

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL

Reference: RPT/0006/09/16

In the Matter of 3 Scamford Park, Camrose, Haverfordwest SA62 6HN

In the matter of an Application under Section 52 of the Mobile Homes (Wales) Act 2013 and the Mobile Homes (Site Rules) (Wales) Regulations 2014

TRIBUNAL Mr S Povey
 Mr D Evans
 Ms J Playfair

APPLICANT Mr R W Culpeper

RESPONDENT Mrs L Barney-Cooper

DECISION

1. Rule 14 of the Site Rules shall be modified as follows:

Where the exterior is repainted or re-covered, homeowners must keep to colours of pastel shades.

2. The last paragraph of the preamble to the Site Rules is modified as follows:

These Rules also apply (for as long as they live on the park) to the park owner, their family members, and any employees with the exception of rules: 28 & 30. The rules also apply to any occupiers of park homes who rent their home, the only rules which do not apply to occupiers who rent their home are rule nos. 14 & 20.

3. Rule 48 of the Site Rules shall be modified as follows:

You must not park or allow parking of commercial vehicles of any sort on the park (other than for the delivery of goods and services) including:

- Light commercial or light goods vehicles as described in the vehicle taxation legislation;

- Vehicles intended for domestic use but derived from or adapted from a commercial vehicle;
- Any vehicle with 'blacked out' steel panel or similar side or rear windows with the exception of commercial vehicles operated by or on behalf of the park owner and being used directly for site business.

4. A new Rule 62 shall be added to the Site Rules in the following terms:

Photographs of individuals within the park and of those areas of the park homes and pitches not reasonably visible from the shared access roads taken by or on behalf of the park owner can only be taken and used with the express permission of the individual or of the homeowner or occupier of the park home. No such permission is required for photographs of the exterior of park homes and pitches provided the same are used solely for the purposes of the marketing and promotion of the park (otherwise, permission for their use is required from the homeowner or occupier).

REASONS FOR THE DECISION

Background

1. The Applicant, Mr Culpeper is the owner and occupier of 3 Scamford Park, Camrose, Haverfordwest SA62 6HN ('the property'), a park home sited on Scamford Park ('the Park'). The Respondent, Mrs Barney-Cooper, is the owner of the Park.
2. The Respondent acquired ownership of the Park on 1st December 2015. On 13th July 2016, she issued 61 proposed site rules ('the Site Rules') to all the homeowners and renters on the Park. It was not in issue that the Respondent complied with the prescribed procedure for consultation on the Site Rules.
3. The Applicant responded to the Site Rules on 29th July 2016, raising a number of objections. The Respondent proposed implementation of the Site Rules with a number of modifications. This was not accepted by the Applicant, who appealed to the Residential Property Tribunal ('the Tribunal') on or around 6th September 2016.
4. The Tribunal issued Case Management Directions on 7th September 2016 and the matter was listed for inspection and hearing on 17th January 2017. However, the parties entered into talks with a view to resolving the issues

between them. To afford this process momentum, the Tribunal proposed (and the parties agreed to) a six week stay of proceedings and the postponement of the hearing on 17th January 2017.

5. Further progress was achieved by the parties, such that only three proposed Rule changes remained outstanding. The parties were content for the Tribunal to resolve these outstanding issues without a site inspection or hearing. They had both provided the Tribunal with written submissions. The Tribunal convened on 6th April 2017 and reached the decisions set out in this determination.

Relevant Law

6. Section 52(9) of the Mobile Homes (Wales) Act 2013 allows for the making of regulations as to the resolution of site rule disputes. The Mobile Homes (Site Rules) (Wales) Regulations 2014 include that procedure at Regulation 10 (so far as relevant):

(1) Within 21 days of receipt of the consultation response document a consultee may appeal to a tribunal on one or more of the grounds specified in paragraph (2).

(2) The grounds are that—

- (a) a site rule makes provision in relation to any of the prescribed matters set out in Schedule 5;*
- (b) the owner has not complied with a procedural requirement imposed by regulation 7 to 9 of these Regulations;*
- (c) the owner's decision was unreasonable having regard, in particular to—*
 - (i) the proposal or the representations received in response to the consultation;*
 - (ii) the size, layout, character, services or amenities of the site; or*
 - (iii) the terms of any planning permission or conditions of the site licence.*

...

7. The Tribunal's powers are set out in Regulation 11. It may confirm, quash, modify and substitute the proposed Site Rules

The Matters in Dispute

8. The Respondent has proposed two Site Rules which remain in dispute, regarding the repainting of pitches (Rule 14) and the use of commercial vehicles on the Park (Rule 48).
9. In addition, the Applicant has proposed a Site Rule prohibiting the taking and use of photographs (Rule 62), to which the Respondent objects.

The Tribunal's Decision

10. Having regard to the evidence we have seen, the Tribunal reached the following conclusions on the issues before us.

Rule 14

11. The Respondent proposed that homeowners must use reasonable endeavours not to depart from the original colour scheme and finish when any exterior of the homes are repainted or re-covered. The Applicant proposed amending this rule to allow the use of either pastel shades or to agree a pallet of acceptable colours with the Respondent, to permit the homeowners some variety and flexibility.
12. The Respondent objected to this amendment as she believed it will have a detrimental effect on the Park and other residents' homes. She reiterated in her objections her desire to "*maintain and ensure [the] exceptionally high standards of the park.*"
13. The Tribunal accepted that there is a delicate balance to maintain between the aims of the Respondent in managing the whole Park and the wishes of the Applicant in respect of what is his home. In our judgment, the Applicant's proposal to include pastel shades reasonably meets that balance. It ensures that the Respondent's stated concerns are met by limiting the options available to homeowners to non-offensive colours and shades, whilst affording homeowners a degree of flexibility in how they choose to maintain and present their homes. In addition, such shades are relatively easy to identify and agree upon and minimise the risk of future disputes (a factor which the Tribunal felt could arise in the parties seeking to agree a range of acceptable colours).
14. We therefore modified the Rule to allow the use of pastel shades but removed the caveat of "reasonable endeavours" in order to protect the Respondent's position.

Rule 48

15. Rule 48 restricted generally the parking of commercial vehicles on the Park, save for delivery of goods and services. Examples were given, including sign-written vehicles. There was also a proposed exemption to the Rule in favour of the Respondent, her family and her employees.
16. The Applicant proposed the removal of sign-written vehicles from the list of exemptions, given the use of such vehicles as garage courtesy cars and hire vehicles when residents own cars were being repaired. In addition, it was proposed that the exemption to the Rules was modified to ensure that it only related to commercial vehicles being used by or on behalf of the Respondent and only when being used in connection with Park business. Reference was made to a number of commercial vehicles on site which did not appear to have anything to do with the managing or running of the Park.
17. The Respondent's objection to the proposed amendment was founded in the understandable requirement to ensure high standards around the Park, maintain community cohesion and protect the value of individual homes.
18. Individual Rules do not operate in isolation. Rule 28 prohibits using the Park for any business purpose or for the storage of stock, plant, machinery or equipment for business purposes. Only home working which does not cause a nuisance to others and does not entail business visits on site is permitted. Rule 48 itself imposes a general prohibition on commercial vehicles on the Park. Against those backdrops, the Tribunal did not conclude that the Applicant's proposals were contrary to the Respondent's reasons for objection. Relaxing the Rule regarding sign written vehicles would not open the floodgates to a rash of sign written vehicles coming on site because of the prohibitions found in Rule 28 and retained in Rule 48. It would, however, address a reasonable concern by the Applicant about the increasing use of courtesy cars over which homeowners would have little control yet which would be a necessity whilst owners' cars were off the road.
19. The Tribunal also concluded that it was reasonable to modify the Rule to make any exceptions afforded to the Respondent to be explicitly linked to Park business. This would provide clarity and certainty, as well as supporting the laudable aims advanced by the Respondent of standards, cohesion and value. This also necessitated the amendment of the preamble to the Site Rules, removing the Respondent's (and her family and employees) exemption from the provisions of Rule 48 if they lived on the Park.

Rule 62

20. The Applicant proposed an additional Rule, prohibiting photography of homes and individuals within the Park without express permission, which would not be unreasonably withheld. The Applicant sought to balance the privacy of those living on the Park with the Respondent's desire to market and promote the Park to potential purchasers.
21. The Respondent objected to the proposed Rule. She referred to the same placing "*unjustifiable restrictions on the day to day running of the park including marketing and sales.*" She also maintained that the Rule was unnecessary, since any promotional photographs that erroneously included residents was deleted.
22. The parties appeared to be in agreement regarding the use of images of residents without their permission. It therefore appeared reasonable to the Tribunal to include an express Rule confirming this position, to provide clarity to the Respondent and her staff and reassurance to residents. It was consistent and reasonable to extend this to those areas of the Park Homes not reasonably visible from the shared access roads.
23. However, those parts of the Park Homes which are visible from shared and public spaces within the Park should not be subject to such a restriction, provided at all times any photographs are used for marketing purposes only. Any other use would require the permission of the homeowner or occupier. The Tribunal could see no reasonable basis for limiting the Respondent's marketing activities, given the Applicant's acceptance that the same was necessary.
24. As such, the Tribunal amended the Rules to include a new Rule 62 in the terms set out above.

Dated this 4th day of May 2017



Stephen Povey
Chairman