners of no 5, Morfa Ddu Park)  
Mr. & Mrs. Bowe (owners of no 6, Morfa Ddu Park)  
Mr & Mrs. Bowers (owners of no.7, Morfa Ddu Park)  
Mr & Mrs. Shaw (owners of no. 8, Morfa Ddu Park)  
Mr. & Mrs. McLauchlan (owners of no. 9 Morfa Ddu Park)  
Miss. Wilde (owner of no. 11, Morfa Ddu Park)  
Miss. Smith (owner of no. 12, Morfa Ddu Park)  
Miss. Huxley (owner of no. 15, Morfa Ddu Park)  
Miss. Hughes (owner of no.17, Morfa Ddu Park)  
Mr. & Mrs. Hogan (owners of no. 18, Morfa Ddu Park)  
Miss Tyas (owner of no. 20, Morfa Ddu Park)  
Mr. Hughes (owner of no. 22, Morfa Ddu Park)

ORDER

1. Flannigan Estates Limited (Flannigans) is the owner of the site known as Morfa DduPark, St. James Drive, Prestatyn. Flannigans had made an application to the Residential Property Tribunal (Wales) in 2012 in respect of an increase to the pitch fees, which had been rejected as it was out of time. In November 2012, Flannigans wrote to all the owners of the park homes on Morfa Ddu Park proposing a new pitch fee from 1<sup>st</sup> January 2013 based on the RPI for September 2012 of 2.6%. The new monthly pitch fee was to be £150.25.

2. On 6<sup>th</sup> March 2013, Flannigans made 14 applications to the Tribunal for a determination in respect of the latest proposed increase in the pitch fee for 2013, for the park home owners set out above. Flannigans said it believed the proposed pitch fee was fair as there had been no loss of amenity in the last 12 months.
3. Directions were given by a procedural chair on 14<sup>th</sup> March 2013. The Respondents were directed to notify the Tribunal by 4<sup>th</sup> April 2013 whether Flannigans' proposal for an increase in the pitch fee was accepted and if not, were to submit a statement setting out their grounds for non acceptance or counter proposal. Flannigans were given until 17<sup>th</sup> April 2013 to respond.
4. On 27<sup>th</sup> March 2013, Miss. Wilde and Mr. Bowe submitted letters addressed to Flannigans rejecting the pitch fee increase and statements of reasons for the rejections and a letter dated 2<sup>nd</sup> April 2013 signed by all the Respondents confirming that representatives of their Residents Association (Miss. Wilde and Mr. Bowe) deal with all aspects of their dispute about the proposed increase to the pitch fee. The letter to Flannigans rejecting the proposed increase complained that Flannigans had not agreed to their request for planned maintenance, nor agreed to discuss with the residents outstanding issues on the site and ignored its duty of care towards the residents and failed to implement any of the promised site improvements which had been agreed between the residents and the site owner.
5. Mr. Bowe had written to Flannigans on 15<sup>th</sup> December 2011, following a meeting of the Residents Association, rejecting Flannigans proposal to increase the pitch fee for 2012, as they wished the following works to be completed: rectification of serious on site flooding and the installation of a functional surface water drainage system, replacement of damaged kerb stones and flagging, installation of drop kerbs, laying of final top coat to the road surface, implementation of any works recommended by Welsh Water, the provision of a planned maintenance system to include road clearing, drain maintenance, exterior and interior fencing, weed control and removal, updating of street lighting, replacement of the personal entry gate and the resolution of health and safety issues in relation to the main security gate.
6. Mrs. and Mrs. Withers (No. 1) complained, in December 2012, that there had been no maintenance, they had lived in a builders' yard for 3 years and 5 months. Lorries and vans thundered in and out and skips sat for weeks at a time. They were still looking at a field of weeds and barbed wire and a very ugly advertising board overshadowing their garden.
7. Miss. Blackshaw (No. 3) complained the main gates broke down regularly and were therefore left wide open, kerb stones were broken and dropped kerbs had not been installed, there was considerable flooding on the site when it rained and no maintenance had been done for 2 years.
8. Mr. & Mrs. Petty (No. 5) did not consider an increase to the pitch fee was justified as no maintenance or improvements had been undertaken since the park had opened. There was no planned maintenance system in place and had not been in the three years they had been there. They had been told by Flannigans that the road would be resurfaced when all the plots were occupied and this had not been done. There were huge puddles when heavy rain fell, water staying on the surface due either to insufficient or ineffective drainage. They needed drop kerbstones and many needed replacing. Health and safety issues in relation to the smell coming into their shower room needed to be resolved. When the gate failed to open it was repaired by persons not approved electricians or contractors putting themselves and the residents in danger. The perimeter fence needed repair or replacement. The communal grass area could be landscaped and the grass cut

other than by a resident. They wanted to know if they were being charged for meter reading and grass cutting. The main gates were not representative of a 5 star quality development and already looked shabby and drab and the bottom gate was beyond description. Bollard lights were not suitable for this kind of development and did not give enough light.

9. Mr. & Mrs. Bowe (No. 6) said Flannigans' maintenance record was appalling, health and safety issues ignored and site rules treated with contempt.
10. Mr. & Mrs. Bowers (No. 7) complained no maintenance was done on site, there was no adequate street lighting, the main entrance was unfit for purpose, the gate would not always shut or only half opened. The road drains were not working properly and a top surface was required to the road and the kerbs were not drop kerbs.
11. Mr. & Mrs. Shaw (No.8) complained the road was still unmade, the drains were inefficient, the communal fences were in a state of decay, the area round the tanks was full of weeds, the drains were always smelling, the road in front of their home always flooded when it rained, the gates have had to be reset on at least 11 occasions when the men from Flannigans were working on No. 2.
12. Mr. & Mrs. McLauchlan (No. 9) raised issues about the heating and gas running out.
13. Mr. & Mrs. Smith (No.12) said they did not feel the dreadful state of the park justified any increase in the pitch fee.
14. Mr. & Mrs. Huxley (No.15) objected to the increase as they considered the drains needing attention and that safe and secure entrance gates, a safe locking system to the pedestrian gate, adequate road lighting, sufficient grids to road to prevent flooding and a final top coat to the road surface all needed to be provided. Mr. & Mrs. Hughes (No.17) also referred to the above items and said they had drawn attention to them in their letter of December 2011. Mr. & Mrs. Hogan (No. 18) also complained about the maintenance of the site.
15. Mrs. Tyas (No. 20) complained about the main gate breaking down on a regular basis, kerb stones in a very dangerous condition, drop kerbs never having been installed, serious on site flooding and street lighting nonexistent.
16. Mr. Hughes (No. 22) complained about the drainage system, the kerb stones, the top coat to the road, the need to replace the fencing, and the lights, the need to clear the LPG area of weeds, the gates and the lack of maintenance.
17. On 15<sup>th</sup> June 2013, Miss. Wilde sent in a written submission in which she wished to refer solely to the failure of Flannigans to abide by assertions made to her about the regular maintenance of the park. For the purpose of her submission, she was not referring to promises made to her about provision of water meters, change to natural gas, completion of the road surface and updating of drains and pedestrian gate. She wishes to ask if any improvements had been made on the site since the last review date. She said that following an inspection by Denbighshire County Council it was said that long grass and vegetation should be cut at frequent intervals to prevent its becoming a fire hazard. She asserted the vegetation and grass surrounding the gas tanks had been cut on only 3 occasions since 2009, 12<sup>th</sup> June 2012, 29<sup>th</sup> September 2012 and 6<sup>th</sup> May 2013. She referred to paragraph 22(f) of the Act regarding consultation with the Residents Association relating to the operation, management and improvement to the site. There had been no direct consultation and Flannigans had declined to attend a meeting of the residents association in January 2013. In relation to loss of amenity, she asserted that no

dwelling or site could be deemed not to have lost amenities when it is not inspected or examined properly over a 4 year period. She also pointed out that the residents had suffered a loss of amenity on two occasions in 2012 and 2013 when the gas had run out. She said that the site, despite being described by the site licensing officer from the Council as being an attractive and well run park, was gradually deteriorating. She wanted to know if Flannigans employed a dedicated maintenance team and the number of times the site had been inspected over the previous 4 years. Regular inspection would have revealed that the residents were supplying and paying for the water supply to the sports facility at the rear of the site.

## INSPECTION

18. The hearing and inspection had been arranged for 3<sup>rd</sup> July 2013. However, Ms. Prendergast, representing Flannigans, had to attend a funeral on 3<sup>rd</sup> July 2013 and, with the agreement of the representatives of the Residents Association, the inspection and hearing was rescheduled for 4<sup>th</sup> July 2013. The Tribunal inspected Morfa Ddu Park on 4<sup>th</sup> July 2013 in the presence of Ms. Prendergast and Mrs. Wilde (no. 11) and Mr. Bowe (No. 6).
19. Contrary to the claims of the Respondents, it did not appear to the Tribunal that it could be said that the condition of the site was gradually deteriorating. The gas tanks at the rear of the property were fenced off and had been recently mowed. The common parts were restricted to the LPG area, the road and a small grassed area at the other end of the park, with the pedestrian gate. The gate was padlocked but the Tribunal were able to inspect the perimeter. The fences appeared intact. The residents obviously take great pride in their homes and many of the gardens were landscaped and were clearly well maintained. The road and common parts appeared to be clean. The Tribunal was told the main gate was opened at 7am and closed at 6pm. The residents could obtain entry after this time by means of a coded keypad. A crude tool which might be used to open the gate in emergencies was secured by a piece of string to the park home nearest the gate.

## THE HEARING

20. This took place at the Meliden Community Centre, Fford Talagoch, Prestatyn, attended by the residents (and one or two observers) listed in the appendix to this order. Ms. Wilde and Mr. Bowe represented the Respondents and Flannigans were represented by Ms. Prendergast, Flannigans' operations manager. Ms. Prendergast wished to read a statement out. The Tribunal offered Miss. Wilde and Mr. Bowe a short adjournment so that they could consider this statement. This was declined and accordingly, the Tribunal permitted Ms. Prendergast to read out her statement, having regard to regulation 30 of the Residential Property Tribunal and Fees (Wales) Regulations 2012.
21. Ms. Prendergast said that Morfa Ddu Park had been purchased in 2009. The first home was sold in 2009 and she asserted the site was still being developed and the 22 homes on the site were all sold or had a sale completion pending. A 23<sup>rd</sup> home might be sited and one of the homes might be moved to another site. She maintained that Flannigans intended that the final surface of the road and repairs to the cracked kerbs would be fixed on completion when heavy machinery would no longer need to come on site.

22. She asserted it was not correct that no maintenance work had been carried out over the last 3 years and that Flannigans used both maintenance employees and subcontractors, a local electrician and employed a company to maintain the fire equipment. Regular inspections of the park were carried out and a resident on site carried out some work in reading the meters. Some issues about incidents which had occurred on site in 2013 were referred to. However, such claims were not relevant to the matters for determination by the Tribunal so are not further referred to here. In respect of the latest pitch fee increase, 5 of the residents had accepted the increase and 14, the subject of the applications, had not. The proposed increase was based on the RPI for September 2012 and it was asserted there had been no loss of amenity since the last review date.
23. Miss. Wilde in response referred to her submission and further confirmed the gas supply had run out on 14<sup>th</sup> December 2012 for 15 hours. Ms. Prendergast explained the tanks had been filled 3 weeks before and had run out due to exceptionally high usage. The supplier made regular visits to keep the tanks filled. Flannigans wished to have a smart meter installed so this problem could be avoided in the future.
24. Mr. Bowe submitted that he considered that amenities referred to the entry gates, the pedestrian gate, the LPG gas supply, the main site road including kerbs and drains, the road lighting, maintenance and upkeep of perimeter fences and common areas. Ms. Prendergast accepted this. He asserted the main gates had failed on at least 11 occasions. One of the residents looked after the gates when they broke down. The pedestrian entry gate had been in the same condition and Flannigans were aware that 75% of the residents never used this gate and the farm lock was extremely dangerous. He agreed it could not be claimed there was a loss of amenity in respect of this gate. He asserted there had been a loss of amenity in respect of the gas supply. In respect of the roads, on 27<sup>th</sup> June 2013 a maintenance team had cleaned the roads and this was evidence that Flannigans accepted it was their responsibility. No cleaning or maintenance had been done in the previous 12 months. He claimed this was a loss of amenity. The surface water grids and gully chambers had also been cleaned the previous week, again this had not been done in the previous 12 months. Flannigans had clearly accepted it was their responsibility. In respect of lighting, he accepted there had been no loss of amenity though Flannigans had refused to replace the lamps. In respect of perimeter fencing, Flannigans had denied responsibility for ownership but in January 2013, Denbighshire Council had required urgent fencing work to be carried out and this had been done within 7 days. One missing section of fencing had been reported on several occasions and had been outstanding for 12 months so he claimed there was a loss of amenity.
25. Ms. Prendergast said Flannigans accepted responsibility for maintenance. The issue was the loss of amenity. She was shocked to hear a resident had been resetting the gates, there should have been a call to the site owner and there was an emergency number. She was unaware of anybody being locked out. After some discussion about the front gates, Mr. Shaw (no.8) told the Tribunal that the tool fixed to the fence of the home nearest the gate was to push the gates open manually. Resetting was done by a switch in the main electric box and he had a key from Mr. Flannigan. He reset the gates with Mr. Flanagan's consent. If he was unable to reset the gate he would ring Mr. Flannigan. When the home at No. 2 was being taken away for 2/3 weeks the gates refused to close at night and he would go and reset the gate. He thought the problem was diggers tripping the switches. He had had the key for 18 months. On numerous occasions over the last 4 years he had had to ring the electrician. He did not consider the gates were fit for purpose.

26. Ms. Prendergast submitted that there was some confusion about the ownership of the fences and the problem with the fence was reported in January and was fixed in February 2013. In respect of maintenance, she submitted that if work was being done, they would clean the road. They did not have a strict rota but relied on eyes in the park. There was no specific schedule for cleaning and no maintenance schedule.
27. Miss. Wilde and Mr. Bowe had submitted some photographs prior to the hearing to show the Tribunal the state of the site. It was unclear when these photographs had been taken but the captions provided asserted that the car parking area had never been cleaned by contractors and this had been left to the residents. There was a lack of routine maintenance and Flannigans only attended when there was a new unit for sale. Pictures of the LPG gas storage area showed the lack of any maintenance and the contractors for Flannigans left mud on the road resulting in blocked drainage. It was said the road had never been cleaned since the site had been opened and the residents carried out this work. The drainage system was inefficient and the poor drainage resulted in flooding. The kerbstones were badly laid and not maintained.
28. Miss. Wilde asked that three of the residents be asked to make statements about their experience of living on the site. Miss. Harris (No.10) said she moved to the site in 2012. The outer perimeter fence had fallen down and the Council visited and Flannigans were told to repair the fence. Miss Withers (No.1) said that she and her husband had moved to the site in 2009. She understood Flannigans were entitled to increase the pitch fee but there had been virtually no maintenance for 3 years and 11 months. Mr. Petty (No.5) complained about the lack of planned maintenance, in particular in the LPG area. Health and Safety regulations required that rubbish should be kept well away and weeds and grass should be kept down. Chloride based weed killer should not be used. The entire area had been cleared a week ago, the first time in four years. At the end of the hearing several residents expressed issues they wished to raise with Flannigans.

#### THE LAW

29. Section 16 of the Act provides that a pitch fee may only be changed at the annual review date either with the agreement of the occupier or if the Tribunal, on the application of the site owner, considers it reasonable for the pitch fee to be changed and makes an order determining the amount of the new pitch fee.
30. Section 18 of the Act provides that, when determining the amount of the new pitch fee particular regard shall be had to any decrease in the amenity of the site since the last review date.
31. Section 20 of the Act provides that there is a presumption that the pitch fee shall increase or decrease by a percentage which is no more than any percentage increase or decrease in the retail prices index since the last review date, unless this would be unreasonable having regard to section 18(1).

#### THE TRIBUNAL'S FINDINGS

32. The only issue for the Tribunal to consider was whether there had been a loss of amenity since the last review date. Mr. Bowe had accepted on behalf of the Respondents there could be no loss of amenity in respect of the pedestrian entry gate and lighting. The issue expressed in respect of the main gate appeared to have been an issue for some time, at least since before the last review date. The Tribunal also considered that the issues raised in respect of the road and kerbs, drainage, fencing and general maintenance were issues the residents had for some time, at least before the last review date so could not be considered loss of amenity. In respect of the maintenance of the

area round the LPG tanks, this was a fenced off area and the Tribunal did not accept that the lack of regular maintenance was a loss of amenity since the last review date.

33. The Tribunal accepted that running out of gas in December 2012 for 15 hours was a loss of amenity. This was not deliberate. Ms. Prendergast had explained how it had occurred and mentioned steps being taken to ensure this did not occur again. However, the Tribunal did not consider that this loss of amenity for a short period of less than a day in one year (without diminishing the distress caused by the loss) displaced the presumption in section 20 of the Act.

#### CONCLUSION

34. The Tribunal therefore determined that the pitch fee payable by each of the respondents would be increased by 2.6% from January 2013."

DATED this 16<sup>th</sup> day of August 2013 (amended paragraph 34)

A handwritten signature in black ink, appearing to read 'Alabey', written in a cursive style.

CHAIRMAN

Attendees at Hearing on 4<sup>th</sup> July 2013 regarding Morfa Ddu properties.

Property Address	Printed Name	Signature
36 ST. JAMES DRIVE	MRS. A. TATHAM	A. Tatham
17 ST. GEORGES DRIVE	MRS. D. BARON	D. Baron
9 MORFA DDU	MR. M'LAUCHMAN	M. Lauchman
7 MORFA DDU	MR BOWERS	R. Bowers
— — —	MR BOWERS	R. Bowers
1 MORFA DDU	MR N. WITHERS	N. Withers
18 MORFA DDU	MR J HOGAN	J. Hogan
— — —	MRS D HOGAN	D. Hogan
3 MORFA DDU	MRS J. BLACKSHAW	Janet Blackshaw
5 Morfa Ddu	MRS A Petty	Andrea Petty
— — —	MR. M. PETTY	M. Petty
8 MORFA DDU	ROSALIND SHAW	R. Shaw
8 MORFA DDU	JEFFREY SHAW	J. Shaw
22 MORFA DDU	KENNETH HUGHES	K. Hughes
1 Morfa DDU Park	DORY WITHERS	D. Withers
20 MORFA DDU Park	ELIEN TIAS	E. Tias
6, Morfa Ddu Park	SUZANNE BOWE	S. Bowe
12 MORFA DDU, Park	NORHA SMITH	M. Smith
17 MORFA DDU Park	SENNY HUGHES	S. Hughes
6 Morfa Ddu Park	JOSEPH BOWE	J. Bowe
17 MORFA DDU Park	BRIAN HUGHES	B. Hughes
16 Morfa Ddu Park	JEAN EVANS CHARKE	J. Evans Charke
14 MORFA DDU Park	GEORGE CHARKE	G. Charke
15 MORFA DDU	JANE HUXLEY	J. Huxley
16 MORFA DDU	JANET DAVIES	J. Davies
10 MORFA DDU	JEAN HARRIS	J. Harris
✓	JEFF HARRIS	J. Harris
11 MORFA DDU	TOM DAVIES	T. Davies
11 MORFA DDU	JEAN WILDE	J. Wilde
FLANNIGAN	ANNE	A. Flannigan

observer  
observer.

ESTIMES LTD  
PREM DERGAIT