

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL (WALES)

Reference: RPT/0071/03/19

Properties: In the matter of Numbers 6, 8, 9, 10, 11, 12, 15, 16, 18, 22, 23, 25, 27, 31, 42, 58, 70, 78, 92, 93, 107, 119, 121, 135, 141, 142, 164, 170, 171, 182, 194, 198 Willow Park, Gladstone Way, Mancot, Deeside, CH5 2TT

In the matter of an Application to determine new pitch fee under the Mobile Homes (Wales) Act 2013

Applicant: Wyldecrest Parks (Management) Ltd

Respondents: Mr James/Mrs Ibell (Number 6), Mr/Mrs Murraray (Number 8), Mrs Heaney (Number 9), Mr/Mrs Vaughan (Number 10), Mrs Rawlinson (Number 11), Mr Farnsworth (Number 12), Mr Dearnley (Number 15), Miss MacNally (Number 16), Mr Stewart (Number 18), Mr Penticost (Number 22), Miss Roberts (Number 23), Mr Corfe (Number 25), Mr/Mrs Battison (Number 27), Miss Jones (Number 31), Mrs Jones (Number 42), Mr/Mrs Willis (Number 58), Mr/Mrs Jackson (Number 70), Mr/Mrs Green (Number 78), Mrs Eaton (Number 92), Mrs Jones (Number 93), Mr/Mrs Whealan (Number 107), Mrs Mallin (Number 119), Mr Cole/Mr Cole (Number 121), Mr/Mrs Tudor (Number 135), Mr/Mrs Wilson (Number 141), Mr/Mrs Wilderspin (Number 142), Mr/Mrs Pierce (Number 164), Mr Callaghan (Number 170), Mr Last (Number 171), Mr/Mrs Davies (Number 182), Mr/Mrs Robinson (Number 194), Mrs Gates (Number 198)

Tribunal: Trefor Lloyd (Legal Chair)
Surveyor: David Jones (Surveyor Member)
Hywel Jones (Lay Member)

Hearing Venue: Council Chambers, Connah's Quay Town Council

Hearing Date: 23rd July 2019

Representation: Mr Sunderland for the Applicant
Miss Marie Mac Nally for the Respondents

DECISION

ORDER

1. **The revised pitch fee will be the previous pitch fee plus the 2.4% increase in line with the CPI for 12 months from October 2018. This will result in the pitches occupied by Mr & Mrs Battison (Number 27), Mr & Mrs Jackson (Number 70), Mr & Mrs Whealan (Number 107) and Mr & Mrs Wilderspin (Number 142) being increased by £3.81 per calendar month to £162.68 per calendar month. Mr Callaghan (Number 170) being increased by £4.30 per calendar month. All the other Respondents' pitch fees will be increased by £4.03p per month to £171.79 per calendar month.**

BACKGROUND

2. The Tribunal received an Application on the 8th March 2018 from the Applicant Wyldecrest Parks (Management) Ltd to determine the pitch fees to be payable for 2019/2010 by the Park Home owners listed as Respondents, whose names are listed at the beginning of this Decision.

DESCRIPTION OF THE PARK

3. Willow Park is a residential park home site. It is a protected site in the meaning of the Act consisting of 172 plots of which 165 are occupied. The Site Licence allows up to 204 mobile homes on the site. The site has surfaced roadways accessing the majority of Homes as well as two car parks. There are mains connections for water, drainage and electricity to the site and its units. The Site is located on the periphery of the Deeside village of Mancot, which is mainly of a dormitory nature. However, Deeside is a well established industrial and business area with notable operators such as British Aerospace and there are connections to The A548 Coast Road, A55 Expressway and M56 Motorway within 5 miles.
4. The Tribunal inspected the property at 10.30 am on the 23rd July 2019 in the presence of the Applicant's representative Mr Sunderland together with a Miss J Springer and a number of the residents.
5. The Application was opposed by the Respondents.
6. A number of directions were issued in relation to conduct of the proceedings.

THE APPLICANT'S CASE

7. The Applicant's case is that the pitch fee has been calculated in accordance with the Act which presumes that the fee will increase annually by a percentage, which is no more than the Consumer Price Index.
8. The Applicant by a form prescribed under paragraph 23 of Chapter 2 of Part 1 of Schedule 2 to the Mobile Homes (Wales) Act 2013 proposed increases to the pitch fees with effect from 1st January 2019. The increase is by way of a 2.4% increase over 12

months being published and a percentage change in the CPI from October 2018 which was 2.4%. This resulted in an increase of £3.81 per calendar month in respect of the pitches occupied by Mr & Mrs Battison (Number 27), Mr & Mrs Jackson (Number 70), Mr & Mrs Whealan (Number 107) and Mr & Mrs Wilderspin (Number 142) Mr Callaghan (Number 170) being increased by £4.30 per calendar month, with all the other Respondents increases amounting to £4.03 per month.

9. By way of an amended directions order dated 16th April 2019 the application form documents filed with the Application were permitted to stand as the Applicant's Statement of Case.
10. In essence the Applicant's case is that it is simply seeking a Consumer Price Index increase as provided for under paragraph 20 of Chapter 2 of the Mobile Homes (Wales) Act 2013. No works have been undertaken, no services are provided, no service costs, or elements that make up service costs. In other words the Applicant has complied with the legislation, and it is for the Respondents to persuade the Tribunal that the presumption of a CPI increase can be rebutted in the circumstances of this case.

THE RESPONDENTS'S CASE

11. The Respondents appointed Miss MacNally as their spokesperson and by way of a document headed "Tribunal Documentation for 2019 Pitch Fee Increases" she complains of Wyldecrest taking the increased pitch fee by Direct Debit without agreement and in the subsequent pages refers to relevant pages of the Application Form, for example Section 5 where the Applicant has ticked "no" to all the boxes, she maintained that maintenance work was always included in the pitch fee. She argues in relation to the absence of car parking. The other salient points can be found under the heading "Has There Been any Deterioration in the Condition and/or Decrease in the Amenity of the Site..." where Miss McNally refers to the change by which there is no longer a Park Manager on site, nor Park Office or Park maintenance and refers to actual site deterioration itself. In that latter regard she also makes reference to deterioration as a result of empty sites not being cleared for years.
12. Miss Mc Nally also makes reference to the Mobile Homes Act 2013 and the obligations on the owner, and refers to the Flintshire County Council Licence. Those latter matters however relate to matters out-with the remit of this Tribunal hearing, as we are simply dealing with pitch fees.
13. Exhibited to the Statement of case are Statements from 18 individuals being Mrs Rawlinson (Number 11), Mrs Roberts (Number 23), Julie Davies (Number 182), Kenneth Pierce (Number 164), Brenda Willis (Number 58), William Anderson (Number 54), Jim Ibell (Number 6), Pat Eaton (Number 92), Anna Green (Number 78), Maurice Tudor (Number 135), Margo Heaney (Number 9), Christine Jones (Number 31), Ann Jones (Number 93), John Wilson (Number 141), Mr Robinson (Number 194), Mr Farnsworth (Number 12), Miss MacNally herself (Number 16), Mrs Margaret Nuttall (Number 226).
14. All the Statements generally touch upon the same type of matters being an absence of services, car parking and allegation of deterioration due to disrepair.

15. During the site visit we walked the entirety of the site, took notice of matters that were pointed out by a number of residents, and also by Mr Sunderland on behalf of the Applicant. During our Site Visit certain items were noted and/or pointed out to the Tribunal Members which included:
- (i) Poor condition, pot holes and 'patch' repairs to sections of roadway;
 - (ii) Exposed electric cables;
 - (iii) Poor state of repair and ease of unauthorised access to electric supply Switch Rooms;
 - (iv) Proposed reduction of car parking by development of new Pitches
 - (v) Overhanging vegetation and/or trees causing some obstruction to certain pathways;
 - (vi) Unstable low level street light fittings;
 - (vii) Unkempt vacant pitches and 'communal areas'.

THE RELEVANT LEGAL PRINCIPLES

16. Schedule 2, Part 1, Chapter 2 of the Act, contains the terms of mobile home agreements implied by the Act dealing with pitch fee reviews at paragraphs 17 – 20. Paragraph 18 says as follows;
- “18 (1) When determining the amount of the new pitch fee particular regard is to be had to-
- (a) any sums expended by the owner since the last review date on improvements
 - (i) which are for the benefit of the occupiers of mobile homes on the protected site,
 - (ii) which were the subject of consultation in accordance with paragraph 22(1)(e) and (f), and
 - (iii) to which a majority of the occupiers have not disagreed in writing or which, in the case of such disagreement, a tribunal, on the application of the owner, has ordered should be taken into account when determining the amount of the new pitch fee,
 - (b) any deterioration in the condition, and any decrease in the amenity, of the site or any adjoining land which is occupied or controlled by the owner since the date on which this sub-paragraph came into force (in so far as regard has not previously been had to that deterioration or decrease for the purposes of this sub-paragraph),
 - (c) any reduction in the services that the owner supplies to the site, pitch or mobile home, and any deterioration in the quality of those services, since the date on which this sub-paragraph came into force (in so far as regard has not previously been had to that reduction or deterioration for the purposes of this sub-paragraph), and
 - (d) any direct effect on the costs payable by the owner in relation to the maintenance or management of the site of an enactment which has come into force since the last review date.
- (2) But no regard is to be had, when determining the amount of the new pitch fee, to any costs incurred by the owner since the last review date for the purpose of complying with provisions contained in this Part which were not contained in the Mobile Homes Act 1983 in its application in relation to Wales before the coming into force of this Part.
- (3) When calculating what constitutes a majority of the occupiers for the purposes of sub-paragraph (1)(a)(iii) each mobile home is to be taken to have only 1 occupier and, in the event of there being more than 1 occupier of a mobile home, its occupier is to be taken to be whichever of them the occupiers agree or, in default of agreement, the one whose name appears first on the agreement.

(4) In a case where the pitch fee has not been previously reviewed, references in this paragraph to the last review date are to be read as references to the date when the agreement commenced.”

17. Paragraph 20 states that unless it would be unreasonable having regard to paragraph 18(1) there is a presumption that the pitch fee is to increase or decrease by a percentage which is no more than any percentage increase or decrease in the consumer prices index (and details are given as to how this is to be calculated).

EVIDENCE AT THE HEARING

18. In opening Mr Sunderland made reference to the fact that the Statements have been submitted late, being the 20th June and as a result of the Applicant forwarding its response on the 19th that document did not deal with it. He did not object strongly however to the Statements being included and accepted the point that on any view he had received them well in advance of the Tribunal hearing. He echoed what was set out in the Applicant's paperwork that it was simply relying upon the presumption for a CPI increase and the Tribunal was tasked with having regard to Section 18.
19. In his submission it was clear most people had some gripes, the bulk related to a sewage incident. There were photos within the bundle of work being carried out. Matters pointed out on the site visit had to be taken into account and taken on board. The vast majority of residents were unopposed to the increases. He made the point that in his submission it was not a qualified resident's association as numbers had to be greater than 50% of the whole.
20. Miss MacNally in response made the point that it was a certified and qualified association, and at an annual general meeting there were 106 that had voted, but more latterly the numbers had fallen to 60. Mr Sunderland in reply made the point that the CPI increases would be permitted via the implied terms, unless unreasonable and that the increase was quite proper.
21. Miss MacNally cross-examined Mr Sunderland in relation to a letter she had sent to Mr Best (the owner of the Company) although undated (page 6), and also a further letter at pages 7 and 8, asking why there was not an answer, to which Mr Sunderland replied that paragraph 2 of the letter (at page 6 of the Respondents' exhibit) made it clear there was no qualified resident's association as the letter cites qualification of the same as an outstanding matter.
22. The Tribunal notes however that on the second page of the same letter the following is stated:
"We are a qualified resident's association"
23. Under cross-examination Mr Sunderland agreed that there had been no works carried out as per the Application Form but maintained that that was not relevant to the issue of the pitch fee increases. When put to him that a letter sent on the 10th July was with a view to harassing residents he disagreed.
24. We note in essence the reference in the letter was simply informing the residents of a different company name that may appear on their bank statements.

25. Mr Sunderland was then asked questions by Tribunal Member Mr David Jones in relation to what could constitute an unreasonable or weighty matter by virtue of usurping the presumption. Mr Sunderland made reference to a First Tier Tribunal Decision of Scatterdale Park whereby it was found that cutting down trees resulted in a loss of amenity whereas upon appeal to the Upper Tier Tribunal they found that the cutting down of trees did not amount to a significant loss of amenity, and what had to be considered was the context of in that instance the open space affected. In terms of the Willow Park matters complained of Mr Sunderland submitted that there was no evidence in relation to, for example the uncovered electrical cabling, in any of the bundles. In his view the reason it had not been referred to before was simply that it was being saved up as a complaint to be presented to the Tribunal. He agreed the roads were worn in some places but serviceable, the potholes were filled in from time-to-time.
26. In relation to the electrical cabling this was all certified and armoured. We as a Tribunal had been asked to look at the structures housing the switch gear and metres. Mr Sunderland submitted that all of this was fully certified and there were no issues.
27. In terms of the Park Manager, Mrs Raywood was available from 8:00 am until 8.30 pm Monday to Friday, and would respond the next day. There were maintenance men available for Saturdays and Sundays. There was a maintenance team and also the possibility of a messenger service to Head Office in relation to any complaints. Complaints were attended to.
28. When cross-examined by Miss MacNally in relation to the following matters generally Mr Sunderland begged to differ:
 - (i) Car Parking - it was put to him that there was insufficient car parking, he maintained the park exceeded the Government Standard of one per home plus one in five. He again disagreed that there was a reduction in amenity as a result of the absence of an on-site Park Manager saying that Mrs Raywood was available 12½ hours a day and there was also an opportunity to contact the Head Office if any issue arose and denied that the absence of maintenance men and a Park Office on site in any way reduced the amenity.
 - (ii) When questioned about the fact that the Head Office phone number was a number, which entailed a premium price when called, and also calling Mrs Raywood involved using a mobile number, which for some residents could be costly, Mr Sunderland suggested to the Respondents that they put forward a proposal to the problem.
29. When asked by Tribunal Member, Mr Hywel Eifion Jones, as to whether he thought there was such a good service as the Manager was no longer on site, he answered that although the location of the manager has changed service was still good.

RESPONDENTS'S EVIDENCE

30. We then heard from Mr Ibel who lives at No 6 who also provided a Witness Statement dated the 30th May 2019. His evidence in chief echoed his Witness Statement. He like a number of the other witnesses who provided Statements raised an issue with the fact that the Site Office had been closed, lighting had been replaced with lower level lighting making paths unsafe, and any issues now needed to be raised by telephone. He was cross-examined by Mr Sunderland in relation to comments about the Fire Officer, and it

was put to him that there was no requirement for a risk assessment to be signed off by a Fire Officer, also in relation to a fit and proper person test appertaining to the Site Licence.

31. Mr Ibel in his Witness Statement in summary asserts that due to the matters set out above plus continual water leaks, a reduction in the service provided on Site, and the condition of the road had deteriorated.
32. We then heard evidence from Mr Robinson who lives at No 194. He complained about the use of the ground behind his property as a "dumping ground", there being two empty units. The Site been left to become overgrown (a matter which we viewed during the Site inspection). Again, his evidence related to complaints about water supply (inefficient pressure for the shower), the lighting and roadways.
33. The next witness was Mr Wilson who lives at No 141 who wished to bring the Tribunal's attention to the defective electric supply connection to his mobile home, exposed wiring connectors outside his property and the general poor condition of the switch room.
34. We then heard closing submissions firstly from Miss McNally on behalf of the Respondents. She asserted that there was a Qualified Residents' Association which met once a month and again repeated the general concerns set out by the other witnesses, whom we heard at the hearing, in essence stating that the unwillingness to agree the increase was due to the lack of maintenance on the Site.
35. Finally, we heard closing submissions from Mr Sunderland on behalf of the Applicant who submitted that:
 - (1) There was no Qualified Residents' Association.
 - (2) There was not a reduction in the amenity of the Site to justify refusing the CPI increase. The Act makes it clear that a CPI increase is permitted unless unreasonable to do so.
36. He invited us to disregard the written evidence of witnesses who had not attended at the hearing to give oral evidence and that due to the absence of a Residents' Association the main Respondents who had not attended the hearing to give oral evidence, had not provided this Tribunal with evidence which it could consider, and as a consequence their appeals should be disregarded.
37. In relation to the concerns of the Residents he submitted that:
 - (1) While the roads were not perfect they were serviceable, and were repaired from time-to-time,
 - (2) There was no requirement set out for there to be an office on Site. In any event Mrs Raywood was available as before and was contactable by telephone.
 - (3) In summary all the Applicant was seeking was the CPI increase as provided for by the statute, and that it was in all the circumstances reasonable to do so.

CONCLUSION AND REASONS

38. Having considered all the evidence (both written) and oral together with the benefit of the Site inspection we find that:
 - (1) Some sections of the roadways affording access to the respective properties were in need of repair. However, there was evidence of patch repairs having been

undertaken, and in the circumstances we do not find that this aspect can amount to a deterioration in the amenity of the site.

- (2) Similarly, in relation to the lighting, we saw evidence of some replacement lighting, and whilst there were some exposed cables, again we do not find that this aspect of the evidence advanced by the Applicant can amount to a decrease in the amenity of the Park to the extent that any CPI increase is unreasonable.
- (3) As regards the concerns about the electricity supply, we were told the same is fully certified, and there was no evidence provided to rebut the same.

39. We accept the submissions on behalf of the Applicant that there is no contractual obligation to have a Park Manager and Office on site.

40. In relation to the absence of car parking Mr Sunderland submitted again there was no statutory requirement to provide the same directly adjacent to any of the Park Homes, further submitting that there was ample car parking for residents, also visitors when the entire Park is considered.

41. As referred to in paragraphs 12 and 13 above of this Judgement other matters raised by Miss McNally relating to the owners obligation and the Mobile Homes Act 2013 and the Licence from Flintshire County Council, these are matters out-with the remit of our deliberations. Similarly, the complaint that the increased pitch fee was taken by direct debit is again not a matter for us to consider.

42. Having considered all the facts and with the benefit of the Site visit we find that the Respondents have not provided sufficient evidence to rebut the presumption in favour of a CPI increase as contended for by the Applicant. Although, we note the Respondents' concerns in relation to the matters as set out above, we do not form a view that they of themselves can amount to a deterioration in the Site and/or amenity to the extent that the presumption is rebutted.

43. Whilst the Tribunal can understand the Respondents' position it did appear to us (although not forming part of the rationale behind our decision as set out above) that there was a degree of lack of communication between the Applicant and the Respondents. Whilst the majority of the occupiers on the Site agreed the CPI increase the Respondents as was their right objected to the increase, resulting in the Applicant having no option other than to apply to this Tribunal.

44. It was clear to us during the course of the hearing that better lines of communication between the Applicant and the Respondents would be beneficial going forward and hopefully whilst clearly not forming part of our decision all concerned will take note of our comments.

45. Having determined the matter in the manner as aforesaid, there is no reason for us to rule on the question as to whether or not there was a fully qualified and constituted Residents' Association in respect of which Miss McNally represented all the Respondents and more specifically the ones who are named in the application, provided (or did not) Witness Statements, but for whatever reason did not choose to give evidence at the hearing.

Paragraph 20, Schedule 2, Part 1, Chapter 2 of the Act

46. As set out in paragraph 18 above this contains the presumption that the pitch fee is to increase or decrease by no more than the percentage increase or decrease in the CPI

calculated in accordance with the Act. It is common ground between the parties that the correct calculation has been undertaken. The presumption as to CPI increase is applicable "*unless it would be unreasonable having regard to paragraph 18(1)*". In other words, when considering the amount of the new pitch fee particular regard can and has to be had to any deterioration in the condition and any decrease in the amenity of the Site which is occupied or controlled by the owner. For the reasons as set out above we do not find that there is sufficient evidence upon the balance of probability to indicate a deterioration and/or decrease in the amenity of the Site. Whilst there are concerns there is evidence of the Applicant as a Site owner attending to matters and we do not accept that the matters raised by the Respondents are sufficient to rebut the presumption.

47. In the circumstances the revised pitch fee will be the previous pitch fee plus the 2.4% increase in line with the CPI for 12 months from October 2018. This will result in the pitches occupied by Mr & Mrs Battison (Number 27), Mr & Mrs Jackson (Number 70), Mr & Mrs Whealan (Number 107) and Mr & Mrs Wilderspin (Number 142) being increased by £3.81 per calendar month to £162.68 per calendar month. Mr Callaghan (Number 170) being increased by £4.30 per calendar month to £183.60. All the other Respondents' pitch fees will be increased by £4.3p per month to £171.79 per calendar month.

Dated this 3rd day of October 2019

A handwritten signature in black ink, appearing to read 'W. W. W.', with a horizontal line underneath the signature.

CHAIRMAN