Y Tribiwnlys Eiddo Preswyl

Residential Property Tribunal Service (Wales)

Leasehold Valuation Tribunal (Wales)

E-mail: rpt@gov.wales

Landlord and Tenant Act 1985 S27A

Premises: Penylan Holiday Park, Cenarth, Newcastle Emlyn, Carmarthenshire

Tribunal Reference: LVT/0012/07/23

Applicants: Leaseholders of various cabins

Respondent: Sheehan Holdings Limited

Tribunal: Judge Shepherd
Mr Hefin Lewis FRICS
Ms Juliet Playfair

DECISION AND REASONS OF LEASEHOLD VALUATION TRIBUNAL

1. This is the decision of the Leasehold Valuation Tribunal in relation to the Applicants' application pursuant to section 27A of the Landlord and Tenant Act 1985 dated 10 July 2023 seeking a determination of liability to pay and reasonableness of various service charges in respect of Penlan Holiday Park, Cenarth, Newcastle Emlyn, Carmarthenshire SA38 9JN for the service charge years 2021, 2022 and 2023. The hearing took place on 26th and 27th March 2024 at Haverfordwest Combined Court. This followed an inspection of the park. The Applicants were represented by Angela Stacey, Robert Owen and Lloyd Harris who are all park homeowners. Katie Helmore of Counsel represented the Respondent.

2. The Applicants consisted of lessees of the following cabins at Penlan Holiday Park Cabins; 1, 2, 5, 9, 10, 13, 21, 27, 28, 33, 34, 35, 41, 42, 45, 48, 52, 56, 62, 66, 72, 73, 77, Torwood 1, Torwood 2, Torwood 4 and Torwood 5. NOTE, the owners of No. 10 subsequently withdrew their involvement in this application.

3. The Respondent acquired the freehold of Penlan Holiday Park in or around April 2021 and was therefore the Applicants landlord until the sale of the freehold in March 2024.

Jurisdiction

4. Issues of the jurisdiction of the Tribunal were raised by the Respondent in the immediate lead up to the hearing. It was the Respondent's position that the Tribunal did not have jurisdiction under s.27A Landlord and Tenant Act 1985 because the homes occupied on the park were not dwellings. This was a surprising claim because no proper evidence had been provided to support the claim. One would have expected expert evidence to support such a radical submission. There was none. Instead, the jurisdiction argument really consisted of submissions made in Ms Helmore's skeleton argument and she couldn't give evidence although she appeared to be doing so on occasions. In any event the Applicants took no issue on the lack of evidence and robustly defended their right to protection under the Act.

5. The Tribunal's jurisdiction in respect of service charges is limited to those charges which are within section 18 of the LTA 1985, namely:

   "18. Meaning of "service charge" and "relevant costs"
   (1) in the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent-…"

   Dwelling is defined at section 38 of the LTA 1985 as follows:

   "…a building or part of a building occupied or intended to be occupied as a separate dwelling, together with any yard, garden, outhouses and appurtenances belonging to it or usually enjoyed with it"

6. In order to be a dwelling, the structure or property must therefore be a building or part of a building.

7. Ms Helmore said the wooden cabins of which there were 96 in total were not dwellings. This was on the premise that the cabins could be moved without a process of demolition. She relied on the case of ***Caddick v Whitsand Bay Holiday Park Limited*** [2015] UKUT 0063 (LC) for this proposition. In *Caddick* HH David Mole QC (sitting as a Deputy Judge of the Upper Tribunal) said the following:

   "76… I agree that an important part of the test is whether the object in question has lost the power to be made mobile, at least at reasonable cost. In Elitestone v Morris, Lord Lloyd identified this consideration. (At [1997] 1 WLR 687, 690.) He said –
   "… for the photographs show very clearly what the bungalow is, and especially what it is not. It is not like a Portakabin, or mobile home. The nature of the structure is such that it could not be taken down and re-erected elsewhere. It could only be removed by a process of demolition. This, as will appear later, is a factor of great importance in the present case. If a structure can only be enjoyed in situ, and is such that it cannot be removed in whole or in sections to another site, there is at least a strong inference that the purpose of placing the structure on the original site was that it should form part of the realty at the site, and therefore cease to be a chattel."

77. Whether or not lodge 11 is a dwelling that is a building is a matter of fact and degree for me. The starting point must be the natural and ordinary meaning. It is also useful to consider the concept of a "building" in the context of the 1985 Act. The draughtsman did not leave the word dwelling as it stands but added the requirement that it must also be a building, plainly intending to exclude a class of "dwellings-nota-building." Examples that come to mind are a boat, a tent, a cave or a caravan. Of course, all those examples can become or be incorporated into a building. (eg Peggoty's house in David Copperfield) I find the most persuasive test of the difference to be that of Lord Lloyd in Elitestone; namely whether the structure has become something that can only be enjoyed where it is and cannot be removed elsewhere without a process of demolition.

78. The reference to a "process of demolition" must not be misunderstood: it is demolition of the structure itself that matters, not the structure's surroundings…"

8. In *Caddick* the factors that led the Upper Tribunal to the view that the homes in that case were not dwellings were:

1 The weight of the lodge was taken on the main frame of the chassis, either by timber block or by screw jacks (paragraph 79 of the judgment);

2 The chains which attached the chassis to the concrete base were necessary to ensure the stability and security of the lodge in an area which may experience high winds and did not "make the lodge a building any more than a boat's moorings make it a building or a light aircraft becomes a building when it is chained to a concrete block on the ground to stop it blowing away" (paragraph 79 of the judgment);

3 The water pipes and electricity supply appeared designed for easy disconnection (paragraph 80 of the judgment);

4 The foul sewage connection was in a void under the lodge and was necessarily of more of a more "substantial construction but is still not much different from the arrangements that ordinary caravans or motorhomes enjoy on some sites and could be disconnected reasonably cheaply and easily" (paragraph 80 of the judgment);

5 The lodge could be separated into two halves by unbolting the chassis and removing the covering strips and ridge tiles (paragraph 81 of the judgment);

6 The skirt attached to two sides of the lodge rested on the ground and would not be difficult or lengthy to remove (paragraph 82 of the judgment);

7 The decking was not attached to the lodge and could be lifted out with a crane (paragraph 83 of the judgment);

8 The axles could if necessary be replaced (paragraph 84 of the judgment);

9 The lodge could be lifted out in one or two pieces using a crane (paragraph 85 of the judgment).

9. In Caddick there were expert surveyors on both sides. In the present case no expert was instructed and the only expert present at the hearing was Mr Lewis who sat on the Tribunal. Despite this gap in the evidence Ms Helmore felt able to make the following statements in her skeleton argument.

At the Park, the Cabins could all be moved and enjoyed elsewhere without a process of demolition and are not therefore buildings. In particular:

1 Each Cabin is timber framed and timber clad construction;

2 Depending on size, the vast majority may be moved as a whole, or the rest in two using a low loader or a crane;

3 TJ Crane Hire Limited have provided a quote to move a cabin of the following dimensions width 8.5metres, length 10metres ad height 4metres from Penlan Holiday Park of £1,930.00 plus VAT;

4 By way of example, on or around 27 August 2021 one of the Cabins, a Cosalt Holiday Cabin measuring 33ft by 20ft was moved in one piece on a low loader from pitch 69 at Penlan Holiday Park and sold offsite to R M & E Jones & Sons Ltd for £8,000 as confirmed in the letter dated 12 February 2024 from Rob Jones of R.M &E Jones & Sons Ltd;

5 The Cabins have substantial wooden joist frames, some of which are metal chassis with axles for wheels, which sit on top of the concrete base;

6 The weight of the Cabins is held by the wooden frame;

7 Some Cabins have attached the Cabin with a metal strap to the concrete base to provide stability and security in case of high winds. Such straps may be easily and cheaply removed;

8 The majority of the Cabins do not have a timber 'skirt';

9 The timber 'skirts' that do exist are suspended from the base of the Cabin and not fixed to the concrete base;

10 The decking is constructed of timber boards and supported on simple cross frames fixed to timber posts and is not screwed to the concrete base;

11 Any screws attaching decking to the Cabins may be quickly and easily unscrewed;

12 The Cabins may be easily disconnected from the water pipes and electricity supply;

13 The foul sewerage connection in the void below the Cabins is necessarily of a more substantial construction but may be disconnected cheaply and easily;

14 Several of the leases of the Cabins contain provisions enabling the landlord to move the cabin to a different pitch within Penland Holiday Park. By way of example the lease dated 1 November 2005 made between (1) Michael George Greenshields ,

10. It's not clear where this "evidence" came from. In any event following a detailed inspection lasting several hours and involving us viewing every home on the site we do not consider that Ms Helmore is correct for the following reasons:

a) It is fanciful to suggest that the homes could be moved without being demolished in some way. Many of them have concrete block skirts which make attaching straps for removal virtually impossible without demolishing the skirt. Even those which did not have a concrete skirt could not practically be transported out of the site. The park has an undulating terrain with a lot of trees. Trees would need to be coppiced or pollarded significantly to allow cranes and lorries to access the homes to remove them never mind in one piece. The quote from the crane company rings hollow in these circumstances.
b) Whilst floors to the homes were predominantly of suspended timber construction on joists, a number of dwellings had solid concrete floors to some habitable rooms. Removal of these units by crane or otherwise would render these rooms uninhabitable as they would be without floors. This supports the assertion that the homes could not be removed without demolition.
c) None of the homes had chassis or wheels despite an earlier suggestion that some did.
d) The "evidence" of prior removal was inconsistent and inconclusive. The home removed was called a Lautrec Twin which was not the same as the other homes on the site and could be moved in two parts.
e) The provision in the lease allowing removal was not uniformly evident in all of the leases.
f) A home removed in 2021 had to be demolished partly because it had an asbestos roof which needed specialist removal.
g) The service connections were hard wired in.
h) The homes were originally assembled on site, they were not constructed and then moved onto the site.

11. For all of these reasons we do not consider that the Respondent's submissions are correct. We do have jurisdiction to deal with an application under the 1985 Act because the homes on Penlan Park are dwellings.

The Applicants' challenge.

12. On day 2 of the hearing the Applicants' challenge to the service charges for 2021-2023 inclusive was considered. The Respondent very sensibly conceded or withdrew a number of items in the Scott Schedule. Other items were agreed between the parties. What remained were five broad categories of items: Website and social media; crazy golf; children's playground material; salary allocation and administration charges. Taking each of these items in turn:

Website and social media

13. This related to the operation of the website for the park, storage of files and other associated social media activities. We consider that the costs were reasonably incurred as the website was informative and the other costs are not unexpected for a site of this type. Accordingly, we allow the sums in full.

Crazy golf

14. This related to the cost of installing a new crazy golf course on the site. The Applicants cited problems that had occurred with the course. They said they had not been consulted on it. Golf clubs were not always available and they considered it was a hazard for small children. The provision relied upon by the Respondent to justify this expenditure was the following:

> *THE THIRD SCHEDULE hereinbefore referred to DUTIES AND OBLIGATIONS OF THE LANDLORD*
> *Part One*
>
> *1, To maintain the said Holiday Village in such manner that the Landlord may reasonably decide is practicable and for this purpose to provide a permanent site employee or employees who. will attend to the general maintenance tidiness and cleanliness of the Holiday Village including all communal facilities and including roads lighting of the said roads drainage fencing of boundaries cutting of grass trimming of trees keeping car parking area free from weeds collection of garbage and general security of the said village (but not so to incur responsibility for any loss or damage howsoever caused)*

15. This provision does not expressly include improvements of the type here. Neither can this be implied. The clause expressly relates to maintenance and not improvement of the site. Accordingly, we do not consider that the cost of the Crazy Golf is recoverable under the lease and the sums are disallowed in full.

Children's playground material

16. This concerned the cost of replacing play fibre in the play area and is therefore a maintenance issue. This is a reasonable expenditure and we allow it in full.

Salary allocation

17. There were four people involved in running the park. These were Charmain Sheehan, Jack Sheehan, Christopher Ayre and Alexander Ayre. For 2021-2022 Christopher Ayre was running the park on a day-to-day basis. His mother, Charmain Sheehan had been in the business for years and had overall responsibility. Christopher Ayre had to be replaced in 2022-2023 because there had been incidents involving his conduct including his being abusive to occupiers. Jack Sheehan replaced Christopher Ayre and the Applicants said that the management improved. Overall, we consider that the salary allocation was reasonable. However, it is necessary to deduct 50% of Christopher Ayre's salary for 2021-2022. The 50% deduction should not be recoverable under the service charge. This is because his performance during the year was poor. His conduct deteriorated and he was abusive to residents. Eventually he was replaced. This was accepted by Jack Sheehan in his evidence.

Administration charges

18. There appeared to be a consensus between the parties that 10% was an appropriate amount. The Tribunal agrees and this is the sum that should be applied to the service charges as determined.

Section 20C Landlord and Tenant Act 1985

19. We allow the application under s20C. The Applicants were successful on many of the items challenged.

Dated this 21st day of May 2024
AMENDED this 23rd day of May 2024
Judge Shepherd