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RESIDENTIAL PROPERTY TRIBUNAL (WALES)

Reference: File Numbers: RPT/0058/01/24 – RPT/0096/01/24]

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

APPLICANT: Wyldecrest Parks (Management) Limited

RESPONDENTS:

Mr and Mrs Murray (No. 8)	Mrs M Heaney (No. 9)	B A Rodgers (No. 12)
Mr J Deleaney (No. 15)	Vivien Foster (No. 16)	Mr Stewart (No. 18)
Mr & Mrs Battison (No. 27)	Mr & Mrs Aldis (No. 33)	Mrs M Lambert (No. 34)
M Hughes (No. 35)	Mr Laird (No. 41)	Mr Newey/Mrs Aldis (No. 43)
Mr & Mrs Willis (No. 58)	Mrs Jones (No. 62)	Mr & Mrs Green (No. 78)
Mrs Eaton (No. 92)	K Higham (No. 98)	Mrs Whelan (No. 107)
Mr T Challinor (No. 132)	M Cywinski/PHope (No. 136)	Mr & Mrs Wilson (No. 141)
K McCully (No. 157)	J Smith (No. 158)	K Pierce (No. 164)
Mr/Mrs Bereeson (No. 165)	Mrs Hopley (No. 167)	Mrs Blease (No. 168)
J Callaghan (No. 170)	Steven Last (No. 171)	Mr & Mrs Davies (No. 182)
S Forshaw/S Plank (No. 187)	D Stewart (No. 191)	S Robinson (No. 194)
Mr & Mrs Weber (No. 220A)	D Felton (No. 222A)	M Shaw (No. 224A)
S Gallagher (No. 228)	Elaine Moore (No. 300)	

PROPERTIES:
8,9,12,15,16,18,27,33,34,35,41,43,58,62,78,92,98,107,132,136,141,157,168,164,165,167, 168,170,171,182,187,191,194,220A, 222A, 224A, 228,300 Willow Park, Colliery Lane, Gladstone Way, Mancot, Deeside, Flintshire, CH5 2TX

TRIBUNAL: Trefor Lloyd (Tribunal Judge)
Hefin Lewis FRICS (Surveyor Member)
Hywel Eifion Jones (Lay Member)

ON-SITE INSPECTION: The site was inspected by the Surveyor Member on 4th November 2024 between the hours of 11:00 and 12:00. He was unaccompanied.

Hearing Date: 8th November 2024 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 ("CPI") for the relevant 12 month period has been partially rebutted as a result of a decrease in condition arising from an absence of regular maintenance as detailed below resulting in a determination that the revised pitch fee being increased by 4.03% from the existing pitch fees since the last review.

Background

1. By way of Applications dated 30th January 2024 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 [ ]. .

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 (at the time of the application) 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. Hefin Lewis FRICS on 4th November 2024 in the absence of any representation from either party other than some placards that had been placed in various locations. Mr. Lewis confirmed he did not consider the placards as part of his inspection.

5. As agreed with the parties the Application was determined on paper. In order to facilitate the case progressing a number of procedural directions had previously been 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. We remind ourselves that Upper Tribunal case in **Wyldecrest Parks Management Ltd -v- Mr & Mrs P Kenyon and others 20117 [UK UT0028] LC** confirms that that there is a presumption of CPI increase unless it would be unreasonable having regard to paragraph 18(1).

8. We also remind ourselves 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.

9. 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).

10. The Upper Tribunal ("UT") decision in **Wildcrest Parks Management Limited v Mr Alan Whiteley and others (relating to Pemnwortham Park Preston) and v Mrs Alves and others (relating to Willow Park Mancot)** the subject matter of this application) **Neutral Citation [2024 UKUT 55 (LC)**]The UT provides clear guidance that where there has been a loss of amenity our decision is not simply a choice between CPI increase and a nil increase and in certain circumstances an increase of less than CPI but more than a nil increase may be appropriate (per paragraph 64 of the UT decision).

11. Paragraph 48 of the UT decision further makes it clear that we were entitled to find that the presumption of a CPI increase did not apply in the circumstances of this case.

12. As a consequence, our task is now in relation to this rehearing to simply either consider whether the loss of amenity affected pitches to a different degree or if we considered they would all equally be affected and in either context to explain the reasons for such and come to a reasoned conclusion as to quantum of any increase if applicable given our findings as to a loss of amenity.

13. The UT decision at paragraph 71 provides guidance in relation to the approach to the valuation and determination of new pitch fees where the presumption of a CPI increase has been displaced stating that:

" tribunals should try to adopt a relatively simple approach, because the sums involved are modest and the material available is likely to be quite limited. Unless different pitches are affected to a materially different degree by a loss of amenity such that there is a good reason for differentiating between them in determining new pitch fees, tribunals should not feel obliged to do so. They should determine what in their view is a reasonable increase or a reasonable pitch fee having regard to the owners expenditure on improvements and to the loss of amenity at the park or deterioration in its condition and having regard to the change in the general level of prices measured by RPI or CPI, and such other factors as they consider relevant. They should use whatever method of assessment they consider will best achieve that objective".

14. In the Appeal hearing the representative for the Appellant suggested that the pitch fee was divided into 3 constituent parts being namely: the right to station a home on the pitch; the right to use the common areas of the park and; the right to have those common areas maintained by the owner. He argued that the most important of

these rights was the right to place a mobile home on the pitch and occupy it and that should account for half the pitch fee and therefore half of any of any increase. The other two rights were important and should be each allocated 25% of the pitch fee and accordingly 25% any applicable annual increase. He also proposed a further refinement which was when they had been loss of amenity the aggregate of three years average or even year average should be calculated so as not to penalise a park owner to forgo a significant increase if the previous year the proportion of increase to CPI was far less.

15. The Upper Tribunal's response to that contention is that (as per paragraph 70 of the UT decision) that it is for us as the tribunal tasked with determining the new pitch fee to decide what we consider to be a reasonable new figure. As Parliament has chosen to adopt a relatively crude standard for pitch fee determinations and gives very little guidance on how the standard should be applied it was not for the Upper Tribunal to lay down a rule where Parliament had chosen not to do so.

16. Given there were numerous applications made we were provided with a sample application form relating to number 164 and also a sample pitch fee review notice plus accompanying letter. It is worthy of note at the outset that no issue is taken in relation to the calculation of the relevant pitch fee review.

The Applicant's Case

17. The Applicant's case can be succinctly summarised as simply seeking an increase in line with any increase in the CPI 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.

18. The Applicant filed a short narrative statement signed by Mr David Sunderland together with the Application forms relying upon the statutory presumption. The statement submits that the Applicant 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

19. In summary the Respondents maintain that loss of amenity arises due to:

(i) A refusal by the Applicant to engage with the Qualifying Residents Association.

(ii) The removal of a large site plan from the site entrance. In support of such an argument they maintain collectively that this would create difficulty for emergency services locating and accessing homes on the site. Despite requests, no steps have been taken by the applicants to reinstate the same. According to the Respondent the reply from the Applicant has been it is not contractually

obliged to replace the existing site plan and the currently in place A4 drawing suffices.

(iii) An alleged lack of maintenance. In this regard they concentrate upon:

(a) The condition of the roads and in their words the "dangerous potholes at the bottom of the park".
(b) The poor lighting and the lack of lighting maintenance plus;
(c) The lack of maintenance to the brick buildings housing electric meters and;
(d) Allowing vegetation to continuously grow to such an extent of pathways become difficult to traverse.
(e) An alleged disregard to consulting with the Parks Qualified Residents Association.

(iv) In support the case as to a lack of maintenance the Respondents rely upon a number of photographs. Sadly, those photographs are not identified by way of specific locations on the site.

The Applicant's Reply

20. The Applicant's response is by way of a statement from its Director of Estates Mr David Sunderland who submits that:

(i) It is for the Respondents to oppose the review as the Applicant simply seeks a statutory annual inflation pitch fee increase;

(ii) The Respondents' representative Mr Pierce represents 33 of the 38 Respondents and the potential Respondents relating to numbers 12, 78, 187, 220A and 222A have not responded to the application therefore do not form part of this specific application.

(iii) The original site plan was erected by previous owners some 20 years ago, was a one off, cannot be replicated and was not to scale. It was never accurate and became less so as the park developed. Although given the use of the word "reportedly" which indicates no more that hearsay evidence Mr. Sunderland goes on to state that around two years ago, reportedly as a result of Residents Association's complaints to the Local Authority's demand to remove it was removed and replaced with the current version that reflect the current layout of the site as required by the licence conditions. The current plan was placed in a prominent position on the notice board at the entrance. This was done to the satisfaction of the Local Authority and is no different to the format used on the other 100+ parks the Applicant and meets with the conditions of the site licence.

(iv) In terms of lack of maintenance this is denied. Mr Sunderland submits that a team visit the park on at least two or three days a week replacing lights and undertake road electric and water leak repairs as well as other general maintenance. The notice referred to in the Respondents' evidence as being a reduction in the

maintenance service was only temporary and amounted to a period of two weeks during staff holidays.

(v) Whilst denying an absence of consultation with the Qualifying Residents Association the Applicant maintains that failure to do so would not in any event be considered to be a reduction in the amenity of the site.

(vi) In conclusion the Applicant submits that the Tribunal should find the pitch fees for the 33 properties represented in the application before us to be determined in line with the proposed 4.6% CPI increase.

21. Unsurprisingly, the Applicant also refers us to the Upper Tribunal decision in the combined appeals cases of Wildcrest Parks Management Limited v Mr Alan Whiteley and others (relating to Pemnwortham Park Preston) and v Mrs Alves and others (relating to Willow Park Mancot the subject matter of this is the case) Neutral citation [2024 UKUT55 (LC)].

22. We have already referred to the principles and guidance that can be derived from that decision above under the heading 'Relevant Legal Principles' and as such we comment no further in relation to the same.

DECISIONS AND REASONS

23. 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.

24. 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. It is trite law by now that the starting point for any review is any CPI increase since the previous review.

25. 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.

26. We have considered carefully the evidence presented and in relation to the evidence appertaining to the lack of regular maintenance since the last site visit and pitch fee review and deal with the individual points raised by the Respondents as follows:

(i) A refusal to Engage with the Residents Association.

We accept the Applicant's submission in their entirety in relation to this aspect of the case. The failure or otherwise of the Applicant to engage with the Residents Association in our view cannot amount to a deterioration in the site or loss of amenity.

(ii) The removal of the large site plan and replacement A4 plan.
We are unable to conclude either way upon this matter and as a consequence as the onus in this regard is upon the Respondents we do not find as a fact that the current A4 plan is appropriate or conversely sufficient. .

(iii) Lack of maintenance – Access Roads.
In terms of the access roads, we have photographic evidence dated June 2023 used to inform the earlier pitch fee determination and comparing these to the images taken by the Surveyor Member on 4th November 2024 taken at the same location the following conclusions emerge:

(a) It is clear, from simply comparing the condition of the roads by way of photographs, that the condition of the roads have deteriorated and as such, we are able to conclude that there is definite lack of maintenance in relation to parts of the access roads.

(b) This has resulted in an increase in potholes and a deterioration in terms of the roads in question.

(c) Poor Lighting
It is impossible to determine from the photographs supplied by the Respondents whether the site suffers from poor lighting and lack of maintenance of the same. Accordingly, the Respondents have not been able to prove this aspect of their case upon the balance of probabilities and we make no finding as to lack of maintenance or loss of amenity in this regard.

(iv) Lack of maintenance – Brick Buildings housing electric meters
Whilst the structures have not been maintained to a high standard, unlike in terms of the access roads, they do not have a detrimental effect upon the day to day use of the site and for that reason we do not find that the absence of maintenance to a high standard is sufficient to treat their condition as either a deterioration of the site and/or a lack of amenity.

27. Having come to the above conclusions we go on to consider the effect (if any) the findings have in terms of the statutory presumption relating to the pitch fee review. In this regard we remind ourselves of the Upper Tribunal guidance in the earlier appeal case appertaining to this specific site (and other sites) **Wildcrest Parks Management Limited v Mr Alan Whiteley and others relating to Pemnwortham Park Preston and v Mrs Alves and others relating to Willow Park Mancot [2020 4UKUT50 5LC]** ("the Appeal Decision"). From which the following principles emerged:

(i) If a loss of amenity (and by analogy) a deterioration in the condition of the site is found it is not simply a Choice between a CPI increase and a nil increase as being the only options.

(ii) This does not mean however that a Tribunal could not be entitled to find that the presumption of a CPI increase in full did not apply in the circumstances of any specific case.

(iii) Paragraph 71 of the Appeal Decision provides the following guidance as to how to approach the question of valuation and determination of pitch fees where the presumption has been displaced stating that:

" tribunals should try to adopt a relatively simple approach, because the sums involved are modest and the material available is likely to be quite limited. Unless different pitches are affected to a materially different degree by a loss of amenity such that there is a good reason for differentiating between them in determining new pitch fees, tribunals should not feel obliged to do so. They should determine what in their view is a reasonable increase or a reasonable pitch fee having regard to the owners expenditure on improvements and to the loss of amenity at the park or deterioration in its condition and having regard to the change in the general level of prices measured by RPI or CPI, and such other factors as they consider relevant. They should use whatever method of assessment they consider will best achieve that objective".

28. Applying the above to our finding at paragraph 17 (iii) relating to the absence (since the last pitch fee review) of any regular road maintenance and the effect in terms of the condition of the site and the inevitable effect upon the residents, visitors and other parties visiting the site we find that the statutory presumption as to an automatic CPI increase is rebutted and consider the most appropriate way to deal with the current pitch fee review is as follows:

29. Although we are not bound by our earlier decisions having determined relating to the same site that the right to site a park home on a pitch has, in itself, a value in terms of both the pitch fee and then applicable or not CPI increase we again adopt and conform the same finding as a fact that the right to site a park on a pitch represents 50% of any pitch fee and accordingly it must follow any 50% of any increase in the same.

30. The remainder of the pitch fee and then the applicable or not CPI increase amounts to the remaining 50% applicable increase. That includes both elements of amenity and maintenance. On previous occasions we have not considered the need to further sub-divide between amenity and maintenance. Clearly, on this occasion there is a need to do so. As a consequence we find as a fact that the remaining 50% pitch fee needs to be sub-divided and as a result 50% of any increase in this instance be further subdivided so as to relate to 25% in relation to amenity and the remaining 25% in relation to maintenance items.

31. The 25% attributable to maintenance covers all items of maintenance not only limited to road repairs and would include items such as, landscaping, hedge cutting

and lighting (none of which we have identified as being deficient). As a consequence the percentage CPI increase in our view should be reduced by 12.5% to clearly reflect the fact that there has been a deterioration in the condition of, in this instance, the roadway since the last review, but not any other material deterioration or loss of amenity that would constitute any further rebuttal of the presumption.

Dated this 28th day of November 2024

Tribunal Judge Trefor Lloyd