

**Y TRIBIWNLYS EIDDO PRESWYL**  
**RESIDENTIAL PROPERTY TRIBUNAL**  
**MOBILE HOMES (WALES) ACT 2013**

**Reference:** RPT/0016/09/15

**Property:** Woodland Park, Old Crumlin Road, Pontypool, Torfaen, NP4 6UP

**Applicant:** Woodland Park Residents Association

**Respondents:** Hills Leisure UK Limited

**Chairman:** Richard Payne LLB MPhil

In the matter of an application under Section 52 (9) and (10) of the Mobile Homes (Wales) Act 2013, and the Mobile Homes (Site Rules) (Wales) Regulations, (“The Regulations”) Regulation 10.

**Determination upon the application to extend time:**

1. By an application form dated 8<sup>th</sup> September 2015 the Woodland Park Residents Association through their Secretary Mr Ian Hunt applied to the Tribunal in relation to the proposed making of new site rules under the Mobile Homes (Wales) Act 2013 by the Respondent. The Consultation Response Document (CRD) appears to have been received by the qualifying residents of the Woodland Park Qualifying Residents Association (WPQRA) on 24<sup>th</sup> August 2015.
2. By letter of 10<sup>th</sup> September 2015 the Tribunal sent a copy of the application and enclosures to the Respondent.
3. By letter of 17<sup>th</sup> September 2015 the Tribunal wrote to the WPQRA asking for confirmation as to whether a copy of the application to the Tribunal was sent to the owner within 21 days of receipt of the CRD. By letter of 18<sup>th</sup> September 2015 to the Tribunal the Woodland Park Residents Association provided a copy of a letter that had been sent to Hills Leisure UK Limited, the Respondent, on 18<sup>th</sup> September 2015 which included the application to the Tribunal and supporting documents. The Residents Association’s letter stated that they understood that they had technically breached the 21 day limit but asked that time be extended to supply the documents to the Respondent. The Residents Association maintained that they had previously notified the Respondents of their appeal but had not sent copies of the application.

4. Under the Mobile Homes (Site Rules) (Wales) Regulations 2014 (“the regulations”), Regulation 10 deals with the right to appeal to a Tribunal in relation to the owner’s decision upon site rules. The regulation states as follows;

**“10 – (1) within 21 days of receipt of the Consultation Response Document a consultee may appeal to a Tribunal on one or more of the grounds specified in paragraph (2)...**

**(3) Where a consultee makes an appeal under this regulation, the consultee must notify the owner of the appeal in writing and provide the owner with a copy of the application made, within the 21 day period referred to in paragraph (1).”**

5. It appears to be common ground therefore that although the WPQRA notified the owner of the appeal in writing within 21 days of the receipt of the CRD they did not provide the owner with a copy of the application to the Tribunal within that 21 day period. The Tribunal invited representations upon the Applicant’s application to extend the time limit for supplying a copy of the application to the Respondent.

6. By letter of 7<sup>th</sup> October 2015 the Respondent informed the Tribunal that they did not object to the extended time request from WPQRA. The Tribunal also received a letter from WPQRA dated 11<sup>th</sup> of October 2015 with further information and documentation in support of their application to extend the time limit.

7. In this case it is clear that once the application had been made to the Tribunal, that Mr Hunt the Secretary of WPQRA emailed the Respondent on the 9<sup>th</sup> September to advise them that an application had been made. As indicated earlier, the Tribunal sent a full copy of all the documentation and the application to Mr Fred Thompson of the Respondent by letter dated the 10<sup>th</sup> September 2015. If the 24<sup>th</sup> August 2015 was the date that the CRD was received triggering the 21 day limit in the regulations, then the first day of that 21 day period would have been the 25<sup>th</sup> August 2015. The last day of the 21 day period would therefore have been Monday 14<sup>th</sup> September 2015. Therefore as a matter of fact the Respondent had received a full copy of the application, albeit from the Tribunal, within the 21 day period. The residents themselves had sent a full copy of the application to the Respondents, as indicated earlier, by letter of the 18<sup>th</sup> September 2015.

8. The Residents Association pointed out that there is confusion over the manner in which the owners needed to be informed of their appeal. The guidance notes prepared by the National Assembly only referred to the Residents Association having to notify the park owners (which they did), rather than have to provide them with a copy of the application. Mr Hunt pointed out that the process is by no means simple and it is very difficult to obtain legal advice for these matters. Mr Hunt sought an extension of time.

## Decision

9. There is no doubt that the appeal itself was submitted in time and that the Respondent did have a copy of the application and all of the documents as required by Regulation 10 (3) albeit provided by the Tribunal. Similar issues have arisen in England and been considered recently by the Upper Tribunal in the case of O’Kane and Charles Simpson Organisation Ltd [2015] UKUT 0355(LC) before His Honour Judge Nicholas Huskinson. Broadly, in that case the appellant had appealed in time within the 21 day limit of the Consultation Response Document but had not sent a copy of the application to the Respondent within the 21 day limit. The First-tier Tribunal had sent a copy of the application within that 21 day time limit.

10. Judge Huskinson decided that the appeal was validly made. For these purposes the wording of the English Mobile Homes (Site Rules) (England) Regulations 2014 mirror those of the Welsh Regulations that are under consideration. Judge Huskinson held that

*“The provisions of Regulation 10 (3) come into operation when a valid appeal to the F-tT has been made. In my view it would require clear language, which is not present in relation to Regulation 10 (3), if the subsequent failure (after making a valid appeal) to comply with the notification requirements in Regulation 10 (3) was to have the effect of rendering a previously valid appeal invalid. There could have been some express provision to this effect.”<sup>1</sup>*

11. Judge Huskinson later pointed out

*“..... the F-tT is not being asked to extend any time limits. It is merely being asked to conclude that, although the time limit in Regulation 10 (3) has been missed, the consequences of this missing of the time limit are not to deprive the F-tT of the jurisdiction to continue to entertain the appeal which had been validly brought within the relevant time limits. I do so conclude. The F-tT was in my judgement in error in declining so to conclude.”<sup>2</sup>*

Judge Huskinson had earlier held that in any event the fact that all of the information had been supplied by the Tribunal within the 21 day period meant that the appeal must be allowed.

12. In this particular case the Residential Property Tribunal Procedures and Fees (Wales) Regulations 2012 (as amended) include the Welsh Site Rules Regulations within the jurisdiction. Regulation 27 in relation to case management powers allows the Tribunal to reduce or to extend the time appointed by or under these regulations for doing any act even if the time appointed has expired where

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<sup>1</sup> At paragraph 41

<sup>2</sup> At paragraph 43

“(b)(i) It would not be reasonable to expect the person in question to comply or have complied within that time; or

(ii) Not to extend the time would result in substantial injustice;”

13. Regulation 3 of the 2012 Regulations refers to the overriding objective and that when the Tribunal interprets any regulation “It must seek to give effect to the overriding objective of dealing fairly and justly with applications which it is to determine.” In this case the Tribunal’s application form itself did not have any mention of the requirement in the Wales’ Site Rules Regulations not only to notify the owner that an application had been made, but also to provide the owner with a copy of that application within 21 days of the CRD. I am aware that the Tribunal is now amending its forms to include this information.

14. The official guidance from the National Assembly likewise did not mention this and the Respondent’s have graciously and fairly indicated that they do not take a point upon this matter.

15. I have due regard to the Upper Tribunal’s decision in O’Kane and Charles Simpson referred to above and note that this is a similar case. The appeal was made in this case by the Woodland Park Qualifying Residents Association within time under Regulation 10(1) of the Welsh Site Rules Regulations and by analogy with the reasoning of Judge Huskinson in the Upper Tribunal, where that appeal has been made in time even if there is a failure to strictly comply with the requirements of Regulation 10 (3), that is not sufficient to invalidate an otherwise validly made appeal.

16. There is however in this case an application to extend time for service of those documents which is not opposed. It may well be that such application is not required because in any event the copy of the application and all supporting documents was served upon the Respondent within 21 days of the CRD receipt. That service was by the Tribunal but again following the guidance of the Upper Tribunal in the O’Kane case this would suffice.

17. Therefore following Upper Tribunal guidance, the appeal is in any event made properly and in time and Regulation 10(3) has been complied with. However if that were not the case, then given the overriding objective and this Tribunal’s power to deal with any matter arising under the Mobile Homes Act, it would be appropriate using our case management powers, to extend time in this case until the date in which the WPQRA sent a full copy of the application and enclosures to the Respondent by their letter of 19<sup>th</sup> of September 2015. Therefore I determine that following the Upper Tribunal case of O’Kane and Charles Simpson Organisation Ltd, the application was validly made and the documentation served and received upon the Respondent within the time limit set out in the regulations. In the alternative I would have no hesitation in extending the time limit in this matter which in any event is not opposed. It is clearly consistent with the overriding objective and the needs of

justice and fairness to do so. The matter therefore is to proceed and the application is validly made.

18. This application was determined on 23<sup>rd</sup> October 2015.

Dated this 28<sup>th</sup> day of October 2015

A handwritten signature in black ink, appearing to be 'R Payne', with a stylized flourish at the end.

Richard Payne

Vice- President