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RESIDENTIAL PROPERTY TRIBUNAL (WALES)

Reference: File Numbers:

RPT/0018/01/23 – No. 1	RPT/0019/01/23 – No. 9	RPT/0020/01/23 – No.11
RPT/0021/01/23 – No. 16	RPT/0022/01/23 – No. 27	RPT/0023/01/23 – No. 34
RPT/0024/01/23 – No. 54	RPT/0025/01/23 – No. 58	RPT/0026/01/23 – No. 62
RPT/0027/01/23 – No. 92	RPT/0028/01/23 – No. 94	RPT/0029/01/23 – No. 95
RPT/0030/01/23 – No. 107	RPT/0031/01/23 – No. 129	RPT/0032/01/23 – No. 132
RPT/0033/01/23 – No. 141	RPT/0034/01/23 – No. 158	RPT/0035/01/23 – No. 164
RPT/0036/01/23 – No. 165	RPT/0037/01/23 – No. 170	RPT/0038/01/23 – No. 171
RPT/0039/01/23 – No. 187	RPT/0040/01/23 – No. 191	RPT/0041/01/23 – No. 194
RPT/0042/01/23 – No. 228		

In the matter of an application for pitch fee reviews under the Mobile Homes (Wales) Act 2013

APPLICANT: Wyldecrest Parks (Management) Limited

RESPONDENTS:

Mrs Alves (No.1)	Mrs M Heaney (No. 9)
Mrs Rawlinson (No. 11)	Ms V Foster (No. 16)
Mr D and Mrs E Battison (No. 27)	Mrs Lambert (No. 34)
Mr and Mrs Willis (No. 58)	Mrs Jones (No. 62)
Mrs Eaton (No. 92)	Mr and Mrs Worrall (No. 95)
Mr Whelan (No. 107)	Mrs Sawyer (No. 129)
Mr T Challinor (No. 132)	Mr John and Mrs Wilson (No. 141)
Mrs J Smith (No. 158)	Mr K Pierce (No. 164)
Mr and Mrs Bergeson (No. 165)	Mr J Callaghan (No. 170)
Mr S Last (No. 171)	Mr Plank/Ms Foreshaw (No. 187)
Mr D Stewart (No. 191)	Mr and Mrs Robinson (No. 194)
Mr and Mrs Gallagher (No. 228)	

PROPERTIES:
No's. 1, 9, 11,16,27, 34, 54, 58, 62, 92, 94, 95, 107, 129, 132, 141, 158, 164, 165, 170, 171, 187, 191, 194, 228, Willow Park, Colliery Lane, Gladstone Way, Mancot, Deeside, Flintshire, CH5 2TX

TRIBUNAL:

Trefor Lloyd	Tribunal Judge
David Jones	Surveyor Member
Hywel Eifion Jones	Lay Member

ON-SITE INSPECTION:
The site was inspected by the Surveyor Member on the 6th June 2023 between 11.30am and 12.30pm. He was unaccompanied.

Hearing Date:
9th June 2023. The Hearing was concluded on the papers as per the agreement with the parties.

Decision

Order

The Application to increase the pitch fee in line with the increase in the Consumer Price Index for the relevant 12 month period has been rebutted due to the decrease of the amenity of the site as detailed below since the last review.

Background

1. By way of Applications dated 30th January 2023 the Applicant Wyldecrest Parks (Management) Limited ("hereinafter referred to as the Applicant") applied to the Tribunal for the pitch fees payable for the Park Home Owners listed as Respondents to be reviewed with effect from the 1st January 2023.

Description of the Park

2. Willow Park is a protected site in the meaning of the Mobile Homes (Wales) Act 2013 ("the Act"). The site licence allows up to 204 mobile homes on the site currently, some 161 plots are occupied. The site benefits from mains water, drainage and electricity connections to all units.

3. Location-wise, the site is located on the periphery of the Deeside village of Mancot with connections to the A548 coast road, the A55 North Wales Expressway and the M56 motorway is within 5 miles.

Site Visit & Hearing

4. The site was inspected by the Tribunal Surveyor Mr David K Jones FRICS in the absence of any representation from either party.

5. As agreed with the parties the Application was determined on paper. In order to facilitate the case progressing a number of procedural directions were issued.

THE RELEVANT LEGAL PRINCIPLES

6. 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."

7. 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).

The Applicant's Case

8. The Applicant's case can be succinctly summarised as simply seeking an increase in line with any increase in the Consumer Price Index from the previous increase as provided for under Paragraph 20 of chapter 2 of the Act. There is no claim for any additional increase as no works have been undertaken and no services are provided. In addition, no service costs or elements that make up service costs are claimed for.

9. The Applicant filed a short narrative statement signed by Mr David Sunderland (Estate's Director for the Applicant Company) together with the Application forms relying upon the statutory presumption. It states that it has complied with the legislation, and it is a matter 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' Case

10. The Respondents appointed Mr Ken Pierce to represent them and within the bundle we have a document at page 35 headed "Willow Park Qualifying Residents and Association Tribunal Case". That document is signed at page 38 in typed script and thereafter there are a series of appendices from which the Respondents' objections/submissions can be ascertained which are summarised below:-

    i. Given the recent high inflation the Consumer Price Index level of increase is too high and as a consequence should not be applied. In that regard the Respondents point to no legal authority which would enable this Tribunal to disapply the increase simply because the CPI indices have increased to a greater extent than usual. In addition, the Respondents do not identify any authority that enables the dis-application of the CPI due to the level of increase of the index itself.

    ii. A deterioration in the amenity of the site. In this regard the Respondents refer to the loss of the car park from the lower section of the site. Both the Applicant and Respondents agree that there are circa 161 units on the site. The Respondents' evidence is that the lower car park in the main has been lost due to the siting of 10 new units. They point us towards the Government Model Standards and aver that as the Model Standards apply consequently there is currently a shortfall of 37 spaces. The Respondents aver that as a result of the loss of the bottom car park any carer, family member or disabled visitor would have to walk up to a quarter of a mile to visit many of the homes at the bottom of the site thus representing a loss of amenity.

    iii. The Respondents also refer to a proposal to remove the car park from the top of the site, submitting that 3 new homes have already been sited on the top car park and 4 more have been planned for. They again aver that this will be a serious deterioration in the amenities of the park. In addition, approximately 40 homes have to park on the front road which in itself reduces spaces.

    iv. Mr Pierce at Appendix 1 sets out his case in relation to the loss of spaces in accordance with the Government Model Standard and at Appendix 2 we are provided with plans, with Plan 1 depicting the position prior to the lower car park being utilised to site the 10 new units (page 41 of the bundle) and Plan 2 depicting

the position following the siting of the 10 units on the lower car park and the 3 units on the upper car park. Finally, the Respondents refer to the proposal to develop the upper car park and Plan 3 (at page 43) in the bundle illustrates the Respondents' case as to the effect of such a proposal.

v. The Respondents also submit that, as a consequence of opening up the lower entrance gate and the creation of a one-way system there is a situation in relation to the loss of security by allowing members of the public to walk freely through the site thus causing a security risk. They allege that young people are riding around the site and, as a consequence the "lack of security" and loss of CCTV amounts to a loss of amenity.

vi. The Respondents also aver there has been a loss of regular and routine maintenance. In this regard they provide an example of a problem with the sewage system and the escape of sewage, with one homeowner having to wait three weeks for the garden to be cleared. Further, in this regard they submit that whereas in the past they were able to rely on permanent maintenance employees this is no longer the case.

Applicant's Response to the Respondents' Case

11. As aforesaid the Applicant's case is that it simply relies upon the presumption of the CPI increase and as such the burden of proof is upon the Respondents to demonstrate (if applicable) that the presumption can be rebutted.

12. By way of a supplementary statement Mr David Sunderland addresses the matters raised by the Respondents as aforesaid. It is worthy of mention at this stage that there is no dispute between the parties in relation to the calculation of the CPI increase nor is there any issue in relation to the validity of the notices relating to the review.

13. In respect of the Respondents' points (as referred to above) the Applicant submits as follows:-

i. Mr Sunderland on behalf of the Applicant agrees that the system of reviewing the pitch fees in accordance with (by now CPI) is a fair system. He recounts the evidence of behalf of the Respondents who state "I recognise as owners of the park you are entitled to increase up to the maximum of the CPI figure and whether legally entitled to or not it is morally wrong". Mr Sunderland refers us to the Upper Tribunal case in **Wyldecrest Parks Management Ltd -v- Mr & Mrs P Kenyon and others 2017 [UK UT0028] LC** and that there is a presumption of CPI increase unless it would be unreasonable having regard to paragraph 18(1).

ii. We are also reminded that a pitch fee can only be amended by either agreement of the parties or following an order of this Tribunal predicated by an application by either party.

iii. Mr Sunderland also touches on the fact that Flintshire County Council acknowledged the Residents Association as a qualifying Residents Association on 10th February

2023. We agree however that this is not a matter that involves this Tribunal and not something we will consider any further.

iv. In relation to the CPI increase Mr Sunderland makes the point that implied term 18(1) makes no reference to the quantum of the CPI figure.

v. In terms of deterioration and decrease in amenity and specifically removal of the car park at the bottom of the site the Applicant's position is that Willow Park has unrestricted planning consent and benefits from a site licence issued by Flintshire County Council in September 2018 allowing up to a maximum of 204 units on site. There are currently around 160 units on site. Any area on the park used for parking is ancillary use and the laying of a base for the position of a mobile home does not constitute a change of use.

vi. Mr Sunderland for the Applicant further submits that there is no contractual requirement within the occupation agreements to provide car parking other than to those who have parking on their own pitch nor is there a requirement to provide car parking in any particular place. He further states that the Government Model Standards relied on by the Respondents are simply standards to be considered by the local authority when applying conditions to the site. There is no such thing as one space for every five on the site. Furthermore, the argument that there is contravention of the site licence is not a matter for the Tribunal to determine. Compliance with such conditions is a matter for the local authority.

vii. Finally, the Applicant simply avers that there is sufficient parking on the park and there has been no loss of amenity.

viii. Regarding the comments about the proposal to remove the upper car park, the Applicant's case is that it cannot amount to a reduction in amenity as it has not happened therefore does not form part of the January 2023 review.

ix. In relation to the complaint about site security the Applicant avers that the lower access was the original access to the site, and it is now being used to facilitate a one-way system and there is no evidence of any loss of amenity or loss of security. In terms of the absence of CCTV the Applicant avers there is no contractual requirement to provide any and it is not a reduction in the amenity of the site.

x. In terms of lack of regular maintenance, the Applicant's case is that it is carried out on site regularly, as required usually either one or two days a week by the local maintenance team and, when relevant, specialist contractors. The Applicant avers that there is a dearth of evidence submitted by the Respondents relying upon one isolated incident of a sewage leak in this regard.

xi. The Applicant finally reserves its right to make an application for wasted costs under Rule 34 of the Tribunal of the Residential Property Tribunal Procedures and Fees Wales Regulations 2016.

DECISIONS AND REASONS

14. Having considered all the written evidence and with the benefit of the Surveyor Member having had an opportunity to inspect the site, take some photographs and comment, we find as follows:

Reliance upon the CPI increase.

15. We accept the submissions made on behalf of the Applicant in this regard. In law we are bound to utilise the CPI Index as the reference point of any increase in site fees and do not have any discretion to disapply simply because the underlying increase is significantly more than it has historically been. It is trite law by now that the starting point for any review is any CPI increase since the previous review.

16. The presumption is of course a rebuttable presumption rebutted where the increase would be unreasonable having regard to paragraph 18(1). Amongst other matters paragraph 18(1)b provides that regard has to be had to any deterioration in the condition and any decrease in amenity of the site or any adjoining land insofar as regard has not previously been had to that deterioration or decrease for the purpose of this sub- paragraph.

17. We have considered carefully the evidence presented and in relation to the evidence appertaining to the lack of regular maintenance and absence of site security we prefer the Applicant's submissions. The Surveyor Member of the Tribunal visited the site during the last pitch fee review and so did the other Tribunal members. Whilst on this occasion it is only the Surveyor Member who attended on site, his view, which we unanimously share having seen the photographs, is that in terms of the actual site itself there is no real evidence of a lack of regular maintenance. The Respondents only cite one occasion of a sewage spillage some significant time ago. Similarly, there is no evidence before us to indicate that a CCTV system existed which has now ceased and even if there were, there is no evidence to indicate that this in any way results in a deterioration to the condition and decrease in the amenity of the site.

18. Similarly, we find that creating the one-way system by utilising the bottom gate does not amount to a deterioration of the site or loss of amenity. Further, there is no evidence before us of difficulties as alleged by the Respondents, as for example third party individuals entering the site.

19. In relation to the car parking we accept the Applicant's submissions in respect of the upper car park as no works have been undertaken save as to site 3 park homes on the area. Whilst this does amount to a loss of car parking space itself, in our view that cannot be said to be a deterioration or loss of amenity to the park.

20. However, we consider that the removal of nearly all of the bottom car park being 60 or more car parking spaces (as evidenced plan 1 page 41 of the bundle) on the balance of probability rebuts the presumption and it would be unreasonable in this instance for

the pitch fees to be increased in line with the CPI as it amounts to a significant loss of amenity . The reason for this is that we find as a fact that the site has had the benefit at all material times from the lower car park until such time as the 10 new park homes were sited on the car park area.

21. Whilst we appreciate that developing the car park is lawful in terms of planning, and the conditions of the site licence and there is no contractual right for the park home owners to be allocated designated car parking areas (save as those who have a car parking area within the curtilage of their own pitch) this does not minimize the impact upon car parking. We accept the Respondents' submissions that the result of the siting of park homes on the lower car park is residents having to walk a further distance and any other visitor having to do the same. This we unanimously find as a fact amounts to a significant decrease in the amenity of the site. This is especially so given the number of car park spaces lost and the simple fact that in accordance with rule 14 of the site rules, all occupants have to be aged 50 or over. In this latter regard sadly, it is a fact of life that as people grow older their mobility is reduced.

22. Bearing all the above in mind we consider that there has been a significant enough decrease in the amenity of the site since the last review to warrant a rebuttal of the presumption to increase the pitch fees in line with the CPI increase. As a consequence, the Application to increase the pitch fees is refused.

Dates this 19th day of June 2023

Tribunal Judge Trefor Lloyd