

Y TRIBIWNLYS EIDDO PRESWYL

RESIDENTIAL PROPERTY TRIBUNAL (WALES)

Reference: RPT/0007/05/24

In the Matter of an Application for Pitch Fee Reviews under the Mobile Homes (Wales) Act 2013

Applicant: Maguires Developments Limited
Representation: Wayne Maguire of Maguire Holdings Limited

Respondents: (1) Julie Davies
Representation: None

Properties: 34 Woodlands Park Woodlands Crescent, Quakers Yard, Treharris
CF46 5AR

Tribunal: R. Price (Chairperson)
K. Watkins (Surveyor Member)
Juliet Playfair (Lay Member)

Date of hearing: 10 September 2024

DECISION

In respect of 34 Woodlands Park Woodlands Crescent, the pitch fee is determined at £194.04 per month from 1 February 2024.

REASONS FOR THE DECISION

Hearing

1. There was a site visit by the chairperson, surveyor member and lay member of the Tribunal on the morning of 10 September 2024, and the hearing took place via Microsoft Teams in the afternoon of that day. The Applicant was represented by Wayne Maguire of Maguire Holdings Limited, the Applicant's managing agent for the site.

2. The Tribunal had before it an appeal bundle prepared by the Applicant. The initial bundle runs to 16 pages, this comprised of the Respondent's statement to the application and the Applicant's response. The Applicant's response included 3 annexes comprising of the Application to the Tribunal dated 30 April 2024, the Notice of Pitch Fee increase dated 30 April 2024 and Annex 3 which was the Respondent's evidence that amounts to 22 pages. The Respondent provided further submissions, in six emails, on 1 September 2024 that was collated as one PDF document, that run to 23 pages. The parties provided the Written Statement dated 28 November 2017, the day prior to the hearing (9 September 2024) following a request by the Tribunal.
3. The Tribunal confirmed with the parties that they had all the relevant documentation. It became apparent towards the end of the hearing that the Applicant had not actually had sight of the further submissions that had been made by the Respondent by email dated 1 September 2024. The PDF document was sent to the Applicant by email at 3:08pm. The hearing was adjourned until 3:30pm to allow the Applicant to consider these submissions and to provide any comments. At 3:30pm the parties rejoined the virtual hearing room and the Applicant provided further submissions in respect of the PDF document.

Background

4. By way of applications dated 30 April 2024, Mr Wayne Maguire – the Applicant – applied to the Tribunal for the pitch fees payable by the Park Home Owner listed as Respondent to be reviewed with effect from 1 February 2024.
5. Woodlands Park is a protected site in the meaning of the Mobile Homes (Wales) Act 2013 (“the Act”).
6. The Respondent's agreement for pitch 34 commenced on 28 November 2017 (this is in accordance with the Written Statement that was signed on the same date.) Conversely, the application made to the Tribunal dated 30 April 2024 records the commencement date of the Respondent's occupation agreement as 16 November 2017. The Tribunal accept the date of 28 November 2017 at a pitch fee of £165 per month, with a review date of 1 February in each year. On 21 December 2023 Maguire Holdings Limited served a notice, in a pitch fee review form seeking an increase in the pitch fee to £214.80 per month from 1 February 2024, the review date. The existing rent as at the date of the notice is recorded in the notice as £206.74, however in the application to the Tribunal the existing rent as at the date of the notice is recorded as £186.76. The Respondent confirmed that this is the pitch fee currently been paid and has been paying since 1 February 2022, although the Applicant stated that one month the increased fee was paid in error.

7. The increase of £8.06 per month, contained in the notice dated 30 April 2024 was calculated by reference to the percentage increase of the Consumer Price Index (CPI) over the period ending with the month before service of the notice (November 2023) and beginning 12 months earlier in November 2022. The Tribunal has confirmed that there was an increase of 3.9%.
8. The Applicant did not rely on any other matters to justify the increase beyond the CPI increase.
9. The Respondent did not agree the increase, hence the need for an application to the Tribunal to determine the pitch fee review.

Law

10. Schedule 2, Part 1, Chapter 2 of the Act, contains the terms of mobile home agreements implied by the Act. Those dealing with pitch fee reviews are at paragraphs 17 – 20. Paragraph 18 provides:

“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 subparagraph),

(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.”

11. 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 CPI. The proposed increase in the pitch fee from £206.74 to £214.80 per month is within that margin. However, the Tribunal do not accept that the existing pitch fee is £206.74. Mr Maguire was not able to provide any evidence to dispute the evidence from the Respondent, that they had been paying a pitch fee of £186.76, indeed Mr McGuire had recorded this figure in the application to the Tribunal with no attempt being made to correct this. The Tribunal accept that the Respondent has been paying £186.76 since 1 February 2022 (aside for that one month).

12. The issues raised by the Respondent are set out under the following headings.

Security Barrier

13. The Respondent's oral evidence is that the security barrier has been broken more times than it has been working since occupancy of the Park Home. The security barrier is one of the main reasons why she chose to purchase a Park Home at this location, as she felt vulnerable as a single female. The Respondent could not be exact as to the dates and length of time that the barrier has been out of service. Annex 3 pages 15 & 16 of the appeal bundle refer to the first lengthy breakdown to the security barrier. These documents comprise of a letter dated 7 January 2020 from a Park Homeowner, Mr Roger Williams and a response from Maguire Developments dated 3 February 2020, although the heading is not legible. The Applicant accepted that the security barrier was out of action for just over four months. The Tribunal accept the evidence of the Applicant that the security barrier was replaced in 2020, and also in 2024. The Applicant accepts that the barrier was out of action for a period of approximately three months in 2024, and this was mainly due to the repairing company delays.
14. The Respondent referred to other intermittent inconveniences due to the barrier being out of action, and it appears that on occasions some residents have had access to the barrier key to resolve the issues. However, the Applicant did not provide any further clear evidence of the dates of these intermittent faults. On balance, taking the lack of amenity caused by the disrepair to the security barrier at its highest which would be less than a year out of nearly seven years, the Tribunal find that it would be unreasonable for there to be a presumption to an increase to the pitch fee consistent with the relevant CPI percentage.

Water Pressure

15. The Tribunal accept that the Respondent has been complaining about inadequate water pressure for at least five years. Indeed, there is a copy of an email being sent from the Respondent to the Applicant on 3 July 2020 referring to this issue and also reference in this email about the matter being reported at an earlier date. The Applicant stated that the water pressure was above the requirements set by the Water Company but provided no evidence in this regard. The Respondent in written evidence stated that they had been informed by Welsh Water that the water pressure was so low that it would be classed as a failure on a public property [page 5 of appeal bundle] It was the Respondent's position that the water pressure would fluctuate depending on the demand on the water by the other residents. The Respondent also stated that due to the low water pressure she was unable to have a shower installed, which would have benefitted her due to her mobility needs. The issue did not get resolved until 2023, after another park owner making a complaint whereupon it was discovered that a buried water stop tap had not been fully turned on, once this was identified the Respondent's water pressure improved significantly and immediately. Using the

expertise of the panel, the Tribunal concluded that this matter could have been identified years earlier with the correct adoption of routine maintenance and repair. The Tribunal find that this matter amounted to a lack of amenity on the part of the Respondent and that it was unreasonable for the presumption to apply as set out in Section 20 of the aforementioned legislation.

Lighting

16. The Respondent stated that the lighting outside her property has required repair on several occasions. The Tribunal has not been furnished with sufficient evidence regarding the length of time that the light outside number 34 has been in need of repair, although it is accepted that lack of routine maintenance by the Applicant has led to delays with the repair. Mr McGuire was unable to give clear evidence as to when repairs to this particular light were undertaken. Whilst the Tribunal acknowledge that Mr Maguire was responding to evidence that was emailed to him during the course of the hearing, the Tribunal would have expected that Mr Maguire would have had before him a clear record of when and where repairs had been undertaken. That being said the Tribunal do not find that this lack of amenity rebuts the presumption in favour of an increase to the pitch fee in line with the prevailing CPI percentage.

Gas leak

17. This issue has been resolved. The resolution of this matter is in dispute, The Respondent states that her meter was replaced by Wales & West Utilities, and the new meter installed had a meter reading of zero after installation. The Applicant stated that they are responsible for each Park Owner's individual gas meters, and at no point has the Applicant been invoiced for a new gas meter. The gas leak occurred prior to the rent review period that is the subject of this appeal, and it's the Respondent's evidence that they smelt it for approximately two years, whilst sat outside and whilst in their home next to the window closest to the meter. The Respondent called the gas line emergency number, and the meter was subsequently replaced. The only evidence offered by the Applicant to challenge the claim made by Respondent is that their company has never been invoiced for the replacement gas meter and that there is no record, when the meter readings are taken by an employee of the Applicant that the meter had low readings as it had been replaced and started from 0 again. The Tribunal find that the gas meter was replaced, the Respondent gave clear cogent evidence upon this, and it was open to the Applicant to provide evidence of a copy of a meter reading from number 34 and find a comparator meter from a neighbouring home. Whilst the Tribunal accept that a new gas meter was installed, the Tribunal do not find that this meets the threshold to rebut the presumption in favour of a pitch increase in accordance with the relevant CPI percentage.

Roads

18. The Respondent has claimed generally that the standard of the roads at the park site are poor and not regularly maintained. The Applicant in oral evidence initially accepted that no routine maintenance is undertaken, but then sought to qualify this later in the hearing stating that general inspections would be undertaken quarterly when meter readings were read. No maintenance records had been made available to the Tribunal. The roads were well maintained at the time of the site inspection and on balance the Tribunal find that this claim by the Respondent does not rebut the presumption that the pitch fee should increase in accordance with the CPI average.

Site Office

19. The Respondent claimed that the site office looked unsightly, particularly for visitors as an internal pane of glass was cracked, it remained like this for a number of years. It was not in dispute that just prior to the summer the Applicant had allowed the park homeowners to use the site office for their own entertainment and as it was to be used by the residents the pane of glass was fixed. The office appeared to be well maintained at the time of the site inspection (although it is acknowledged this is in part due to the residents who have decorated it internally. This, issue did not meet the criteria set out in paragraph 18 and did not rebut the presumption of a pitch fee increase in line with the CPI.

Electricity

20. There was an issue in respect of the supply of electricity to the Respondent's home. Whilst this issue was resolved it unfortunately led to an unpleasant confrontation between the parties. The claim is that the Applicant holds video footage of the incident, which understandably the Respondent has requested is deleted. This is not a matter that can be resolved by the Tribunal as it does not fall within the scope of paragraph 18 which sets out the relevant criteria to be considered when adjudicating upon a pitch fee increase. Likewise, the issues concerning the Respondent's complaint about the defects with her park home and allegations of nuisance behaviour that have been made against her do not fall within the scope of paragraph 18.

Conclusion

21. Whilst the Tribunal accept that the issues of the water pressure and security barrier would fall within paragraph 18 of the aforementioned legislation, the Tribunal find that this matter has been reflected by the fact that the Respondent has not been subject to a pitch fee increase since at least 2022. The Tribunal confirm that the pitch fee stood at a figure of £186.76 prior to the notice of increase served on 21 December 2023. The

Tribunal do not find that any of the other matters raised by the Respondent make the pitch fee increase of 3.9% from 1 February 2024 unreasonable and determine the pitch fee to be £194.04 from 1 February 2024 ($186.76 \times 3.9\% = £7.28$ (+ $186.76 = £194.04$) . Whilst the Tribunal accept the barrier has been out of action for nearly a three month period this year, this in itself would not make the pitch fee increase unreasonable to prevent the 3.9 percentage being applied since 1 February 2024 to the existing pitch fee of £186.76.)

Dated this 24th day of September 2024.

R. Price
Tribunal Judge